Aspen Institute

Program on Communications and Society

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Table A4. NORDIC COUNTRIES: POOLED CRESS-SECTION — TIME SERIES REGRESSION COEFFICIENTS ($n = 24$, PERCENTAGE CHANGES 1952–64)[1]

Dependent Variable: CBR $_{t+1}$					*Dependent Variable: TFR* $_{t+1}$			
t	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*
PC	.06772	.06041	.1480	.1487	.07109	.02348	.1615	.1274
	(.3491)	(.3329)	(.7813)	(.8262)	(.4325)	(.1378)	(1.199)	(.9082)
FW/	−.001991	.06154	−.3138	−.2831	.2909	.3392	−.04123	−.07216
CLI	(−.003128)	(.1045)	(−.492)	(−.4860)	(.5395)	(.6141)	(−.0909)	(−.1536)
IM	.07957	.1394	.01154	.07619	.2118	.1932	.1281	.1173
	(.4017)	(.7797)	(.0605)	(.4471)	(1.262)	(1.152)	(.9451)	(.8531)
TCS	.1907		.1503		.08975		.04335	
	(2.140) †		(1.722) °		(1.188)		(.6985)	
FA		.05761		.04256		.04701		.02705
		(1.765) *		(1.356) °		(1.535) °		(1.068)
BK		.01045		.01044		.003146		.003364
		(2.641) †		(2.751) †		(.8471)		(1.098)
TD		.02133		.01867		.0323		.02881
		(.4823)		(.4524)		(.7784)		(.8657)
GP			.08588	.08296			.1095	.1073
			(2.016) *	(2.107) *			(3.614) ‡	(3.379) ‡
P			1.155	1.347			2.059	2.089
			(.6861)	(.8499)			(1.721) °	(1.634)
$\bar{R}^2$	.253	.289	.220	.310	.095	.095	.357	.347
D.W.	1.263	1.977			2.224			

1 Data available only at two-year intervals
Note: D.W. = Dubin-Watson Statistic For Serial Correlations
°, *, †, ‡: See Table A2, footnotes

THE ECONOMIC CASE FOR A FOURTH COMMERCIAL TELEVISION NETWORK

ROBERT W. CRANDALL

Among the most controversial features of the Nixon administration, which was riddled with controversy, was its continuing war with the national news media. During the first term, much of the battle was waged with the commercial television networks, reaching a verbal crescendo with Clay Whitehead's charge that the network news divisions dispense "ideological plugola."[1] The assault was not simply a verbal one, however, for the Nixon Justice Department had the temerity to file Sherman Act antitrust suits against each of the three networks, charging restraint of trade and monopolization of prime time programming.[2]

It is unfortunate that the political tone of the Nixon assault upon network power has distracted the attention of the public from the real social issue: the continuing economic concentration of the most important news, public affairs, and entertainment medium in the country. Most of the debate concerning the Sherman Act litigation and ancillary thrusts by the Nixon administration have centered upon the underlying political motivation which produced the actions and the related First Amendment issues. Few people realize that the existing network triopoly is a creation of government policy and that normal market forces will not lead to deconcentration as the industry grows.

The underlying cause of network concentration is quite simply the local-station allocation plan enacted by the Federal Communications Commission two decades ago. By limiting the number of VHF stations to three in most markets, the Commission

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1 A speech delivered by Clay Whitehead, Director of the Office of Telecommunications Policy, in Indianapolis in December 1972.

2 These actions, *United States* v. *Columbia Broadcasting System and Viacom International, United States* v. *American Broadcasting Company*, and *United States* v. *National Broadcasting Company*, were filed in the U.S. District Court for the Central District of California, April, 1972.

drove one network from the market and effectively blocked entry for the foreseeable future.[3]

Strangely, most of the Nixon administration's assaults upon network power have failed to deal with this underlying cause. The antitrust suits envision no relief which would encourage more than three networks to coexist at the same hour. The 1970 Prime Time Access Rule[4] enacted by the FCC simply remands one-half hour of prime programming time daily to the local stations with disastrous effects upon program quality.[5] The assault upon network reruns is obviously not directed toward structural reform.[6] Perhaps the only major policy initiative which may eventually undermine the network triopoly was the liberalization of cable television rules in early 1972.[7]

Had the Nixon administration wished to reduce network power, it should have focused its attention upon the structure of the local television markets in which a new entrant must find affiliates. Even at this late date, it is possible for the FCC to make a few changes in its frequency allocations which would ease the problems of entry into network brokerage. A practical suggestion for such changes appears in section 3 of this paper.

Clearly, an economist cannot measure the full social benefits of increased competition in a major medium such as network television. The standard theory of monopoly suggests that monopolists profit from restricting output, but would greater competition in network television increase the networks' output of viewer exposures to advertising? This could occur only through an increase

3 For a full listing of these allocations, see section 73.606 of the Federal Communications Commission Rules and Regulations Governing Television (Washington, D.C.: U.S. Government Printing Office, 1974).

4 U.S. Federal Communications Commission, *Report and Order*, Docket 12782 (Washington, D.C., May 1970). Since that time the FCC has attempted to weaken the rule, but more recent litigation has forced the commission to stay this action (see U.S.F.C.C. Docket 19622) (Washington, D.C., 1973–1974).

5 The most cogent case for repeal has been made by Dean Burch, former Chairman of the FCC. See his separate statement in the 1973 *Report and Order*, Docket 19622 (Washington, D.C.).

6 Office of Telecommunications Policy, "Analysis of the Causes and Effects of Increases in the Same-Year Rerun Programming and Related Issues in Prime-Time Network Television" (Washington, D.C., March, 1973).

7 The final decision of the FCC in Dockets 18397, et al., was issued in February 1972. This decision authorized the importation of distant broadcast signals into the largest 100 markets and included guidelines for pay cable. The compromise among broadcasters, cable system owners, and copyright owners was a signal achievement of Chairman Burch and Clay Whitehead.

in the number of commercial minutes per hour or through an increase in total viewing stimulated by greater network rivalry for audiences. If the latter increase were to occur, it would represent a gain for consumers, but can it be shown that total viewing is related to the number of network signals available? Section 1 of this paper investigates such a possibility, drawing upon existing studies and the results of a new econometric inquiry.

Even if total viewing is not responsive to increases in the number of national network program services available, it is conceivable that the program choices afforded by four or five networks would be more valuable to viewers than the fare offered by the existing three network companies. There might be a greater range of entertainment programming, or at least more choices available, even if this programming were similar to that now offered by the networks. In addition, viewers would have more national news and public affairs services available with the possibility of more diverse viewpoints from which to choose. It is not a simple matter to estimate the addition to viewer welfare which would result from increasing the number of networks, but we can attempt to measure the value of existing network services from data drawn from the cable television industry. Section 2 compares the results of several studies of the demand for cable television services in areas where the full three-network service is not available off the air. These results are then extrapolated in order to calculate the consumer surplus which would be derived from new national networks.

Finally, a specific policy proposal for hastening the development of a fourth network is presented in section 3. Since the social benefits from increased competition among networks should exceed the private benefits, a comparison of the putative costs of launching and operating a new network with the benefits calculated in section 2 should provide a conservative guide to the wisdom of actively encouraging entry into network television.

1. The Effect of Concentration Upon Audience Size. The Existing Evidence

The effects of limited program choice upon U.S. television viewing cannot be very great, as even the most cursory examination of audience data would amply demonstrate. During a typical hour of prime time — 7:30 to 11:00 P.M. Eastern time — more than 60 percent of all households are viewing television, with 80 million persons above the age of two years before their receiving sets. From 9:00 A.M. to midnight, the average audience is 40 percent of all television homes.[8] Given the time required to carry out a variety of the duties of life, it is difficult to see how Americans could increase their television viewing by an appreciable amount.

These aggregate statistics do not permit us to conclude that viewing is related to broadcast signal choice or to a variety of demographic variables. More precise investigation is required. Of the existing studies of viewing behavior, three merit brief review before turning to our own econometric investigation.

Perhaps the most thorough of existing studies of viewing behavior is that undertaken by Fisher and Ferrall for one- and two-station markets.[9] These authors estimated that the average audience with only one local station is 53 percent of television homes in prime time. The addition of a second "viewing alternative" was found to increase the audience to 58 percent of television homes, but the addition of a third alternative led to ambiguous results because of the difficulty in separating duplication and independent signals from primary network signals.

More recently, Noll, Peck, and McGowan estimated the effect of local competition upon the market share of an affiliated station, and their results were similar to those of Fisher and Ferrall for one- and two-affiliate markets.[10] With one affiliate, the average audience during prime time is 42 to 45 percent of television homes. The addition of a second affiliate raises this estimate to 55–58 percent, and a third affiliate raises it still further to 60 percent.

A cruder study undertaken by the FCC staff suggests that there is no relationship between viewing and the number of local commercial stations.[11] This study, appended to the commission's Second Proposed Rule for CATV, simply relates the average audi-

[8] These data may be found in the annual *Television Market Analysis*, published by the American Research Bureau, New York.

[9] Franklin M. Fisher and Victor E. Ferrall, "Community Antenna Television Systems and Local Television Audience," *Quarterly Journal of Economics*, May 1966.

[10] Roger Noll, Merton J. Peck, and John J. McGowan, *Economic Aspects of Television Regulation* (Washington, D.C.: The Brookings Institution, 1973), p. 51.

[11] U.S. Federal Communications Commission, "The Economics of the TV-CATV Interface," study appended to the Second Further Notice of Proposed Rule-Making, Docket 18397-A (Washington, D.C., July 15, 1970).

ence from 9:00 A.M. to midnight for a number of markets arrayed by the availability of local broadcast signals. It does not separate network stations from independents, nor does it capture the effect of signal choice upon viewing during prime hours.

All of the studies cited above suffer from a common defect: the absence of demographic variables which may be important to viewing habits. In addition, only the Fisher and Ferrall study comes to grips with a major problem in such an investigation — the overlapping nature of television signals caused by the FCC allocation plan. Both of these problems are addressed in the econometric investigation reported below.

A More Detailed Analysis of Viewing Frequency

The voluminous data on the nation's television viewing habits may be employed to test a rather simple model of viewing frequency. The two most important tasks in undertaking such an investigation are the separation of households on the basis of their ability to receive VHF, UHF, and imported cable signals, and the identification of the precise number of each type of signal carrying network, independent, or noncommercial programming. The form of the model which we shall attempt to estimate is given by

$$(1) \quad A_i = V_i(\quad) + U_i(\quad) + C_i(\quad) + u_i,$$

where A_i measures the audience in the ith market as a proportion of television homes during the specified interval, V_i is the proportion of homes capable of receiving only VHF signals off the air, U_i is the proportion of homes able to receive both VHF and UHF signals off the air, and C_i is the proportion of homes attached to a cable television service. The u_i term is a random disturbance factor, and the brackets indicate a functional form of the available signal variables. Unfortunately, (1) cannot be estimated because of the difficulty in separating V_i from U_i. The audience measurement services report both the number of cable homes and the number of homes with UHF capability, but the latter datum is a combination of some homes with cable television and some receiving all channels off the air. Since there is no way of separating the all-channel cable homes from those able to receive all channels off the air, it becomes impossible to obtain precise measures of V_i and U_i by subtraction or any other methodology. As a result, we estimate a slightly less satisfactory linear model of viewer behavior: [12]

$$(2)\quad A_i = O_i\,(a_1 DNET_i + a_2 LNET_i + a_3 DIND_i + a_4 LIND_i + a_5 DEDUC_i + a_6 LEDUC_i) + \gamma C_i + \lambda CTZ_i + \eta HH_i + u_i$$

where, for the ith market, O_i = the number of homes without cable and

$DNET_i$ = a dummy variable equal to zero if viewers in the given reception category cannot receive a network station, and unity if they are able to receive a network station.

$LNET_i$ = the natural logarithm of the number of network stations which viewers in the given reception category can receive.

$DIND_i$ = a dummy variable equal to zero if viewers in the given reception category cannot receive an independent station and unity if they are able to receive an independent station.

$LIND_i$ = the natural logarithm of the number of independent stations which viewers in the given reception category can receive.

$DEDUC_i$ = a dummy variable equal to zero if viewers in the given reception category cannot receive an educational station, and unity if they are able to receive an educational station.

$LEDUC_i$ = the natural logarithm of the number of educational stations which viewers in the given reception category can receive.

CTZ_i = a dummy variable equal to unity if the market is in Central or Mountain Time Zones, and zero otherwise.

HH_i = the number of television households in the market.

The off-the-air signal variables are a series of dummies and logarithms of the number of signals of each type because of the

[12] This equation ignores the likelihood that UHF signals are viewed less intensively for given reception quality because of the absence of UHF capability on some receivers and the difficulty in coping with the UHF dial on all-channel receivers. R. E. Park has estimated that the UHF handicap is substantial in his cable subscriber demand investigation (see ftn. 23). On the other hand, Greenberg's study of television station profits (ftn. 20), suggests no specific UHF handicap, and my attempts to fit Park's equation to a new data base (ftn. 25) lead me to reject the hypothesis of a significant UHF handicap. It would probably be fair to say that a

assumption that additional signals add to audience at a declining rate — an assumption derived from the previous studies and mildly vindicated by the somewhat reduced explanatory power of a regression equation linear in the signal variables. The convention that the logarithm of zero is zero is adopted for the purposes of estimating (2).

Because of the absence of complete data on the several thousand cable systems in the country, it is impossible to specify the precise number of signals available to cable viewers in each market. This is probably not an important limitation for one major reason. The number of network signals available to cable subscribers is three in virtually every system; thus, *DNET* and *LNET* combine to form a single term with a coefficient of γ if the other signals have no effect upon viewing. In light of the results for off-the-air viewing, as we shall see, this is an eminently reasonable interpretation.

The inclusion of *CTZ* and *HH* is intended to capture the effect of the location of the market and its size upon total viewing. Since prime time programming begins at 6:30 P.M. in the Central Time Zone instead of at 7:30 as in the rest of the country, it is likely that viewers in markets in the *CTZ* will behave differently from those in other areas. The size of market is simply a proxy for urbanization.

Two dependent variables are used in this study: (i) the percentage of television homes viewing during prime time (*PTA*), and (ii) the total number of quarter hours watched by the average household in one week (*AQHW*).

To estimate (2), we utilize data for the 207 markets listed by the American Research Bureau in its division of the country into Areas of Dominant Influence. All viewing data are drawn from fall 1970 tabulations by the ARB. Cable penetration data for these markets are obtained from A. C. Nielsen tabulations published in *Broadcasting*.[13] The number of signals available off the air in each market are derived from the "B Contour" [14] mappings published in the *Television Factbook*.

consensus exists among students of the industry that there is some UHF handicap, but that it is dwindling.

[13] *Broadcasting*, June 1, 1970.

[14] The B Contour embraces that area in which viewing is defined to be of satisfactory quality 90 percent of the time from 50 percent of viewing locations.

Table 1. REGRESSION RESULTS FOR VIEWER FREQUENCY — MARKET AGGREGATES

Regression Number	Dependent Variable	Off-the-air 0 times DNET	LNET	DIND	LIND	DEDUC	LEDUC	Cable C	CTZ	HH	R^2	n
					All Markets							
(i)	AQHW	146.8[a] (71.44)	4.742[b] (2.84)	1.388 (0.85)	−2.193 (0.70)	−1.424 (1.05)	−3.096 (1.19)	145.8[a] (38.03)	−3.890[a] (3.78)	0.00148 (0.86)	0.152[b]	207
(ii)	PTA	54.28[a] (49.15)	2.156[c] (2.39)	0.2117 (0.24)	−1.326 (0.79)	0.4545 (0.63)	−3.242 (2.32)	53.57[a] (26.00)	1.593[c] (2.533)	0.00146 (1.59)	0.140[b]	207
(iii)	AQHW	146.2[a] (75.93)	4.577[b] (2.88)					145.8 (39.27)	−3.604[b] (−3.68)		0.136[b]	207
(iv)	PTA	54.55[a] (52.28)	2.441[b] (2.84)					53.09[a] (26.40)	1.571[b] (2.96)		0.111[a]	207
					Homogeneous Markets							
(v)	AQHW	142.3[a] (21.94)	6.160 (1.18)	−9.989[c] (2.55)	12.57 (1.08)	0.5301 (0.18)		145.0 (22.35)	−0.9113 (0.41)	−0.006716 (0.97)	0.310	26
(vi)	PTA	54.13[a] (15.98)	4.719 (1.14)	−2.156 (1.06)	0.2374 (0.04)	−1.949 (1.26)		47.15 (14.02)	1.927 (1.67)	0.0009369 (0.26)	0.629	26
(vii)	AQHW	143.1[a] (49.05)	0.8011 (0.273)					157.3[a] (22.78)	0.07724 (0.04688)		0.136	26
(viii)	PTA	52.18[a] (17.66)	4.452 (1.79)					49.31[a] (16.78)	2.458[b] (2.46)		0.5541[b]	26

a = Significant at the 0.1 percent level
b = Significant at the 1 percent level
c = Significant at the 5 percent level
(t statistics in parentheses)

The ordinary least squares estimates of (2) are reported in Table 1. Only the coefficients of the network signal variables, the cable penetration variable, and the *CTZ* dummy are consistently significant, but the magnitude of *LNET* is quite small. The interpretation of the results for the 207-market sample is quite straightforward. In regression (iv), for example, the coefficient of *DNET* suggests that 54.55 percent of all television homes watch during an average hour of prime time outside *CTZ* if there is but one network station available. An increase in the number of network signals to three increases prime time viewing by the coefficient of *LNET*, 2.441, multiplied by the natural logarithm of 3, or approximately 2.7 percentage points. Thus, trebling the number of networks increases viewing during prime time by only 5 percent.

Since every cable system is assumed to offer three primary network signals, the coefficient of C — 53.09 in regression (iv) — points to less prime time viewing by cable homes than by noncable viewers with three network affiliates to choose from. This is an intuitively unsatisfactory result to which we turn below.

Interestingly, the *CTZ* dummy variable assumes a positive coefficient in the *PTA* regressions but a negative coefficient in the *AQHW* equations. Homes facing earlier network schedules watch more during prime time but apparently view less during the entire week. Finally, the size of market appears to have little significant impact upon total viewing.

The small values of the estimated coefficients for *LNET* in the full 207-market sample may be attributed in some part to a problem of errors in variables.[15] Viewers in most markets are often able to receive some signals from other markets, and it is the rare market in which all households are able to receive precisely the same signals. There are two methods available for ameliorating this problem. One might drop all observations for markets in which overlapping signals exist. Alternatively, one could reduce the size of the geographical areas covered in the sample. We begin with the former possibility, selecting all markets whose signals do not overlap other market signals at the B-contour level. This

15 If there are random errors in the independent variables, such as LNET or LIND, straightforward application of ordinary least squares will provide estimates of the respective coefficients which are biased downward. See J. Johnston, *Econometric Methods* (New York: McGraw-Hill, 1963), Chapter 6.

yields a very small sample of only 26 "homogeneous" markets.[16]

When equation (2) is estimated over only the homogeneous sample, the statistical precision of the *PTA* regressions is improved, but the *AQHW* regressions prove statistically insignificant. Equations (vi) and (viii) support the general qualitative results of the 207-market regressions, but the magnitude of the coefficient of *LNET* is nearly double that obtained in the larger regression sample, confirming our suspicions of an errors-in-variables problem. Cable homes still appear to indulge in less total viewing than their counterparts receiving signals off the air, and this result leads us to question the precision of the off-the-air estimates.

A more satisfactory approach to reducing the errors in variables lies in choosing small geographic areas for our sample observations. The smallest geopolitical divisions for which ARB reports viewing data are county units; therefore, we next estimate our viewing equation by utilizing a sample of counties in which television households report the viewing of only local signals. For the 1970–71 rating periods, there were 262 such counties in available ratings books.[17] Although this sample may contain some counties in which households are technically able to receive outside signals, households do not report any such viewing, and we may therefore conclude that distant signals are not meaningful viewing options.

Since the county sample contains only households who do not view television stations outside the home market, the problem of cable signal imports does not occur. In fact, there are no cable subscribers in 235 of the 262 counties in the sample, and in the remaining 27 cable penetration is very low. Nevertheless, we report all results for both the entire sample and for counties without cable television, omitting the cable penetration variable. The logarithm of the number of households in the county is included to capture the effects of urbanization,[18] and in unreported regressions a measure of household income and the mean years of

[16] A list of these markets may be obtained from the author.

[17] Specifically, the criterion is that local households report viewing signals from other markets less than 0.5 percent of the time since ARB rounds all viewing percentages of more than 99.5 percent up to 100 percent.

[18] Dr. R. E. Park of Rand has suggested to me that this variable might also be capturing the effect of reception quality since smaller counties are likely to be located farther from transmitting stations. I doubt that this explanation is of major importance given the variance in the sizes of the home counties of the markets included in the sample.

Table 2. REGRESSION RESULTS FOR VIEWER FREQUENCY — COUNTY AGGREGATES

Regression Number	Dependent Variable	DNET	LNET	DIND	LIND	DEDUC	LEDUC	CTZ	Log HH	R^2	n
					All Counties						
(i)	*AQHW*	120.3a (15.40)	23.28b (3.02)	−3.376 (0.88)	−1.093 (0.12)	2.027 (0.67)	−14.57 (1.93)	−2.559 (0.88)	1.444 (1.49)	0.081b	262
(ii)	*PTA*	44.91a (16.22)	7.061c (2.58)	−0.3441 (0.25)	2.928 (0.91)	−1.127 (1.04)	−4.314 (1.61)	3.589a (3.49)	1.199a (3.50)	0.143b	262
(iii)	*AQHW*	117.7a (16.65)	23.63a (3.36)						1.606 (1.69)	0.065b	262
(iv)	*PTA*	45.16a (16.37)	5.502c (2.18)					4.316a (4.50)	1.267a (3.72)	0.124b	262
				Counties without Cable Television							
(v)	*AQHW*	122.4a (15.47)	18.71c (2.37)	−3.932 (0.98)	1.537 (0.16)	3.677 (1.14)	−15.84c (2.02)	−2.031 (0.66)	2.106c (2.08)	0.091b	235
(vi)	*PTA*	45.33a (16.30)	6.406c (2.31)	−0.4848 (0.34)	3.420 (1.03)	−0.8043 (0.71)	−5.002 (1.81)	3.528b (3.28)	1.291a (3.63)	0.153b	235
(vii)	*AQHW*	119.4a (16.88)	20.49b (2.88)						2.237c (2.26)	0.072b	235
(viii)	*PTA*	45.51a (16.49)	5.021c (1.98)					4.206a (4.14)	1.382a (3.91)	0.131b	235

a = Significant at the 0.1 percent level
b = Significant at the 1 percent level
c = Significant at the 5 percent level

education for persons 25 years of age or older are also included. Since the income and education variables never contribute significantly to the explanatory power of the viewing equations, they are omitted from the results reported in Table 2.

As in the previous samples, the only form of television signal which contributes to viewing intensity is the network affiliate. Neither independent nor educational stations are associated with greater viewing during prime time or over an entire week. Even though the statistical fit of the regression equations is rather poor — undoubtedly caused in large part by considerable sampling error for such small areas — the effect of the number of network signals upon both *PTA* and *AQHW* is considerably greater than in the previous results. With only one network signal available, 45 percent of households view television in a non-*CTZ* county with 1,000 television households. This prime time audience rises to 49 percent with the addition of a second network signal — an increase of 8 percent — and to 51 percent in the presence of 3 network stations. The effect of the *CTZ* dummy is the same as in the results reported in Table 1 for the *PTA* regressions, but it appears to have no significant effect upon average weekly quarter hours. In addition, viewing is directly associated with county size.

All the results obtained in this detailed econometric investigation point to an association of television viewing with the number of network stations available, but to no association between television viewing and other commercial or noncommercial signals. One might ask if this association is not as much a reflection of causation running from viewing to the number of stations which can coexist profitably as it is support for the theory that more network stations lead to more television viewing.[19] Such an interpretation would be plausible if the estimation of (2) yielded significantly positive coefficients for the independent-station variables, for it is the independent stations which are at the margin of profitability in most markets. Greenberg has reported econometric results which demonstrate that fewer than 200,000 homes are required for a market to support three network affiliates

[19] More formally, we might suggest that there exists a simultaneous equation bias in the estimated coefficients of such variables as *LNET* and *LIND* because a complete model should include two equations: one explaining viewer behavior and one determining the size distribution of local stations. For reasons discussed below, I doubt that such a simultaneous equation model is needed in this instance.

comfortably.[20] Nearly one-half of the markets in our 207-market sample are above this threshold; hence, it would seem most unlikely that a few percentage points in various audience measures would have much effect upon network station viability. Rather, it seems that the causation runs the other way — from numbers of network stations to viewing. Moreover, the results reported in Table 2 are based upon individual county units, and it would seem quite implausible to suggest that network affiliates' viability turns on the viewing habits within but a single county in their markets.

The conclusion which must be drawn from the results reported in this section is that the number of local network signals has a significant, if small, impact upon total viewing. Independent stations — offering mostly reruns of old network programming — and noncommercial stations do not attract additional viewers to their sets even though the latter offer distinctly different types of programs from those appearing on the commercial stations. Either the noncommercial station audience is drawn from those who would watch network fare in the absence of other choices, or it is so small as to have little effect upon total viewing data. As we shall see, the latter explanation is probably the more persuasive.

2. *The Value of Increased Viewing Options*

Even if additional network signals do not create a major increase in total television viewing, might the increased competition not yield a more diverse program menu which viewers would value? Without a price mechanism in commercial broadcasting, it is difficult to estimate the value of alternative viewing options, but fortunately the advent of cable television has provided us with a valuable source of data for estimating consumer demand.

There are three major studies of the demand for cable television services in the literature. Although these investigations differ in a number of important respects, all utilize ordinary least

[20] Edward Greenberg, "Television Station Profitability and FCC Regulatory Policy," *The Journal of Industrial Economics*, July 1969, pp. 210–238. These estimated breakeven points may be high for two reasons: (i) recent data on station profitability shows a trend toward fewer unprofitable UHF stations and (ii) there is a problem of separating amortization of capitalized monopoly rents from true social costs in the accounting costs collected by the FCC.

squares regression techniques to estimate the effect of a proportional increase in viewing signals upon subscriber demand. The signal variables utilized in each of these studies are of a form first suggested by McGowan and Peck [21] in their pathbreaking investigation

$$(3) \qquad X_i = \frac{1 + C_i}{1 + L_i} \quad ,$$

where C_i is the number of signals of the ith type — primary network, duplicate network, independent, or educational — offered by the cable system, and L_i is the number of analogous signals available locally. Comanor and Mitchell [22] utilized this form for various reception levels, while Park [23] constructed a similar set of variables, employing UHF handicap and distance weights in constructing the L_i. In each of these studies, the network signals provided the greatest impact upon total subscribers. For instance, the elasticity of subscription rates with respect to X is equal to 0.93 for network signals in the Park study but only 0.09 for educational or duplicate network signals. Independent signals do not contribute significantly to subscriber penetration in either the Park or the Comanor and Mitchell studies. In fact, the only form of signal import which contributes to explaining the variance in subscriber penetration in the latter investigation is that of primary network affiliates.

McGowan and Peck do not report the mean values for their variables, but they calculate the total and incremental consumer surplus contributed by independent and network signals. This set of calculations is reproduced as Table 3, but the reader is cautioned that they derive from a highly restrictive Cobb-Douglas utility model and require integration far outside the limits of the observations utilized in the regression analysis.[24]

[21] John J. McGowan and Merton J. Peck, "Estimating Consumer's Valuation of Additional Television Programming from CATV Data," ms., 1970, reprinted as Appendix A to Noll, Peck, and McGowan, ftn. 10.

[22] William S. Comanor and Bridger M. Mitchell, "Cable Television and the Impact of Regulation," *The Bell Journal of Economics and Management Science*, Spring 1971, pp. 154–212.

[23] Rolla Edward Park, "Prospects for Cable in the 100 Largest Markets," *The Bell Journal of Economics and Management Science*, Spring 1972, pp. 130–150.

[24] The calculation of consumer surplus usually requires integration in a range of price-quantity combinations which lie outside the range of actual observation. The more serious problem is undoubtedly the a priori restriction placed upon the form of the utility function. Attempts to fit other data to the McGowan and Peck demand equation have not been successful (see below).

Table 3. TOTAL AND MARGINAL SURPLUS PER HOUSEHOLD PER YEAR FROM FREE TELEVISION — MC GOWAN AND PECK ESTIMATES

Number of Stations	*Network*		*Independent*	
	Total Surplus	*Marginal Surplus*	*Total Surplus*	*Marginal Surplus*
1	$234	$234	$60	$60
2	365	131	96	36
3	456	91	121	24
4	525	68	140	19
5	581	56	156	16

Although there are a variety of statistical problems which each of the existing studies have failed to overcome completely, each points to the same conclusion: households are willing to pay much more for increments to network signals than for any other service offered by standard cable television systems.

In a more recent study conducted by this author,[25] a sample of 228 systems was utilized in testing alternative forms of a cable demand equation. The data for these systems were drawn from a 1971 questionnaire survey of 449 large systems. When the data were fitted to demand equations of the types utilized in the three earlier studies discussed above, versions of the Park model performed far better than the Cobb-Douglas form utilized by McGowan and Peck. Further analysis revealed that the value of successive signal imports does not decline as rapidly as implied in (3). Instead of constraining the signal variables in this fashion, therefore, a set of dummy variables, D_i, were utilized for each possible cable signal/local signal configuration. The following results were obtained in an ordinary least squares regression.

$$(4) \quad \log S/H = \underset{(2.30)}{-\ 3.207} + a_i D_i - \underset{(3.59)}{0.717} \log P$$
$$+ \underset{(2.27)}{0.336} \log Y + \underset{(2.76)}{0.122} \log AGE,$$

where S/H is the proportion of households subscribing to the cable system, P is the monthly subscription fee, Y is median household income in the cable system's principal community, and AGE is the age of the system in months. The equation was estimated over a sample of 136 systems operating in areas of ap-

[25] R. W. Crandall, "The Efficiency of Local Franchising of Cable Television," unpublished ms., M.I.T., April 1974.

parently good local signal reception. The figures in parentheses are *t*-statistics for each estimated coefficient.[26] The values of the α were:

$\alpha_1 = 0.372$ (4.87) if a third network signal was imported when two network signals were available locally.

$\alpha_2 = 0.482$ (5.67) if the second and third network signals were imported into a market with only one network station.

$\alpha_3 = 0.613$ (5.25) if all three network signals were imported (and none were available locally).

The increment to α in (4) as a second and then a third signal is imported declines from 0.13 to 0.11. Assuming that this decline continues linearly with the addition of new networks, we might assume that the value of α would be 0.683 if 4 network signals were offered, 0.733 if 5 network stations were offered, and 0.763 in the presence of 6 network signals.[27] We may insert these values into (4) in order to obtain a demand equation for each level of expanded service. The value of each level of service may then be approximated by estimating the area under each demand curve from $S/H = 0$ to $S/H = 1$. Given the loglinear form of the demand curve, however, such an integration would involve extremely large values of P as S/H becomes very small — values of P far outside the limits of the sample used to estimate (4). Therefore, we integrate the demand curve only between the limits of $S/H = 0.1$ and $S/H = 1$. The expression for the value of each level of service is thus assumed to be equal to:

$$(5)\quad V = \int_{P_{S/H=1}}^{P_{S/H=0.1}} (S/H)dP + P_{S/H=1}$$

where $P_{S/H=0.1}$ and $P_{S/H=1}$ represent the prices at which S/H achieves the value of 0.1 and 1.0, respectively, for each demand equation. S/H is equal to the antilog of (4) evaluated at mean household income for the same ($9,300) and a system of age of

[26] The results are very similar to those for the entire 228-system sample. See the appendix to R. W. Crandall, ftn. 25.

[27] There are obvious difficulties involved in extrapolating beyond the range of observations used in fitting (4), but it would be impossible to calculate the value of a hypothetical network without such extrapolation.

one month. This yields a demand equation which is a function of the $\alpha_i D_i$ values defined above:

$$(6)\quad S/H = exp\,(-.137 + \alpha_i D_i)\ .\ P^{-0.717}$$

Substituting (6) into (5) and integrating results in the following expression for the value of per month each level of service:

$$(7)\quad V = \left[\frac{\exp\,(-.137 + \alpha_i D_i)\ .\ P^{0.283}}{0.283}\right]_{P_{S/H=1}}^{P_{S/H=0.1}} P_{S/H=1}\,.$$

In Figure 1, the lightly shaded area represents V for three net-

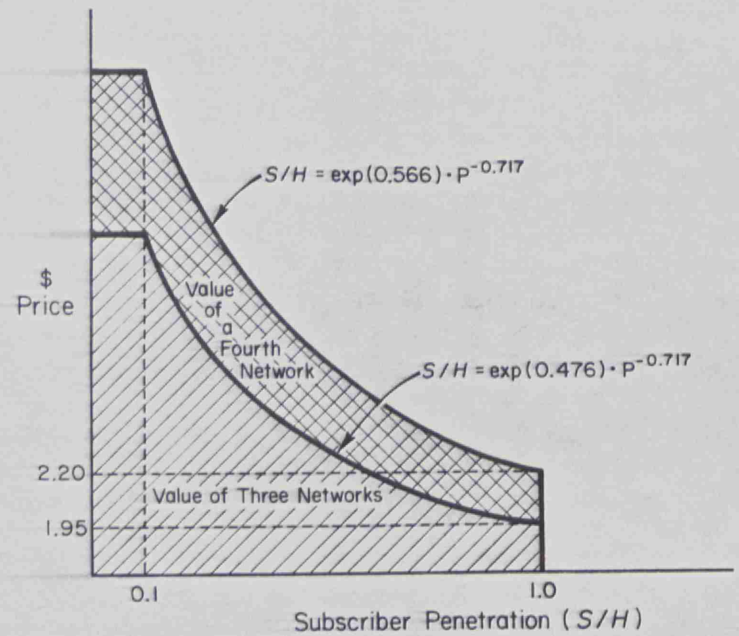

Figure 1. THE VALUE PER HOUSEHOLD PER MONTH OF TWO DIFFERENT LEVELS OF NETWORK SERVICE

works while the sum of the shaded and cross-hatched areas equals the value of the fourth network per month. The difference between these two areas, or simply the cross-hatched space, represents the increment to value per household contributed by the fourth network. The estimated values for a fourth, fifth, and sixth network are reported in Table 4. These estimates are only 30 percent of the McGowan and Peck calculations presented in

Table 3, but even these conservative estimates lead to a projected value of nearly $1 billion for a fourth network,[28] certainly less than the costs of providing such an increment through a rearrangement of VHF allocations and the production of new programs.

Table 4. ESTIMATED VALUE PER HOUSEHOLD PER ANNUM OF INCREMENTS TO A THREE-NETWORK, ZERO INDEPENDENT TELEVISION SYSTEM

Number of Network Signals	*Total Value per Household*	*Marginal Value to Household of Signal*
3	$145.44	
4	160.20	$14.76
5	171.96	11.76
6	179.16	7.20

3. *A Suggested Formula for Creating a Fourth Network*

The discussion of the preceding section suggests that the net benefit to viewers of a fully competitive fourth network could approach $1 billion per year. How much would this addition to our national television service require in annual operating costs? At present, the three national networks share revenues of slightly more than $1.5 billion per year, realizing less than 10 percent of this in net profits. During prime time, revenues are approximately $900 million; total program outlays are between 60 and 65 percent of this amount. Affiliation payments require another 15 percent of revenues, administrative costs approximately 10 percent, and interconnection costs no more than 3 percent. Thus, net margins are somewhere in the range of 10 to 15 percent in prime time.[29]

[28] The estimate of consumer surplus obviously depends very much upon the specification of the demand function. In another paper (ftn. 25), I argue that two-stage least squares is required to fit a demand function properly because local regulators should encourage a bidding system for cable franchises in which the subscriber fee is a function of prospective demand for the service. Estimation of such demand and regulatory functions is not easy, however, given the difficulty in specifying a regulatory equation which fits the data. Nevertheless, one attempt at doing so results in two-stage least squares estimates of a demand function in which the price elasticity of demand increases to −0.982. This more elastic demand function generates much lower estimates of consumer surplus. From this equation, the incremental value of a fourth network may be calculated at only $7.08 per household per year or less than $500 million per annum for all households. Nevertheless, even this ultraconservative estimate of the value of another network exceeds the private costs of operating a new network.

[29] These data are derived from U.S. FCC, *Broadcast Financial Data*, 1972, and Broadcast Advertisers Reports, Inc., New York, 1973.

The entry of a fourth network would lead to an erosion in each of the 3 existing networks' audiences, and the rents earned by performers would decline as a consequence. This decline would not be proportional to the decline in revenues, however, if the networks behave competitively in their bidding for talent. In fact, we would expect a standard Cournot model of program outlays to generate an increase in the share of revenues devoted to programming from the 60–65 percent range to approximately 70 percent.[30] Affiliation payments would undoubtedly fall because of the expanded number of stations which would have to exist in most markets to facilitate the survival of a fourth network, but this decline would be minor.[31] Whether administrative costs could be reduced in the face of declining revenues is not clear, but obviously interconnection costs per dollar of revenue would rise.

Since a fourth network would add only marginally to total audience, it is a rather safe deduction that total network advertising revenues would be very nearly the same as for a three-network market. Annual revenues per network would decline from $500 million to approximately $375 million. Profit margins might fall to less than 5 percent, given our above deductions, but it is difficult to know whether this would be sufficient to cover the cost of capital without some measure of the capital investment required per dollar of sales. Since the cost of an average program would fall by over 20 percent, the investment in inventories of future programs would decline correspondingly. Network broad-

[30] This result is derived from a version of the standard Cournot model utilized by R. W. Crandall in "F.C.C. Regulation, Monopsony, and Network Television Program Costs," *The Bell Journal of Economics and Management Science*, Autumn 1972, pp. 483–508. Subsequently, Park adopted a similar model in "New Television Networks," The Rand Corporation, December 1973 (R–1408–MF) although Park argues that his model differs conceptually from its predecessor. Each model predicts that program expenditures will rise as a proportion of revenues as the number of networks increase. This rise will be at the rate $(N-1)/N$ increases, where N is the number of networks; therefore, an increase from 3 to 4 networks should lead to an increase of 12.5 percent in program outlays if revenues remain unchanged.

[31] Affiliation payments represent the total compensation which networks must make to induce clearance of their programs, but they include a large amount of economic rent. Greenberg's results (see ftn. 20) demonstrate the importance of a network affiliation in determining station profitability, a clear indication that affiliation payments are considerably above the opportunity cost of the time relinquished by affiliates. With the advent of a new network, the economic rents available for sharing with affiliates would decline, as would the opportunity costs of local broadcasting in the face of three network affiliate rivals.

casting is little more than a brokerage operation and the total required capital – other than film inventories – is rather small. It is quite conceivable that profit margins in the area of 5 percent would be sufficient in this leaner, more competitive world, but it is not possible to assert more than this.

If a fourth network were to survive under the above assumptions, it would have to be able to reach very nearly the same number of homes as its three rivals. Faced with the necessity of bidding against these firms for programming, it could not offer lower program payments to suppliers for equivalent fare. Nor is it likely that it could find lower cost programs which would allow it to generate sufficient audiences to compete.[32] But how can it hope to reach as many homes as its three established rivals? The existing commercial television stations in the United States would allow the new network access to only 21.6 million homes via VHF stations and 17.2 million through UHF outlets.[33] With only 60 percent of the nation able to receive its programs, a new network would obviously be remanded to an early grave. Clearly, some FCC action is required to provide the affiliated stations in markets with few outlets. Herewith is a suggestion.

It is imperative that the FCC consider new means for increasing the number of commercial VHF stations in the nation's largest markets. The best option for doing so is to transfer public broadcasting stations now in the VHF band to the UHF band if there are fewer than four commercial VHF stations in the market. This decision, combined with some minor shifting of the freed VHF allocations, would increase the new network's affiliation possibilities via VHF to 36 million homes. Another 11.8 million would be obtainable by UHF affiliations, creating a total exposure to 47.8 million homes (see Table 5).

A second possibility is the use of some of the "VHF drop-ins" suggested by the Office of Telecommunications Policy.[34] This

[32] R. E. Park and I reach opposite conclusions on this matter. He argues (see ftn. 30) that a disadvantaged network will choose less expensive programs than its rivals, but I argue that the rents of established talent would be the same to all buyers. Thus, for instance, ABC has not programmed with cheaper fare in the face of its affiliation disadvantage, and the reason for this is quite simple: the rents paid to talent reflect their differential ability to attract audiences in a given environment. ABC must absorb the cost of its inferior status, not Harry Reasoner or Dick Cavett.

[33] The reader should compare these calculations with those of Park in "New Television Networks," ftn. 30.

[34] Office of Telecommunications Policy, "Technical Analysis of VHF Television Broadcasting Frequency Criteria," (Washington, D.C., October 1973).

Table 5. POTENTIAL ALLOCATIONS FOR FOURTH NETWORK

Policy	*Total Homes Reached by* VHF Affiliates	UHF Affiliates	All Affiliates
1. No change in FCC policy – existing independent stations affiliate with new network	21,640,000	17,156,000	38,796,000
2. All VHF educational stations in markets with fewer than 4 commercial VHF stations are transferred to UHF	35,995,000	11,843,000	47,838,000
3. OTP drop-in plan for VHF is adopted – 2 continues for non-"drop-in" markets	44,099,000	6,183,000	50,282,000
4. New network is issued construction permits for a UHF station in any market with fewer than 4 commercial stations – 3 continues. New network may also construct VHF station wherever VHF allocation is unused.	44,306,000	15,277,000	59,583,000

would increase VHF exposure to 44.1 million homes. Finally, the new network could be permitted to construct and own UHF stations in all markets with fewer than four commercial stations after the conversion of public stations and VHF drop-ins. The total effect of these three simple changes in FCC policy would be to allow the new network access to nearly 60 million homes, or about the same as ABC at present. One-fourth of these homes would be accessible only by UHF stations, but this handicap might not be sufficient to render it noncompetitive.[35] The three policy changes deserve a try at least.

The thought of transferring noncommercial VHF assignments

[35] Some of the UHF stations might encounter difficulties in covering their costs, but those facing a majority of the new households attracted by the fourth network would not. Approximately 9 million homes are to be accessed in this fashion, but 5.3 million of them would be in markets sufficiently large to support four network affiliates, assuming that Greenberg's (ftn. 20) breakeven market size for three-station markets is the appropriate criterion for a four-station market when there are four networks. The purported unprofitability of independent UHF stations has fallen markedly since Greenberg's article; thus, this may be a conservative judgment.

to commercial broadcasters may seem a crass concession to commercialism, but any acknowledgment of the principle of consumer sovereignty certainly dictates such a shift. At present, the noncommercial stations in the top 50 markets are able to attract a mere 322,000 households during an average hour of prime time. At the same time, the networks are attracting 25 million viewers, or 8.3 million per network, more than 25 times the audience of the noncommercial ventures.[36] The shifting of noncommercial stations to the UHF band might reduce their audiences by as much as 25 to 30 percent, or less than 100,000 viewers. But a fourth network would be worth nearly $1 billion to viewers. Even after subtracting the additional resource costs devoted to programming this fourth network, can anyone seriously believe that the public broadcasting devotees, who would now be forced to find their favorite noncommercial show on a dial without click stops, would be willing to compensate the potential gainers from a fourth commercial network? Some might argue that the lower costs of noncommercial television offset its lower audiences, but at present audience levels the typical prime-time noncommercial hour costs between $100 and $200 per thousand homes viewing while a commercial program hour requires less than $20.[37] This disparity cannot be a favorable reflection on resource allocation, especially given the evidence that few would pay anything for the privilege of watching noncommercial television as presently conceived. To transfer its prized VHF stations to commercial broadcasting seems only sensible.

4. *Summary and Conclusions*

Ever since Steiner's seminal article [38] on the potential misallocation which derives from "free" commercial broadcasting, students and regulators of radio and television have focused an enormous amount of energy upon measuring diversity and seeking structural means to increase it. The evidence in this paper suggests that if diversity is to have an economic meaning — an opportunity set

[36] American Research Bureau, *Television Market Analysis*, 1972.

[37] Noll, Peck, and McGowan, ftn. 10, p. 224.

[38] See Peter O. Steiner, "Program Preferences and the Workability of Competition in Radio Broadcasting," *Quarterly Journal of Economics*, May 1952.

confronting viewers which adds to their satisfaction as the number of options increases — diversity is best achieved by expanding the number of commercial networks, not by trying to expand the number of stations offering program fare which virtually no one watches. This lesson is particularly important for a medium in which the fixed costs of programming and distribution are very large, requiring sizable audiences to amortize them efficiently. Catering to extremely small audiences, whether through offering highly specialized fare nationally or providing local programming, is an extremely inefficient objective. Better that audiences hungering for French-language versions of Brecht plays or desiring the most recent examples of Alvin Ailey's choreography partake of these pleasures in a theater than to view them on a television channel whose opportunity cost is measured in terms of the loss of a different variety of police-detective drama. The fact that viewers may place a value of $1 billion per annum on a fourth commercial network's programming is strong evidence that greater choice among motion pictures, sports, and television dramas is preferred to more "cultural" fare. There is no evidence anywhere in the literature that the type of programs broadcast by noncommercial stations today is valued very highly by many people, nor is there even any evidence that many households view such fare.[39]

There is very good evidence, however, that a reduction in network programming actually reduces viewer welfare. In 1970, the FCC reduced the number of hours of network programming during prime time by 15 percent, requiring stations to seek their own "first-run" programming during these hours.[40] The effect of this requirement has been a flood of cheap game shows so lacking in viewer appeal that a very large number of viewers have switched

[39] This is not to say that noncommercial programs are without value to their viewers, but merely to observe that their value is less than that of the potential commercial programs they displace. Viewer contributions to noncommercial stations are often cited as evidence that the programs which they offer are highly valued by some households, but these contributions defray less than 10 percent of the noncommercial system's costs. Since others may view without contributing, it is impossible to conclude that these contributions are an accurate measure of value to all viewers. Nevertheless, there is no evidence that this total value approaches the $1 billion suggested for a fourth commercial network.

[40] The effects of the Prime Time Rule were anticipated in R. W. Crandall, "The Economic Effect of Television-Network Program 'Ownership,'" *The Journal of Law and Economics*, October 1971, pp. 385–412. For a full discussion of the rule's effects, see R. W. Crandall, "The F.C.C.'s Prime Time Rule: An Assault on Monopoly Control?" unpublished ms., M.I.T., March 1974.

to independent stations during this "access" period. Thus, the Commission has created programming which many viewers take to be inferior to the old network reruns offered by the independent stations.

The FCC's principal error in attacking network power through this reduction of prime-time network programming lies in its misconception concerning the economics of program production and distribution. Quality programs are produced only when there is a national market for them, and it is the network which provides this national market. If greater diversity and choice is desired, it is imperative that the FCC examine policies which facilitate the entry of new networks. One such policy has been presented in section 3 above, but it is by no means the only alternative. If the commission finds the proposal of shifting prized noncommercial VHF stations to the UHF band particularly distasteful, it could look to other methods of reassigning television frequencies. It would be particularly unfortunate, however, if the political appeal of allowing these noncommercial stations to operate on very valuable VHF frequencies were to thwart the development of a fourth commercial network. It seems very unlikely that the costs to the few hundred thousand noncommercial viewers of learning to cope with their UHF tuners are as great as the benefits of greater viewing choice to the 36 million households watching network television during a typical hour of prime time.

JAPANESE POLITICS OF ADVICE IN COMPARATIVE PERSPECTIVE:
A Framework for Analysis and a Case Study

EHUD HARARI

Introduction

Among the various forms of outside advice used by governments in democratic policies, public advisory bodies (PABs) have undergone a notable proliferation in recent years. They vary in several respects, such as in name (Royal Commissions, public commissions, advisory councils, etc.), duration (ad hoc, intermittent, permanent), or size of membership (one individual, a group of five, a White House conference of several hundred) — to mention only a few.

Public advisory bodies are distinguished from other forms of outside consultative groups by the following criteria: (1) They are appointed by national or local administrations, in some cases with, in other cases without, the authorization of their legislatures; (2) their membership includes (either partly or exclusively) persons from outside the government; (3) they are designed as *public* advisory bodies by the instrument of their establishment; this criterion excludes such outside sources as private consultants, consulting firms, or research institutions; (4) the manner of their establishment and their final reports (but not necessarily the content of their deliberations) are made public; this criterion excludes certain "task forces" such as those used by the Johnson administration in the United States.[1]

Ostensibly PABs are formed to supplement the traditional institutions of policymaking with new perspectives on public issues and new ideas. However, recent studies in several countries suggest that PABs perform a variety of functions in addition to, or

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1 Norman C. Thomas and Harold L. Wolman, "Policy Formulation in the Institutionalized Presidency: The Johnson Task Forces," in Thomas E. Cronin and Sanford D. Greenberg (eds.), *The Presidential Advisory System* (New York: Harper & Row, 1969), pp. 124–143.

For Clay T. Whitehead

A FEDERALIST PAPER, 1974

CITIZEN MONEY ORGANIZATIONS:

FROM PROTEST TO POWER

by

the Staff of the
INDUSTRIAL AREAS FOUNDATION
SAUL D. ALINSKY TRAINING INSTITUTE

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p3: citizen groups pressuring advertisers re programs

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"It's OUR money, dammit, let's make it work FOR us instead of against us!"

That's the central idea in Citizen Money Organizations, as they are now emerging in Chicago, Milwaukee, Minneapolis-St. Paul and several other cities and counties around the country.

Early Example: On April 26, 1974, in Milwaukee, 80 leaders and members of the West Side Action Coalition deposited individual and parish savings accounts totaling $500,000 in two savings-and-loans. The officers of those savings-and-loans signed contracts to turn those deposits into mortgages for the red-lined West Side. The president of the S&L which received $400,000 in deposits looked at the delegation and said, "I probably shouldn't tell you this---but do you realize how powerful this can get if you really organize it?" It took WAC four months to collect pledges to move those savings accounts.

Early Example: In Minneapolis-St. Paul, four citizen organizations--The Greater Metropolitan Federation, South Minneapolis Coalition, North East Community Organization, and Organization for a Better St. Paul--spent from October, 1973 until January, 1974 collecting savings account pledges totaling $2 million. That leverage resulted, on January 16, in an agreement between the organizations and Midwest Federal Savings and Loan, to make available the same percentage of mortgages as there were deposits from the two cities, instead of investing city depositors' money in suburbs and out of state. In 1973, Midwest Federal made 11% of its loans in the Twin Cities. This year so far they've more than doubled that, to 25%. The organizations collected that $2 million from 800 individual parties, plus the Catholic Diocese, which moved $100,000 to Midwest Federal.

Early Example: In Chicago, the Citizens Action Program (CAP) has collected pledges totaling $47 million, from individuals and churches, to move savings accounts into savings-and-loans and banks which re-invest back into the depositors' neighborhoods, for mortgages and home repair loans. CAP calls this "greenlining"---the opposite of "red-lining," which happens when mortgage makers draw a red line on a city map, around working class and middle class neighborhoods, and say, "No more mortgages there---we'll take their deposits and invest them in the suburbs, or in Las Vegas, or Orlando, or Phoenix." In June, 150 CAP members canvassed parts of Chicago's Southwest side, collecting pledges to move deposits into mortgage houses which returned monies back into the Southwest side. In one day, those canvassers collected $11 million in pledges. Savings and loans which a year ago refused to discuss their policies with their depositors are now begging to negotiate. CAP is taking that program into almost every neighborhood in Chicago.

* *

Citizen Money Organizations (CMO's) are plainly NOT what schools of social work call "community organization." Nor are they "street" or "turf" or "neighborhood" organization---that style was obsolete in the 60's.

The basic idea of Citizen Money Organization is to aim large numbers of small monies, to organize family and institutional monies into collective instruments of real power. The way these monies are actually organized is through a pledge card system, covering checking accounts, savings deposits, insurance premiums, cash value life insurance loans, and credit cards. That pledge card declares that my family, or our church, fraternity or union, will move X dollars from one or more of those categories into a financial institution which signs a contract agreeing to the policies that citizens, through their CMO, have agreed are necessary.

The CMO then negotiates with the savings-and-loan, bank, insurance company or retailer from a position of actual financial power. These negotiations can cover a wide variety of issues.

Take, for example, citizen consumer issues, such as:

1. LAND. In the cities, working class and poor neighborhoods are stripped of money when insurance companies, savings and loans, and banks dis-invest, or "red-line." Those financial institutions put that money, not into the areas that need it, but into suburban and exurban sprawl--over-developing areas that don't want it. This process becomes the engine which fuels land speculation in downtowns, suburbs, and exurbs, driving people from the cities into soon-to-be suburban slums and back into luxury apartments on city land from which working class and poor were originally evicted. (For excellent descriptions of this process see Cities Destroyed for Cash, by Bryan Boyer, and, Mortgage On America, by Leonard Downie, Jr.) The insurance premiums of poor, working and middle class families, when collected in huge numbers and aimed by the insurance giants, are used to drive those same families from area to area, all in the name of "safety" or "security for your loved ones." It's the biggest "sting" in America. But a CMO in a metropolitan area that organizes $50 million to $200 million can say, "Put your money here, don't put your money there; or, put it there for only certain types of developments."

2. FOOD PRICES. The big profits here are in agribusiness--the huge producing, processing and marketing combines--and the banks and institutional investors which speculate in commodity prices. CMO's in the commodities exchange areas---Chicago, New York, Minneapolis, Kansas City, for example---could regulate rampant food speculation much more effectively than the government regulators who are only fronts for the speculators. CMO's could ask commercial banks to disclose what food chains, or food processors and producers they invest in. Or CMO's could ask food chains to disclose how much they spend on advertising, which is tax-free. Food is energy, it is a crucial public commodity. Its ownership and profit patterns must be flushed into the public arena, where customers, using millions of dollars in negotiations with the financial heart of the industry, can enter the center of the decision-making process. This strategy, not sporadic boycotts, is the way to change power and profits in the food industry. The same idea applies to energy companies and utilities.

3. APPLIANCE QUALITY. Standards of quality for everything ranging from TV's to automobiles (including gasoline mileage) are pitiful, and are an incessant source of everyday irritation. CMO's with major money power can deal with the directors of major retailers, by aiming thousands

of credit cards, or by dealing directly with the banks that finance retailing or auto. In this area, the new federal Consumer Product Safety Commission will never have the power to carry out drastic changes in product quality without the allied clout of huge amounts of organized citizen money.

4. COST AND NATURE OF HEALTH CARE. Instead of ineffective moaning about astronomical profits in the ethical drug industry, or in medical equipment, CMO's can negotiate directly with the institutional financiers of the ethical drug companies and the medical equipment industry. Once in the real arena of health-cost decision-making, citizen health consumers, on an organized basis, can raise long-term questions about the over-professionalism, impersonalization and over-specialization of health care, which disturbs both consumers and thoughtful practicioners.

5. QUALITY OF ELECTRONIC MEDIA. Anyone in media knows that the purpose of radio and TV is to sell products. Information about how to cope with economic, political and social reality in the world of the 1970's and 1980's is far down, if not at the bottom, of the priority list of both local broadcasters and the networks. The real centers of decision-making in the electronic media are in the major advertisers, who use the brokers of the advertising agencies to meet the right media executives. Instead of calling the station to object to a program or an opinion, or instead of staging "events" just to attract media attention, Citizen Money Organizations can negotiate from strength with the advertisers to change the quality and values of mass media presentations. This is one way to avoid unnecessary government regulation in the area of free speech, yet give interests other than the major advertisers fundamental input into mass media. CMO dollars, not just advertising dollars, can walk into the broadcasting board rooms.

Or take <u>citizen municipal</u> issues, such as city services, mass clearance for <u>unneeded expressways</u>, "urban removal" of working class and poor neighborhoods, quality schools, public health, ineffective criminal judges and district attorneys, or discriminatory property taxes.

Instead of going through the game of "citizen participation" or "hearings"---a game set up to exhaust citizen efforts and divert them from the real sources of municipal power---Citizen Money Organizations can meet directly with the directors of the banks and insurance companies who make the real money off those public decisions, and who, by financing the political campaigns and the ongoing bribes for politicians, really run our cities, counties and states.

After extensive internal education on an issue, the members of the CMO can instruct their leadership to meet with the key local banks and insurance companies, to say: "We have \$100 million. We'll move that \$100 million into the bank(s), or place our insurance premiums with the insurance companies, that ally with us to stop that expressway and fight for mass transit expansion." Or break the bureaucratic nightmares that stifle good teaching in the city public schools. Or force criminal court judges, DA's and criminal defense lawyers to end the tax-financed madness of our current criminal injustice system.

SOME KEY ELEMENTS OF FIGHTING CITIZEN MUNICIPAL ISSUES:

1. Banks and insurance companies buy the municipal bonds which fundamentally finance out-of-whack local government bureaucracies and public works projects. CMO's can meet institutional bond-holders in their board rooms if CMO's are capable of moving $100 million or more in deposits or insurance premiums. The terms of the bond covenants are the REAL statements of operating public policies and public works. Citizens must have the money power to sit at the tables where those bond covenants are drawn up, and to speak with results at those tables.

2. Insurance companies get hundreds of millions of dollars in premiums for public properties. Do they re-invest those tax-paid premiums back into the cities, in mortgages for working class and middle class and poor families who want to stay? Or do they invest in new forms of industry which could make Long Island, or Brooklyn, or St. Louis, or Paterson, or Gary economically hopeful? No. They use those premiums to destroy the cities, by investing in suburban shopping centers, which attract slurb housing, most of which will be slums in ten years. Or, they invest in trans-national corporations which destroy American jobs by setting up sweatshops in Taiwan, or Korea, or Singapore.

3. Who are the local insurance brokers who collect those tax-paid premiums which the major carriers invest elsewhere? The key local politicians. In New York or Chicago, what local insurance broker do you have to use if you want to open a restaurant or bar or parking lot? Your friendly ward committeeman or clubhouse chairman, or county chairman. Insurance premiums are a prime driving force in local and state government. CMO's, by aiming millions of dollars in premiums and cash-value life insurance policies, can force the major insurance carriers to tell their local and state brokers/politicians to vote for the interests of the organized policy holders.

4. Local and state units of government place huge amounts of tax receipts in checking and savings accounts in local commercial banks. With rare exceptions, mayors or school board presidents or state treasurers or governors never demand that those tax dollars be re-directed back into red-lined neighborhoods, or into new job development, or into leveraging energy companies, or food companies, or utilities, into changing their policies to benefit the taxpayers and consumers who originate those dollars. Local commercial banks take municipal cash held in checking accounts, do not pay the local unit of government for the use of that money, and invest it in high-profit short-term paper, or loan it out to other banks (so-called "federal funds")---without any disclosure or accountability to the taxpayers. CMO's, with their money power, can go to the heart of local politics, which is the relationship between elected politicians and the financial institutions, discover what is actually going on, and wield a surgical knife sharp enough to lance the local boils. CMO's can demand disclosure, accountability and changed policy, and get results, not the run-around.

5. As for electoral politics, most American voters are just turned off. CMO's can transform the game of electoral politics, at local, state and eventually national levels, by following the advice of Secretary of Agriculture Earl Butz on how to influence the vote of Congressmen:

"Find the Congressman's financial angel. That is the way I worked to beat a bill raising price supports 25%. I called up one chap and started to explain the bill. He said, 'Hell, don't bother. I'll just tell the Congressman I don't want it.' He did and that was it." (How many angels can dance on the head of a politician?) CMO's can deal directly with the angels. Why run around in limbo?

6. A final example of CMO strategy on citizen municipal issues applies to local property taxes. In city after city, suburb after suburb, industrial and commercial properties are assessed at far less a percentage of market value than homes and small apartment buildings. This is the result, pure and simple, of money clout with the local assessor. Many homeowners, caught in the vise of needed new public services and inflation, are at their taxing limit. What can organized citizens do to a local assessor who is on the take from the local Real Estate Board, or the local Manufacturers Association, aside from trying (usually unsuccessfully) to defeat him at the polls? Expose him in the media? Usually he can just ride that out.

Instead of being confined to traditional protest tactics against an assessor and his cronies who cheat on their property taxes, a CMO, with its focused dollars, can speak quietly but effectively to the holder of the mortgage on the under-assessed property. Especially if the mortgage holder is a bank or an insurance company. Or if a bank or insurance company holds bonds or stock in a company whose property is underassessed, or issues loans to that company, CMO leaders can demand that the bank or insurance company (or both) tell the company's management to pay their full share of local property taxes. This strategy can be extremely useful in the suburbs, where the major shopping centers are usually underassessed badly, denying essential revenues to local schools, recreation facilities, transportation, etc.

In any of these issue areas, citizens must have actual power, not the appearance of power. In other words, they must have money leverage.

Where there are skilled organizers and trained leaders, <u>the process of building CMO power</u> would look like this:

1. Large educational meetings, where citizens/consumers/depositors/policy holders/credit card holders, in a process of action, reflection and study, identify their financial targets and set priorities.

2. Sign up thousands of families, and hundreds of churches, fraternities and unions, to move their monies into the institutions which change their policies to meet the demands of the CMO, as the CMO members develop and vote on those demands.

3. Once the CMO has collected pledge cards worth (depending on the size of the city or county) $50 million, or $100 million or more, negotiate with the financial institutions which can actually change the situation.

4. If the financial institution(s) agree to the CMO demands, then the CMO leadership encourages the members, individually and institutionally, to move their money into those banks, S&L's, or insurance companies. Conversely, if money can be moved into certain institutions, it can be moved out of others, which do not respond to the policy requirements of organized citizens. What can be given---deposits or premiums---can be taken away. The key fact here is that when I deposit one dollar in a bank, the bank can loan out 6 or 7 dollars. Conversely, when I take my dollar elsewhere, the bank loses 6 or 7 dollars in loan capacity.

(But this is not the creation of a "run" on any financial institution. It is a positive marketing strategy, to invest in financial institutions which sign contracts with organized depositors/policy holders to invest money where it will benefit those people. It is depositors/policy holders holding out incentives to attract institutional investment. Viewed historically, this is simply a re-enactment of what happened in many early ethnic neighborhoods as leaders gathered together savings from their frugal neighbors and organized early savings-and-loans. Only now, with CMO's, it is being done on a metropolitan or county-wide basis, much larger than a single neighborhood. From another point of view, if banks can advertise appliances and other goodies to attract depositors, why can't depositors, in a thoughtful, organized way, advertise so that banks and insurance companies and savings-and-loans have to bid for their money? What could be more American?)

Another aspect of the strategy involves pension funds. Unions and churches have immense amounts of their pension funds invested in oil and utility and food companies through bank trust departments, yet in their current lack of organization, those organizations are permitting their members' monies to be used by the largest banks to drive fuel, utility and food prices so high that their members' pensions will have no value at all in a few years. The weekly contribution to his pension fund by the worker, or teacher, or clergyman, is being used to bankrupt him.

There are three leverage points on banks: Moving deposits, demanding a genuine voice in how the pension fund is invested, and buying and selling bank stock.

There are two leverage points on insurance companies: Collective use of premiums, and collective use of cash value life insurance loans.

Citizen Money Organizations don't have much direct access to large pension funds, but they can move deposits, buy and sell bank stock, and use both insurance premiums and policy loans. Or they can aim credit cards to leverage retailers.

Progressive unions have the same weapons, but they also have tremendous potential leverage in the use of the pension funds. Public employee unions, if they would fight for control of their funds, could influence funds totaling $65 billion now, going up to $130 billion by 1980. In pension funds on the private sector side, there are non-insured assets of

$107 billion, insured assets of $45 billion; that will also double by 1980. What good is so-called union democracy if the members have no real voice in how that amount of money---their money---is invested? They can prevent it being used against themselves.

The CMO, or "greenlining" strategy is being used in a number of cities now. It is working. It will continue to work. It is a major new citizen strategy.

Calculate the figures. Take a metropolitan area of three-fourths of a million people. Break that into 250,000 family units. Figure that you can organize 10% of those family units, in other words, 25,000 families. Estimate that the average amount of money that can be moved in each family unit, including checking accounts, savings deposits, insurance premiums and policies and credit cards, is--conservatively--$2,000. That comes to $50 million. Add 500 institutions across that metropolitan area, moving a very conservative $5,000 apiece. That comes to a combined total of $52,500,000.

Or on insurance: Figure 1,000 families in a parish with each family spending a conservative $500 a year in insurance premiums. Organize that along with 49 other parishes. That means that those 50 parishes have $25 million in insurance premiums to negotiate with.

Add to that the municipal monies in the local city councils, county boards, school districts, sewer districts, mosquito abatement districts, and so on.

To leverage this kind of money in the real arenas of power means organization---not movement. It requires highly skilled organizers and trained leaders, and its constituency is not the children of the affluent, but the heads of households of working families--poor, blue collar and white collar. It must include church institutions, fraternities and unions, neighborhood groups and taxpayer groups.

To get representation inside a Citizens Money Organization, a church, fraternity, neighborhood organization, union, or taxpayers group buys a seat in the Leadership Committee by paying, let's say, $500 a year dues. So for $500, that group can share in leveraging $50 million or $200 million or more depending upon the size of the population base that can be organized.

"Greenlining" is a citizen strategy that can be applied to any issue. Like any strategy it can be used for good or evil depending on the values and objectives of those who wield it.

Citizen Money Organizations offer a new technology of power to citizens so that in the battle for redistribution of wealth, accountability of our economic and political institutions, decentralized decisions which are closer to the centers of citizen power, citizens can fight, not with the shotgun protests of the 1960's, but with laser beams--with weapons that hit what they are supposed to hit, with an impact that wins.

Why is this important?

Citizen consumers in every income, ethnic and political category in the country are now cynical to the marrow over the poison that has been released for all to see in the political parties, and in the purchase of both parties by bankers, insurance and manufacturing executives, and business union officials.

Any thoughtful citizen knows there is a Watergate in every city and county hall, every board of education and sewer district, in every governor's house and state legislature.

The result is a massive sense of helplessness, about both that rottenness and the daily bombardment of rising prices. Low voter turnouts simply reflect a huge "turnoff." That feeling is compounded because, as citizen consumers cast around for solutions, they know that the traditional methods of protest will not work.

On citizen municipal issues, citizens know that traditional tactics such as large protest meetings, picket lines, or even changing elected officials, don't pay off with consistency and finality. After long fights on these issues, citizens are still left mostly with the feeling that the REAL decision is not made in city hall, but somewhere else by someone behind the elected politicians; and that there may be temporary victories, but the big economic interests are only outwaiting, silently, the protesters. The politics of protest comes to feel like an empty charade, where citizens stretch out their hopes, then pour their energy into fighting---only to be in the wrong arena. The best recent documentary of this is The Power Broker, Robert Caro's book about Robert Moses, where countless citizen groups go up against the mayors of New York, who lie to them, or stall them, or otherwise con them, while the real decisions are made by a cluster, orchestrated by Moses, of bankers, insurance men, engineers, contractors and union leaders who remain out of sight, and who, getting rich, line the pockets of the politicians who front for them by "hearing" the citizen protest groups into exhaustion and defeat.

Citizens feel the same about consumer issues. In these areas, citizen consumers know that they have no real leverage over the immense concentrations of control in key centers of banking, insurance, manufacturing and media. They also know that politicians and "regulators" are bought and sold with daily regularity by these interests---that most state and federal politicians are in debt to or have investments in banking or insurance or manufacturing or media.

There is disillusion across the country, not just among the poor, but also throughout the middle and lower middle class groups, white, black, Latin and Indian, both about the ability of the current system to solve these problems, and about the protest tactics of the 1960's. Everyone knows that those tactics did not go to the jugular, did not prevent runaway banks, insurance investors, manufacturers and their captive "regulators" and politicians from concentrating control and making decisions, vital to the public well-being, for their own profit and power. And only the most naive, or the dependent, have any belief left that electing "the good guys" will change that concentration of control. The basic feeling is, "I could elect St. Francis of Assisi to the White House, or Congress, or the Governor's house, and he'd sell me out tomorrow morning." Why? Because the seduction of "good" politicians into "The Club" starts very early, is very skillfully planned by those with money power, and in almost all cases works.

James Madison warned us about runaway factions, or interest groups, in "Federalist Paper Number Ten." He saw clearly that there would always be interest groups, that some would always strive for complete dominance of the society, and that government's job was to regulate the continual jockeying among them so that dominance would not occur.

Today, the problem is that a few factions---the key American families who own the major banks, the largest insurance, manufacturing and media companies, and their captive business unions and politicians---dominate the economic and political system's decision process to such an extreme degree that the vast body of American citizen consumers are complete victims, without centers of genuine power in either the economic or political arenas. Citizens and consumers, in short, have few factions to speak of, few organizations with enough power to defend their own interests and fight effectively for solutions that benefit them. The key American clans and their economic allies own government at all levels across the country. Government has become what Madison warned against--not the regulator, but a captive.

As a result, public policies appear--and are in fact--both arbitrary and irrational to the middle of the country, that is, to 85% of the population. If you have no input into decisions, or discover that your supposedly genuine input was ersatz all along (hearings and elections), then you have no choice but to conclude that those decisions are arbitrary, made for the sole benefit of those with real power, and irrational in that they make no sense for your interest: they work against you and your family.

As Madison saw clearly, when one faction or a small group of factions dominates a society so wholly that the other factions have no instruments of accountability and influence, chaos and violence are the result. Cynicism becomes the basic value, the ground for dictatorship and fascism.

Currently, electoral politics is only the appearance of democracy. The critical decisions are, in fact, economic, and are in fact made by a small group of institutional investors. The only way that citizen consumers can operate in the real world of American decisions is through Citizen Money Organizations, which leverage, in a sophisticated yet democratic way, those institutional investors.

This strategy does not require hysterical outpourings of protest. Large groups of democratically-elected CMO leaders can meet quietly with key bankers and insurance executives in board rooms, where money is leverage and does the loud talking.

Nor need it be an opportunity for corrupt leaders to rip off members' money, as is the case in many fat-cat unions. CMO's can insist that no one but the individual member can move his money or decide about his insurance premium or policy loan. If that control is kept with the individual member, then all major decisions must be submitted to the democratic process within the organization.

A major long-range goal of this strategy could be a Citizens' Reserve Board, composed of elected representatives from the large Citizen Money Organizations and progressive unions, to extend the CMO strategy into increasingly central arenas of economic decision-making. In that event, the Citizens' Reserve Board might have the power to negotiate with the Federal Reserve Board---one representing large organizations of citizen consumers, the other representing large institutional bankers. In that kind of negotiating, new policies in almost every area of American domestic and overseas life could emerge, with genuine, as opposed to sham, input from the ordinary citizen.

After all, if Madison was accurate, the essence of a democratic republic is a large number of factions capable of holding each other accountable, through the actual, not mythological, regulatory function of representative government. Not empty protest, but real leverage, real power.

Citizen Money Organizations, by exercising citizen--consumer money power, could create a new mix of factions and therefore a democratic process relevant to the real America of the 70's and 80's.

Citizen Money Organizations must be the citizen power organizations of the future. They are the instruments through which citizens can learn that power is necessary to get anything done, and the key power is money aimed by organized people.

GREENLINING PLEDGE CAMPAIGN
Inventory Sheet

______________________________ pledges to place our savings,
(the name of your group, fraternity, institution, union or church)

deposits, and premiums only in banks, savings and loans, and insurance companies which reinvest their assets and establish policies for our neighborhoods, communities, and churches which benefit our families, our congregations and parishes, and communities. The decisions about where the monies will be placed will be made democratically in the Citizen Money Organization.

NAME ______________________________ TELEPHONE ______________

ADDRESS ______________________ CITY ______________ ZIP ________

*These figures are released publicly only with your permission.

Banks or S&L's where you have money:

______________________________ Amounts to be placed ________

______________________________ " " " " ________

______________________________ " " " " ________

Insurance companies:

______________________________ Yearly premiums ________

______________________________ " " ________

______________________________ " " ________

Retirement or Pension Funds:

______________________________ Yearly payments ________

Others: Any comments

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YOUR SIGNATURE ______________________ Date ______________

NOTIFY ME OF ALL GREENLINING STRATEGY SESSIONS

WHAT'S FAIR ON THE AIR?

The Red Lion case: A landmark court decision...Democratic dirty tricks...Government as editor of last resort.

By Fred W. Friendly

At 1:12 P.M. on the afternoon of Nov. 25, 1964, Bob Barry, the announcer on duty at radio station WGCB, Red Lion, Pa., threaded a tape made in the Tulsa, Okla., studio of the Christian Crusade. At 1:14, he began reading a commercial for Mailman's Department Store. Sixty seconds later, he gave station identification, pushed the "start" button on Tape Recorder 1 and raised the level of the audio pot just in time for the opening fanfare of "The Battle Hymn of the Republic." The Rev. Billy James Hargis was on the air in Red Lion, York, Spry and Dallastown.

The Rev. Mr. Hargis, in a stinging personal attack, lashed out at Fred J. Cook, an investigative reporter who in his own crusades had taken aim on a wide range of targets, from Richard M. Nixon to J. Edgar Hoover, from the C.I.A. to the F.B.I. His most recent book had been a highly critical biography of Barry Goldwater, published during the conservative Senator's unsuccessful race for the Presidency.

In 1964, Hargis had believed that the election of Barry Goldwater was essential "to the survival of a free America" and he was outraged by Cook for writing the book "Barry Goldwater: Extremist of the Right" as well as an article, "Hate Clubs of the Air," which appeared in The Nation and classified Hargis as a bigot. Hargis attacked Fred Cook as "a professional mudslinger," accused him of dishonesty, of falsifying stories and of defending Alger Hiss. The Hargis attack lasted less than two minutes, and the air time it filled cost $7.50.

The voice of Billy James Hargis was familiar to the people who listened to WGCB, which offered a rich diet of conservative, anti-Communist opinion derived from the evangelical vision of "the infallible word of God." There are hundreds of stations

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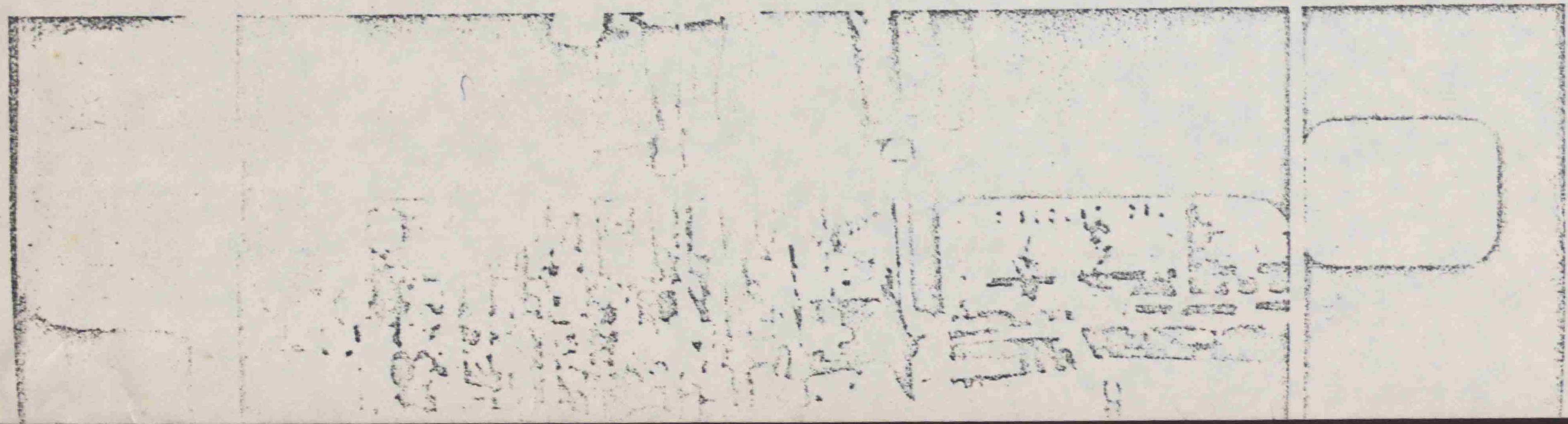


like it throughout America, many of them clustered in the Bible belts of Pennsylvania, Texas and Oklahoma.

If that day's Hargis broadcast seemed routine, however, it also turned out to be an element in a larger story of politics and communications law. For it would generate a key legal dispute over the fairness doctrine—the idea that the Government has the right to order a broadcaster to grant reply time to a person or group that claims to have suffered from a broadcast over the public airwaves.

This article began with research for a textbook on the history of the fairness doctrine, and the Hargis broadcast was a logical point of focus. For Mr. Hargis's attack upon Fred Cook would cause Cook to demand reply time of WGCB, and the resulting legal case would end in a Supreme Court decision directing the Red Lion station to grant Cook's request. The decision would stand as a commanding precedent fortifying the Government's position in subsequent fairness-doctrine cases, and the name "Red Lion" would come to stand for the power of Government to intervene directly in the content of broadcast programing on fairness grounds.

Before long, however, the historical research turned into an exercise in investigative reporting. For it became clear that the basically well intentioned concept of the fairness doctrine has on occasion been perverted—used for political purposes. Fred Cook, it turns out, did not bring his action against WGCB simply as an offended private citizen; instead, his actions grew out of a politically motivated campaign to use the fairness doctrine to harass stations airing right-wing commentary, an effort inspired and managed by the White House and the Democratic National Committee and financed in large measure with political contributions.

The facts of that effort are startling enough in themselves after the Watergate story, with its generally accepted assumption that dirty tricks in the Nixon White House were unique. But the story of the fairness-doctrine effort during the 1964 campaign also illuminates—with striking irony — the subtle and fascinating interplay of power politics and regulatory policy. In the Red Lion case, for example, many of the agency bureaucrats, Government lawyers and judges tended to dismiss the broadcasters' claim that freedom of expression might be "chilled" by court decisions extending Federal regulatory control over the content of radio and television programs—little realizing that at the time, they were granting implicit legal sanction to an unsavory project of political censorship by the Democrats.

Furthermore, this sanction, unwittingly ratified by the highest court in the land, would later embolden the Nixon Administration in its attempts to lean on broadcasters unfriendly to the President. The Red Lion precedent has been cited most recently in a case brought by a Nixon-Agnew era broadcasting watchdog group in response to a 1972 NBC documentary about corporate pension plans. That case was decided in favor of the network only this month in the Court of Appeals for the District of Columbia, but an appeal to the Supreme Court is planned. It focuses the First Amendment aspects of fairness-doctrine policy even more sharply than did the Red Lion case. For in Red Lion the issue was relatively limited—the right of an individual to gain Government-ordered reply time if he has been attacked by an irresponsible commentator. But in the pensions case, the issue is broad—the right of an interest group to gain Government-ordered satisfaction if it doesn't agree with the editing and interpretation of the facts by professional journalists.

As a general concept, the fairness doctrine arose from the fact that more people wished to broadcast over the airwaves — a public esource — than the electromagnetic spectrum could accommodate. Its outlines were formalized in a 1949 F.C.C. report, which directed roadcast licensees to operate in the public interest (1) by devoting a reasonable amount of time to the coverage of controversial issues of public importance, and (2) to do so fairly by affording a reasonable opportunity for contrasting viewpoints to be voiced on these issues.

So stated, the doctrine seems innocuous, yet the second provision, the part usually enforced, mandates that the Government should have some power to influence the content of broadcasting. A station's fairness record has come to be considered a factor in the F.C.C.'s decision to renew its license, although only once, in the case of the flagrantly racist WLBT in Jackson, Miss., did a television station lose its license to operate on fairness-doctrine grounds. Even in that case the F.C.C. acted reluctantly only after Judge Warren Burger and his colleagues on the Court of Appeals ordered it not to renew WLBT's license. More common was the application of the personal-attack provision, under which a person who felt his character had been maligned over the air could apply to the offending station for free time to respond. (It is important not to confuse the fairness doctrine, which applies to news and public affairs programing and has to do with content, with the concept of equal time, a

The Red Lion broadcast seemed routine, but it was part of a larger tale of political mischief under Kennedy and Johnson.

mathematical formula for apportioning air time among candidates during political campaigns.)

It was in 1963 that the doctrine began to change from a vague public-interest policy to an instrument of politics and inhibition. That year, President Kennedy worried that one of the noblest goals of his Administration—the nuclear test-ban treaty with the Soviet Union—was being jeopardized by right-wing commentators who denounced the treaty and argued against its ratification. His political strategists monitored stations broadcasting such commentary and then prompted test-ban treaty advocates to demand time to state their side of the issue, citing the fairness doctrine in their letters to the stations involved. The campaign resulted in a dramatic number of broadcasts favoring the treaty in areas of the country where such views might not otherwise have been heard. The White House believed this political use of the fairness doctrine had made an important contribution to the eventual Senate vote to ratify.

In 1963, Kennedy and the Democratic National Committee believed that the Republicans might nominate Goldwater and that the right-wing radio commentators who supported him could damage the President's chances for re-election; they decided to see if the fairness doctrine could again be used, this time for partisan political purposes. (It is important to remember, in light of the following, how ominous the thunder on the right seemed in those days. During this period I was an executive of CBS News; we did some aggressive reporting about the influence of right-wing extremists and incurred the wrath of many, and of Senator Goldwater, who for a period during the 1964 campaign refused to appear on CBS news programs.) The result was a campaign that continued under Lyndon Johnson through the 1964 election year; in the process, events were set in motion that would lead to the Supreme Court's decision in the Red Lion case.

On Oct. 12, 1963, one of President Kennedy's chief political assistants, Kenneth O'Donnell, invited Wayne Phillips, a skilled publicist who had helped run several Administration conferences on urban problems, to the White House. Phillips, a former New York Times reporter and part-time faculty member of the Columbia School of Journalism, was then an assistant to the director of the Housing and Home Finance Agency. At a meeting in the Fish Room, O'Donnell instructed Phillips to see if the fairness doctrine "could be used to provide support for the President's programs." Phillips in turn hired Wesley McCune, who made a business of keeping an eye on right-wing groups, to monitor the radio right. Since now there was no focused debate, as there had been over the test-ban treaty, the idea was simply to harass the radio stations by getting officials and organizations that had been attacked by extremist radio commentators to request reply time, citing the fairness doctrine. All told, Phillips recalls, this effort resulted in over 500 radio replies.

In the midsummer of 1964, with Goldwater the Republican nominee, the Democrats decided to expand the fairness-doctrine effort. Phillips, now an executive of the Democratic National Committee, retained the public relations firm of Ruder & Finn, which set about organizing a bipartisan front organization, The National Council for Civic Responsibility. Arthur Larson, a prominent liberal Eisenhower Republican and once head of the United States Information Agency, was recruited to lead the blue-ribbon panel whose members shared serious concern over the growth of the John Birch Society and other elements of right-wing extremism.

Larson would deny in public that the organization of the group had anything to do with the Presidential campaign, and funds for the council were solicited through newspaper advertisements signed by a wide range of the most respected moderate and liberal intellectuals in the country. Yet more than half of the money Larson set as his fund-raising goal came from major Democratic party contributors at the direction of the Democratic National Committee. Furthermore, the Democrats sought to encourage—and to camouflage—these big party contributions by linking the council to the Public Affairs Institute, a tax-exempt "citizen's lobby" group that had been founded in 1948 by several unions, but had existed in name only for many years.

James H. Rowe, a Washington lawyer and adviser to Presidents from Roosevelt to Johnson, called his old friend Dewey Anderson, executive director of the moribund institute, and learned that its tax-exempt status was still in effect. Anderson, then 67, recalls being escorted by Rowe through a side door of the Democratic National Committee offices to meet National Chairman John Bailey and Treasurer Dick Maguire. Anderson remembers being told by Rowe and Bailey, "We got the money and you got the tax exemption and we need you to fight these right-wing radio extremists." Anderson, happy to be summoned from retirement, agreed to join the campaign. So the National Committee for Civic Responsibility became the National Committee for Civic Responsibility of the Public Affairs Institute with initial *(Continued on Page 37)*

What's fair?

Continued from Page 12

funding of $25,000, directly from the Democratic National Committee.

The committee used the money raised—estimated at $200,000—to amplify the effort begun by Phillips and McCune. It produced and sponsored broadcasts to counter right-wing extremism, and it printed and distributed literature exposing the John Birch Society and other extremist groups. The radio shows, as shrill as those they were designed to counter, were called "Spotlight" and were narrated by commentator William Dennis, the made-up name for an actor employed by Ruder & Finn.

After the election, Phillips wrote in an evaluation report that the monitoring campaign had "resulted in over 1,700 free radio broadcasts," and that "even more important than the free radio time, however, was the effectiveness of this operation in inhibiting the political activity of these right-wing broadcasts."

Most of those who were involved in this combined White House-Democratic National Committee-Ruder & Finn effort and who will talk about it today are not proud to recall their participation. "Our massive strategy was to use the fairness doctrine to challenge and harass the right-wing broadcasters and hope that the challenges would be so costly to them that they would be inhibited, and decide it was too expensive to continue," says Bill Ruder, who had been an Assistant Secretary of Commerce in the Kennedy years. A former Ruder & Finn executive who handled the account has little doubt that "if we did in 1974 what we did in 1964, we'd be answering questions before some Congressional committee."

Larson, who had long been a target of the radical right, recalls his role with a sense of embarrassment. "The whole thing was not my idea," he says, "but let's face it, we decided to use radio and the fairness doctrine to harass the extreme right. In the light of Watergate, it was wrong. We felt the ends justified the means. They never do." And then he adds sadly, "I guess I was like a babe in the woods."

No major news organization reported these "sleazy and seamy activities" as Dewey Anderson characterized them recently, although four months after the election another man named Anderson reported in the "Washington Merry-go-Round" column the covert use of Democratic party funds to finance the Committee for Civic Responsibility front. But Jack Anderson could not possibly have known about the far-reaching fairness-doctrine implications of these irregularities, for at that time the Red Lion case was just getting under way.

Wayne Phillips and the Ruder & Finn organizers of the fairness-doctrine effort had hired freelance writer and reporter Fred Cook to help out with research and writing. He freely acknowledges that he was paid $1,500 by Ruder & Finn to produce material to be used in pamphlets, the "Spotlight" broadcasts and other projects to combat the right. Cook also undertook other tasks as a result of his association with Phillips and McCune. His book on Goldwater, it turns out, was encouraged and would not have been published without the subsidization of the Democratic National Committee. The technique, similar to Laurance Rockefeller's financing of the Victor Lasky book critical of former Supreme Court Justice Arthur Goldberg, was simple enough: The Democratic National Committee offered in advance to buy 50,000 copies of the book. The offer virtually guaranteed the cost of printing and Cook's advance of $1,000. Correspondence indicates it was the key element in the decision of Grove Press to publish the book.

In the meantime, Phillips, in May of 1964, began conversations with Carey McWilliams, editor of The Nation, as well as with Cook, about an article exposing right-wing radio activities. Cook acknowledges the close working relationship he had with the Democratic National Committee at this time and says, "It was only natural that while I was working on the Goldwater book, Phillips would suggest the 'Hate Groups of the Air' piece." The Nation agreed to run the article and pay the author a modest fee. Phillips and McCune provided Cook with much of the research material and a master tape of the most virulent far-right broadcasts.

Billy James Hargis was one of those who had figured prominently in the Nation article, and there are some indications he had an inkling that there was more to the growing anti-extremism movement than met the eye. In any case, he decided that November to attack Fred Cook in one of his broadcasts. He mentioned Cook's anti-Goldwater book and then made a number of assertions intended to discredit its author, among them that "Cook was fired from The New York World Telegram after he made a false charge publicly on television against an unnamed official of the New York City government. . . ."

It is true that Cook was discharged from The World Telegram & Sun in 1959 under clouded circumstances. He and another Telegram reporter, Eugene Gleason, had prepared a report on slum clearance mismanagement. During the preparation of the article, Gleason told Cook that he had been offered a bribe by a city official, and Cook repeated the story in a television interview. The next day, Gleason admitted to the District Attorney that he had fabricated most of the bribe story, and both men were fired from The Telegram. Cook always claimed that he was a victim of Gleason's bravado and eventually obtained a letter from Manhattan District Attorney Frank Hogan exonerating him of any responsibility for the false accusations made on the television program.

The imprecision of Billy James Hargis's statements about Cook made him a choice target for the fairness-doctrine effort, which continued even though election day had passed. Phillips and Democratic National Committee lawyers helped Cook to draft and mimeograph a letter demanding time to answer Hargis's "scandalous and libelous attack," and they provided him with a detailed list of the stations that normally broadcast Hargis. Cook sent out 200 letters; about 50 of the stations agreed to air a reply. The response of WGCB in Red Lion, Pa., however, was uncompromising. It said flatly, "Our rate card is enclosed. Your prompt reply will enable us to arrange for the time you may wish to purchase."

The rest of the Red Lion drama was played out in the courts. Fred Cook turned to the F.C.C. for redress, and the agency directed WGCB to give him free reply time. The station's owner, the 82-year-old Rev. John M. Norris, declaring that "the devil was loose in the F.C.C. corridors," decided to sue in the Court of Appeals in Washington, D.C., and lost. The court upheld the commission's right to order WGCB to provide Cook with free reply time. The F.C.C., emboldened by this favorable ruling, published a new set of rules "to clarify and make more precise the obligations of broadcast licensees where they have aired personal attacks and editorials regarding political candidates." They specified that stations and networks must notify within a week all persons attacked during the discussion of an issue and offer them reply time. Failure to provide notification could result in the forfeiture of $1,000.

Then the case took a portentous turn. The larger community of broadcasters had been watching the Red Lion events with increasing anxiety, and they were hardly reassured by Mr. Norris's plans to take his case to the Supreme Court. They feared the curmudgeon from the hills of Pennsylvania would be routed in the Supreme Court, and that the resulting precedent could give the F.C.C. new legal muscle to implement the fairness doctrine.

The self-appointed champion of the industry's cause was W. Theodore Pierson, the *pro bono* legal counsel for the Radio-Television News Directors Association, an unincorporated group of some 1,000 news managers and editors of radio and television stations. He decided to mount an attack on the fairness doctrine that would be purposely separated from the embarrassing Red Lion case and designed to steal the spotlight from it. His plan was to fight the F.C.C.'s proposed personal-attack rules, an effort in which he was eventually joined by CBS and NBC.

Pierson brought a suit challenging the proposed rules in the Seventh Circuit Court of Appeals in Chicago, a court that, he believed, did not share the pro-F.C.C. leanings of the D.C. bench. He also retained Harvard law professor and former Solicitor General Archibald Cox to represent the broadcasters.

Pierson's strategy worked. In a unanimous opinion, the Chicago court struck down the F.C.C.'s rules on right

A demonstration for Goldwater at the 1964 Republican National Convention. His nomination caused the Democrats to step up their fairness-doctrine campaign against the right.

The Red Lion decision could be seen as affirming that the First Amendment was not absolute for broadcasters; their rights were to be balanced by the rights of viewers and listeners.

of reply to personal attack as "colliding with free-speech and free-press guarantees contained in the First Amendment. . . ." The Washington and Chicago court tests had resulted in two diametrically opposed decisions on the constitutionality of the fairness doctrine. This conflict in the circuits insured that the Supreme Court would accept the appeal. The News Directors Association case was consolidated with the Red Lion case for a date in the highest court in the land.

In the Supreme Court, Red Lion's lawyer was Roger Robb, selected by Norris because he wanted "a true believer, not one of those fancy-pants Eastern liberals." Robb relied heavily on First Amendment rhetoric. "We submit," he argued, "that the command of the First Amendment is that 'thou shalt not abridge' [free speech]. And it is not 'You may abridge, but please try to keep it reasonable.'" For the industry, Archibald Cox argued that the personal-attack rules could have a chilling effect even if they were never applied, a position that Solicitor General Erwin Griswold, representing the Government, quickly attacked as hypothetical.

In questioning the three lawyers, the Justices made it clear that their main concern was the matter of access —whether the First Amendment should mean that broadcasters can use their own right of free expression in order to limit the free expression of others. Justice White asked if the Government that gave franchises to radio stations ought not "to be able to require that they let somebody else into the facility now and then when there is good reason to do so." And Justice Black asked if "there would be no relief that the man could get from the radio station that permitted him to be personally attacked."

Cox attempted to answer that the vision of "the insulated listener that the commission [illegible]" had [illegible] proved unrealistic. Broadcasting, he argued, with its multitude of outlets and its complementary relationship to other news media, has given the public greater means to communicate, not less.

But the seven participating Justices (William O. Douglas was ill, and before the decision, Abe Fortas, in the midst of his own troubles, recused himself) sided with the Government. In a unanimous ruling in June of 1969 they upheld the right of the F.C.C. to order Red Lion to grant Fred Cook reply time, and they reversed the Chicago Seventh Circuit Court opinion that the personal-attack rules were in violation of the First Amendment. The Court did acknowledge that the First Amendment was not irrelevant to broadcasting and noted that "Congress . . . forbids F.C.C. interference with the right of free speech by means of radio communication." But the opinion proclaimed "that it is the right of the viewers and listeners, not the right of the broadcaster, which is paramount."

Justice Byron White, writing for the unanimous Court, stated: "There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves."

Mr. Norris and the broadcasting community were finally undone. Norris sent Fred Cook a letter offering him 15 minutes of air time at no cost. Cook responded by thanking Norris for the offer but declined to accept it. "I cannot see much point at this late date in raking up and rehashing the entire episode. . . ." Cook says he did not know the case had gone to the Supreme Court until a local newspaper notified him of the decision.

The Red Lion decision was hailed at the F.C.C. as a "cardinal teaching," solidifying the fairness doctrine into law. At last the vague policy based on the fuzzy notion that the Government ought to have some power beyond the traditional libel laws to keep broadcasters from behaving irresponsibly had received the sanction of the highest court in the land. And what was more, the Court had used its understanding of the doctrine to intervene directly in one station's programing—it did not simply tell the Red Lion station that it must be fair to Fred Cook; it ordered it to grant him free time to broadcast on its station. The fallout from the decision did not take long to appear. Shortly after the opinion was handed down, the F.C.C. decided for the first time to take away a radio station's license for its "failure to comply with the fairness doctrine . . ." as well as its failure to inform the commission of its program plans. The station was WXUR in Media, Pa., owned by the ultraright Rev. Carl McIntire. (In a dissent to the Court of Appeals decision upholding the F.C.C. ruling, Judge David Bazelon protested that the license removal was like "going after gnats with a sledgehammer.")

But there was also a more subtle and more important result: The Red Lion decision had been read as definitely affirming that the First Amendment could not be considered an absolute guarantee of free speech as far as broadcasters were concerned; the broadcasters' rights under the First Amendment were to be balanced by the rights of viewers and listeners.

This was no small matter, for in this pre-Watergate, Vietnam-racked period, the Nixon White House was seeking systematically to politicize broadcasting. A Supreme Court decision that could be construed as the opening wedge for Government involvement in decisions of content on a broadcast-by-broadcast basis meshed with the aspirations of the Nixon Administration.

There is evidence, furthermore, that major broadcasters were in fact inhibited by the Government during this period. They granted Richard Nixon more free air time than any President had ever sought before to announce and explain his programs. And with few exceptions, they acquiesced in the demand of the White House that views too critical of the President and his policies be kept off the air—when, for example, the Democratic National Committee sought to purchase reply time to the President.*

This reaction, of course, was more a matter of politics than of written law, and with the Watergate scandals, the politics would shift in such a way that broadcasters, along with journalists, would find themselves less on the defensive. But before that happened another case entered the courts, this time at the insistence of a group with a rightist orientation. The case threatened to tighten by another notch the Government's potential fairness-doctrine power over broadcasters.

The broadcast involved was a far more substantial item than a $7.50 episode of the Christian Crusade. Entitled "Pensions: The Broken Promise," it was a major network documentary on corporate pension plans and how they often fail to keep faith with the workers they are supposed to benefit. It was broadcast on Sept. 12, 1972, over 175 stations of the NBC network.

In one of the strange coincidences of fairness-doctrine history, NBC's interest in the idea that workers were not receiving their due from pension plans had been stimulated in part by an article in The New York Times Magazine, which happened to be written by freelance writer Fred J. Cook.

The pensions broadcast captured the poignancy of aging workers who described, often in moving, graphic detail, first-hand experiences of pension plan abuse. It also included a number of interviews with U.S. Senators and authorities involved with pension-plan reform. There were some fleeting interviews with defenders of pension plans, including an executive representing the National Association of Manufacturers. Strictly on professional grounds, the documentary might be faulted for not having included a brief example of a pension plan that worked. Such a portrayal would have heightened the contrast with those that fail. However, the narrator of the program, Edwin Newman, purposely prefaced his final summary with a disclaimer: ". . . we don't want to give the impression that there are no good private pension plans. There are many good ones, and there are many people for whom the promise has become a reality."

But there was no attempt by NBC to create a stopwatch balance. Producer David Schmerler and his executive producer, Eliot Frankel, had been aroused and offended by the pension abuses uncovered by their research and that of a Senate labor committee. Schmerler says: "What we were doing was building an emotional program out of people who felt they had been terribly wronged." And although "Pensions: The Broken Promise" received an American Bar Association gavel and the George Foster Peabody Award, among others, it also was credited with stimulating the sweeping remedial action that Congress applied to the problem in a 1974 pension-reform law.

The praise was not universal, however. A Los Angeles actuary, Richard Solomon, felt the program had unfairly represented his profession and helped persuade a group called Accuracy In Media, Inc. (AIM) to file a formal complaint with the F.C.C. demanding reply time for the pension-plan industry. AIM's membership includes many names generally associated with the right-wing view of the press (Abraham H. Kalish, Marine Corps Gen. Lewis W. Walt, Eugene Lyons and Morris L. Ernst) though its founders and original direc-

(Continued on Page 46)

*The fairness doctrine, the Court decided in another historic case, could not be applied to such broadcasts. That case involved a suit by Business Executives Move for Peace, an antiwar group that had been denied the right to purchase one-minute spots on WTOP, Washington. In a strange coalition of Justices as diverse as Burger and Douglas, the Supreme Court agreed that "editing is for editors" and broadcasters could not be ordered to sell time to political activists. For different reasons, the Nixon Administration and the networks rejoiced in the decision.

The F.C.C. has also ruled on the fairness questions raised by paid commercials. In 1966, acting on a complaint of a 23-year-old Columbia Law School graduate, John F. Banzhaf III, the commission ruled that radio and television stations were required to provide some response time to cigarette advertising. By 1969, antismoking commercials had proved themselves effective, and Congress, in an act of pragmatic statesmanship, passed the Public Health Act of 1969, which ordered all cigarette advertising off the air.

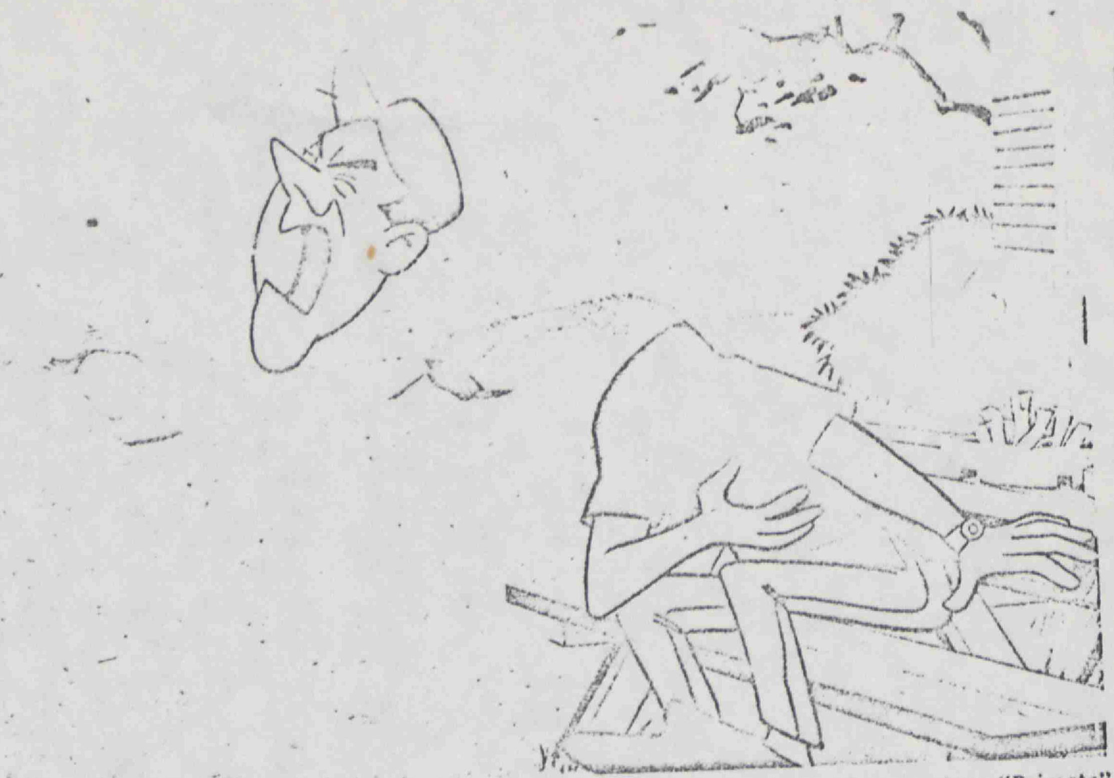
In 1970, Friends of the Earth, an environmental group, complained that the NBC station in New York was airing automobile commercials that promoted the sale of cars using high-octane gasoline. After prodding from the court, NBC and Friends of the Earth entered into a "secret" agreement that provided for some 120 antipollution commercials to be aired. Since then, the F.C.C. has ruled that the fairness doctrine is not applicable to the ordinary commercial that simply promotes the sale of a product.

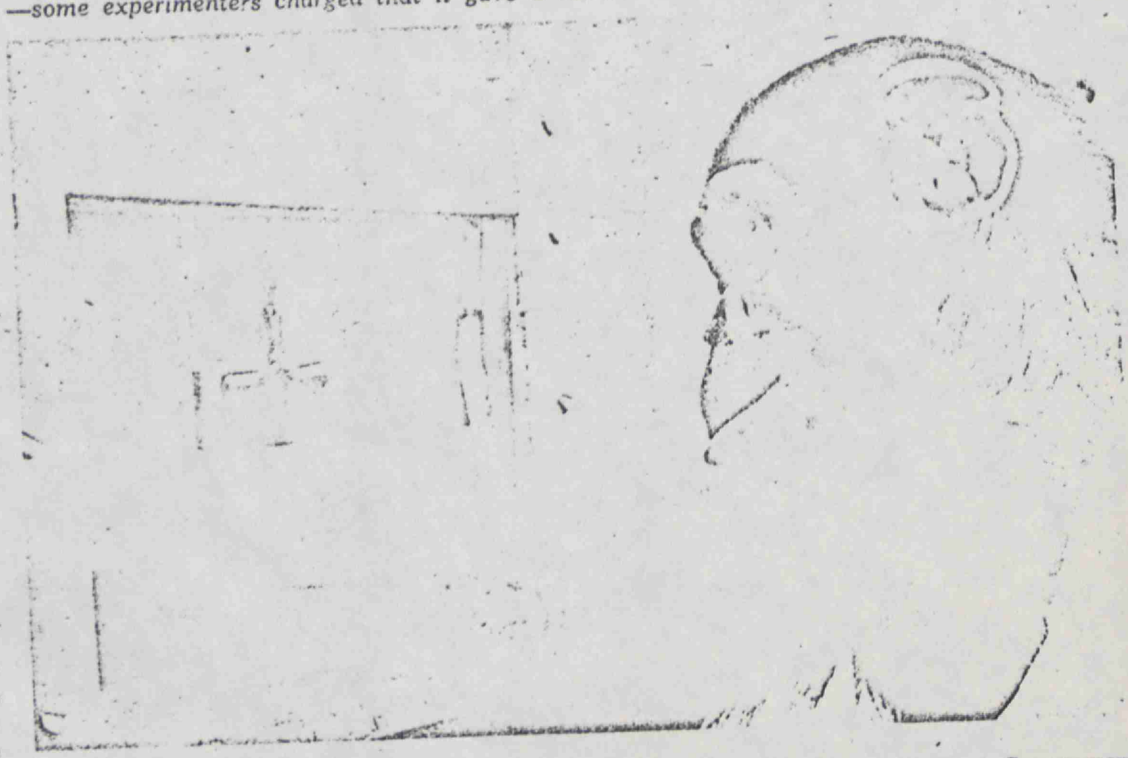
Continued from Page 43

tors included some moderates (Dean Acheson, Dr. Harry Gideonse and Edgar Ansel Mowrer). The identities of all of AIM's financial backers are not revealed, although knowledgeable sources will confirm that one wealthy individual who made a major contribution to the group was Shelby Cullom Davis, a major contributor to Nixon's campaigns who eventually was appointed Ambassador to Switzerland by the former President. AIM's largest contributor, a wealthy Connecticut industrialist, refuses to be identified.

AIM charged that the documentary presented a "grotesquely distorted picture of the private pension system in the United States . . . giving the impression that failure and fraud are the rule." It accused NBC of presenting "a one-sided, uninformative, emotion-evoking pitch." The intent of the action was to get the F.C.C. to order the network to schedule additional coverage of the pensions question to correct the "deliberately distorted" presentation.

The F.C.C. rejected AIM's allegation of distortion, but did hold that NBC had violated the fairness doctrine. And, mindful, no doubt, that the Supreme Court in its Red Lion decision, had recognized that the Government could use the fairness doctrine to justify a specific order relating to program content, the agency ordered the network to broadcast balancing material. For years the F.C.C. had refused demands by irate groups to second-guess the fairness of such documentaries as "Biography of a Bookie Joint," "City of Newburgh," "Harvest of Shame" and "The Selling of the Pentagon," and Chairman Burch had previously pledged that the agency would continue to do so. This, then, was the first time the F.C.C. had found a network television documentary in violation of the fairness doctrine. NBC, which might have complied with the commission's order by scheduling a follow-up report on the Today Show or the NBC Nightly News, refused, and instead entered an appeal with the Court of Appeals for the District of Columbia.





Fair play? An antismoking ccommercial and, below, a scene from the documentary "Primate" —some experimenters charged that it gave a distorted view of their work.

NBC's defense, argued in court on Feb. 21, 1974, by Floyd Abrams, the 37-year-old attorney who had worked with Alexander Bickel representing The New York Times in the Pentagon Papers case, was that the fairness doctrine had been misapplied. The network's position was that the commission's decision constituted an impermissible intrusion into matters of news discretion. The documentary, the network contended, did not fall under the purview of the fairness doctrine because its topic, abuses in pension plans, was not in itself a controversial issue of public importance. Had the program been about the overall performance of pension plans, good and bad, the network said, then the fairness doctrine would have applied; in that case the question would have been, does America's pension system work successfully? And it would have framed a truly controversial issue. But the existence of abuses in pension plans is a matter of fact, and, the network argued, not controversial. NBC reinforced this point by asserting that the documentary recommended no remedial course of conduct other than to suggest that individuals check their own plans to see if they are being treated well; had the program endorsed specific measures to reform pension practices, it would have become controversial.

In response, the F.C.C. conceded that the program did treat the subject of some abuses, but argued that NBC was unreasonable in denying that it had not also presented viewpoints on the issue raised by AIM — the over-all performance of the private pension system considered as a whole. In sum, the F.C.C.'s position seemed to be that while a network's journalistic judgment should be given the widest possible latitude, it could be challenged under the fairness doctrine in cases where editing seemed unbalanced to an unreasonable degree. In effect, the agency held that the Government could serve as a super editor of last resort.

John Pettit, general counsel of the F.C.C., suggested that NBC may not have fully understood what the F.C.C. and the Supreme Court require in the seeking out of reasonable opportunity for opposing views, and recalled the Red Lion language stating the licensee's responsibility to "conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves."

Because of the urgency of the case, the court had dispensed with formal briefs; therefore, the oral arguments were decisive far beyond their usual impact. In his quiet way, Floyd Abrams had hi

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Because of the urgency of the case, the court had dispensed with formal briefs; therefore, the oral arguments were decisive far beyond their usual impact. In his quiet way, Floyd Abrams had hit hard at what he called the F.C.C.'s misuse of the fairness doctrine and wasted little time on the customary First Amendment rhetoric. When the court handed down its decision, in the fall of 1974, two of the three judges identified themselves with the NBC argument about the misapplication of the fairness doctrine, and "Since we reverse on [that] ground, we have no occasion to consider [First Amendment] arguments," which had been the central core of Red Lion and most other fairness-doctrine appeals.

Six months later, on March 18, the full court issued a ruling upholding its three-man panel, and though AIM said it planned to take the case to the Supreme Court, it appeared that NBC and Floyd Abrams had won a decisive round. Among broadcasters, there was a sense of relief. For if the decision had gone the other way, the court would have legitimized the idea that the Government could in effect substitute its judgment for that of the network as to what issue was involved in a broadcast documentary and order that more air time be given to elements that the journalist never thought central to the story. This, the broadcasters feel, would genuinely restrict their efforts at investigative reporting. It would mean that every assertion of wrongdoing by persons or groups would have to be balanced with an equal statement of their claims to innocence — however unbelievable they might be. The result would be confusion and, more often than not, outright misinformation. In addition, the broadcasters feared, a decision for the Government would make it difficult to air any program that took a point of view.

These fears have been allayed for the time being, however, and we are left to ponder the larger implications of these cases. The first is simply that high-minded principles of regulation are tricky, even dangerous, to administer in a society of powerful competing interests, and all of the parties involved—the executive, the broadcasters, the courts and the public—need to understand the process more completely than they do now.

As we have seen, the Supreme Court decision in the Red Lion case was based on questions of personal attack and access, on the idea that a broadcast licensee has "obligations to present those views

Landmark site: Radio station WGCB, Red Lion, Pa., focus of a Supreme Court debate.

and voices which are representative of his community and which would otherwise, by necessity be barred from the airwaves." Thus, *Red Lion* was, above all else, the enabling act of the fairness doctrine. The decision transformed an ethic of fairness into a rigid law proposed by the F.C.C. and enacted by the judiciary. This decision became a major prop for the Government's position in the pensions case.

And yet the assumption that the problem in the Red Lion case was access for Fred Cook's views is, in light of what we know today, demonstrably false. Fred Cook with his Nation magazine attack on Hargis and other "Hate Clubs of the Air," and his subsidized book against Goldwater, was hardly a classical case of a man in need of access. And though the Court did not know it when it heard the case, his motivation for taking action against the Red Lion station was not just to gain access to the public air-waves in order to defend himself against an attack so much as it was the product of a carefully orchestrated program initiated by politicians to inhibit views they believed to be harmful to the country, as well as to their own political fortunes.

In the pensions case, which grew out of another era of high-level Government hostility to broadcasters, the Red Lion precedent served to bolster the Government's position that it had a right to broad influence over broadcast content, a claim that may or may not have been laid to rest by the Court of Appeals for the District of Columbia. Indeed, after that court's most recent ruling, an official of the F.C.C. was quoted as saying, "The fairness doctrine is alive and well," and it remained clear that the basic dispute is far from settled. The crucial test will apparently have to wait until another television or radio case works its circuitous course from the newsroom through the regulatory agency to the high court.

In light of all this, it is tempting to say that the fairness doctrine should be abolished—any regulatory principal so susceptible to political abuse is clearly a threat to free speech. And in fact, some powerful broadcasters want the Government totally out of broadcast journalism, and they cite the 1974 landmark First Amendment case that applies to newspapers—*Tornillo v. The Miami Herald*, in which the Supreme Court decided "it has yet to be demonstrated how Government regulation in this crucial [editing] process can be exercised consistent with First Amendment guarantees of a free press." During the arguments Justice Harry Blackmun made an observation that was as relevant to *Red Lion* as it was to *Tornillo*. "In this country, for better or worse, we have opted for a free press, not fair debate."

And yet, many serious observers of the broadcast industry are apprehensive about the removal of all requirements for responsibility on the part of broadcasters. Most agree that in the case of WLBT in Jackson, Miss., the decision of the F.C.C. to withdraw the station's license was justified—over a long period of time, the station had shown itself to be grossly unfair to the black people in its community. Furthermore, the power of the major broadcasters is so awesome, that the thought of their exerting it totally unchecked is hard to accept. One need only ponder the fact that not too long ago the International Telephone & Telegraph Corporation was seriously interested in purchasing one of the major networks to understand the possible danger of unregulated broadcasting.

The real lesson to be learned from studying these cases is that the Government seems to have lost its sense of priorities in applying the fairness doctrine. It is the second requirement of the doctrine that broadcasters should "afford reasonable opportunities for opposing viewpoints." The first requirement is "to devote a reasonable amount of broadcasting time to the discussion of controversial issues." It is the breach of that first obligation that should be considered decisive; concern for opposing views should not be emphasized to the extent that coherent discussion of controversial subjects becomes inhibited.

The basic issue is whether the Government will encourage or discourage broadcasters from the probing, hard-hitting journalism that their financial interests resist but the public interest demands. In this sense, the proper definition of the fairness doctrine will influence the essential quality of broadcast programing.

In the resolution of the contradictions between the fairness doctrine and the First Amendment, between *Red Lion* and *Tornillo*, rests the base of the American system of broadcast journalism, so vital—now more than ever—to the proper functioning of our democratic process. ■

From
CHIEF JUDGE BAZELON

See also:

Brandywine Main-Line
Radio v. FCC
473 F.2d 16 (1972)

Citizens Committee to
Save WEFM v. FCC
No. 73-1057 (slip opin.
issued October 4, 1974,
D.C. Circuit)

accompanied
his Nov 15, 1974 speech
to FCBA.

see pp 8, 9, 11 for book material

8 - personal liberty infringed by govt regulation

9 - political decisions inevitably delegated to bureaucrats

11 - Woodrow Wilson on liberty + govt power.

BLUE EAGLES AND DÉJÀ VU

Remarks by

Walter B. Wriston

Chairman

Citicorp

before

The Society of American Business Writers

Washington, D.C.

May 5, 1975

* *

As we approach the bicentennial of our republic, it is useful to remember that our founding fathers faced hard times--much harder than those which are with us today. They, too, had to make some tough choices. Thomas Jefferson expressed the problem in a nutshell: "We are not to expect to be translated from despotism to liberty in a featherbed."

The great principles of our government laid down by our founding fathers embody a vast distrust of centralized governmental power, and an unswerving dedication to the proposition that government rests on the consent of the governed. No sector of our society has been more vigilant than the press in keeping that proposition always before us. Nevertheless, whenever we create the conditions which cause our system to appear to falter, whether through inflation or corruption, people who would destroy our liberty press forward with plans the founders rejected--old plans dressed in a new vocabulary. A good many years ago, John Randolph foresaw the danger and put it this way: "The people of this country, if ever they lose their liberties, will do it by sacrificing some great principle of government to temporary passion."

Today, passions abound in the land; as the heat rises our memory of fundamentals seems to fade. We forget that the traditional optimism of the American people is an absolute essential to a democracy. We hear a rising chorus of attack upon the unique American economic system, though it has produced both the highest standard of living and the largest measure of personal liberty in the history of mankind.

People who should know better begin to waffle about human freedom and in the moment of passion that John Randolph feared even suggest that some form of dictatorship may not be so bad after all. In the 1930s Senator David Reed from Pennsylvania voiced it bluntly: "If this country ever needed a Mussolini, it needs one now." The admiration in the United States for the way Mussolini made the trains run on time was widespread. The New York Times in May of 1933 reported that the atmosphere in Washington was "strangely reminiscent of Rome in the first weeks after the march of the Blackshirts, of Moscow at the beginning of the Five-Year Plan...The new capital...presupposes just such a highly centralized, all inclusive government as is now in the making." In the 1930s it began to look more and more as if we would sacrifice some great principle and lose our liberty.

The resident philosopher in Washington in those days was Rexford Guy Tugwell. Like his current counterparts, Tugwell expressed contempt for the consumer's ability to choose, and wanted large state-controlled corporations along fascist lines. It was all very simple and logical. He put it this way: "When industry is government and government is industry, the dual conflict deepest in our modern institutions will be abated." This old idea has now been revived with a new name: We now call them "benchmark" corporations. By 1984, George Orwell tells us the concept will be set to music in a telescreen jingle that goes: "Under the spreading chestnut tree, I sold you and you sold me..."

The first major step that this nation took toward merging government and industry, and toward the total abandonment of the free market system, was the enactment of the legislation that created the National Recovery Administration. The NRA with its famous Blue Eagle symbol soon began grinding out hundreds of "codes" repealing economic freedom and arbitrarily fixing wages, prices and hours.

In the temporary passion of that moment, many businessmen welcomed the idea of controls and were openly pleased with the idea of an escape from competition. "Codes" in the 1930s were the equivalent of the current euphemism "guidelines." These "codes" ultimately affected some 22 million workers. Like all schemes which require people to behave in a way they would not act of their own free will, force eventually has to be used against the populace. Since the NRA codes required citizens to make decisions which were contrary to their own economic interests, penalties for noncompliance had to be severe. Tailors were arrested, indicted, convicted and sentenced because their prices for pressing a pair of pants were a nickel below the relevant NRA code. Farmers were fined for planting wheat that they themselves ate on their own farms. Barbers who charged less than the code rate for a shave and a haircut were subject to fines of up to $500. Even the village handyman was prosecuted, since he did not fit in under the multiple wage-and-hour scale set up by the codes.

The complexity of the codes soon antagonized labor as well as management. The average factory worker who had been earning $25 a week was cut back to $18.60 under NRA codes. As a result, strikes became a way of life and auto workers, frustrated by red tape, began calling the NRA the National Run Around. When the textile code authority cut production in the mills in 1934, another great strike began in the South. Before the strike ended, the National Guard had been called out in seven states and scores of textile workers were killed and wounded. A few months later, NRA Administrator General Hughie Johnson resigned under a storm of criticism--or, as he phrased it himself, "a hail of dead cats."

As was the case with the rights of minorities in the 1950s and 60s, or with Watergate in the 70s, a few had the courage to challenge the power of the state. A fairly small company, The Schechter Poultry Company, refused to observe NRA standards of "fitness" governing the slaughtering of chickens. When the case reached the Supreme Court, the NRA was unanimously declared unconstitutional. The Court wrote: "Such a delegation of powers is unknown to our law and it is utterly inconsistent with the constitutional prerogatives and duties of Congress." After the decision was read, Justice Brandeis told one of FDR's legal aides: "I want you to go back and tell the President that we're not going to let the government centralize everything." That was a call to return to fundamental American principles.

That time around we were rescued from the temporary passion of the moment by the Supreme Court. For such actions, the justices were reviled as the Nine Old Men. Fortunately, they were old enough to remember the tyrannies of the past, and struck down the attack on individual freedom even though it was wrapped in a package labeled "progress." As if in direct reference to John Randolph, the Court said: "Extraordinary conditions do not create or enlarge constitutional power."

Today, just as we are beginning to win the battle against inflation and recession, the classic attacks on individual freedom are being launched with new vigor. In place of the NRA and Mussolini's Blackshirts of another era, we have new groups with new names selling the same worn-out concept of government planning as "progress."

The current effort to peddle the theories of Tugwell is being quarterbacked by an organization called the Initiative Committee for National Economic Planning. Its members, businessmen, academicians and labor leaders are all well-intentioned people who should know better. Their program, if adopted, could bring about the step-by-step destruction of the free market system, and, as a consequence, all personal liberty. The opening statement of the Initiative Committee expresses the usual doubt about whether our tried and tested system provides "the best hope for combining economic well-being and personal liberty."

Like central planners in the past, the new breed speaks euphemistically of "plenary power" and obtaining a "mandate." They suggest that a "five-year plan" would be "voluntary" but add that it might require a "legislative spur." They imply that they would not set specific goals for General Motors, General Electric, General Foods, or any other individual firm but would "try to induce" the relevant industries to do their bidding. The New York Times, an ardent advocate of central planning in 1975 as in 1933 (except of course for the media) has fully endorsed the idea of government planning as "a means to help private industry to make its own planning decisions...without government coercion." There is no case of government planning not implemented in the end by coercion.

If the proponents of central planning came right out and said they wanted to create an economic police state, their cause would never get off the ground. So, they resort to "doublespeak," as Mario Pei so aptly called it, the usual camouflage for the ultimate use of force against the individual. Ludwig von Mises summed it up when he wrote: "All this talk: the state should do this or that ultimately means: the police should force consumers to behave otherwise than they would behave spontaneously. In such proposals as: let us raise farm prices, let us raise wage rates, let us lower profits...the <u>us</u> ultimately refers to the police. Yet, the authors of these projects protest that they are planning for freedom and industrial democracy."

Perhaps the oldest lesson of history is that an assault on one aspect of freedom is an attack on the whole, as the framers of the Constitution were well aware. To think that the bell that tolls for economic freedom, does not toll for academic freedom or for freedom of the press is a delusion, and a dangerous one. The vigilance of the press which helped smoke out some of the misdeeds of Watergate should be equally focused on the economic <u>non sequiturs</u> coming from some of Washington's prominent citizens.

Attacks on the system that has produced our relative affluence as well as our freedom come in part from people seeking power, and in part from a failure to understand the American experience. Pulitzer Prize historian Daniel J. Boorstin put it this way: "There is an increasing tendency... to blame the United States for lacking many of the ills which have characterized European history. Our lack of poverty is called materialism, our lack of political dogma is called aimlessness and confusion."

All current proposals for a managed economy rest on an underestimation of the intelligence of the American people. They assume that you and I are just not smart enough to decide how to spend the money we earn. The decision must be made for us by a wise government. Those wonderful people who brought us wage and price controls, which so severely disrupted our economy, now wish to extend the chaos on a permanent basis. The intellectual arrogance of those who would substitute their judgment for that of the American people is amazing.

As the incredible complexity of American life begins to dawn on the would-be government managers, as it did in fact ultimately dawn on the Administrator of the NRA, ever increasing pressure has to be applied to make a reluctant citizenry conform. The clash between governmental economic planning and personal liberty is inevitable because, in the end, governmental allocation of economic and intellectual resources requires--ultimately--the use of force. No agency, for example, could have regulated our railroads into bankruptcy as did the I.C.C. without such power. This power must be continuously increased to block opposition, to generate public acceptance and suppress doubts about the competence of the planner.

Last year's Economic Summit should have made it obvious to all the world that experts do not agree. No plan which covers a continent with the infinite variety of America and contains thousands of parts, can possibly be agreed upon by experts and certainly not by a majority of the people. Even if by some miracle we could get all the fiscalists and monetarists to concur, the ultimate decisions would be political much more than economic. It would be impossible to get a majority vote in the Congress on every item in the economy which would have to be allocated, priced and assigned priority. Since both political and economic agreement is a virtual impossibility, these decisions have to be delegated to the planner and thus can never represent the will of the majority. Such action by definition destroys the premise on which American democracy rests.

as in broadcast regulation.

The First Amendment is one of the most sweeping definitions of freedom of the citizen against his government ever enacted anywhere in the world. As in the past, it must now be guarded jealously by all sectors of our society. What I am suggesting to you today is that you must examine with great care and skepticism the proposition that government regulation of goods and services is a legitimate function of government. It is predicated upon the dogma that consumers lack the intelligence to make choices, but that they are capable of sorting out a good idea from a bad one without government help. You should question the logic which leads some people to conclude that a so-called truth-in-advertising law is good, but a truth-in-media law is bad. On a purely logical basis it is hard to sustain the argument that the public is unable intelligently to choose among competing dog foods without government help, but is competent to sort out the true meaning of a senator's speech.

The press, along with the rest of this country, generally has come to the conclusion that the performance of government at all levels leaves a great deal to be desired. Bureaucracy has never been synonymous with efficiency. There is a growing perception across the country that government regulation of goods and services has often tended to promote monopoly, raise the price levels and smother innovation. Professor Houthakker of Harvard made this point dramatically at the Economic Summit by listing 43 areas he thinks the government should deregulate.

Lest you think that you are exempt, more and more educators are beginning to perceive the hand of government within their own campuses, despite the long tradition of academic freedom. Academicians are learning the old lesson that if you take the king's shilling, you will do the king's bidding. We already have government very much in the broadcast field, although some people feel this has not been objected to as strongly by the print media as one might have hoped or wished. If you accept the proposition that government intervention in the dissemination of ideas is bad, which is one I strongly hold, you must then review in your own mind whether it makes any sense to argue for governmental intervention in the individual's choices among goods and services. Whatever conclusion you come to on this proposition, you should not fool yourself that economics and politics live on separate islands; in the end our freedom is indivisible.

One of our least admired presidents was characterized as one who approached power with "muffled oars." Those of you who depend for your existence on the First Amendment should sensitize your ears to pick up the sound of "muffled oars" seeking to approach power through a planned economy. This suggestion is in accordance with sound liberal doctrine as expressed by Woodrow Wilson: "The history of liberty is a history of limitations of governmental power, not the increase of it."

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REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

at the

47th Annual Convention
National Association of Educational Broadcasters

Miami, Florida
October 20, 1971

It would be refreshing for you, I'm sure, to hear a convention speaker dwell on all the good things that public broadcasting has accomplished--after all the accomplishments are real. But government policy making doesn't usually concern itself with good news, it deals with problems and policy is my topic today.

Public broadcasting occupies a very special role in my Office and in the Executive Branch generally. It is one of the few elements in our communications system that has had a policy blueprint. The policy for public broadcasting--even its very name--was the result of deliberate study, public discussion, and legislation in the form of the 1962 ETV Facilities Act and the 1967 Public Broadcasting Act. Much of the policy has been developed and administered by the Executive Branch.

The process of developing policy is a continuing one. After four years of experience with the system created by the Act, you and OTP are asking whether the policies that guide public broadcasting work--where they have taken us and where they <u>are</u> taking us. The process has taken much longer than we all wanted it to take. But now I'd like to talk to you about the factors that have shaped our thinking about public broadcasting and how we view the policy questions.

I honestly don't know what group I'm addressing. I don't know if it's really the 47th Annual Convention of NAEB or the first annual meeting of PBS affiliates. What's your status? To us there is evidence that you are becoming affiliates of a centralized, national network.

For example, CPB calls PBS our fourth national TV network--and the largest one at that, with over 210 affiliates. Don Quayle's National Public Radio may be the only real national radio network we have--I half expect Arthur Godfrey--or maybe David Susskind--to be hired to do a "morning magazine" show for NPR. I see NAEB's ETS Program Service transferred to PBS and NPR. Because of CPB's method of funding program production, it's less than candid to say the production system is a decentralized group of seven or eight regional centers. Who has real control over your program schedules?

On a national basis, PBS says that some 40% of its programming is devoted to public affairs. You're centralizing your public affairs programs in the National Public Affairs Center in Washington, because someone thinks autonomy in regional centers leads to wasteful overlap and duplication. Instead of aiming for "overprogramming" so local stations can select among the programs produced and presented in an atmosphere of diversity, the system chooses central control for "efficient" long-range planning and so-called "coordination" of news and public affairs--coordinated by people with essentially similar outlooks. How different will your networked news programs be from the programs that Fred Friendly and Sander Vanocur wanted to do at CBS and NBC? Even the commercial networks don't rely on one sponsor for their news and public affairs, but the Ford Foundation is able to buy over $8 million worth of this kind of programming on your stations.

In other kinds of programming, is it you or PBS who has been taking the networks' approach and measuring your success in rating points and audience? You check the Harris poll and ARB survey and point to increases in viewership. Once you're in the rating game, you want to win. You become a supplement to the commercial networks and do <u>their</u> things a bit better in order to attract the audience that wants more quality in program content.

The temptation to make your mark this way has proven irresistible. The press is good. You've deserved the limelight much sooner, but it's coming now with truly outstanding efforts in the up-coming "Electric Company" and "Sesame Street" and "Forsyte Saga" and the BBC's other fine dramatic and cultural shows. You do this job brilliantly. You <u>can</u> pick up where the commercial networks leave off. You can do their children's shows, their drama, their serious music, their in-depth informational programs--you can even be their "farm system" and bring up young, minority-group talent to work in the "majors" in New York and Los Angeles.

You <u>can</u> program for the Cambridge audience that WGBH used to go after--for the upper-middle class whites who contribute to your stations when you offer Julia Child's cookbook and Kenneth Clark's "Civilisation." It also has the advantage of keeping you out of the renewal and access conflicts now faced by commercial broadcasters. With a few notable exceptions, maybe the community activists don't think you're meaningful enough in your own communities to warrant involving you in these disputes.

As the fourth national network, things are looking pretty rosy for you. Between 1968 and 1970, national broadcast hours went up 43%. This year alone PBS is sending an average of two hours a night down the interconnection lines. But local production of instructional and "public" programs continue a decreasing trend--down 13% from 1968 to 1970. The financial picture at the local stations looks bleak, even though CPB can now raise the range of its general support grants to between $20,000 and $52,000 per TV station. But it's still not enough. The average TV station's yearly operating costs are over $650,000 and the stations are suffering--Delaware may be without a state-wide system, local programs are out on WHYY in Philadelphia, things look bad elsewhere--even at the production centers.

Money alone--great bales of it--would solve a lot of the problems. CPB would be able to fund programs on America's civilization and programs on the Adams family instead of the Churchill and Forsyte families. The production centers could be more independent and the other local stations could devote more energy to programming, ascertainment and community service instead of auctions, fund-raising gimmicks and underwriting grants. More money could even lessen the internal squabbling that seems to occupy so much of your attention.

But money alone won't solve the basic problems that relate to the structure of public broadcasting--a structure that was to be built on a bedrock of localism. I've read Arthur Singer's speech last June at Boyne Highlands and I've read the Carnegie Commission Report and the legislative history of the '67 Act. Singer wins--the reality of 1971 doesn't match the dream of 1967.

Do you remember that the Carnegie group put its principal stress on a strong, financially independent group of stations as the foundation of a system that was to be the clearest expression of American diversity and excellence; that the emphasis was on pluralism and local format control instead of a fixed-schedule, real-time network, and that this view was reflected in the House, Senate and Conference reports on the '67 Act; that CPB was supposed to <u>increase</u> options and program choices for the stations; and that the Carnegie Commission wanted general operating funds to come from HEW because of the concern that the corporation not grow too big or become too central. As Dr. Killian put it, if stations had to look to the corporation for all their requirements, it would lead "naturally, inevitably, to unwise, unwarranted and unnecessary centralization of educational broadcasting." The concept of dispersing responsibility was essential to the policy chosen in 1967 for public broadcasting. Senator Pastore said on the floor of the Senate that, "since the fundamental purpose of the bill is to strengthen local noncommercial stations, the powers of the Corporation itself must not impinge on the autonomy of local stations."

The centralization that was planned for the system--in the form of CPB--was intended to serve the stations--to help them extend the range of their services to their communities. The idea was to break the NET monopoly of program production combined with networking and to build an effective counterforce to give appropriate weight to local and regional views.

In 1967, the public broadcasting professionals let the Carnegie dreamers have their say--let them run on about localism and "bedrocks" and the rest of it--let them sell the Congress on pluralism and local diversity--and when they've gone back to the boardrooms and classrooms and union halls and rehearsal halls, the professionals will stay in the control room and call the shots. The professionals viewed the Carnegie concept of localism as being as naive and unattainable as the Carnegie excise tax financing plan. They said that no broadcasting system can succeed unless it appeals to a mass audience in one way or another;

that networking in the mold of the commercial networks is the only way to get that audience; that a mass audience brings a massive reputation and massive impact; that it's cheaper, more effective, more easily promoted, simpler to manage, and less demanding on local leadership than the system adopted by the Congress; and they are right. But is that kind of public broadcast system worth it? Is it what you want? What your community needs? What's best for the country?

You've been asking yourself thesequestions. For you, the past few months have been a time for self-analysis and hard questions--from Singer's Boyne speech, to the Aspen meetings; the Jack Gould-Fred Friendly debate on the pages of the Sunday New York Times; the discussion that's been going on between my Office and CPB; and the emotional debate within public television over the FBI sequence on "Dream Machine." Your public debate has focussed on the fundamental issues and you're to be admired and respected for it.

You are grappling with the policy imposed on a going enterprise in 1967. That policy was not only intended to change the structure of ETV, it was also supposed to avoid the structure of commercial TV and to steer clear of a government-run broadcast system. There are trade-offs in this policy. For example, if you imitate the commercial structure, all we have is a network paid for by the government and it just invites political scrutiny of the content of that network's programs. We're asking a lot of you when we expect that you implement the policy chosen for public broadcasting. But some of you haven't succumbed to despair yet. Some of you don't want to be a fourth network. Some of you are trying to make the policy work.

For example, PBS will be trying to use its interconnection for program distribution as well as networking; it's trying to broaden the base of small station representation on its Board; CPB is trying to devote more funds to general operating grants; as long as there is a centralized network, Hartford Gunn is trying to make it work in a responsible manner despite the brickbats and knives that come his way; some local stations are really trying to do the job that must be done at the community level. I recognize this. I appreciate the problems you face.

CPB seems to have decided to make permanent financing the principal goal and to aim for programming with a national impact on the public and the Congress to achieve it. But look at the box that puts you in. The local station is asked--and sometimes willingly accedes--to sacrifice its autonomy to facilitate funding for the national system.

When this happens, it also jeopardizes your ability to serve the educational and instructional needs of your communities. All the glamor is packed into your nighttime schedules and the tendency is to get more public attention by focusing on the news, public affairs and cultural programs that are aimed for the general audience. But there must be more balance in your service to your communities. In quantitative terms, your schedules are already split equally between instructional and general programming. But in qualitative terms, are you devoting enough of your resources to the learning needs of your in-school and in-home audiences?

Do any of you honestly know whether public broadcasting--structured as it is today and moving in the direction it seems to be headed--can ever fulfill the promise envisioned for it or conform to the policy set for it? If it can't, then permanent financing will always be somewhere off in the distant future.

The legislative goals for public broadcasting--which I hope are our common goals--are:

(1) to keep it from becoming a government-run system;

(2) to preserve the autonomy of the local stations; and

(3) to achieve these objectives while assuring a diversity of program sources for the stations to draw on in addition to their own programs.

When you centralize actual responsibility at a single point, it makes you visible politically and those who are prone to see ghosts can raise the spectre of government pressure. When you, as local stations, are compelled by the system's formal structure, its method of program distribution, the mere lack of a programming alternative or simple inertia to delegate formulation of your program schedules to a central authority, how can you realistically achieve the objective of local autonomy. All we are left with is the central organization and its national programs and that was never intended to be an end in itself. When the struggle is simply between the Washington center and the New York center, it doesn't much matter who wins. It probably isn't even worth the effort.

You've been told at this convention all that you should do--that you should be--as cablecasters, minority group employers, public telecommunications centers and the lot. But is enough expected of you when you are branch offices of a national, public telecommunications system? It would be a shame for you to go into the new world of electronic education centers offering a dazzling array of services without engaging in the most exciting experiment of all--to see if you as broadcasters can meet your wide responsibilities to your communities in instructional and public programming. It's never been tried and yet, as a policy, it's America's unique contribution to broadcasting--it's our concept of mass communications federalism.

Your task then is one of striking the most appropriate balance in determining the local station's role in the public broadcast system--a balance between advancing the quality of electronic instruction and the quality of programs for the general public and, ultimately, the balance between the system's center and its parts. You have to care about these balances and you have to work for them. We in government want to help, but the initiative must come from you.

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REMARKS OF

Mr. Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

at the

Ohio Association of Broadcasters
Fall Convention
Columbus, Ohio

September 29, 1971

When I started to prepare my remarks here today, I thought I would focus on those issues that are of critical, current concern to broadcasters. Unfortunately, the schedule does not permit me to devote six or seven hours to this subject. But I don't mean to make light of it--the sheer volume of problems facing you and those in government is almost a problem in itself. Someone must have opened Pandora's Box when we weren't looking.

If it's of any comfort to you, many of your economic problems at least are not too different from those faced by other businessmen. Although there may be some questions to be cleared up, I understand that the price guidelines for broadcasting are working smoothly. If there are any problems, however, we want to hear about them. You should be assured of equity and clarity in the administration of this set of regulations. I've heard this hasn't been your experience in your other brushes with government regulation.

We're working to change this. We should approach your broadcast regulatory problems in the same vein that the President has faced our economic problems. The President's new economic policy is coming to grips with fundamental problems in our economy--

problems which not long before seemed intractable. I want to take the same general approach to our communications policy problems by doing a thorough job of analysis and then proposing a solution that goes to the heart of the matter. I want to apply the Administration's style of policy-making to such problems as CATV, license renewals, the Fairness Doctrine and radio/TV regulation generally. Let me give you some idea of how OTP views these problems.

CATV

First CATV--the President's Cabinet committee on cable television has almost completed its study and will soon issue recommendations on a policy to guide the careful integration of cable technology into our public communications system. While this long-range study was going on, we sought an accommodation to the short-range problems of CATV growth. We tried to see if the parties could resolve the tough regulatory problems of distant signals, Footnote 69 and leapfrogging in a rational framework of CATV copyright liability and broadcast program exclusivity. The attempt failed--some say it was doomed to fail. The doom sayers were proved right--they regularly are in Washington.

But we haven't given up. Shortly, we will respond to Senator Pastore's invitation to comment on the FCC's CATV proposals, in light of the Cabinet committee's work and our own views on the FCC's regulatory approach. Naturally, it would be premature to go into these matters now, but at the appropriate time we will make our proposals to Congress. You probably will not like all that you will hear.

Does this mean that OTP is pro-cable? Of course we are. Does it follow that we're anti-broadcasting? Definitely not; although sometimes you make it harder for us to support you. Take what's happening in Akron, for example. The cable system there will be carrying home games of the Cavaliers and the Barons live from Cleveland. Cable is giving Akron residents what they want and it doesn't involve taking your signals. We can't oppose CATV for providing this type of service and, if you put up a fight, you can't expect our support.

On a broader basis, we think cable has a lot of appeal. It's the appeal of a technology that offers an opportunity to recast the mold set for our public communications system back in 1934. As cable is integrated into our communications structure, we should try to modify that structure. A system of regulation that requires government intervention in program content can't be our model for the future.

License Renewals

One of the most drastic means of government intervention is the license renewal process. I don't have to tell you of the difficulties that can result at renewal time when your judgments conflict with the government's notions of the type and amounts of programming that will best serve the public in your community. How will you juggle your schedules to get 3% of public affairs programs in prime time? Is it safe to put that U.S.D.A. film at 5 a.m. on Mondays? Is there anyway to count "The Chicago Teddybears" as a children's instructional show? What about radio--will there be a Commission inquiry when you switch from the all-Guy Lombardo format

Don't bother to do any ascertainment to see what format will serve the public; remember, it's not supposed to deal with program preferences, only problems and issues.

It's really not a joking matter, you risk your future on the way you answer some pretty ridiculous questions. The risk is measurably increased when you have no assurance that your good faith performance over the years will count for much when a rival group decides that you are ripe for picking. Even when a competing group is not involved, renewal time is an appropriate time for negotiations and challenges involving the responsiveness of your programs to local needs, your employment practices and your commercial practices. You can't be insulated from this aspect of the renewal process, but the Commission tried to avoid the worst features of a comparative renewal hearing with its 1970 Policy Statement. OTP generally supported it as a sensible way of giving the conscientious licensee the consideration he deserves, while protecting the interest of the public.

The Court of Appeals held that the policy violated the hearing requirements of the Communications Act. I have no doubt that this interpretation was sound from a strictly legal standpoint. But I question the appropriateness of the court second-guessing the Commission on its so-called "substantial performance" standard. A long established principle governing judicial review of agency action is that the court should defer to the expertise of the agency and not substitute its judgment on the substantive merits of the case. In the broadcast area, this principle seems to be avoided whenever there is a conflict between the public and the broadcasters. Here the issue seems to be resolved on the basis of whether the court agrees with the result reached by the FCC. This compounds the absurdity of a regulatory round-robin that began with a broad grant of power from Congress to the FCC. The vagueness of the public interest standard under which that power was granted simply invites this type of court review. Besides the courts are just as expert as the FCC in determining the public interest.

You may argue that one for a while, but what's the most appropriate response to the license renewal problem in the aftermath of the court's decision? I'm not certain it is to have the FCC merely change the standard from "substantial" to "superior" and then go on as usual until the next court challenge. The problem is caused by the 1934 Act and it should be solved in the Act. We should have a direct approach which will go to the heart of that problem.

Fairness Doctrine

The direct approach may also be necessary to bring some order and clarity to the Fairness Doctrine area. There must be public access to the air waves. For the public's benefit and your benefit, the access mechanism should be uncomplicated and inexpensive. But it should not be administered in a manner that intrudes unduly on your operations. You have an obligation to the public to provide access for contrasting viewpoints on public issues, but the government has a duty to you to make clear the limits of your obligations, especially as we find ourselves in contentious times when a consumption-oriented life style is just as much a controversial issue as a referendum item or some other specific short-run dispute.

When the application of Section 315 began to get out of hand, the congressional intent was made known and the boundaries of the equal time requirements were clearly defined. Can you discern the boundaries of your Fairness Doctrine obligations? Where is the line drawn in the area of product advertisements? When is an auto company selling a way of life and not a car? Do you balance Chrysler spots with Volkswagen spots? I shudder to think of the controversial issues lurking in certain deodorant ads. What about public service announcements? Army recruiting PSA's don't raise controversial issues; can the same be said for all the anti-drug spots? When do appearances of the President or Governor Gilligan prior to election campaigns call for Fairness time? What ruling applies: the <u>Zapple</u> ruling; the one in the latest Democratic National Committee cases; or all of the above? When do you give free time for contrasting views? What are the relationships between the new right of paid access to the air and the Fairness Doctrine requirements?

Right now I'm not saying <u>how</u> these questions should be answered. I'm not sure I know the answers to some of them. All I'm saying at this point is that we in government have let you down by not doing our job of setting the metes and bounds of what is now an amorphous set of far-reaching requirements which you interpret at your peril: if the renewal policy of the 1934 Act is its Sword of Damocles, then the Fairness Doctrine is its revolver in a game of Russian roulette. We intend to take a careful look at the Doctrine--if the bullet can't be removed you can at least be given some idea of where it is.

Broadcast Regulation

The problems created by CATV, by renewal policies and the Fairness Doctrine are all related in the struggle for public access to broadcast channels.

The trustee role of the licensee under the Communications Act is workable as long as the public is willing or at least content to trust you. But when hard questions are being asked of all institutions that have traditionally enjoyed the benefits of public trust, you can expect that you will be challenged--that ways will be sought to make you more responsive to the public through the renewal process and the Fairness Doctrine and even to phase you out in favor of a technology that need not be dependent on any individual public trustee.

Despite all the bitterness engendered by specific access disputes, as evidence by the the license challenges right here in Columbus, and other Ohio cities you should recognize that your critics are doing nothing more than seeking more effective and more practical means of achieving the intended results of the Communications Act. It's fruitless to argue at this late stage that the intent of the Act has been perverted. Times change--this is the way it is now. If you don't like it, either change the Act or find a line of business where there's no Communications Act and a public committed enough to tell you what its interest is. It's a fundamental issue--one that won't be solved by patchwork approaches to superficially unrelated regulatory problems.

No matter how the renewal challenges are resolved in Columbus and elsewhere, the process of redefining the broadcasters' relationship with the various publics to be served is just beginning. This painful and difficult process can proceed as it has begun. It can go on city-by-city in an atmosphere of mutual distrust, emotional blood-letting and even fear, or it can be recognized for the critical policy problem it is and approached in a manner that does not pit broadcasters and citizens in a battle that both view as essential to their survival. No progress can be made when local broadcastors and local citizens groups see themselves as adversaries--this is the ultimate perversion of the intent of the Communications Act -- from public trustee to public enemy. We've got to go back and work out a new relationship between the licensee and the public before this goes much further.

We must address ourselves to these basic flaws that are all too apparent in our broadcast regulation, especially the structural flaws that developed in our public access mechanisms. At the same time, we need a separate policy for cable television. The growth of cable technology will force us to consider access problems in the overall context of a public communications system of the future. We can't simply engraft broadcast regulation to cable technology. The Communications Act is the only source of policy guidance for the FCC, but cable television does not fit the Act. We must have a clear conception of what we want from cable and how we want to regulate it. The cable policy must be consistent with a modified broadcast policy and must reflect the ultimate goal of that policy. We should, in short, end up with two TV communications policies--each tailored to the different technologies of distribution but each directed to the same access goals.

Most discussions of new policy directions sound pretty abstract, this one is no exception. But what's the bottom line? How does it all affect the daytimer in Dayton? Let me give you one example. So far I've focussed on the implications of your relationship to the public, but changes in this relationship also call for a modification in the way the government deals with you. We have to move to a more flexible style of regulation--to regulate by legislative policy rather than by detailed agency oversight. Let's be realistic--we simply can't continue to proliferate renewal applications that are weighed rather than read--don't worry about what your programs say, just be sure the percentages look ok and the application weighs a lot--10 lbs. will be superior service-- 3 lbs. will lead to a short-term renewal.

Where has this type of regulation led us in the radio area, for example? We started out regulating TV as if it were radio with pictures--now we regulate radio as if it were TV without pictures. This is not much progress in 40 years of regulation. Our regulators are so bogged down in detail that they haven't been able to notice that radio is different, or, if they've noticed, they've been too busy to do anything about it. When we deal with access and other problems in radio, our thinking must take account of radio's greater numbers, its different competitive situation, its different impact on the public mind and the public debate. It is a different medium with a different message. Does the difference justify, for example, a different set of fairness obligations, different treatment for cigarette commercials, political spots and other forms of radio advertising; different license renewal policies; different ascertainment requirements?

The whole rationale of radio regulation started changing in the early 1950's. It's going to change more as CATV systems start offering more and more audio services. Let's recognize this. We don't have to change human nature -- even I'm not expecting this -- all we have to do is to give our regulators fewer details to get into. Let's start with radio. Maybe we should think about the <u>de</u>regulation of radio, instead of pulling it along as television regulation is expanded in a policy vacuum.

We've covered a lot of ground here today, but, as I said at the outset, we're besieged with problems -- problems that call for a more searching analysis than they've received up to now. The Administration will undertake this responsibility and will deal directly with the crux of each problem. The President is committed to this type of approach, but if it's to succeed you must participate in the process by letting us know your views and helping us work with you to a responsible and responsive solution.

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REMARKS OF

Mr. Clay T. Whitehead

Director, The Office of Telecommunications Policy

at the

National Cable Television Association

Twentieth Annual Convention

Washington, D.C.

July 8, 1971

First of all, I want to tell you how pleased I am to be here. For several weeks, I've been looking at a very large pile of forget-me-not seed packages and now I am getting the chance to meet those responsible for this "greening" of OTP.

I visited a number of the convention exhibits yesterday, and I was both intrigued and impressed. I found that they demonstrate once again, and in a very tangible way, the vitality and potential of the cable industry.

Like all electronic communications industries, cable TV's future depends only in part on vitality and potential. It also depends on how the government chooses to let it grow. Tonight, I would like to talk a little about the development of cable television, and about the government's role in that development.

I think it is safe to say that we all view the development of cable as the most important single policy issue on the communication front -- perhaps one of the most significant domestic issues of this decade. Naturally, the Administration wants to take its own careful and constructive look at the problem before any definitive policy is formulated.

We are hoping that we will be able to develop a policy on cable within the next few months. Our purpose in doing so is not to cause the FCC to delay its proceedings, but rather to provide a different perspective on cable regulation -- a perspective we feel is badly needed.

The policy issues which OTP is studying are different from the issues with which the FCC is presently concerned. The President wants an imaginative, forward-looking policy - one which is sufficiently comprehensive to be a valid framework for the next decade. We are not going to achieve that kind of policy framework by worrying about whether there should be three distant signals or four or none; or by trying to resolve the Byzantine enigma of "footnote 69." The FCC -- and those of you here at this conference -- are rightly concerned with these immediate issues, because they are your bread and butter issues. But those issues are not the real policy issues government must ultimately address -- we must also take the longer and broader view.

Indeed, it was precisely for that purpose that the Office of Telecommunications Policy was established. Our role is quite simply to formulate executive branch policy on communication matters. We are not a regulatory agency. Our interest is in policy, not the details of rules and regulations. Thus, we would hope to formulate the policy framework within which the FCC, the states, or the courts might regulate -- or not regulate -- cable. A sound cable policy framework must specify such matters as industry structure; common carrier or limited carrier status; the degree and type of regulation; jurisdictions; copyright in the broadest sense; access; ownership; public service uses; and the effect on broadcasters and on special classes of viewers.

I wish that I could predict for you now the results of our policy-making efforts. Of course, I cannot. There are, however, a few things that seem to us to be obvious and fundamental. Let me briefly outline three points.

First, it seems plain that cable is an important example of a new technology which simply does not fit any of our existing institutions. We want to avoid the danger of trying to force cable into unnatural regulatory molds -- molds developed for different purposes in different times. We need a comprehensive new policy to deal with the special problems and unique capabilities of cable. And we certainly do not want to repeat the mistakes all too apparent in our present framework of broadcast regulation.

Second, the basic criterion by which the Administration will assess the policy options is by their effect on the viewing public. Our principal concern is for people, and the effect of our policies on people. The cable industry has rightfully emphasized the benefits of cable to consumers, and you must expect this to be the criterion by which you will be judged. I think there is a tendency for the regulatory process to get caught up in the short-run dynamics of competing industry viewpoints, without sufficient attention to the longer run impact on the public interest. This typically results in a series of short-run, ad hoc decisions -- compromises, really -- which never add up to a meaningful policy. The potential impact and importance of cable make it exceedingly hazardous to make cable policy by accumulating a series of short-run compromises. Of course, I would be less than candid if I did not admit that political pressures present serious problems. Whatever policy we come up with will have to be not only a good policy, but a timely and politically realistic policy.

Third, and in the same context, it is perfectly clear that television service as we now know it is valued very highly by the public. People spend a lot of time and money on television. No policy will be good, or acceptable to the American people, if it threatens to reduce this basic level of television service. On the other hand, consumers also value additional options very highly -- that is why people subscribe to cable service. The promise of cable lies in its potential for expanding consumer choice, and in reducing the cost of access to transmission facilities. But cable will not reduce the cost of program creation. If we want new and better programming and new services of other kinds, more money must be brought into programming than advertiser-supported TV now seems able to produce. Cable must make its way by offering the public new options that consumers or advertisers are willing to pay for. It is very hard to find a rationale for keeping people from paying for something they would like to buy, particularly if the existing level of advertiser-supported television service is not reduced.

We hope that we can develop a policy which will allow and encourage cable to offer the public a wide variety of new services, including but not limited to, entertainment, while at the same time preserving or even augmenting the quality and value of existing television service. Only in this way can the full benefits of cable in terms of education, public access, and other special uses be realized. While these special community services offer the potential of great benefit to the public sector, they can be achieved only if cable is a viable business proposition in the private sector.

Combining these three principles in a comprehensive national policy is not going to be easy. Nevertheless, the time for decision has arrived. I think that what we would like to do is to formulate a policy which creates an industry structure conducive to our policy goals. This offers a clearer, more manageable regulatory approach than does the highly detailed, meddlesome, and unpredictable Federal regulation of the traditional sort.

As you know, the President asked that we have a special cabinet-level committee to look into all aspects of cable policy. The purpose of this committee is to provide a forum within the Administration to discuss the important ideas, explore the alternatives, and provide for the President the views of the concerned Cabinet departments and Administration officials. The purpose of establishing the committee is not, as some have suggested, to delay the growth of cable, but rather to accelerate the development of cable policy.

The second generation of cable can be very exciting, but we must be very certain that we create an environment in which you can plan and grow into the far more important third generation. Your potential and your claim to high level government consideration lies in the diversity and service you can bring to the public, not in the quick profits you can make tomorrow.

You must recognize that you are laying the groundwork for exciting future developments that will profoundly affect this country's future. Although I have been talking tonight mainly about the government's role in that development, we in government - and particularly this Administration - realize that the energy and thrust -- the initiative and vitality -- must come from the private sector. I encourage you in your enthusiasm and your vitality.

I have an economist on my staff who tells me I should make policies which make everyone better off -- or at least no one worse off. Unfortunately, policy making is seldom so easy. But the potential of cable is so great, and its implications for our way of life so far-reaching, that we really may be able to achieve this kind of "blue sky" goal in the cable field. I hope we can all - government, broadcaster, cable owner - work together to that end. I am optimistic that the future is bright and I wish you well. Thank you.

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Remarks of Clay T. Whitehead, Director
Office of Telecommunications Policy
at the
Workshop on Cable Television for Minority Municipal Officials
Washington, D. C.
February 13, 1971

"Oh what a tangled web we weave/when first we practice to receive."

It sometimes requires a little modification, but Mr. Shakespeare can usually be found to have a line appropriate to any subject.

I wish I had some wise words for you in this tangled web of CATV. But in many ways, I would much rather empathize; we in the Federal Government are struggling to come to grips with it just as you are.

It is a difficult problem. First of all, we don't even know what CATV is: Is it Community Antenna Television or cable television? Does it receive signals, or does it send them? Is it a technological frill or a bright new broadcasting medium? Is it a force for certain kinds of social change? a precursor of "Big Brother"? or a neutral forum for the open exchange of ideas and entertainment?

The answers to these questions depend somewhat on technology and economics, somewhat on the services the public wants. But mostly, they depend on what we in government -- local, state, and national -- do about it.

Making sense of cable TV will require technical and economic analysis, social awareness, a bit of philosophy and foresight, and a lot of common sense. The public discussion on this subject so far has been short, or shallow, on almost all these ingredients. In such a situation, common sense takes on especial importance. It alone is not enough, of course, but then neither is economics, or philosophy, or social awareness. Yet we have many who would prematurely decide the future of this potentially great medium on the basis of one or two considerations alone.

It was only 50 years ago that broadcasting began. We have come a long way in that short time, and our private enterprise system of over-the-air broadcasting served us well. The broadcasting media already have become the major means of distributing information and entertainment to mass audiences. First radio, then television, now cable; and the rate of technological change is continuing to accelerate. We are at the dawn of an age where the electronic media will have an increasingly pervasive, direct, and influential affect on the lives of our citizenry. It is significant that a social commentator can say, with some credibility, that the medium is becoming the message.

Several weeks ago, I spoke at the Columbia University School of Journalism on the subject of public policy and the regulation of broadcasting. The basic theme was that many -- if not most -- of the dissatisfactions expressed about current over-the-air broadcasting result from the way that industry has been structured by governmental policies rather than from failings inherent within the industry itself.

In the area of public affairs programming, I suggested that much of our current difficulty stems, in particular, from the way we have limited and controlled access to the radio and TV channels. The concerns and regulations dealing with station ownership, fairness, prime time programming, and community needs in reality are roundabout expressions of concern regarding the limited number of TV stations allowed in any community and the limited access granted anyone but the station owners. Many of the dissatisfactions with entertainment programming can be traced, although not so visibly, to the same causes.

Many critics of broadcasting -- and many broadcasters themselves -- assume that this is the basic nature of things, that cable TV is the same kind of cat, to be given the same kinds of incentives and put into the same kind of restraints. But before we automatically strike out on the same confused course for cable broadcasting, shouldn't we ask what our end objectives are? and whether there aren't better ways of reaching them?

What is it your community really wants from cable? You no doubt want <u>all</u> elements of the public and community interest to be served in some objective way without a lot of hassle. You probably want:

- a diversity of views and ideas available to your viewers

- a reasonable access to channel time for those with something to say
- a diversity of good entertainment programming in good taste
- availability for education, for civic use, for community involvement
- reasonable cost
- modern systems and the latest services

I hasten to point out that OTP has not itself fully explored all the complexities of cable, nor how these objectives can best be achieved. However, our studies so far convince us that many practical alternatives do exist, and that cable need not necessarily go the confused policy route of over-the-air regulation.

What are some of these alternatives? They have not been adequately explored, but perhaps some analogies would be helpful.

Telephone is the first analogy that comes to mind. Both cable and telephone involve communications lines coming into the home providing an important service. But that's about as far as the analogy goes. In telephone service, all the cost is in the hardware; for cable it is mostly in the programming. There are strong elements of natural monopoly in telephone switching that are not present in one-way cable distribution. Competition in telephone service can lead to the need for several telephones in order to be able to be connected to all other users; competition in cable systems simply gives the consumer a choice of which services he will subscribe to.

If telephone is not an appropriate analogy, what about movie theaters? No major qualitative differences really. Cable TV comes directly into the home, and thereby affords more convenient choice of programming. Movie theaters could, in principle, offer public affairs programs and live news. But then movie theaters don't need access to public conduits and don't need to connect physically to every home they serve. Movies are perhaps a better analogy than telephone, but still not completely accurate.

Perhaps trash collection is somewhat in between telephone and movies as a policy analogy for cable. Both are quasi-public services; each can be provided by municipal government or by private operators. Both have to serve all areas of the community; each can be regulated in as much or as little detail as government sees fit. Of course, we do not have a national trash distribution system that is Federally regulated -- but with the current concern over pollution, we may be moving toward a more complete analogy than I intended. In any event, maybe the best off-hand analogy is the trash collector or milk delivery man who takes up TV recorded cassette delivery on the side.

These analogies shouldn't be carried too far; and I don't intend them seriously as models for your deliberations, but thinking about them a bit may help you put cable in some perspective compared with other municipal services you have more experience with.

While the best overall concept for cable policy and regulation is not yet clear, some specific facts do stand out from our studies. I pass them on to you in the hope that they will be helpful in deciding how your community will proceed:

(1) Exclusive operating rights are unnecessary and unwise. Few cable companies need the protection of exclusivity in order to wire your community -- although they obviously would like it if you care to give it away. To be sure, in many towns once a single operator is in, there may continue to be only one. If that turns out to be the case, and if the operator gives good service, there is no need for exclusivity. If this turns out not to be the case, the city and its citizens will be the worse for having granted exclusivity.

(2) Franchise fees should be nominal. The value of cable to your community is not the few added revenues you can get for municipal government; its value is the profoundly important communications service it can bring to your citizens. Excessive fees can discourage innovative and modern system operators, encourage graft, and retard the growth of cable services in your community. Let it grow; and tax it like any other business.

(3) Municipal ownership is not best for your citizens or your municipal government. It is the exclusive franchise carried to the absurd. Cable systems require large amounts of capital and the revenues are far in the future; a municipally owned system would almost inevitably be an obsolete, limited system. Municipal ownership of various service industries was a fad at one point in our history, but it is contrary to all the best current thinking on the subject, liberal and conservative alike.

(4) Be wary of "free" channels reserved for special purposes. Reserved channels for educational stations made sense in over-the-air broadcasting because of the severely limited number of channels and the law that private broadcast station owners were not common carriers. With cable, the total number of channels is limited only by demand -- or government policy. Transmission costs are trivial compared to programming costs. Reserved "free" channels for cable will pass the costs on to the consumer in a regressive way. We do not reserve movie houses for blacks or for educational films; we do not require so many hours of free film for poor people or provide free trash collection to public interest groups. Does it make sense to do so in cable? Access and subsidy can be achieved in more direct ways that raise far fewer political headaches and better serve the public.

(5) Don't automatically treat cable as a public utility. There are strong reasons why we treat some public services as utilities and not others -- and those reasons revolve around getting maximum benefit for the individual user. Most of those elements of a public utility, such as large economies of scale or wasteful duplication arising from competition are not readily apparent in cable. It is true that we tend to automatically associate communications with tight regulation, but then we don't treat newspapers or movies that way. Let's get our analogies right before we lock ourselves in. Many vital public services are best achieved with minimal, but purposeful, municipal involvement. To go back to trash collection for a moment, the vital public interest is sanitation, convenience, and low cost. In spite of the overwhelming importance to our national health of public sanitation, we find that the best approach is a mix of private competition with governmental prescription as to standards of cleanliness, frequency of collection, and such. Even though all the information is not yet in, the same also may be the case with cable. Simple requirements on the cable operator of nondiscriminatory access, equal service to all households, and the like might well achieve your end objectives far better than extremely detailed municipal or Federal regulation ever could.

My general message, then, can be summed up in two thoughts: Go slow and don't lock yourselves in. The great hay-day of cable is not 1971 -- or 72 or 73. It will take time to develop; its potential and its nature will evolve. It is easy to add restrictions as the need arises; it is almost impossible to remove privileges once they are granted.

It is up to you in the cities and to us in Washington to see that cable develops wisely. The potential of broadcasting, whether by cable or over-the-air, for dealing constructively with the problems of minority groups in American society is tremendous. Neither our rapid progress in civil rights nor our increased sensitivity to the problems of the cities or rural areas would have been possible without the impact of television.

But your main concern should be a vital, flexible, low-cost, many-channel, easy access broadcasting system that ties us together as a people. The hardware of communications should not be physically structured or divided up in time to enforce separate-but-equal service to minorities of any sort. Rather, we should seek the widest possible opportunities for access and let the man with the message and the would-be listener or viewer find each other out.

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1.	Seminar on Urban Cable TV and the Wired City, Univ. of S. Calif.	1/15/72 (informal remarks)	Los Angeles, Calif.
✓ 2.	Georgia Association of Broadcasters	1/26/72	Athens, Georgia
3.	Armed Forces Communications and Electronics Association	2/3/72	Washington, D.C.
✓ 4.	The Conference Board	2/15/72	New York, New York
✓ 5.	Colorado Broadcasters Association 1972 Legislative Dinner	2/17/72	Denver, Colorado
6.	National Association of FM Broadcasters	4/8/72	Chicago, Illinois
✓ 7.	National Association of Broadcasters	4/10/72	Chicago, Illinois
8.	International Radio and Television Society College Conference	4/20/72 (informal remarks)	New York, New York
✓ 9.	American Newspaper Publishers Association	4/27/72	New York, New York
✓ 10.	Magazine Publishers Association Management Conference	5/1/72	Palm Beach, Florida
11.	American Women in Radio and Television	5/5/72 (informal remarks)	Las Vegas, Nevada
12.	Ministry of Posts & Telecommunications	7/27/72	Japan - SEAsia trip
13.	National Academy of Television Arts and Sciences	9/14/72	San Francisco, Calif.
14.	North Carolina Association of (Wilmington) Broadcasters	10/16/72	Wilmington, N. Carolina
15.	International Conference on Computer Communications	10/24/72	Washington, D.C.
✓ 16.	California Community Television Association	11/16/72	Anaheim, California

17.	Arts/Media Conference - National Council on the Arts	12/1/72	Washington, D.C.
18.	Sigma Delta Chi Luncheon Indiana Broadcasters Association	12/18/72	Indianapolis, Ind.
	News Conference following 12/18/72 speech		
19.	Interview - CBS Morning News (Informal remarks--transcript)	12/20/72	Washington, D. C.
20.	Interview - The Today Show (NBC) (Transcript) Frank McGee/Bill Monroe	12/21/72	Washington, D. C.

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5. How to Talk Back to your Television Set, Nicholas Johnson.

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8. Survey of Broadcast Journalism 69-70 - The Alfred I. DuPont Columbia University; Edited by Marvin Barrett.

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12. About Television Martin Mayer, 1972.

13. Aspen Notebook on Government and the Media Rivers and Nyhan.

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2. Letter from Clay T. Whitehead, OTP, to Honorable Carl Albert, dated July 16, 1974 with enclosure re Public Broadcasting Financing Act of 1974.

3. Letter from John Eger, Office of Telecommunications Policy, to Honorable William Saxbe, October 11, 1974.

4. Letter from Clay T. Whitehead, OTP,to Honorable Dean Burch, dated August 17, 1973.

5. Letter from Henry Goldberg, OTP, to Vincent J. Mullins dated September 20, 1974 re Consideration of the Operation of, and Possible Prime Time Access Rule, Section 73, 658 (k) of the Commission's Rules, Docket 19622 (duplicate).

6. Letter from Clay T. Whitehead, OTP, to Honorable Carl T. Albert, dated March 13, 1973.

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10. Memorandum from Clay T. Whitehead, OTP to Heads of Executive Depts. and Establishments; re: Frequency Spectrum Policy Concerning the Development and/or Procurement of Communication Electronics Systems, dated November 24,1972.

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14. Section by Section Analysis of the International Satelite Communications Act of 1974, Sections 101-108.

15. Comments of Comsat, FCC and Senate Departments on Certain provisions of Office of Telecommunications Policy Amendments to the Communications Satellite Act of 1962.

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19. <u>Conclusions and Recommendations re Land Mobile Radio Service in the 900 MHZ Band</u> ; Office of Telecommunications Policy, (FCC Docket No. 18262).

20. <u>Public Broadcasting Financing Act of 1974</u> - Comparison with Existing Law Support B - Corporation for Public Broadcasting, Section 396.

21. <u>Bill proposed to Amend certain Provisions of the Communications Act of 1934 to provide long-term financing for the Corporation for Public Broadcasting and for other purposes</u>, by Office of Telecommunications Policy.

22. <u>Office of Telecommunications Policy Submits Long-range funding Bill for Broadcasting</u>, Office of Telecommunications Policy, news release dated July 16, 1974.

23. <u>Summary and Section Analysis, Cable Communications Act of 1974</u>, Sections 701-711 (Draft).

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26. <u>Report on Activities and Programs</u>, Office of Telecommunications Policy

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COURSE OUTLINE

EMERGING PROBLEMS IN BROADCAST REGULATION

Supplementary Readings:

Barron, In Defense of Fairness: A First Amendment Rationale for Broadcasting "Fairness" Doctrine, 37 U. Colo. L. Rev. 31 (1964)

III. ACCESS TO THE MEDIA

Supplementary Readings:

Barron, Access--The Only Choice for the Media? 48 Tex. L. Rev. (1970)

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1.	U.S. Independent Telephone Association Conference	10/20/69 (Informal)	Sheraton-Park Hotel
2.	National Chamber's Communications Committee	1/14/70 (Prepared Notes)	Sheraton-Carlton Hotel
3.	WINCON Conference	2/11/70 (Informal)	Biltmore Hotel, Los Angeles
4.	Electronics Industries Association	3/10/70 (Prepared Notes)	Statler-Hilton Hotel
5.	Joint Council on Educational Telecommunications	3/25/70 (Informal)	Philip Murray Building Washington, D. C.
6.	National Association of Manufacturers	3/31/70 (Prepared Notes)	Army-Navy Club
7.	McGill University Seminar	4/10/70 (Prepared Notes)	McGill University Montreal, Canada
8.	EDUCOM	4/15/70 (Prepared Notes)	Conference Inn, Holiday Inn Boston, Massachusetts
9.	National Cable Television Association	4/30/70 (Prepared Notes)	Palmer House, Chicago

10.	National Association of Educational Broadcasters	5/21/70 (Informal)	International Club
11.	Armed Forces Communication and Electronics Association Convention	6/2/70 (Prepared Notes)	Sheraton Park
12.	International Municipal Signal Association	8/3/70 (Prepared Notes)	Diplomat Hotel
13.	Tele-Communications Association Video Taping	9/18/70 (Prepared Notes)	Logos Production Studios Arlington, Va.
*14.	IEEE Broadcast Symposium	9/25/70 (Prepared Notes)	Washington Hilton Hotel
15.	U. S. Independent Telephone Association	10/13/70	Honolulu, Hawaii
16.	NARUC	11/17/70	Las Vegas, Nevada
17.	IEEE Vehicular Technology Group	12/2/70	Statler-Hilton
✓ 18.	Alfred I. DuPont- Columbia University Awards in Broadcast Journalism	12/16/70	New York, New York
19.	National Academy of Engineering	1/7/71 (Informal)	National Academy of Sciences Washington, D. C.
20.	Federal Communications Bar Association	1/28/71 (Informal)	Army-Navy Club Washington, D. C.
✓ 21.	Workshop on CATV for Minority Municipal Officials	2/13/71	Howard University Washington, D. C.
✓ 22.	Nat'l Assoc. of Television Program Executives, Inc.	2/17/71	Houston, Texas

*Delivered by Dr. Mansur because Mr. Whitehead was in the hospital.

23.	Electronic Industries Assoc.	3/9/71 (Prepared Notes)	Statler-Hilton Hotel Washington, D. C.
24.	MIT/Harvard Seminar	3/11/71 (Informal)	Harvard Law School Cambridge, Mass.
25.	Independent Telephone Pioneers Association	4/15/71 (Informal)	National Press Club Washington, D. C.
26.	Yale Seminar on Television and the public interest	4/22/71	Yale University
√ 27.	Montana Greater Montana Foundation Award Ceremony	5/21/71	University of Montana Missoula, Montana
28.	International Communications Association	6/2/71	Atlanta, Georgia
29.	Society of Civil Engineers of France	6/9/71	Paris, France
√ 30.	National Cable Television Association	7/8/71	Washington, D. C.
31.	American Bar Association	7/14/71	London, England
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...from New York Times., Sat., 6 Jul 74 p 17

FD

An Argument for Eliminating Broadcasting's Fairness Doctrine

By William S. Paley

A free press must include all journalism if it is to serve its common purpose in a free society. Journalism transmitted over the air should no more be inhibited by government than the print media from informing the people, from stimulating discussion and from helping citizens thereby to take the action essential to effective self-government.

Broadcasting's fight for this recognition has not been easy, broadcasters being licensed by the Government, originally for technical reasons — to avoid chaos in the use of the airwaves — a fact often forgotten. A quantitative factor was also involved — "the scarcity principle." There was a limit on the number of broadcasting stations possible.

The struggle has centered very largely on whether problems of fairness should be left, under First Amendment principles, to broadcasters, answerable to their audiences, vulnerable to their competitors and exposed to constant public criticism, or whether under the fairness doctrine the problems should be left to the Federal Communications Commission.

The danger implicit in the latter course lies in giving a Government agency the power to judge a news organization's performance.

Misapplication of the power furnishes a springboard for efforts to restrict the freedom of broadcasting from operating fully in the public interest, as the press always has, unhampered by judicial commands, bureaucratic reviews, administrative probings and executive reprisals.

"Personal attack" rules impose on broadcasters automatic requirements for time to reply whenever the character of a person or group is questioned, compromising First Amendment values by making a governmental commission the arbitrator of fairness. For it is equally an abridgement of freedom to compel publishing something as to forbid it.

Attempts have been made to extend the enforced fairness principle to entertainment and advertising. "The Autobiography of Miss Jane Pittman," the story of a former slave shown on television, was the subject of a complaint, wisely rejected by the F.C.C., alleging that it reflected unfavorably on whites.

In commercials, complaints assume the militant guise of "counteradvertising," demanding, on the vaguest grounds, free time for replies to specific advertisements. This could endanger broadcasting's economics enough to reduce its ability to carry out its journalistic responsibilities.

Government's intrusion upon broadcast journalism has led to open attacks upon the basic principle of the free press, which is that the value of whatever is published—whether printed or over the air—is best left to the people.

Attacks by the Administration have been directed at impugning the integrity of able reporters; setting up monitoring systems to determine whether Government agencies could be used to intimidate offending media; splitting affiliates from networks by threatening nonrenewal of licenses; and weakening the economic base of news operations by clumsy appeals to advertisers to boycott broadcasters failing to report the news as the White House sees it.

The inescapable impression emerges that there are those in positions of power and trust who oppose a free press because they think it will distort some facts and know it will disclose others.

To strengthen broadcast journalism's freedom, it is time to repudiate the fairness doctrine, specifically immunizing news and public affairs broadcasting from any form of governmental supervision.

As for the scarcity principle, the arithmetic of communications today reveals no grounds for enforced fairness. When broadcasting was first regulated, there were 677 broadcasting stations and 1,949 daily newspapers. Today there are 8,434 broadcasting stations, two-thirds unaffiliated with networks, and 1,774 daily newspapers. Most broadcast news originates with these local stations. And there are as many television networks as there are news services or national news weeklies.

Broadcast journalism must also compete for public confidence with the vast output of printed and oral communications constituting the giant mix that conveys information. This pluralism constitutes the strongest safeguard a free society has against abuses of freedom of the press.

A further check on broadcast journalism is its constant subjection to review and criticism in publications, letters and public forums.

In a free society, this pluralism, watchfulness and competition for public confidence constitute the true judges of broadcasting's fairness and should be the only ones.

If there is any risk in this belief that, in Jefferson's words, "...the people ... may safely be trusted to hear everything true and false, and to form a correct judgment" — and there is — then it is the risk inherent in any free society. But a free society is not the safest way of life. It is only the best.

William S. Paley is chairman of CBS Inc. This is adapted from a talk at Syracuse University.

CBS Columbia Broadcasting System, Inc.
51 West 52 Street
New York, New York 10019
(212) 765-4321

For Release:
10:30 AM, Friday, May 31

BROADCAST JOURNALISM: AT THE CROSSROADS OF FREEDOM

Address by WILLIAM S. PALEY, Chairman, CBS Inc.

Dedication of Newhouse Communications Center -- II

Syracuse University

May 31, 1974

I am delighted and honored to be here with you today. The completion and dedication of this impressive second unit of the Newhouse Communications Center has a significance that goes far beyond this moment and this campus. Thousands of young people will be going out of this building, as from its great sister building devoted to the print media, to become the architects and builders of the journalism of the future. To all of them, the name of Samuel I. Newhouse should be a constant reminder of a remarkable career in communications. It spans over half a century and embraces newspapers, magazines, radio and television stations. His achievement is eloquent testimony that one medium, to be strong, need not weaken another but can strengthen it -- that a new medium, to be effective, need not destroy an old, but can constructively change it. This magnificent building is also a powerful reminder of a great revolution in communications -- the use of broadcast signals to bring the events, personalities and issues of the outside world into the living room. And it seems to me wholly appropriate that Newhouse II (as, I am told, it has already become known) devoted to studies in broadcast and film communications, has been built in close proximity to Newhouse I, devoted to studies in the print media. For one of the great battles that broadcast journalism has been fighting in this country, since its beginning in the late 1920's, has been to establish the principle that a free press must be inclusive if it is to serve its common purpose in a free society. This means recognition that journalism transmitted over the air should not, for that reason, be inhibited by government, any more than the print media should be, from informing the people, from contributing and stimulating informed discussion among them and from helping to enable them to take the action essential to effective self-government.

The fight for this recognition -- and it is a battle we in broadcasting are still fighting -- has not been easy. In the first place, broadcast stations are licensed by the Federal government. Originally, this was for technical reasons -- to avoid chaos in the use of the airwaves -- a fact that has often been forgotten. There was also believed to be a quantitative factor involved -- "the scarcity principle," which, as I shall point out later, has turned out to be more theoretical than real. This centered on the technical fact that there had to be, in the spectrum, some limit on the number of broadcasting stations, whereas there was no technical limit on the number of newspapers that could be printed. As it turned out, economic realities came to be more limiting in newspaper publishing than technical realities did in broadcasting.

In the actual evolution of broadcasting as an information medium, however, I think that most broadcasters were far less concerned with theoretic considerations than with a respect for its sheer strength as a medium. Consequently, we saw it as our clear responsibility to protect the public from the misuse of broadcasting as a result either of government interference or pressure or of possible selfish or biased interests of broadcasters themselves. At CBS -- and I think generally throughout broadcasting -- the principles of fairness in dealing with news and public affairs -- as well as other guidelines to assure responsible broadcasting in this area -- were voluntarily and painstakingly arrived at and put into practice. At the same time it was -- and remains -- our firm conviction that what constitutes fairness should be determined by those responsible for the operations of the media and not by a governmental agency policing them and imposing upon them its own definitions and its own arbitrary rulings.

The long and continuing struggle of broadcast journalism to assert and maintain its position as part of the free press has centered very largely on this issue: whether defining and resolving problems of fairness should be left, under the principles of the First Amendment, to broadcasters, who are answerable to their audiences, vulnerable to their competitors and exposed to constant public criticism, or whether it should be left to a government agency to determine these matters.

Historically, the Fairness Doctrine was not formally enunciated as a policy of the Federal Communications Commission until 1949, when it was adopted as part of an FCC report upholding the right of broadcast licensees to editorialize. The purpose of the Fairness Doctrine was to insure that the exercise of the right to editorialize did not lead to rampant bias on the air. The new policy was designed not to repress the expression of opinion but on the contrary to stimulate a multiplicity of opinions. Despite its good intentions, however, the Fairness Doctrine had implicit dangers in that it conferred upon a government agency the power to judge a news organization's performance. In recent years, this danger has become real as the FCC began considering complaints on a broadcast-by-broadcast basis, almost line-by-line and minute-by-minute. One station, for example, was ruled unfair because the FCC found that, on one news program, "approximately 425 lines were devoted to expression of views opposing the legalization of casino gambling whereas approximately 115 lines were devoted to the proponent's views." Inevitably, such super-editing by a government agency has become a vexing symbol of broadcasting's second-class citizenship in journalism. Misapplication of the principle became a springboard for attack on the media by various government officials for purposes unrelated to the original concept of fairness. Such attacks, if they had not been resisted, would long since have led to the weakening of broadcasting as an arm of the free press and have destroyed its ability to function as an effective tool of democratic life and growth. In recent years the symptoms of broadcast journalism's second-class status have become so clear as to reveal how the Fairness Doctrine can be used as a device to influence the content of news and public affairs broadcasting.

This is not a matter of seeing ghosts lurking in every corner. Consider some of the actions and trends emerging in just the past five years, to restrict or condition the freedom of broadcasting to operate fully and freely in the public interest -- as the press always has -- undirected by judicial commands, unhampered by bureaucratic reviews, unchallenged by administrative probings and unthreatened by executive reprisals.

In 1969 the Supreme Court decided that the FCC had the power under the Fairness Doctrine to promulgate its so-called "personal attack" rules, which require broadcasters to follow automatic notification and requirements for time to reply whenever the "honesty, character, integrity" of a person or group is questioned. While certain news broadcasts are exempt from the rules, First Amendment values are, nevertheless, compromised when a governmental commission becomes the final arbitrator of journalistic fairness and can prescribe the remedy. Recent events demonstrate the fundamental danger of lodging with a governmental commission -- however well intentioned it may be -- the power to review and penalize broadcasters as a result of a finding that a particular news broadcast was "unfair."

Already attempts have been made to extend the principle to entertainment and advertising. To cite a recent example in entertainment, perhaps one of the most distinguished dramas ever presented on television, "The Autobiography of Miss Jane Pittman," the story of a former slave, was the subject of a complaint demanding time on the grounds that it put whites in an unfavorable light -- a complaint which the FCC wisely rejected. In commercials, some complaints under the Fairness Doctrine have assumed the militant guise of "counteradvertising." Unsatisfied with broad-gauged existing restraints on deceptive advertising, they would demand that, under the Fairness Doctrine, free time be provided opponents of a company or a product or service on the vaguest grounds conceivable. The implications of this are clear: it could, by reducing broadcasting as an effective advertising medium, so endanger its economic viability as to reduce its effectiveness in all other respects, including its journalistic role.

No news medium can afford to turn the other cheek. Any notions that, in respect to enforced fairness, the free press is divisible, and that pressure could be applied to one medium while others are immune to it, got a serious jolt last year. The Florida Supreme Court held that a newspaper -- in this case, The Miami Herald -- under the personal attack principle in a state statute, can be compelled to print verbatim replies. An appeal of the decision is now pending before the Supreme Court of the United States. It is ironic and could be tragic, unless there is a reversal, that this shortsighted policy of fairness by government edict is extended to the print media just at the time that it is proving most menacing to the broadcast media. We all know it is no less an abridgment of freedom of the press to compel publication of material than to forbid it.

The intrusion of the government into the content and style of broadcast journalism has led to an open season of attacks upon the basic principle of the free press: namely, that what is published -- whether on the printed page or over the air -- is best left to those doing the publishing and any judgment as to its interest and value is best left to the people reading, hearing or seeing it.

Few Presidential administrations, in my experience, have been consistently pleased with the press: all want to be constantly approved and admired. But that is not the function of the press, and previous administrations, though often displeased with the press, did not seek to undermine or punish it. The startling fact of the present Administration is that, virtually from its inception, it has launched a systematic effort to discredit both the objectives and the conduct of those journalists whose treatment of the news it disapproves. None of the news media has been immune to verbal onslaughts from the White House; but broadcast journalism, in particular, has been subjected to unprecedented direct threats to inhibit, weaken and disable it. Even though not all these threats have been actually put into practice and none have succeeded in their motives, they are nevertheless shocking and frightening in their implications. They have been directed at impugning the integrity of able and respected reporters; at setting up monitoring systems, whose findings were to determine whether agencies of the Federal government could be used to investigate and intimidate the offending media; also at splitting networks from their affiliates by threatening non-renewal of the latter's licenses; and at weakening the economic basis of costly broadcast news operations by clumsy appeals to advertisers to boycott networks and stations which fail to report the news as the White House sees it.

But what about overall responsibility, [illegible], etc.?

As the history of this continuous campaign to undermine broadcast journalism has unfolded, the inescapable impression emerges that there are those in positions of power and trust who are, from all appearances, against a free press -- and that they are against it, not just because they <u>think</u> it will distort some facts, but also because they <u>know</u> that it will disclose others.

So I say, with all the strength at my command, that the time has now come to eliminate entirely the Fairness Doctrine from government rulebooks or statutes. In spite of the fact that the FCC has shown moderation in putting it to use, the very fact that the Fairness Doctrine confers on a government agency the power to sit in judgment over news broadcasts makes it a tempting device for use by any administration in power to influence the content of broadcast journalism.

Meanwhile, broadcast journalism is continuing to carry out its mission of honest, thorough and responsible reporting. It continues to rate high in the public confidence. And there is surfacing a growing sense that the Fairness Doctrine has outlived its usefulness. Broadly recognized as the leading constitutional authority in the United States Senate, Sam Ervin has characterized the enforced fairness concept as "a fickle affront to the First Amendment" and strongly urged an inquiry "to consider how to move broadcasting out of the Government control...." In a landmark 7-2 decision last year, the Supreme Court emphatically rejected the contentions of those who would impose even more restrictive obligations on broadcasters. It declared "The question here is not whether there is to be discussion of controversial issues of public importance on the broadcast media, but rather who shall determine what issues are to be discussed by whom, and when....For better or worse, editing is what editors are for; and editing is selection and choice of materials," and it goes on "If we must choose whether editorial decisions are to be made in the free judgment of individual broadcasters, or imposed by bureaucratic fiat, the choice must be for freedom." The Chairman of the FCC, Richard Wiley, has indicated his receptiveness to studying the suspending of the Fairness Doctrine in areas where there are a sufficient number of licensees. And Senator Pastore, Chairman of the Senate Subcommittee on Communications, has taken an open-minded view in announcing his proposal to hold hearings to reexamine the policy.

In addition to the offense done the freedom of broadcast journalism by fairness enforced by government, the arithmetic of the communications field today offers convincing evidence that the scarcity principle has no validity as grounds for enforced fairness. On the contrary, it calls for clear and outright repeal of the Doctrine. A sparseness of broadcast outlets, as compared to daily newspapers, no longer exists. As a matter of fact, the situation is inverted. When the regulatory powers over broadcasting were first enacted in 1927, there were 677 broadcasting stations in the United States and 1,949 daily newspapers. Today there are 8,434 broadcasting stations and 1,774 daily newspapers. The multiplicity of voices heard over these stations -- two-thirds of which have no network affiliation -- far exceeds that provided by any mass medium at any time in our history. The vast majority of news and public affairs broadcasts originates with the thousands of local stations, whether or not they have network affiliations. Americans spend, in an average week, 555 million hours watching television news broadcasts. Of these hours, 394 million are spent on locally produced news and 161 million hours on network news broadcasts. In radio the ratio of locally produced to network produced news is overwhelming, all but a small fraction is local.

There is, furthermore, very little overlapping of control of broadcast stations by newspapers: 19 percent of the 934 television stations are owned by newspapers; and 7 percent of the 7,500 radio stations. And there are just as many national television networks as there are wire services or national general news weeklies. In addition, of course, broadcast journalism must compete for public confidence with all the newspapers, as well as monthly, quarterly, bi-weekly and weekly periodicals; also books and newsletters; and educational, civic, professional, and other meetings. All of these add to the giant mix that conveys, appraises or interprets information and presents and discusses issues. The possibility of any major news source consistently distorting or misusing its function in the face of all these other competing forces for enlightenment is virtually non-existent. This pluralism constitutes the strongest safeguard that a free society can have against abuses of freedom of the press.

A free people just does not tolerate persistent bias if it has such a wide range of free choices. And never in the history of communications has a medium been as wholly susceptible to watch-dogging by the entire population. A further check on the overall fairness of broadcast journalism is that it is consistently and universally subjected to review and criticism. Every major newspaper in the United States reports every day on how broadcasting is doing its job and who is doing it -- often faulting us, occasionally praising us, but never ignoring us. Most general interest magazines add their comments and criticisms every week and every month. A hundred and thirty-four publications -- daily, weekly, monthly and quarterly -- deal exclusively or to a major extent with broadcasting; and their circulation runs into millions. Letters from private citizens, running into thousands every week, clearly indicate that the public consider themselves our real supervisors and do not hesitate to let us know how well or how fairly they think we're carrying out our job. At CBS News -- as I am sure at other broadcast news organizations -- we have carefully thought out guidelines, continuous reviews of our work and formal procedures to make certain that we are doing it responsibly. And the fact is that we seem to be doing it well. Independently run public opinion polls at regular intervals question the American people as to the degree of their confidence in broadcast journalism. The last such poll revealed that the largest number by far, 56 percent, considered broadcasting the most believable news media of all.

In a free society, this pluralism, this watchfulness and this competition among literally hundreds of news sources for public confidence constitute the forces that are the true judges of broadcasting's fairness and should be the only ones. Government should simply -- as a matter of asserted national policy consistent with what I believe to be the spirit of the First Amendment -- repudiate the Fairness Doctrine and specifically immunize news and public affairs broadcasting from any form of governmental oversight or supervision whatsoever.

Twenty years ago -- almost to the day -- I had occasion to address myself to the freedom and responsibility of broadcasters. I said then, "Some people may question the desirability of placing in the hands of the broadcaster this important element of control. To this point I would say that undoubtedly there may be abuses, as there are in other media. But I for one have enough faith in the vitality of the democratic process, in the intelligence of the American people and in the freshness of the competitive climate to believe that the good will and the determined intent of broadcasters to be fair, coupled with the powerful voice of the people, will provide far better protection against abuse than any other form of control."

Nothing during the past 20 years has led me to change my mind or to qualify those words.

If there is any risk -- and there is -- in this belief that, to quote Jefferson's words, "...the people...may safely be trusted to hear everything true and false, and to form a correct judgment between them" -- and there is a risk -- then it is the risk basic and continuous in any free society. But it has been the verdict of our forebears and the experience of ourselves that a free society is not the safest way of life: it is only the best.

A Policy Paper/The Aspen Institute for Humanistic Studies
Series on Communications

Public Television:

Toward Higher Ground

Report and Papers from the Aspen Institute Conference on Public Broadcasting

Aspen Institute
Program on Communications and Society

Douglass Cater
Director

The Aspen Program was established in 1971 as part of a long-term project of the Aspen Institute for Humanistic Studies to identify major issues relating to the communications media and to develop policies and actions dealing with those issues. Initially, the Program is concentrating on four priority areas: 1) public broadcasting; 2) government and the media; 3) television and social behavior; 4) cable television and the new technologies. Workshops, seminars and conferences are conducted in each of these areas, and the results of these meetings and of research conducted and commissioned by the Aspen Program are published as The Aspen Series on Communications and Society. The Aspen Program has received support from the Markle, Benton, Russell Sage, Rockefeller, Harris, Arca, Marcus and Harryette Cohn, and Ford Foundations, as well as the National Endowment for the Humanities, the National Home Library Foundation and the Rockefeller Brothers Fund.

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Program on Communications and Society

Douglass Cater
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We are pleased to send you the report and papers from the 1975 Aspen Institute Conference on Public Broadcasting. PUBLIC TELEVISION: TOWARD HIGHER GROUND probes key issues in the growth of this non-commercial enterprise. We welcome your comments and suggestions.

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INTRODUCTION

DOUGLASS CATER

The Aspen Insitute Program on Communications and Society is concerned about the fate of public broadcasting in America. During the growth stages of this enterprise, our purpose has been to keep informed, involved, and yet not beholden. We have charted a clear if difficult role to sponsor reasoned inquiry, and to convene in a non-adversary atmosphere those who are committed to public broadcasting's future.

Since 1972 the Program has sponsored a series of meetings to take a hard look at the problems and prospects of public broadcasting. The early conferences examined issues of financing and organizational structure needed to ensure the system's independence and viability. Our latest focused on problems of creative programming, along with related issues.

The study papers and accompanying report from this Aspen Conference point to two essentials if public broadcasting is to move toward higher ground.

- Long-range federal funding is the single most important step to guarantee independence and to nurture creativity for the system. Nearly eight years have passed since the Public Broadcasting Act was signed into law, yet at this writing Congress still struggles with this issue.

- As CPB Chairman Robert Benjamin stated at the conference: "The priority today has to be programming; it's high time we got to it." Good programming for television, commerical or public, needs time, venture funding, and the constant willingness to risk mistakes.

While these papers concentrate on problems, it should also be noted that public broadcasting has made significant progress since the time of the Carnegie Report in 1967. Yet major challenges lie ahead. While the future of public broadcasting is not a subject which seizes the popular imagination, less momentous causes have been advanced by enlightened inquiry among groups of purposeful citizens. We hope this publication will further that purpose.

Douglass Cater is Director of the Aspen Institute Program on Communications and Society.

A CRISIS OF IDENTITY: WHAT IS PUBLIC BROADCASTING?

ANNE W. BRANSCOMB

Several recent developments cloud the future of public broadcasters, most of whom operate on channels reserved for noncommercial educational use.[1] The most significant of these developments is the Federal Communications Commission's decision not to renew the licenses of nine educational stations operated by the Alabama Educational Television Commission[2] and the assignment of the new FCC Commissioner and former law professor Glenn Robinson to a special responsibility for noncommercial stations.

This "special" attention will certainly precipitate much soul-searching among public broadcasters and their regulators concerning the nature of public broadcasting and its development in the future. During this crisis of identity, many questions will arise: What is public broadcasting? What is the justification for reserved channels? What does a noncommercial service really mean? How are noncommercial educational licensees to ascertain and serve public needs, interests and programming preferences? Who is responsible for what? Do "public stations" have higher or lower standards of responsibility with respect to political and other public affairs programming? How are these various responsibilities and needs to be funded? Who is to decide what?

I. What Is Alternative Broadcasting?

Part of the problem is that nobody really knows the meaning of the words "public broadcasting." Policymakers deliberately decline to define the term very explicitly for fear of opening the Pandora's box of programming control, which is fraught with First Amendment concerns and connotations. The term "public broadcasting" does not appear in the early legislative history of the Communications Act of 1934. Indeed, all licensees of broadcasting facilities are deemed to be "public trustees" operating their stations "in the public interest."

Initially there were no broadcast channels reserved for special purposes, although both educational and religious interests fought for this concept. At the time, it was not yet evident that reserved channels might be desirable—that the broadcasting industry would quickly develop into a vehicle for delivering a mass, consuming public to national advertisers. In addition, during the early days of radio, many educational entities obtained licenses but then failed to develop them for their own purposes. As a result, most of these licenses were transferred to profit-seeking entities, and it became necessary once again to lobby for the reservation of "public" channels when the new broadcast services became available.

Despite public broadcasting's eventual success in reaching—if not in actually capturing—the available audience,[3] the FCC has never really interpreted the meaning of "noncommercial educational" broadcast services. The regulations remain quite ambiguous. For example, Section 73.503, governing the licensing of the reserved FM channels, reads in part as follows:

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[1] Notable exceptions are WNYC–TV and WNET–TV in New York. There are eight other television stations operating on commercial channels, as well as sixteen FM and 30 AM licensees operating noncommercial educational programs on nonreserved channels.

[2] New York Times, Sept. 20, 1974, p. 1; Broadcasting, Sept. 23, 1974, p. 50.

[3] In 1941, the FCC set aside five FM channels for noncommercial educational use (see 5 Fed. Reg. 2690, 1940), and in

(footnote continued, pg. 2)

(a) "A noncommercial educational FM broadcast station will be licensed to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program . . .

(d) "Each station shall furnish a nonprofit and noncommercial broadcast service . . ."

Similarly, Section 73.621, governing the licensing of television channels, reads:

(a) ". . . noncommercial educational broadcast stations will be licensed only to nonprofit educational organizations upon showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service . . .

(c) ". . . noncommercial educational television broadcast stations may transmit educational, cultural and entertainment programs, and programs designed for schools and school systems in connection with regular school courses . . ."

Although it is clear that the public channels would never have been reserved had it not been for an overriding concern among commissioners that television be used for "educational purposes," it is, nonetheless, also clear that something more than strictly educational and instructional programming was contemplated. Commissioner Hennock, who was the patron saint of educational broadcasters, spoke of "an unprecedented opportunity for education, both formal and informal," and suggested that educational stations "supply a beneficial complement to commercial telecasting. Providing for greater diversity in television programming, they will be particularly attractive to the many specialized and minority interests in the community, cultural as well as educational, which tend to be by-passed by commercial broadcasters speaking in terms of mass audiences."[4]

With the Public Broadcasting Act of 1967, which was derived from recommendations made by the Carnegie Commission, the purposes of educational television were delineated only by a reference to Carnegie deliberations. The Carnegie Commission Report spoke of the opportunity for "public television" to:

(1) "provide a voice for groups in the community that may otherwise be unheard,"
(2) "help us see America whole, in all its diversity,"
(3) "increase our understanding of the world,"
(4) "open a wide door to greater expression and cultural richness for creative individuals and important audiences,"
(5) "seek out able people whose talents might otherwise not be known and shared,"
(6) "explore new dimensions of artistic performance not ordinarily available to our nation's audiences,"
(7) "carry the best of knowledge and wisdom directly into the home."[5]

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*3 (Cont.)*1947, 20 channels were made available (see 12 Fed. Reg. 1369, 1947). Today there are 705 educational FM stations on the air—about 10 percent of the total of all radio allocations, with 793 authorized (see Broadcasting, Oct. 7, 1974, p. 74). With the onset of television in 1952, the FCC reserved 242 television assignments (80 UHF and 162 VHF) for noncommercial educational use (see 41 FCC 148, 1952). This represented about 12 percent of the total video allocations at that time. There are currently 246 licensed television stations operating on reserved channels, with a total of 252 authorized. These 246 stations represent 25 percent of the total of all authorized and operating television stations. Public television presently reaches a potential audience of 84 percent of the nation's homes (public radio is in range for about 60 percent of the audience).

[4]41 FCC 148 at 591 (1952).

[5]Public Television, 92-94 (1967).

In short, it is apparent that the purpose of the Public Broadcasting Act was to provide an alternative programming service to what was readily available on commercial channels. However, the language of the act remained less than helpful in defining the content of "public broadcasting." It merely refers to the legal words used by the FCC, "noncommercial educational radio and television broadcasting" and to stations which "under the rules and regulations of the FCC are licensed or eligible to be licensed and which are owned and operated by a public agency or a nonprofit private foundation, corporation or association." Only the term "nonprofit" is truly explicit. (The FCC case history also makes it abundantly clear that nonprofit agencies may not operate broadcasting facilities on reserved channels for a profit-making purpose.)

In sum, it is generally understood that this alternative broadcast service was to be complementary to commercial programming,[6] but it is not clear who is to decide what is complementary. What exists today as public broadcasting has had substantial support in its development from commercial broadcasters, both at a local and at a national level. This assistance, which was fiscal as well as volunteered time and free equipment (many transmitters were given to these educational stations by commercial licensees), was provided for a number of reasons, certainly some of them eleemosynary. However, some broadcasters surely assumed that there would be less pressure upon them because of the existence of the local publicly owned stations.[7] To the extent that the public broadcasters begin to develop programming which is considered by commercial broadcasters to be competitive to their programming, there will certainly be increased animosity from the commercial representatives, and monitoring of the noncommercial programming will result.

There is already evidence that public broadcasters are embarked on a collision course with commercial broadcasting. In September 1972, WGBH—TV captured a surprisingly substantial percentage of the audience in the Boston market for coverage of the Canadian-Russian hockey finals. Storer Broadcasting had also bid for coverage of the matches on WSBK—TV, which it has cultivated as the "hockey station" in the market. It is understandable, then, that Storer sought clarification from the FCC about whether this was the kind of programming intended to be carried on reserved channels. The basic thrust of Storer's argument was (a) the hockey matches did not provide programming otherwise unavailable in that market; (b) the cost was underwritten by commercial sponsors which were regular purchasers of WSBK—TV air time; (c) extensive newspaper advertising was used to promote the WGBH—TV coverage, with substantial credits to the underwriters; (d) the programs carried promotional interruptions and fund-raising solicitations during the intervals, and these "commercials" were considerably in excess of that which would be permitted on commercial stations for advertising interruptions. Such programs as *The Way It Was,* which is a recap of outstanding sporting events during the last few years, and *A Family At War,* which, significantly, was produced for a commercial television network in Great Britain, also begin to infringe upon areas thought by commercial broadcasters to be their natural domain.

Certainly producers and performers programming the reserved channels desire the same evidence of success as those producing on commercial channels—a large and appreciative audience. However, to the extent that public broadcasters move in the direction of attracting a mass audience, they will incur the wrath not only of the commercial broadcasters but also of another significant political force in the community, the minority groups

[6]In its membership solicitations, WNET—TV in New York promises to provide programming not available elsewhere.
[7]Such an assumption would be understandable, even though the FCC's decision to reserve channels for educational purposes explicitly stated that it intended no diminution of responsibility among commercial licensees for educational and public affairs programming.

whose taste for special-interest programming is not being satisfied by commercial broadcasting. As a result, the FCC finds both groups[8] knocking at its door for the kind of decision making which the commission has assiduously avoided in the past with its traditional stance of leaving the "educators" alone and regulating by the "raised eyebrow." Pressure is certain to increase for a clear definition of the concept of alternative programming and for answers to two fundamental questions: Is the alternative programming requirement enforceable? If so, by whom?

II. What Is Noncommercial?

The FCC has addressed itself to the definition of "educational" and has determined that licensees on the reserved channels need not necessarily be institutions dedicated to formal educational purposes.[9] However, very little case law exists on what the term "noncommercial" means, and this is an area fraught with potential difficulties as the "public broadcasters" seek financing from both private industry and the general public. It is clear that overall programming must not operate at a profit and that the programming may not include any explicit advertising messages. However, substantial inroads toward commercialism have been made in the attribution of support from commercial sources, in the solicitation of funds on the air for the support of the station, and in the carriage of nostalgia programming containing commercial announcements.

Credits to commercial sponsors. Some time ago the best minds in the communications bar gathered to debate whether or not the Mobil Oil Corporation could use its logo in public television underwriting identification with the image of gasoline sloshing through the center of the red "o." It was decided that PBS would be unwise to permit this product identification which might attract the concern of the FCC.

With all of the FCC staff members who boast of having no television sets and their apparent inability to monitor programs, one wonders who would have complained? Nonetheless, the rules are explicit concerning commercial credits. Section 73.621 (d) provides that persons or organizations furnishing or producing programs or providing funds for production should be identified by name only; for example, International Business Machines rather than IBM[10] and Chevrolet Division of General Motors rather than Chevrolet. Companies sharing the same or a similar name may request a waiver of the rule in order to include brief additional descriptive material, and logos have been permitted under such a waiver in order to establish the identity of the company. No mention of the product or service of a company may be made, and credits are permitted only at the beginning and end of a program unless the program lasts longer than an hour.

Although less than 10 percent of the funding for public broadcasting comes from commercial sources, the programming which is supported by commercial funding tends

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[8]A number of petitions to deny the licenses of noncommercial educational stations are currently pending before the FCC or on appeal to the courts. The most notable include: KQED–TV, San Francisco; WETA–TV, Washington, D.C.; KNME–TV, Albuquerque; and KETC–TV, St. Louis, Missouri.

[9]At the present time, approximately one-third of the reserved television channels are licensed to state and local educational authorities, one-third to colleges or universities, and one-third to nonprofit community organizations. Half the reserved FM channels are licensed to colleges and universities, and about one-fourth each are held by school systems and nonprofit community organizations. (Figures obtained from the Educational Broadcasting Branch of the FCC.)

[10]PBS is interpreting this as requiring the full corporate name only on the audio announcement. The logo type (IBM, ARCO, or Mobil) is permitted to appear on the television screen.

to be the most prestigious entertainment (*Masterpiece Theatre,* for example). It has been virtually impossible for PBS to raise money from corporate commercial sources for public affairs programming, although IBM is reported to have committed $100,000 (about 10 percent of the funding) for the new *Bill Moyers' International Report.*[11] Although PBS allegedly maintains ultimate editorial control over the programming content, the availability of funding from the corporate sources naturally determines the direction of programming choices. This means more entertainment programming and fewer informational programs of a controversial nature.

Since the purposes of commercial interests on public television must necessarily be similar to those on commercial broadcasting—to wit, to obtain the largest audience possible and a positive corporate image—there is a substantial question whether or not it is in the interests of public broadcasting to expand funding from this source and to permit greater commercialization. Moreover, the manner in which other media are used to advertise the commercially supported PBS programs raises the question of whether or not the reserved channels are actually being used already for commercial purposes.

There is no regulation of the advertising support in other media. Atlantic Richfield uses the ARCO logo in its newspaper ads promoting PBS programs.[12] The Mobil Oil Corporation, in its full-page ads for *Masterpiece Theatre* and *Mobil Showcase Theatre,* actually refers to the program credits as "commercial interruptions."[13] In addition, Mobil is now using the Mobil logo, but without a commercial plug for oil, in advertising *The Way It Was* and *Upstairs, Downstairs* during the *Today* program on NBC. Exxon advertises its offerings on PBS without commercial content, but the ads are invariably in close proximity to the Exxon product commercials on the *NBC Evening News.* Aside from a desire to know how and why *NBC News* decided to carry the announcements, there also arises the interesting question of whether a commercial announcement on a commercial station for programming on a noncommercial station constitutes commercial use of a reserved channel.

Another subsidiary question is whether or not corporations should be encouraged or discouraged from funding programming related to their business. It has always been an unspoken taboo for public stations to accept programming *supplied* by corporations and related to their business or products. Commercial stations are also leery of carrying such programming. According to case law established by commercial broadcasters, such programs are deemed to be commercial matter in their entirety and are required to be logged as such. On the other hand, what institutions in society have a greater interest in programming related to their business than those in the business?

An interesting related problem is the fight Mobil has lost to obtain time on commercial networks for editorial advertising. Actually, it might better serve the public and provide a strong source of alternative programming if large corporations were encouraged to provide funding for informational programs concerning public issues related to their business interests. Since station licensees are subject to the Fairness Doctrine which requires that both sides of controversial issues be broadcast, the station would have to obtain a program expressing the other sides of the issue or require a corporation supplying funding for such informational/editorial programming to include a discussion of different sides within the given program. Public funds or foundation funds might be used to produce the "reply" programs to a controversial corporation feature.

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[11] New York Times, Dec. 5, 1974, p. 87.

[12] New York Times, Oct. 28, 1974, p. 54.

[13] Washington Post, Sat., Sept. 28, 1974, p. 27.

Solicitation of contributions. The FCC has prohibited PBS announcements of events, such as benefit performances and house tours, which are soliciting funds for other nonprofit entities. However, over-the-air solicitation of funds for the public stations is permitted to a limited extent. A popular form of money-raising for the community-owned stations has been annual auctions of consumer products and services which have been donated to the station. This practice obviously contravenes the spirit of the prohibition against commercial uses of the station, since consumer products are being shown and their donors credited over the air. However, the FCC rules have been amended to provide that credit announcements during "auction" broadcasts may identify a particular product or service but "shall not include promotion of such products or services *beyond that necessary for the specific auction purpose*" (note 4, Section 73.621).

The rules have never addressed the question of whether programming time on reserved channels should be used to solicit funds for the support of the station itself, but such solicitations appear to be generally permitted. The Ford Foundation has announced a $1.5 million grant specifically to promote an increase in viewer support of public television from its current level of 20 million dollars or approximately 10 percent of the viewing population, to 60 million dollars annually.[14] Certainly this is a laudable attempt to obtain independent funding for public television stations. However, one wonders whether this effort may create a system of audience-supported stations with goals that will vary from the purposes for which the reserved channels and public funding were originally intended by Congress.

An appeal for listener contributions militates in two directions: (1) it dictates programming content which appeals to the largest common denominator in order to increase audience response, (2) it creates an audience and subscriber group to which the station management is beholden for its financial support. The question is whether a public station should be catering to the noncontributing rather than the contributing public. One also wonders whether a station can do both without jeopardizing one or another of its obligations. Perhaps there is a genuine need for both public and subscriber-supported stations. If so, the legal constraints might well be quite different. The subscriber-supported stations might seek to provide alternative entertainment programming, whereas public stations could appropriately offer "common carrier"-type broadcast service.

Nostalgia programming containing commerical matter. Packaged "nostalgia programs," such as *Fibber McGee and Molly, Amos and Andy,* and several other favorite radio series of the 1930s, have become a popular form of entertainment on noncommercial educational FM stations. Because these programs frequently include the original commercial breaks, there has been concern that carrying these shows on reserved channels could make a mockery of the noncommerical prohibition. This would be a problem if the original commercial advertisers would begin to provide this nostalgia programming free of cost to the noncommercial stations. However, the FCC staff has made a number of informal rulings permitting the use of old commercials whenever the program concerns radio history or whenever the "old commercials are an integral part of the nostalgia appeal of the program."[15] The commercials are also acceptable if they are for products or services which are no longer available to the public. Cigarette ads may not be broadcast, regardless of age, because the FCC has no authority to waive the requirements of the Public Health Act of 1969.[16]

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[14] Broadcasting, Oct. 21, 1974, p. 36.

[15] WBJC–FM, 40 FCC.2d 936 (1973).

[16] 15 USC Section 1331 to 1338.

All of these questions concerning the definition of noncommercial programming on reserved channels bring us back to the original question concerning the nature of "public broadcasting." Should public broadcasting be seeking a mass audience? Should it seek financial support from the same sources as commercial broadcasting? Should it be permitted to rebroadcast programs previously carried on commercial channels? May educational institutions charge viewing or listening students for broadcast-related materials? May these institutions charge tuition for the classroom credits received from educational programs?

Since governmental intrusion upon programming choices is prohibited under a strict interpretation of the First Amendment, the easiest definition of "noncommercial" is either "nonprofit," which is easily defined, or "without advertising content," which is not so easily defined, or both. Any effort to define appropriate public broadcasting programming content more precisely would likely lead to much frustration and litigation.

III. How Should Public Broadcasters Ascertain Community Needs and Interests?

The basic philosophy of the Communications Act of 1934, under which both public and commercial broadcasters are licensed, is that each broadcaster is a "public trustee," serving the specific needs and interests of the community to which each is licensed. Since 1969, under the "Primer for the Ascertainment of Community Needs," commercial broadcasters have come to follow a very elaborate procedure when applying for an initial license and a renewal. There are four aspects to this "ascertainment process": (1) interviewing of community leaders by station management; (2) a general survey of the public in the geographical area served by the station; (3) a statement of needs ascertained by the two surveys; and (4) a statement of programming designed to serve those needs. For some reason—perhaps because the "educators" have been given special treatment due to their alleged poverty—the noncommercial educational licensees were never required to engage in the ascertainment process. More recently, however, two independent petitioners filed rule-making petitions asking the FCC to require the noncommercial educational licensees to ascertain community needs and interests. Consequently, a rule-making docket was set up[17] in which all of the concerned parties—CPB, PBS, numerous licensees of noncommercial educational facilities, and several public interest groups—have filed comments in the FCC proceedings stating their reasons for or against ascertainment of community needs and interests by public licensees.[18]

PBS, although admitting that some form of ascertainment by public stations would be desirable, generally opposed the new requirement. The PBS recommendation seems to be that noncommercial educational licensees be left to their own discretion to determine how they should ascertain local needs. In contrast, CPB proposes an amendment to Section 73.503 to require noncommercial educational stations to demonstrate that they would serve "demonstrated community needs within the station's primary service area which are of an educational, informational and cultural nature." Moreover, CPB concedes that the "special treatment afforded noncommercial educational broadcasting through reservation of channels and frequencies clearly warrants higher expectations of applicants seeking to achieve or maintain this special status."

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[17]Docket No. 19816.

[18]Congress has proposed legislation which would require that licensees applying for renewals ascertain "the needs, views, and interests of the residents of their service areas for the purpose of their broadcast operations." (See Section 309 (i) of H. R. 12993; H. Rep. No. 93-961, 93rd Cong.2d Sess.) No exemption is provided for noncommercial educational licensees.

The National Citizens Committee for Broadcasting (NCCB), which has served as a lobby for citizens' groups all over the country, favors a more general survey of community needs. The NCCB representatives point out that public radio and television stations are substantially insulated from large portions of their potential viewing and listening audience, in that the viewing public most greatly in need of special interest programming was least often assessed as to its needs and preferences. The reasons for this neglect, according to the NCCB, are obvious: (1) the viewing public "most in need" can seldom afford to become supporting members of a public broadcasting station and therefore do not receive the preference polls used by many of the stations; (2) very few minority-group employees are involved in the decision-making process on public stations; (3) the composition of station boards and directors tends to exclude the least affluent members of the community.

Most of the noncommercial educational licensees have not favored the pending ascertainment requirement. They argue: (1) lack of funds to obtain professional assistance in surveying citizens; (2) money for such ascertainment procedures would have to come from the already limited resources available for programming; (3) programming decisions are substantially influenced by state and local funding sources.

One major problem which has not been addressed is the relationship of the concept of alternative programming to the ascertainment requirements. As outlined by the FCC the ascertainment procedure is not directed to "programming needs." The inquiry is directed to the problems and needs and interests of the particular community to which the station is licensed in order to assist in the planning of station management concerning their role in the resolution of existing problems. Consequently most of the ascertainment proceeding is directed toward public affairs programming. If one accepts as a major responsibility of the licensees operating on reserved channels the duty to supply alternative programming to that offered by commercial licensees, then the major requirement for noncommercial educational licensees should be an appraisal of the programming offered within the market served by the licensee showing that the programs offered by the noncommercial educational broadcaster are fulfilling unmet programming needs. Only the NCCB has proposed that noncommercial educational broadcasters be encouraged to deal with programming preferences in the community.

The entire concept of alternative programming is in conflict with the basic requirement that all licensees operate as public trustees. Indeed, if the commercial licensees were meeting all of the needs of the community, then there would be no need for alternative programming. Furthermore, if a noncommercial educational licensee is "a public trustee," then these licensees should be required to ascertain the problems, needs and interests of *all* of the citizens in the community and to design this programming service to serve *all* of those ascertained needs.

Clearly, this ascertainment issue has created a focal point for questioning the basic thrust and philosophy of public broadcasting, and a number of very basic issues must now be resolved: (1) should noncommercial educational broadcasters be treated differently from commercial broadcasters? (2) should noncommercial educational broadcasters strive to ascertain the programming of commercial licensees and then demonstrate that their own offerings serve well as alternatives to the existing programs available in the market? (3) should ascertainment be related only to the "public programming" portion of the broadcast day (that directed to general audiences), or should it also include instructional programming? (4) are noncommercial educational licensees to be held to higher or lower or different standards than commercial broadcasters? (5) how shall noncommercial educational broadcasters meet the requirement of Section 396 (a) (4) of the Communications Act, as amended, "to encourage noncommercial educational radio and television broadcast programming which will be responsive to the interests of the people both in the particular localities and throughout the United States"? (6) are noncommercial educational broadcasters "public trustees"? Or pinch hitters for the inadequacies of the "public trustees"? (7) can any of these questions be answered without an integrated look at each of the specific markets? (8) can the FCC or any other publicly funded entity render a judgment which involves evaluating programming choices?

IV. What Are the Responsibilities of Public Stations for Political Broadcasting?

Traditionally, the noncommercial educational broadcasters have not aired a substantial amount of political broadcasting during campaigns. This is mainly due to a combination of circumstances: (1) Political candidates, seeking larger audiences, are more inclined to put pressure on commercial stations to make time available, and (2) Noncommercial educational broadcasters, being largely dependent upon state or local tax sources, are not anxious to bite the hands that feed them. Also, Section 315 of the Communications Act did not positively require that time be made available for political campaign purposes, but only that "equal time" be afforded where time had already been granted by a broadcaster. Therefore, no one had cause to hassle public broadcasters about whether their neglect of campaign politics was in the public interest. In any case, some public stations were providing a meritorious service covering local elections.

With the passage of the Campaign Communications Reform Act of 1971, Section 312 (a) of the Communications Act was amended to authorize the commission to revoke licenses "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." The act also required that commercial licensees make time available at their lowest unit rate. Since noncommercial licensees had no rate card for advertising, the FCC interpreted the act as permitting a charge by public stations for production services but not for time. Commercial licensees, by contrast, were under no obligation to make free time available.[19]

Although there is nothing in the legislative history of the act that would indicate that noncommercial educational stations were intended to be exempted from this political-access requirement, neither is there any evidence that there was much consideration by Congress of the consequence of this amendment on public broadcasting. Are public licensees justifiably required to meet a "higher standard" (that is, free time) for political programming; and, if so, on what basis? Certainly, there is room for interpretation of what constitutes "reasonable access," for the carriage of political programming represents a very considerable financial drain on the public stations as well as a diversion of resources from other programming.

Virtually no use was made of the public broadcasting system by major candidates for the Presidency in 1972.[20] Since the major networks and commercial licensees have, by contrast, provided a substantial amount of time—albeit paid political broadcasting—for candidates for federal office, there remains the pressing question of whether it makes any sense to require that public stations provide substantial amounts of free time for candidates

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[19] Interestingly enough, the amount of free programming time given by the national networks to the presidential campaign in 1972 was greatly decreased from previous years. Only one hour of sustaining time was provided to candidates and their supporters on television in 1972, compared with 39 hours, 22 minutes during the famous 1960 debates, and 29 hours, 38 minutes in 1956. The comparable figures for radio are 19 hours in 1972, compared with 43 hours, 14 minutes in 1960, and 32 hours, 23 minutes in 1956. (See FCC Survey 1968, Table 4; Survey 1972, Tables 22 and 23.)

[20] The PBS program "Election '72," which was conceived by its originators as an in-depth analysis of the Presidential and

(footnote continued, pg. 10)

for federal office (the Campaign Communications Reform Act applies only to candidates for federal office). Consistent with the concept of alternative service, the public stations should meet a major *alternative* need in the area of local political campaigns. Public broadcasters can provide a unique service in airing the arguments of local candidates, who are less able to pay for commercial broadcast time and therefore more likely to respond to the invitation of public stations to appear. In addition, in 1972 there was a significant use of public broadcast time by third-party candidates, such as Dr. Benjamin Spock. This, too, is consistent with the concept of an "alternative" television service.

If one accepts the current concept of public broadcasting as the source of "alternative programming," a modification of the Campaign Communications Reform Act, in order to encourage carriage of local rather than federal elections, would seem logical. Certainly, neither state nor local entities have the authority to either prohibit or require specific subject matter on the federally licensed media. An act of the Maine legislature which prohibited educational television systems supported by state funds from being used for the purpose of promoting political candidacies or specific governmental actions, has been struck down on the basis of the supremacy clause of the Constitution.[21]

V. What Are the Parameters of Controversial-Issue Programming?

Under discretionary authority in the Communications Act of 1934, and now under the written law, the FCC has over the years developed the Fairness Doctrine to serve as a guideline to licensees in the planning of programming on "controversial issues of public importance." The doctrine has always been greatly criticized by broadcasters, and the authority of the FCC in this area was questioned but not resolved by the recent *NBC Pensions* case. The responsibility of deciding what is a controversial issue of public importance, and how much time a station or network must devote to opposing views, has been left substantially within the discretion of the licensee. The present guidelines of the Fairness Doctrine include:

(1) the responsibility for administration and interpretation of the doctrine remains with the FCC;
(2) the responsibility for its application rests upon the licensee;
(3) the Fairness Doctrine applies to the entire programming service, not to individual programs;
(4) the responsibility to evaluate controversiality is upon the licensee rather than the program supplier.

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*20 (Cont.)*Congressional campaigns, bit the dust when it stepped on the toes of politically powerful incumbents and also was perceived by commercial broadcasters as competition. Indeed, the public broadcasting community is still feeling the repercussions of this sortie into an area preempted by commercial networks. A pending public-TV funding bill in Congress would write into law for the foreseeable future a system whereby local licensee control of programming content would be perpetuated, thereby effectively foreclosing the advent of a fourth news network which might challenge the preeminence of CBS, NBC, and ABC in presidential coverage.

21Oddly enough, a related federal prohibition of editorializing by public television stations or of supporting political candidates (in Section 399 of the Public Broadcasting Act) has not been challenged by any of the noncommercial educational licensees, although there seems to be general agreement that the restriction is unconstitutional. Section 399 is unlikely ever to be challenged by any of the noncommercial educational licensees themselves because they are very content with a nonpartisan status. For one thing, a positive requirement to editorialize or to support political candidates would be fraught with hazards to public television's funding. Furthermore, Section 399 constituted a concession on the part of the educators engaged in lobbying for the Public Broadcasting Act. They accepted the restriction in order to subdue the fears of congressmen that the federal funds made available to CPB would be used to defeat incumbents. Finally, there is the problem of the IRS restrictions on activities of nonprofit organizations with respect to lobbying for legislation and advocacy of political candidacies. Anyone undertaking to litigate the constitutionality of Section 399 would probably also have to tackle Section 4945 of the IRS regulations on nonprofit licensees of broadcast facilities.

It would appear that Section 396 (g) (1) (A) was intended to insure that CPB, which is not a broadcast licensee and therefore not subject to FCC jurisdiction, would use public funds to promote programming that is consistent with the philosophy of the Fairness Doctrine. However, Section 396 (g) (1) (A) was drafted hastily as an eleventh-hour amendment, and the only thing certain about the terms "objectivity and balance" is that they apply only to programs funded by CPB. Both CPB and PBS have argued strenuously that Section 396 (g) (1) (A) means nothing more or less than the Fairness Doctrine, but it is difficult to rationalize the discrepancies in the language of the two bills. Certainly, consistency could have been easily achieved for the Public Broadcasting Act by referring back to the Communications Act Section 315 terminology.

The Communications Act, Section 315 (a) (4) clearly requires licensees to afford reasonable opportunities for the discussion of conflicting views on issues of public importance. The requirements of Section 396 (g) (1) (A) of the Public Broadcasting Act would appear to be far more stringent in terms of balancing views to cover far more subject matter. "Programs of a controversial nature" (the Communications Act) is far more inclusive than "conflicting views on issues of public importance" (the Public Broadcasting Act). Similarly, the phrase "programs or series of programs" in the Public Broadcasting amendment is ambiguous but incontrovertibly wide-ranging. It could be interpreted as demanding "objectivity and balance" within a single program, within a single title series, within all programs involving the same issue, all controversial programming, or only the entire program package for a season. There is substantial legislative history that something more than a single program was intended, but what that "something more" was intended to be remains obscure.[22]

Most communications lawyers representing public entities agree that Section 396 (g) (1) (A) is unconstitutional. However, the law is not very likely to be challenged in the near future for the very simple reason that public broadcasting is unlikely to obtain funding from public sources unless it strives to maintain an overall "fairness," "objectivity," and "balance" and to air the various views of the politically influential officials who control whatever public funds are being made available at both the national and local level. A more fundamental constitutional question is whether or not a publicly funded broadcasting entity could be challenged for more "objective and balanced" access under the First Amendment or even under the Fourteenth Amendment requiring nondiscriminatory behavior by public entities. The *CBS v. DNC* case upheld the right of commercial broadcasters to decline to carry political advertising of a controversial nature, but the majority opinion did not address the question of the obligations of a noncommercial educational licensee receiving more than 50 percent of its funds from governmental agencies (which is the financial situation of most of the noncommercial educational licensees). Justice Douglas did note, however, that such governmentally funded licensees should not be permitted to refuse the programs offered, and he specifically raised the question with respect to programming funded by CPB.[23]

Although the Section 396 (g) (1) (A) question is a non-issue in the sense that it is unlikely to generate a substantial amount of litigation in the near future, it nevertheless dramatizes the dilemma of public broadcasting in sorting out the ambiguities of its status and responsibilities.

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[22] 113 Cong. Rec. 29386 (1967).

[23] 412 U.S. 94 (1973).

VI. Which Institutions Have Regulatory Jurisdiction Over Public Broadcasting?

When the Accuracy in Media organization petitioned the FCC for an interpretation of Section 396 (g) (1) (A), the CPB filed a brief which argued that Section 398 of the Public Broadcasting Act eliminated any FCC claims of jurisdiction to interpret the Public Broadcasting Act. Section 398 provides:

> "Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under this Act; or (2) to authorize any department agency, officer, or employee of the United States to exercise any direction, supervision, or control over educational television or radio broadcasting, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction or personnel of any educational institution, school system, or educational broadcasting station or system."

Section 398 can indeed be read to exempt noncommercial educational licensees from any control by the FCC. The law is ambiguous since it disavows any intention to amend other provisions or requirements under the act, and the act clearly establishes an intent to honor all previously established responsibilities of licensees under the original Communications Act of 1934. Nevertheless, CPB argued successfully that the FCC had had no jurisdiction over the interpretation of Section 396 (g) (1) (A), which was directed to the programming funded by the CPB itself, and the FCC therefore declined to exercise any jurisdiction or to define the meaning of the "objectivity and balance" phrase.

The Accuracy in Media opinion by the FCC dramatizes the current confusion concerning the regulatory authority and institutional responsibility of the various agencies associated with public broadcasting. The question of who has the power to interpret the "strict adherence to objectivity and balance" clause in the CPB enabling act represents merely the tip of the iceberg. There is a much deeper jurisdictional dispute brewing between the CPB and PBS, which CPB spawned under authority granted in the 1967 act. This dispute, which has erupted into public view during the debate on the long-range funding bill in Congress, concerns the amount of federal funding that will be directly available to the stations. Currently, the share of the licensees ranges between 30 and 50 percent, with 50 percent proposed under the pending bill. The stations are lobbying for an increase to 70 or 75 percent.[24]

The stations' request for the greater portion of federal funds is a result of their decision that, by 1976, PBS and the member stations would take full responsibility for funding the Station Program Cooperative (SPC). The cooperative, a recent plan which provides for the selection of national programming by ballot of the licensees, is currently financed by grants from the CPB and the Ford Foundation as well as by station contributions. However, if the bulk of federal funds are to be transferred directly to the stations, the authority of the CPB would be greatly diminished. Naturally, this possibility disturbs the delicate balance of power achieved between the CPB and PBS by the "partnership" agreement reached two years ago.

Other than Congress and the President, there are five major entities that retain substantial fiscal and policy control in decisions concerning public broadcasting. These five are:

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[24] New York Times, Nov. 2, 1974, p. 58.

(1) *The broadcast licensees.* There are approximately 246 stations licensed to 155 entities.[25] The various entities represent diverse forms of ownership including about 13 percent licensed to public school systems; 29 percent licensed to colleges and universities; 29 percent licensed to state organizations (including substantial educational television networks in Alabama, Georgia, Kentucky, Maine, Nebraska, New Hampshire, North Carolina, South Carolina, and Vermont); 1 percent licensed to municipalities (where no local educational authority exists); and 3 percent representing some form of joint arrangement.[26]

(2) *The Federal Communications Commission.* All broadcasting entities receive their licenses directly from the FCC under its specific authority to license such facilities and its general authority to provide for an integrated communications system for the nation. The FCC has full administrative and rule-making authority spelled out in the Communications Act of 1934, and no other federal agency has been given any specific regulatory authority over noncommercial educational licensees. The latter are entirely the creatures of the FCC's rule-making authority, not specific congressional mandate.

(3) *The Corporation for Public Broadcasting.* The CPB is a funding agency set up under the Public Broadcasting Act of 1967 to receive funds from Congress and to dispense them to other entities to promote and develop programming sources for the noncommercial educational licensees.

(4) *The Public Broadcasting Service.* The PBS was originally set up by CPB as a program distribution and interconnection service for licensees under authority granted in Section 396 (g) (1) (B). However, the Public Broadcasting Service was organized as a membership organization and, once established, became much more than a distribution or interconnection system. In effect, PBS is now equally a trade association of public licensees, representing their collective interests and acting as their spokesman. Consequently, PBS has established a separate and distinct existence from the CPB and has developed a considerable amount of political clout. This has left the CPB with little operational or administrative function other than to serve as a "pass-through" for some portion of federal funds allocated by Congress.

(5) *National Public Radio.* The NPR is a program production, distribution, and interconnection system for about 179 noncommercial educational radio stations qualified (as "full service" stations) to receive programs funded by CPB. for radio broadcast. Unlike PBS, the NPR does not serve as a trade association for the radio licensees. Instead, they have organized a separate membership organization called the Association of Public Radio Stations.

The Carnegie Commission Report contemplated only a single agency to promote and develop public television. That agency was to be independent of control by Congress and other government bodies. The problem, however, is that in its efforts to insure independence of programming choice unfettered by governmental intrusion, the public broadcasting legislation set up an agency with very little operating authority.

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[25] Multiple ownership rules, which restrict the number of licenses a commercial licensee may acquire, do not apply to noncommercial educational channels. See 47C.F.R. 73.636(b) and 73.240(b).

[26] Statistics from CPB, FCC, and the National Instructional Television Center, One Week of Educational Television, No. 6, p. 13 (1970).

The lawmakers feared that an independent federal agency using federal funds might become a fourth national network outside the jurisdiction of the FCC. Thus, the CPB was prohibited from owning or operating "any television or radio broadcast station, system, or network, community antenna television system, or interconnection or program facility." There was also substantial concern that the noncommercial educational stations should maintain local autonomy and provide a local programming service. Now, if the licensees are to receive 75 percent of federal funds, as they propose, CPB will lose most of its remaining responsibility for fiscal matters. Ironically, the CPB, by spawning PBS, may have served as a dummy corporation to give birth to that which the legislation specifically prohibits the corporation from becoming itself—a fourth network.

Having fulfilled this historic function, perhaps there are those who would wish a timely demise for CPB. However, there is nothing in the legislation to prevent the CPB from spawning other program production facilities, systems of interconnection for the distribution of programs, or even networks for specific purposes. The major purpose of CPB appears to be as a "facilitator" and developer of diverse programming without operational responsibility. Consequently, it may be that the proper role of the CPB is to seek out and develop new forms of program production and distribution facilities.

For example, what would be wrong with promoting production facilities and networks for the distribution of ethnically oriented programming, or developing satellite distribution to cable television systems, or even purchasing time on commercial networks for informational programs which seek a national or mass audience?[27] A broad range of opportunities are still available to the CPB for the development of diverse programming to serve the needs and interests of the heterogeneous population of this country.

Meanwhile, programming control remains in the hands of those who control the funds—the executive branch and the Congress. Even though the act purported to set up an independent funding agency, the board of directors of that agency is appointed by the President and the funds for that agency come from the Congress. Furthermore, both the executive and legislative branches have explicitly stated an intent to exert programming control through the power of the purse strings. In explaining the presidential veto of the public broadcasting funding bill in 1972, Patrick Buchanan, a member of the White House staff, stated publicly that the bill was vetoed because persons in programs appearing on public television (i.e., Sander Vanocur, Robert McNeil, and Bill Moyers) were regarded as anti-administration.[28] Similarly, Senator Cotton, in the debate on the Public Broadcasting Act, stated that Congress could instantly correct any injustice evidenced by public broadcasting:

> "First we can make very uncomfortable, and give a very unhappy experience to, the directors of the corporation. Second, we can shut down some of their activities in the Appropriations Committee and in the appropriating process of Congress with respect to this particular network."[29]

In addition, the bill itself provides for the General Accounting Office to audit the books and records of the CPB, and the Office of Management and Budget reviews the budgetary request of the agency annually, although the CPB submits its budget with a proviso that this is done by courtesy only and not because of any legal requirement that

[27] This would require an amendment to the Public Broadcasting Act for distribution to cable systems (which is proposed by the OTP bill) and for distribution over commercial stations. It would require larger amounts of funding as well.

[28] New York Times, May 28, 1973, p. 31.

[29] 113 Cong. Rec. 13003.

they do so. All of these conditions collectively demonstrate the difficulty of trying to set up an independent agency which must depend upon appropriations either annually or even at five-year intervals from Congressional sources. No less an authority than a Supreme Court justice has stated that "it is difficult to see why it (CPB) is not a federal agency engaged in operating a 'press' as that word is used in the First Amendment."[30]

A completely independent system of public broadcasting will remain a dim and distant hope unless and until some form of insulated funding is available, such as that proposed by the Carnegie Commission. Use of "earmarked" funds set aside in trust could guarantee independence for a CPB, a PBS, individual licensees or some other new entity.

VII. Who Is To Decide?

Assuming that we will be able to find some resolution for the funding question and for the institutional responsibilities of the various agencies engaged in public broadcasting, there is a subsidiary question of what the composition of governing boards of public broadcasting agencies should be. Section 396 (c) (2) of the Public Broadcasting Act requires that members of the CPB board be selected on a representative basis but from a group of citizens with "various kinds of talent and experience appropriate to the functions and responsibilities of the corporation." This could be interpreted variously as requiring a broadly representative group or one with particular talents related to the corporation functions and to the knowledgeable selection of what is truly "alternative programming."

The current board has a substantial number of members from related media—broadcasting, program producers, cable television systems, and the movie industry. Although these members would seem to comply with the provision of 396 (c) (2), such a composition also presents a fairly substantial question of conflict of interest in the management of funds for public broadcasting. The composition of the board has also been challenged by the National Black Media Coalition, the Citizens Communications Center and the CPB Advisory Committee of National Organizations as seriously deficient in providing representation to "women, youth, and minorities" as well as broad consumer interests.

The present method of selecting the board, by Presidential appointment, also deserves serious reconsideration if insulation from political influence is to be achieved. A system of selection from nominees submitted by the governing boards of participating licensees would be preferable, if such boards were themselves representative of general community interests. However, the National Citizens Committee for Broadcasting has also challenged the makeup of these "blue-ribbon" elitist boards, which are more representative of the contributing audience than of the general community. Public broadcasters are being asked by local citizens' media groups to defend their choices not only of board members but also of their management-level employees. The Community Coalition for Community Change has filed a petition to deny the license renewal of KQED based on the lack of board representation.[31]

VIII. Reflections Upon the Future of Public Broadcasting

Public broadcasting is asking too much of itself and too little of the public. It is a whole new concept which embodies all the residual and unfulfilled hopes and promise of advertiser-supported, mass-audience broadcasting. With too much public scrutiny, it may die a-borning. Without public support, it may also come to naught. Consequently, broadcast licensees operating on reserved channels are going through a crisis of identity the

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[30] CBS v. DNC, 412 U.S. 94 (1973) J. Douglas dissent.

[31] BRET-25 and BRET-203.

resolution of which will be both painful and protracted. Some of the more pressing problems might be resolved as follows:

(1) The concept of "alternative programming" is unlikely to be defined for the reason that no public agency, certainly not the FCC, will want to specify programming content. It is easier to classify types of licensees, and, once they qualify, let them make their own program decisions.

(2) There should be reconsideration of the concept of reserved channels. The courts are at the brink of a legal breakthrough in recent cases directing the FCC to scrutinize the need for both minority ownership and specialized programming services. Perhaps there are purposes other than educational and noncommercial for which channels should be reserved. Overall communications capability needs to be assessed on a market-wide and nationwide basis, not on the capability of each licensee.

(3) There should be an agonizing reappraisal of the effects of the Public Broadcasting Act of 1967. Is the Public Broadcasting Service—laudable as it may be—the be-all and end-all of the legislative purpose? Clarification of the relationship between the CPB, PBS, NPR, FCC, and licensees is necessary—the possibility of a completely independent system of public broadcasters, or community stations, exempt from supervisory control by the FCC, should be considered.

(4) CPB should carefully assess its role as a facilitator of educational noncommercial public programming and look to alternative methods it can use to increase diverse programming—as the long-range funding bill proposes—by means other than broadcast facilities. For example, nothing is happening out there with all those channels allocated to public use by cable systems.

(5) There is nothing in the Public Broadcasting Act that says that only one radio and one television system should be developed. Although the PBS might cry foul play, the act could not (and does not), under the antitrust laws, prohibit licensees from obtaining programming from alternative sources. Perhaps the greatest need is to stimulate and develop new production and interconnection facilities in order to provide a wider choice of programming to the public.

(6) The responsibilities of public broadcasters to make free time available to candidates should be clarified. It makes good sense to exempt licensees from the requirement to carry candidates for federal elective office where candidates for local elections are given time. Moreover, the meaning of "reasonable access" for candidates, whether federal or local, should be defined. Although it is not now a problem, since there is no great clamor from candidates for time, the increasing success of public broadcasters in capturing larger audiences may result in request from national candidates to preempt the most popular programming (*Upstairs, Downstairs,* for example, or *The Way It Was*). Such preemption would, of course, seriously disrupt program schedules and could disrupt their funding as well.

(7) Public broadcasters must ascertain community needs. However, the overall purpose of such ascertainment should be to assess the programming of all stations in the market and to show how the public broadcasters are meeting the unsatisfied programming needs of that particular market. This is vastly different from what is expected of commercial broadcasters. It would provide a useful yardstick by which the public might assess the performance of all stations in a market.

(8) Some soul-searching must necessarily be generated by concern about the desirability of increasing the portion of broadcast time paid for by commercial sources. Indeed, there is much room for thought on the whole definition of a noncommercial service. At a minimum, there should be some funding available for the production and purchase of quality entertainment programming which is not governed by commercial interests nor directed to mass audiences.

(9) The boards of all licensees, as well as of the CPB, should be opened to a broader spectrum of appointees. This may require an amendment to the Public Broadcasting Act of 1967. Furthermore, more careful scrutiny of what constitutes a conflict of interest should be written into the law.

In summary, the "educators" may long for the peace and quiet of anonymity; but having decided to "go public," they must now live with the consequences: much more public scrutiny, much more public clamor, much more public criticism, and conceivably, much more public influence.

PROGRAMMING: THE ILLUSORY PRIORITY

RICHARD O. MOORE

The words have been cited over and over again:

> "Noncommercial television should address itself to the ideal of excellence, not the idea of acceptability—which is what keeps commercial television from climbing the staircase. I think television should be the visual counterpart of the literary essay, should arouse our dreams, satisfy our hunger for beauty, take us on journeys, enable us to participate in events, present great drama and music, explore the sea and the sky and the woods and the hills. It should be our Lyceum, our Chautauqua, our Minsky's, and our Camelot. It should restate and clarify the social dilemma and the political pickle. Once in a while it does, and you get a quick glimpse of its potential."
>
> —E. B. White, in a letter to the Carnegie Commission on Educational Television

Mr. White's vision is broad-scale. It is also a revolutionary vision, in that it is addressed to the proper uses of television. It describes a potential service for *all* of the American people, and it implies a *primary* rather than a *supplementary* public service television system. It recognizes the importance of popular as well as more elitist programming. In short, Mr. White states the purposes of a television service as a national sociocultural instrument rather than as a corporate enterprise on behalf of stockholders. Regrettably, what is happening today in public television makes White's vision a wholly impossible dream.

Apart from the predictable and dreary disputes over "eastern liberal bias" or, if you prefer, "ideological plugola" and "elitist gossip," noncommercial television has seldom taken the subject of programming seriously. What *is* taken seriously is the issue of control and participation in the hierarchy that makes the programming decisions. However, even in these disputes, the issue is not really programming and audiences, but rather the distribution of available monies for the purposes of institutional survival. The noncommercial television establishment assumes that if only the system were financially secure, the programming generated by the system would not only be good for all of us, but good also in the sense of attracting the attention and support of the American people.

Since 1952 and the reservation of channels for noncommercial, educational use, the principal message of noncommercial television has been messianic in the promises it has made in exchange for immediate conversion. As noncommercial television approaches the first quarter century of its existence, it is still making these promises and then defaulting on delivery, while the true believers continue to battle over who is to control the priestly hierarchy. Public television has even developed its own Pharisaic class that pretends to divine the true intent of the Carnegie Commission Report and the Public Broadcasting Act of 1967 or the latest press release or memorandum from the Ford Foundation and the CPB Board of Directors. The *summa* of this new scholasticism is to be found in the intricate but wholly consistent, computer logic of the Station Program Cooperative. Noncommercial television has built a system but has failed to produce the great awakening that its adherents continue to promise.

The history of public television's domestic program production over the past 20 years reveals that the ostensible priority of good programming has been illusory. In the beginning, there was a national production agency (NET) funded by the Ford Foundation.

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NET had no production facilities and no assured access to noncommercial stations. Although the actual history of broadcasting in the United States and elsewhere in the world has been one of centralization and networking, United States broadcast law underlines the responsibility of the individual licensee, that is, the local station. As a result, the stations very quickly began to realize the power of "the switch." In other words, even though NET programs were offered "free" to the stations, the programs remained on the shelf unless the stations chose to accept and broadcast them.

A battle ensued between NET and the stations, and although the dispute was couched in the language of licensee responsibility, the real issue was not programming but money. If a program is meaningless without being broadcast, should not the first priority be economic assistance to the stations? Would it not be better if the stations were given the money to produce programs which they could then exchange with other stations? From the moment the stations voiced this argument, NET's days as an independent and primary production and distribution agency were numbered. The question of how to attract the best talent and produce programs in an optimum cost-effective manner became merely a masquerade for the real issue of station survival and system building.

The Carnegie Commission on Educational Television was a direct outgrowth of this first struggle for power and money in what was soon to be called public television. The Public Broadcasting Act of 1967 and the creation of CPB and PBS represented the reformation of educational television based on the principles of decentralization and a collective expression of choice regarding national program scheduling. The perfect theological expression of these principles is the Station Program Cooperative. The current battle between CPB, PBS, and possibly a third force represented by the larger producing stations is the same old struggle for the control and distribution of monies. The fear is the same old fear that the ghost of NET, as an independent production agency devoted primarily to *programming,* may return under a new set of initials. The one heresy that public television cannot tolerate is the emergence of a strong individual or group with the resources to generate imaginative and popular programming, free of the extraordinarily dense filtering system represented by the sum of stations.

Thus far, the Children's Television Workshop has represented a tolerable heresy, in that it began by tapping funds hitherto unavailable to most stations and then giving away a much needed and popular product. However, now that a substantial proportion of CTW's costs have been shifted to the stations—plus the fact that the organization is branching out into other than children's programming and is competing for foundation support, corporate underwriting, and CPB funds—CTW may well become the new principal heretic within a system based on decentralization, localism, and majority rule programming.

Historically, excellence in television programming has been associated with strong leadership in highly centralized organizations. Only such organizations seem capable of establishing an environment in which individual judgment and creativity can flourish. Although television programming is always the result of teamwork, the generation and execution of an outstanding program concept is usually the work of an exceptional individual. It is inevitably the quality of judgment and the creative imagination of responsible individuals which make the difference between the first and the second-rate in programming. Public television has devised a system wherein the power rests with a collection of institutions and boards as a protection against the exceptional. It is a system that guarantees the second-rate in the name of localism and system survival. Whenever the *system* sets the standard, that standard cannot be other than self-serving and merely middle-ground.

The development of new programming is the most frustrating problem faced by any broadcast system, commercial or noncommercial. There is simply no set formula for a successful program. In the majority of instances, the tendency is merely to imitate the current success. Frequently, however, a new season's success is precisely that program or series about which the broadcast executives were the most anxious and unsure.

In commercial television, this pattern can be stifling because the networks tend to imitate each other. In public television, the situation can be even more constricting; for programming decisions tend to be made either wholly on an economic basis, in order to fill out the schedule, or on the "safe" basis of striving to create new versions of last year's "standards." The idea of innovation and the breaking of new ground—not in the narrow experimental sense, but in terms of all the objectives set forth in E. B. White's statement—is not even a priority in public television. With 50 percent and possibly more of CPB's funds "passed through" directly to individual stations, the financial condition of each station becomes the determining factor in what passes for program planning and decision making in public broadcasting.

At the root of the problem is the policy throughout public broadcasting of lumping local broadcast operations and program production into the same institutional package. Among other things, this means that program production budgets must reflect the overhead factor for the whole institution. As a result, the budgets tend to be unnecessarily high (the overhead frequently approaches 40 percent of actual costs). One of the early arguments in favor of contracting with local broadcast stations to produce national programs was that it would enable stations to increase staff and facilities and to attract talented people. Basically this attitude remains dominant today, except that stations now compete with each other for production contracts as a means of maintaining existing staff and covering overhead. It is not surprising that somewhere in this shuffle programming objectives get lost!

It is a painful dilemma for which there is no simple resolution. Current policy in public broadcasting, FCC regulation, and forthcoming legislation stresses decentralization, localism, and station-based production. However, this approach is demonstrably more wasteful and, at the same time, woefully inhibiting with respect to innovation and risk-taking in programming. Public broadcasting will continue to be dominated by political rather than programming interests so long as the "integrity" of public broadcasting is identified with a system in which the collectivity of the bureaucracies, as represented by the sum of the licensees, has the controlling voice in national programming policy.

The subsidization of local operations in the name of programming is, in my view, a self-defeating policy. Granted that without this policy on the part of the Ford Foundation and CPB, the development of public broadcasting might have proceeded at a much slower pace. However, it can also be argued that if the monies spent on station development and "survival" had been invested instead in programming that was effectively competitive with commercial stations, we would be much nearer the goal of a public service television system consistent with the "ideal of excellence" described by E. B. White.

It is critical that programming resources outside of the public television establishment be tapped. It is equally critical that an absolutely first-rate national schedule be made available to all viewers within reach of a noncommercial channel. Local broadcast operations ought to be supported by the communities they serve, while national programming available to all noncommercial stations should be a separate enterprise for reasons of leadership, program quality, and cost-effective production. A clear separation should be made between audience (I prefer the word *consumer*) support for station *operations* (including some local programming) and *production* funding from CPB, the foundations, and corporate underwriting for national programming and distribution. I believe that such a system would be far more consistent with "American tradition and American goals." Finally, public television can hope to develop into a mature broadcast system only by offering a product that the U.S. television audience will watch, applaud and then support through subscriptions or contributions to their local station.

It is absurd to expect that the hard won political victory of the stations will provide a congenial atmosphere in which to reevaluate and redirect public television and its programming policies. However, unless programming becomes a real priority, unless some means is found to provide leadership based on program values rather than political power, and unless a situation is established in which the creative individual can work with the freedom spoken of in the Carnegie Report, public television will become so decentralized and politicized as to fall apart and become merely a costly luxury for a very small minority of Americans. If the vision of public television as "our Lyceum, our Chautauqua, our Minsky's, and our Camelot" is to become a reality, extraordinary leadership, comparable to that given the CCB by Lord Reith and Charles Curran, will be required to tackle the problem of program planning and production contracting.

PUBLIC TELEVISION'S STATION PROGRAM COOPERATIVE

NATAN KATZMAN

I. Background: History and Procedures

The current form of the PBS Station Program Cooperative has its roots in various proposals and antecedent organizations.[1] However, the immediate impetus for the SPC experiment was undoubtedly Hartford Gunn's article "Public Television Financing," which appeared in the *Educational Broadcasting Review* of October 1972. Hartford Gunn was President of the Public Broadcasting Service, and the *Educational Broadcasting Review* (now renamed *Public Telecommunications Review*) was close to a universal forum for the industry. Gunn's suggestions immediately stirred the already troubled waters of public television. Within six months, PBS had undergone a complete reorganization. Within a year, PBS and CPB had negotiated formal agreements on duties and responsibilities. Within 18 months, the first station program cooperative was functioning.

The "Gunn Plan"

Mr. Gunn's proposal, usually called "The Gunn Plan" or "The Market Plan," ran 26 pages and covered both theoretical background and specific details of a plan to "stimulate other and better ideas and . . . evoke comment and discussion." The article began with an analysis of the state of public television at that time. It was realistic and critical. Gunn noted the problems of last-minute federal funding "which are at odds with the creation of original quality programming." He identified CPB's involvement in program operations, the internal (i.e., within the industry) dissension over program priorities, the problem of balance between "local" and "national" needs, and the difficulties caused by external criticism from Congress and the Administration. "The result of all the dissension, criticism and debate," he wrote, "is to bring public television to almost a dead stop."

Stating his assumption that "public and instructional programming of high quality is a continuing national need," Gunn suggested an alternative that would maximize decision making at the local public television station. Two main justifications were offered: First, the plan would reduce the appearance and reality of a centralized decision making body that could be attacked for misuse of public funds. Second, the plan would offer an alternative to "insulated funding" (which might be "an impossibility or an illusion") in order to free public broadcasting from governmental pressures. The plan was called the Station Program Finance Plan—a name that never took hold—and was described in four sections of the article.

Section I presented the general concept of the plan. It discussed the need for an understandable and creditable system with well-delineated functions for various agencies. It considered the CPB role in program financing and noted that CPB decisions—either to fund or not to fund—were always open to the charge of outside influence. Gunn's introduction to this section concluded with the following summary and statement of needs:

> In sum: Confusion of the planning/evaluation and program operating roles risks both the loss of adequate system planning and evaluation and a cycle of deepening, frustrating, and unrewarding involvement in program operations by the Corporation . . .

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[1]The Eastern Educational TV Network is a cooperative venture of stations in the Northeast. They acquire and distribute programs to members over an EETN interconnection system.

> Essentially, what is needed is a strengthening of public television's primary functions of system leadership/planning/ evaluation and programming operations by establishing more clearcut and easily recognizable divisions of responsibility for these functions . . .
>
> [The] Corporation would be responsible for system leadership, planning and evaluation; and the stations for program decision making and operations.

The role of CPB in the scheme was defined. It would be responsible for policy overview. It would develop a strong planning and evaluation capability, monitor changing technology and regulatory decisions, and keep in touch with changing public needs and interests. It would provide a special service to the public broadcasting community by addressing "management, professional, and technical problems." It would " play a new and crucial role in programming" by attending to long-range needs, experimentation and innovation. The CPB programming function "would 'fill the gaps' in the program plan the stations devised" and insure a balanced national schedule. Finally, the Corporation would be put in the role of "judge/arbiter" whenever conflicts arose within the system or between the public and the system.

The local licensees were to be the system operators "in every respect," working on their own and "through their designated agencies." National production would then be the result of a consensus of all participants, rather than a decision by a small number of program planners and national agencies. Gunn proposed that "once the specter of centralist programming is removed," prospects for long-term financial support would be enhanced.

Eight "basic elements" of the plan were outlined:

1. Federal funding would be provided for the stations through CPB.
2. The funding would cover (a) general stations' activities, and (b) "the purchase and distribution of programs from nonlocal sources."
3. Enough stations would have to join together for meaningful cooperative purchases.
4. A system of safeguards would have to insure the encouragement of additional system income, a balance between local and non-local production, the protection of innovation and divergent views and minority interests, and a fair relationship between program expenditures and "the number of people that station is called upon to serve."
5. There would be sufficient initial funding to allow a fair test of the plan.
6. A capital fund would be available to help initiate the system.
7. CPB would have the means and authority to supplement and complement the basic programming system.
8. The stations would commit themselves to a two to three-year experimental period for the cooperative.

Section I closed with a reflection on risks and potential problems. One question was whether enough stations would be willing to participate; another was whether such a system might draw too much money away from national production. A third was whether "a system that depended on the concurrence of 140 or more managements might stunt creativity and innovation if an insufficient number of stations were willing to support any particularly innovative program project." And a fourth question was concerned with whether the flow of federal funds to local stations would have a "replacement effect" on local sources of funds. Gunn disclosed each of these potential problems and found no cause for pessimism if appropriate structures and incentives could be devised. The goal was to establish the local licensees "as the buffer between federal money and public television programming."

Section II discussed in detail a "possible model" for distribution of federal funds from CPB to stations. It introduced the notion of varying support based on a base grant, plus a formula involving station budget and population served. Of significant importance were the ideas (1) that payments to stations should "reward each station in proportion to the magnitude and complexity of the job it is trying to do in its community and the quality and intensity of that job," and (2) that there should be incentives for future enlargement of local nonfederal support.

Section III presented a model for the functioning of a Program Cooperative. It was brief and less detailed than the discussion of finances. This was its heart:

> Under the Station Program Finance Plan, the bulk of federal funds for programming, national as well as local, would flow to the stations according to a distribution formula administered by CPB. The stations themselves would determine what proportion of those funds each wished to allocate to local programming, and what proportion to the purchase of program services from a national cooperative.

The cooperative was to provide three levels of services. First, there would be the basic membership, which provided use of a communications system, a tape library, promotional services, station relations and voting rights in the cooperative. The second level involved the "basic cooperative program service." This deserves some note since it differs considerably from the system that was later instituted. For a fee, based on the same factors determining grants to stations, members would receive (1) "a minimum number of program hours . . . selected by the station for its use *from a pool of programs developed jointly by the stations";* [emphasis added] (2) interconnection; and (3) sufficient color tape recording equipment. Stations would not have to use any or all of these services, but the fee would give them that right. Gunn also noted that the fee "must be sufficient to provide financing for that minimal level of service which the preponderance of the stations deem necessary and appropriate for their use." The third level of service would be "optimal program services," which involved another set of fees for additional materials not included in the basic service. Of course, there also would be "bonus" programs, underwritten with outside funds and free to all members.

Details of the program service are lacking in Gunn's article. However, several points are clear from the outline. The plan included a basic package of programming for which all members would pay an appropriate fee and from which all members could pick what they wanted. There was no notion of program-by-program financing of the "basic" service—which is the system eventually implemented. Rather, it was assumed that there would be a group of programs that "the preponderance of the stations deem necessary," and these programs would be equitably paid for by everyone buying the "basic" service. Less popular programs would be provided via "additional optional program services."

Gaps existed in this description: Who would decide upon the basic program package? How would the decision be made? Other sections of the article seemed to imply that these functions would be undertaken by the stations and/or by their chosen representatives. The organizational details of the cooperative were left to the stations, but Gunn specified six elements that would have to be provided:

1. Commitment from stations for two or three years of participation.
2. A capitalization fund, including discretionary money for producing stations to provide innovation and diversity.
3. A structure that would include a national program advisory board to "aid in the development of a coherent strategy for program offerings."
4. Arrangements for multi-year project funding.
5. Surplus money to return to members, replenish the capital fund, and be distributed to producers for their discretionary use.
6. Provisions of full program and financial data to member stations.

Gunn summarized, "The structure must provide for effective participation of all stations in the decision making process, yet retain the flexibility needed to take advantage of topical, timely opportunities."

Section IV of the article was a detailed sample of a financing plan. Again the issues were equity and incentives. The details need not concern us.

Reorganization of Public Broadcasting

Gunn's "market plan" (from the idea of a free market for program purchases) was given significant impetus at the annual PBS meeting in the spring of 1973. By a vote of 124 to 1, PBS in effect became a station cooperative. A board composed of 25 members from boards of local licensees would provide basic governance. The Board of Governors would be assisted by a 25-member board of PTV professionals (later called the Board of Managers), which would help develop and implement policy and confirm the selection of the PBS president. Ralph Rogers, Chairman of the Board of KERA in Dallas, became PBS chairman. Hartford Gunn was reaffirmed as president. The change meant that PBS no longer *served* the stations; now PBS simply *was* the stations. The stations were members of the Public Broadcasting Service, and its staff and officers now represented the stations and served at their pleasure.

Conflicts had developed between PBS and CPB over the funding and distribution of national programs. However, after a few months of dispute, the reorganized PBS and CPB reached an effective compromise. *Variety* was able to write: "The formal pact signed between the Corporation for Public Broadcasting and the Public Broadcasting Service September 28 in Washington, D.C., by CPB prez Henry Loomis and PBS topper Hartford N. Gunn, Jr., plus the monitoring committee set up last May, should iron out differences between the two organizations, according to Loomis."

At the end of May, the PBS and CPB boards had issued a joint resolution that clarified some of the points of contention. It specifically established the size of grants to local stations under different levels of federal funding. The amounts were high enough for a program cooperative to be instituted. An agreement issued on September 28th put to rest certain disputes about specific responsibilities for the two organizations and allowed PBS to proceed with plans for a cooperative.

In December, the producing stations were asked to submit their program proposals. Then, on January 21, 1974, PBS member stations held their annual meeting in Washington. They passed a resolution that outlined principles of a "station program cooperative" for the coming year. It authorized the PBS staff to develop a plan to provide "national programming funding and [foster] autonomy and future growth of the stations."

The following principles were laid down: (a) individual station selection and financing of programming, (b) organization to provide for optimal cooperation and sharing of costs, (c) operation by PBS to fully reflect the will of the stations, and (d) encouragement of national program funding by outside organizations.

PBS staff developed plans for the Station Program Cooperative[2] and on April 6, the PBS Executive Committee adopted a resolution establishing, subject to PBS Board and station ratification, detailed procedures for the SPC. One component of the resolution emphasized that the first year of the cooperative was to be experimental and subject to review. A policies and procedures manual was then sent to all stations, the proposal was ratified, and the SPC was officially in business.

Actually, the SPC had been in business unofficially prior to the ratifying vote. The need for adequate lead time to establish a system had required certain activity throughout the winter. Program proposals had been requested in December, and they were collected in a "Preference Catalog" that was distributed in mid-February. In March, stations voted on a 1 to 5 scale for each proposal. The idea was to eliminate unwanted offerings and then to include the rest in a final "program catalog" that would be used when the SPC was put into operation.

The plan that was approved by the PBS Boards and ratified by the stations had also been thoroughly discussed in a series of "round robins" held March 19-29. Representatives of CPB and PBS (including Presidents Gunn and Loomis) toured the country for a series of meetings with managers of almost all the stations. The detailed operations of the proposed SPC were explained and discussed at these meetings and station managers were even given the opportunity to practice using the teletype voting system that had been devised. The round robin meetings indicated that the stations supported the SPC concept, so the ratifying vote of 140 to 5 was not a surprise.

SPC Procedures and Operations

The key to the proposed SPC operation was to be the DACS (Dial Access Communications System) teletype network that was already available. PBS is connected to all PTV stations by computer-controlled teletype. Every station already had a terminal that could send and receive printed messages. The system was primarily designed to transmit operational messages to stations—for example, what programs PBS would be feeding over the interconnection at what times. The basic hardware was ideal for a series of votes and for automated computer processing of the results. The DACS system provided the method for "votabs" tabulations on the various issues (including ratification of the SPC) which required a vote of PBS members. This gave PBS the idea for an automated voting system for the cooperative, and a grant from the Ford Foundation paid for the creation of the new computer software and equipment that would process the SPC data.

The SPC manual sent to each station specified the following procedures and policies:

1. All PBS policies regarding, for example, technical and content standards, distribution, and underwriting remain in force unless explicitly modified for the SPC.

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[2]This oversimplifies a fairly complex process. Representatives of PBS, CPB, and the Ford Foundation were involved in negotiations that resulted in SPC details, including the $10 million "matching fund" provided by CPB and Ford. These negotiations helped define the proposed roles of local stations, PBS committees and staff, and the CPB.

2. Proposals are to be generated in response to national needs. The proposals are evaluated by vote of the stations, and then the PBS Programming Committee, using station preferences and "other considerations," creates a Program Catalog for use in the cooperative. Concise information about various aspects of each proposal is to be included in the catalog. Producers are encouraged to provide pilot material for their proposals.

3. Program Selection Rounds of voting—using a computer-assisted process—will eliminate programs receiving no bids (or only bids from their producers).

4. Elimination Rounds will further reduce the number of offerings and allow purchase of some offerings:

   a. If 80 percent or more of the stations bid on a program, and the price to each does not go up, it is to be declared purchased. Bidding stations are then committed to purchase it.

   b. If less than 30 percent of stations bid for a program, the PBS staff are to determine whether bidding stations are willing to pay up to 80 percent of its cost among themselves. If they are not willing, the program is to be dropped.

   c. During these rounds, producers are allowed to absorb some of the program cost, lowering the price to bidders. Programming Committee consent is required, and price change data is to be communicated to all stations.

5. Purchase rounds of voting determine what other programs will be purchased through the SPC. Bids during these rounds are binding, and purchases irrevocable, so long as the price to the bidding station does not increase. Potential price increases may be eliminated by subsidy from the producer or by other underwriting, subject to the approval of the Programming Committee.

6. Stations may not use programs they do not purchase, and they may not use purchased programs if they are behind in their payment schedules.

7. Production costs—but not program content—are to be negotiated by the PBS staff and producers subject to Programming Committee review. The decisions are made prior to publication of the Program Catalog.

8. Producers are to deliver all broadcast rights to PBS. In general, these rights are to be for four releases over three years. The disposition of ancillary rights is to be determined.

9. Each station's purchase agreements are noncancellable.

10. A 5 percent surcharge is to be included in prices of programs. This is to be used for advertising and promotion. One quarter of the funds will go to create advertising material, and three-quarters to local media on a 50-50 match with local station funds.

11. Late purchases, soon after the last voting round, might apply to discount funds (see next paragraph for an explanation of these funds). Post-market purchases can be made at any time, without discount funds, at the price determined in the last purchase round.

12. The Programming Committee can activate the cooperative at any time for selection of additional programs.

13. Nonmembers may purchase programs from the SPC after paying a surcharge.

14. Pricing to individual stations is determined by a specified formula. Discount funds are to be allocated according to the same formula.

15. Financing of programs and of the cooperative itself are subject to auditing.

16. Data concerning individual station selection of programs will not be published, pending policy determination by the Programming Committee.

17. The PBS staff, subject to oversight by the Programming and Finance Committees, is responsible for the administration and operation of the cooperative under the specified rules.

Financial arrangements for the SPC had been worked out among PBS, CPB and the Ford Foundation. Under terms of the May 1973 agreement, CPB was granting $15 million directly to the stations in the form of no-strings Community Service Grants. Now, Ford agreed to grant $5.5 million and CPB $4.5 million to form a $10 million pool for "matching" or "discount" funds. This discount pool was to be used to provide a 3:1 match, up to a specified ceiling for each station, of local money used in the SPC. Thus, a 75 percent discount was applied to SPC purchases. (For every dollar spent, 75 cents came from the discount funds, 25 cents from local funds.) If every station spent at or above its limit, the total amount spent by the SPC would be $3.3 million in local "matchable" funds, $10 million in discount funds, and whatever money individual stations spent above their matching ceilings. (Total expenditures would pay for programming plus the 5 percent surcharge for advertising, and an additional 2 percent surcharge to cover financial uncertainties.) If any station spent less than all their matchable funds, the remaining discount funds would revert to Ford and CPB. Programs purchased by less than 10 percent of the stations (less than 15) were not eligible for discount funds.

The cost of programs to individual stations was to be determined by two factors: a "pricing share" and the number of other stations purchasing the same program. The pricing share was determined by a formula based 20 percent on the potential audience and 80 percent on the station operating budget. The ratio of maximum to minimum share was fixed at 15:1 (with the exception of WNET, which was given a share 20 times the lowest).

To simplify this formula a bit, each station was assigned a percent of the total price of any program. If your station had a pricing share of 0.5 percent, it meant that if all stations purchased a $100,000 program, you would have to pay $500. The second, and most critical, factor was the number of stations that wanted a given program. (In fact, the critical factor was total purchasing power, but it is simpler to consider that as equal to the number of stations.) Actual price to a station was determined by that station's pricing factor, divided by the total of the pricing factors for all purchasing stations. If only half of the stations wanted a $100,000 program, the price for your 0.5 percent share would be $1,000 (0.5% ÷ 25% = 2%) for the program.

The PBS Programming Committee had decided on the offerings to be included in the final "Program Catalog." All programs receiving sufficiently high ratings in the earlier preference poll were included in the catalog. In addition, programs with special minority interest and those with available pilot material were included even if they had received low preference ratings. A schedule analysis worksheet, which listed free programs known to be available for the next season and detailed the programming in the previous season, was sent to stations along with the program catalog. Next, the PBS interconnection provided more than a week of closed-circuit feeds of pilot material, so that the stations had the opportunity to see pieces of the proposed programs. The producers also came on screen to try to "sell" their proposals. Finally, there was a conference call in which stations could question producers about their offerings.

On May 19, the DACS system transmitted to each station the hypothetical cost for each proposal. (The hypothetical prices assumed purchases by 80 percent of the stations.) On May 22, the first round of voting was held, and there were nine more rounds in the first three weeks of June. The scheduled meeting of Program Managers was then held in Washington at the end of the month.

Everyone at the meeting was in general agreement (and a bit amazed) that the computer system had been working so well. The meetings were far more concerned with technical problems—including scheduling—than with whether people were satisfied with their SPC acquisitions. The fall schedule—or at least a preliminary list of fall programs—was presented, and then everyone went home for two further purchase rounds.

SPC Voting by Local Stations

To this point, the discussion has vaguely referred to decisions made by "stations"; but, of course, participation in the SPC was by *people.* Typically, the program manager of the local PTV station was responsible for selection of programs within the financial limits set at higher levels of station management. Program managers sat and watched much of the 15 hours of pilot material. Quite a few stations made tapes of the pilot feed. After the end of the last feed, the program manager made a list of things he wanted and things he might consider or was not sure about. In most cases, the manager definitely wanted six or seven particular programs.

Initial lists reflected a great deal of thought and some discussion within the station. Program managers have their preferences for particular types of material, and they often differ sharply in what they consider a good television program. Nor did the tastes and opinions of specific program managers inevitably reflect the particular slants of the populations they served. Some PTV decision makers are interested in changing their communities, others in reflecting their communities. Some are worldly and well-read; others depend for their information on discussions with friends and associates and the letters that arrive at the station. The safest conclusion is that initial lists of program selections were what local managers *thought* would be best for their stations within constraints of available money and need to fill air time.

The next step was to figure out how much all this might cost. With only the pricing shares available, this was a time-consuming clerical task; and many people did not choose to take the calculations very far once they had determined the total price of the programs they knew they had to buy. (Seven programs were selected by at least 75 percent of the stations in the first round, and the total price of these seven came to more than half of the limit for matching funds.)

It became easier to estimate costs when the lists of specific prices to stations came through. At that point, some program managers became painfully aware that they could not buy all they wanted. Some programs had been immediately discarded because of the pilots or the feeling that there was no need for "that kind" of program. Others were now rejected because of cost. The tough decisions were always among the marginal programs.

Most program managers had one or two favorites which they kept on the list for a while longer. Typical of these marginal "favorites" were *International Cinema, The Thin Edge, Wiseman Documentary, Soul Specials,* and *Small City Garden.* Similar offerings also became a difficult problem. For example, should the station buy *Consumer Survival Kit* or *Consumer Game? Black Journal* was well-produced but expensive and controversial. *Black Perspective On The News* was inexpensive, weekly and of uncertain quality. Program managers discussed the problem with others at the station—producers, assistants, membership people, anybody who might be interested. At least one program manager asked every black person working for the station to view and evaluate the tapes of the two black-oriented programs.

In the end, all the discussions and decisions produced a list of first-round preferences. Among many program managers, there was a definite air of excitement as they went to cast their votes in the first SPC. It was the initial trial of something new and exciting. People gathered around the teletype machine (usually in a back corner of the station). Somebody—at small stations, the program manager; at larger stations, the person who usually deals with DACS messages—sat down at the machine and dialed the PBS computer. Voting times had been staggered because the computer could only handle a limited number of simultaneous inputs. Most stations cast their first votes within a few minutes of the time they were scheduled to phone the DACS computer.

When the computer had been contacted, the terminal automatically printed "ENTER PASSWORD," and the person at the keyboard entered a predetermined code. Then the response: "ROUND 1 NOW ACTIVE—BIDDING." (The name had been changed from "selection" to "bidding" rounds.) To have "station funding statistics" printed, you had to type "YES." The computer then showed that the station had spent none of its local or matching funds and asked, "DO YOU WISH TO SELECT ANY PROGRAMS?" In answer, the appropriate catalog code numbers representing desired programs were typed into the computer.

More often than not, the first entry produced the message, "YOUR RESPONSE WAS INVALID, PLEASE CORRECT"—usually the result of a misplaced comma or some other technical error. The problem would be resolved and the voting procedure was then taken to completion in five to ten minutes. In later rounds, people became adept at operating the interactive computer system and seemed even to enjoy the procedure of adding or (later) deleting programs and calling for funding statistics and lists of purchased programs. The computer and the people worked well together.

The average station selected 21 programs in the first round. The shock came the next morning when DACS sent back a tentative bill. So many programs had received so few votes that the typical program manager was faced with a huge potential bill—several times higher than his total available discount funds. Hypothetical station expenditures of hundreds of thousands of dollars were printed out by the teletype. All seven of the programs which had received more than 75 percent of the station bids had reasonable prices—like $20,000 for a year of *Sesame Street,* or $2,500 for *Wall Street Week.* Sixteen episodes of *International Cinema,* on the other hand, might cost a bit more than 130 new hours of Big Bird and his friends. The typical program manager took a look at the results of the first round bidding and saw some obvious things to do. *Consumer Survival Kit* had been chosen by 75 stations, whereas *Consumer Game* had attracted only 16 votes. Therefore, 28 additional managers decided to bid on the second round for the former program at 20 percent of the cost of the latter. The black programs finished in a dead heat; but that made the simpler show (*Black Perspective*) even less expensive than the other. The price for *Great Dancers* or *Hollywood On Hollywood* (one teleprinter insisted on *"Hollywood On Holmywood"*) came to $10,000 for a single 90-minute special. It was easy to decide what to drop.

Figures for the second-round voting show that the stations deleted an average of 3.55 programs from their first-round lists. The programs that were eventually purchased gained more than a vote per station in this second round, while the others fell by the wayside in great numbers. However, program managers could not continue to drop programs and still retain enough material to fill a complete season.[3] At this point, discussions began within stations—how far over the matching ceilings would they go?

Second-round voting set the trend for the other rounds. More than 50 of the 93 proposals fell below the 10 percent support level needed for matching funds. Nine proposals were dropped from the catalog.

Local program managers had bid on material that would have cost twice as much as the $13.3 million the system expected to spend with matching funds. It was clear that programs with minimal support were not likely to survive. The next three rounds were to be the "elimination" rounds, and producers began to cut prices or change the series' lengths (affecting 26 of the proposals) in an attempt to keep them alive. Such changes were permitted by published SPC procedures; but the nonproducing stations tended to be surprised by the maneuvering. They wondered where the underwriting money had been found; and they considered the price cutting "manipulative," even if it did not have much effect. Major producers phoned each other to seek support for their "must-have-in-order-to-survive" programs.

For all the jockeying, the voting after Round 2 mainly involved program managers dropping unsupported (i.e., expensive) proposals and replacing them with supported (i.e., inexpensive) proposals that had not been on their original lists of desired material. After Round 4, only 44 programs remained in the cooperative, and 16 of those were supported by less than 10 percent of the stations. NPACT had lost *Washington Connection,* although *Washington Straight Talk* survived. *The Advocates* was sinking after a modified proposal had rallied few additional votes in Round 3. WNET had worked hard to rally 23 votes for *American Chronicles* after a price cut. *U.N. Day Concert, Opera Theater, Black Journal, Animation Festival* and *Solar Energy* were still barely in the running. Everything else was either clearly going to be purchased or clearly out of the running.

Aside from the question of which of the few marginally viable programs would drop out, the major issue in the later voting rounds was the number of stations that would finally purchase each program. Program managers received DACS summaries after each vote. These revealed that prices and total committed station funds were steadily falling as more stations joined in the purchase of the successful programs. Instead of being faced with the unbelievable bills that were presented after the first few rounds, program managers began to find that they might not exceed their matching fund ceilings after all. Since many of them had already discussed the need to spend additional money, they rather readily decided that it would be possible to add one or two relatively inexpensive series without disrupting the overall station budget. This activity further lowered prices and pushed along the bandwagon.

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[3]The need for material to fill an empty schedule was a very real concern during the voting. The PBS project had severely underestimated the quantity and quality of free programs that would be available to all stations. After the close of the SPC, several important programs, such as Behind The Lines, received outside funding. Some had been rejected by the SPC. In retrospect, the problem seems to have been exaggerated.

In the end, 25 programs were declared purchased by the cooperative.[4] (The average SPC member bought 19 of them. Two-thirds of the stations used all of their matching funds and went above the ceiling for local matchable funds.[5]) Twenty-six of the stations spent at least 50 percent more than their ceiling levels. (This tended to happen when both *Black Journal* and *Animation Festival* were purchased. Less than 40 stations bought each, so they were expensive for each purchaser.)

The Conclusion of the First SPC

The decision makers have expressed relative satisfaction with the operation of the first SPC. Program managers tend to say things like, "I didn't get everything I wanted, but I think it worked pretty well."

Local diversity had to be reduced considerably as the voting proceeded. The marginal programs that distinguished one list of choices from another list all fell out of the SPC. (*Black Journal* and *Animation Festival* were the exceptions to this.) Votes in later rounds reflected the following kind of thinking:

> "What if somebody says something important on Straight Talk and we don't carry it? The other things I want are getting cheaper, so I'll pick it up." "We really owe something to the guys in [pick a major producer] so I guess we ought to buy their program now that there's some money to do it." "Well, it looks like the system is going to pick up that one. If TV Guide does something on it and we don't have it, there are going to be letters." "I don't know how we can fill a year with just this—better pick up another series just in case." "There are a few dollars left from what we expected to spend. What can I buy with them?" "Everybody else seems to want it; maybe it's not as bad as I thought."

In many cases there was perceived pressure (and, in some cases, very real pressure) for black, women's and consumer programming. The particular attributes of the programs were not as important as the fact that *Black Perspective On The News, Woman,* and *Consumer Survival Kit* were available at relatively low prices. Also, the titles of these shows would be in the schedule for the whole year, so any local pressures could be reduced.

One thing that was realized rather late in the development of the SPC was that stations were now able to seek local underwriters for SPC purchases. (Actually, when the underwriting price reflects SPC cost, plus the stations' expenses for broadcasting operations, the latter costs are often higher than the program cost.) This does not seem to have influenced voting this year; but we can probably expect future cooperatives to be affected by the expectation that particular programs can be sold locally. Many stations are currently recouping some of their local SPC funds by selling underwriting credits. ("*Consumer Survival Kit* has been brought to you thanks to a grant from the First National Bank.")

The general feeling seems to be that the first SPC was a successful experiment. Any perceived flaws are attributed to lack of sufficient funds in the system. Program managers point to the list of program titles and the total amount of money; this tends to defuse criticism about diminishing programming for minority groups and reduced public affairs material. (CPB's Advisory Council on National Organizations had expressed its concern before the voting began. Later newspaper accounts of the SPC often quoted or paraphrased NPACT fears that "investigative journalism" had been short-changed.)

The actual operation of the teletype machine and the sense of participation created when program managers could choose, add, or delete programs produced a tangible and beneficial feeling of involvement in decision making. Social psychologists have repeatedly

[4] See the next section of this paper for a detailed analysis of the outcome.

[5] Data from PBS document "Station Program Cooperative: Station Allocation of Funds at Conclusion of Market."

demonstrated that active involvement with a procedure results in a favorable evaluation; and it is true that with the SPC, there was considerable satisfaction with at least the mechanics of the voting. The next section of this paper will examine the factors that influenced program selection and the nature of the programs purchased by the SPC.

II. The Results of SPC Voting

All 152 participants in the SPC went through the series of voting rounds, and in the end, the SPC purchased 25 of the program proposals and rejected 68. *In general, the SPC tended to purchase longer series which had been on the air before and which had a relatively low price per minute of material.* In fact, one minute of the *purchased* programming cost SPC members less than a third of the price for an average minute of the rejected programs. The purchased programs had higher *total* production cost than the rejected programs, but because the purchased programs were available at a significantly lower price per minute, it seems fair to conclude that the higher total cost was a statistical artifact of the demand for more total hours.[6] The main point to be made is that SPC voters were sophisticated enough to differentiate between low-cost proposals and low-cost-*per-minute* proposals. They were interested in the latter.

During the course of the voting, the prices of 26 programs were reduced. Of these "cut rate" programs, only three were eventually purchased. And of these three (*Animation Festival, Black Journal* and *American Chronicles*), all received far fewer votes than the average purchased program. *Cutting prices during the course of the voting apparently had no general effect on the voting and the final set of purchased programs.*

Well-known programs were the most likely to be purchased. Of the 25 purchased programs, 15 had been regular national offerings prior to the advent of the SPC. The only two "raw concepts" were *Solar Energy* (an unusual case for many reasons) and *American Chronicles,* a last minute replacement for *Bill Moyers' Journal.* (Even though *Chronicles* was promoted as Moyers' replacement, it still had a hard time in the SPC—only 56 percent of the stations purchased it even when three-fourths of the production cost was underwritten.) Two other programs that had never been available on public television were purchased: *Japanese Film,* which was 96 percent underwritten, and *Animation Festival,* which cut its price and was purchased by only 23 percent of the stations. Both had offered some pilot material during the presentation of proposals. If we look at these figures for the effect of the SPC on new program production, we find that *Solar Energy* was the only entirely new project that was bought for national distribution. *Chronicles* was to be a different job for an old production team, and the film and animation series were repackaging projects for materials produced abroad. Two other new programs—*Consumer Survival Kit* and *The Romagnoli's Table*—involved national distribution of series that had already been produced for local use. In short, the SPC was extremely conservative. It purchased programs that it already knew.

Among the nine regular national programs rejected by the stations, *U.N. Day Concert, Opera Theater,* and *The Advocates* were special cases that received significant first-round support and then declined. They will be considered in detail later. *Behind the Lines, Wiseman Documentary, Washington Connection,* and *NPACT Documentaries* were *expensive* public affairs materials (high cost per minute) that could not compete with the quantity of cheap "talking-heads" available. *Eye To Eye* and *The Lenox Quartet* (the former expensive and the latter inexpensive) were simply old chestnuts that fell by the wayside. Their "cultural" content was not a strong point in the SPC, since outside underwriters were known to be funding slicker, more expensive cultural materials for the national system.

[6] When the children's programs (many total hours and high total cost) are removed from the analysis there are no longer differences between total production costs of purchased and rejected programs. Removal of children's programs from the analysis also widens the disparity on price per minute—rejected programs would have cost four times as much per minute as purchased programs—and narrows the difference found for total hours (the difference is still large).

Among the producers of SPC proposals, the big PTV production centers offered a great deal of material and were rejected more frequently than any other group except the very smallest stations. The ten programs eventually purchased from these producers included seven that had already been national series (the exceptions were *Chronicles, The Romagnoli's Table,* and *Evening At The Symphony*). These are not a particularly innovative group of new productions from the major production centers. By way of contrast, the 30 rejected offerings from the big producers included several innovative (and expensive) proposals covering the arts, the social sciences, some unserved target groups, and "non-talking-head" public affairs. The basic problem seems to have been that these producers have more expensive ideas *and* higher production costs for similar projects. The SPC had limited funds and could not afford the kinds of new programs that were being proposed by New York, Los Angeles, Boston and Washington.

In the end, CTW, the major production centers, and various secondary producers each provided the SPC with roughly equal numbers of hours of material. This represented a fairly high rate of success for the *secondary* producers. In addition to such tried and true programs as *Book Beat, World Press, Firing Line* and *Wall Street Week,* they provided four of the relatively new programs purchased by the cooperative: *Soundstage* (contemporary music), *Japanese Film, Animation Festival* and *Consumer Survival Kit.* Philadelphia (*Black Perspective on the News*) and Buffalo (*Woman*) placed talk series with the SPC, and Rochester (*At The Top*) sold a set of contemporary music programs. The South Carolina ETV Network submitted a number of ambitious new proposals that were rejected. *Lilias Yoga* and *Solar Energy* were the only proposals accepted from very small producers.

In terms of subject matter, children's programs fared best in the SPC voting, and public affairs proposals also did quite well. More than half of the public affairs hours were purchased; and if we were to include the number of special-events hours as well, the total of programming purchased in this broadened public affairs category would probably be as high or higher than the total SPC purchased hours in the target, cultural and educative categories combined. Among all 25 purchased programs, the bulk of the SPC purchases were talk or discussion programs that received little or no outside funding. Nineteen of the 25 selected shows were prime-time material (other than children's, yoga, and cooking programs); eight of these were talk or discussion formats, and another, *NPACT Special Events,* also tended to be open-camera coverage plus more talk and discussion. Since three programs were musical performances, and two series were repackages of foreign material, that left only *five of 19 prime-time programs which were complex television productions produced specifically for public television (Consumer Survival Kit, Solar Energy, American Chronicles, Black Journal,* and *Hollywood TV Theater).* More than half of the cost of these five programs was being underwritten. Even so, few stations were willing or able to buy the limited amount of "better" material. It costs money to make and to show high quality television programs.

Eleven proposals created unexpected voting patterns. Three of these received a relatively high number of first-round votes but were not purchased. Three received relatively few initial votes and still survived. Five programs were finally purchased by 73 percent or fewer SPC members, whereas all 20 others were purchased by more than 83 percent of the stations. Data analysis provides no place for "exceptions that prove the rule"; and such a concept is alien to scientific thinking. However, some information about these 11 special cases may prove illuminating in other ways.

U.N. Day Concert received 45 first-round votes. At $430 per minute, it was not far beyond the price range in which programs were purchased. It had also been a regular PBS event in the past. But voters were not very interested in one-shot programs or more culture.

Support eroded to 20 stations prior to the first "purchase" round. Each of those 20 stations was then faced with a potential cost 7.5 times higher than it would have been if all stations were buying. Fifteen of them pulled out mainly because of the high cost, and the program was dropped. It will be underwritten and on the air this year.

The Advocates received 55 first-round votes. It was a familiar series, but had almost gone off the air a year earlier for lack of funds. Cost per minute was $710. The SPC bought seven public affairs programs, six of which cost less than $260 per minute. WGBH, faced with fading support, reduced the number of Advocates from 35 to 26, lowering the price per minute to $639. That didn't help. Twenty-three stations hung on until they had to commit their money. Then 20 pulled out and the program was dropped.

Opera Theater received 55 first-round votes. It was originally going to cost $835 per minute. However, after the second round, when support had slipped to 41 while all obvious successes were gaining votes, WNET dropped the most expensive of the operas from the series. The price per minute fell to $692, but individual stations saw no drop in the price for them, since fewer were voting for the program by then. Support continued to fall from 24 stations in Round 5 (the last "elimination round") to eight stations who were still willing to buy the program at the Round 6 price.

Then WNET committed an act of folly of incredible magnitude. The New York station guaranteed the eight remaining stations the price they would have paid if 24 stations had been buying the program. The program was declared purchased, and WNET was in the hole for 75 percent of the price of the series, even though only a handful of stations would be able to air it. In addition, SPC rules declared that programs with less than 10 percent support were not allowed to receive matching dollars. Thus, WNET had put itself in the position of underwriting a high budget, national series for very limited distribution. And other stations had been dragged into a position of putting up 100 percent of their bills.[7] When no other stations joined the debacle, all the buyers got together and agreed to let Opera Theater drop out of the SPC. (Note that underwriting for only an additional 25 percent of the production cost would have made the program available to all stations—and a minimum of 55 of them had originally wanted the program.)

American Chronicles was supposed to replace the popular (among stations) Bill Moyers' Journal and use the same production unit. It was proposed at a price of $1,500 per minute. Only 16 stations were willing to vote for that in Round 1, and when they saw how alone they were, six dropped out in the second round. WNET decided to cut the price in half, and by Round 5 there were 24 stations voting for the program. (These were mostly large stations and represented more purchasing power than a random selection of 24 stations.) It seemed likely that the program would not get far in the next round, when a vote was a commitment to buy.

WNET decided to underwrite half of the remaining price, so that per minute price was now down to $375. The program was a bargain. Stations began to vote for it, and a bandwagon effect began. However, more than 40 percent of the stations still are not getting American Chronicles, since it remains more expensive than all other public affairs series. If WNET or its backers had been willing to go the rest of the way from 75 percent to 100 percent underwriting, all PBS members could now have the program.

Animation Festival initially gathered a small group of about 20 supporters, and they hung on through several voting rounds. The per minute price began at $510, but after the second round, the series was reduced from 26 to 13 episodes (with an increase to $573 per minute). Twelve more stations joined the buyers in the

[7] PBS decided that discount funds would be available for purchase of Opera Theater. It was reasoned that the price was set at a 24 station purchase level (thus, greater than 10 percent).

last two rounds, so that the program is now available to less than a quarter of PBS members. The others have chosen to pass up unlimited rights to seven and a half hours of animation, in which the possibilities for station breaks, titles, and pledge nights are extremely valuable.

Solar Energy started with 31 votes and fell to 26 in the second round. There was no price change, and the program seemed likely to drop out. However, it had more support than any other science program, and it was only $170 per minute. Despite being produced by a small station (KNME, Albuquerque) and despite offering only three hours of material, it received increasing support prior to the purchase rounds. The bandwagon began to roll as the price to each station fell, and in the end, 112 stations bought the program. That is still difficult to explain in the context of everything else that happened during the SPC. The program seems to have been a prime beneficiary of the extra money that was released as prices for popular programs declined.

Black Journal was the only program eventually purchased by fewer stations than voted for it in the first round. All through the voting, the program attracted a unique pattern which, for the most part, seemed tied to the fortunes of Black Perspective On The News. In the first round, for example, Journal got 59 votes and Perspective got 58. It was a dead heat, even though the former cost $730 while Perspective cost only $180 per minute.

In the second round, Journal lost nine votes and Perspective gained 14. Once again, WNET decided to underwrite its program, and the SPC price for Journal was cut in half. By the purchase round, only 21 stations were still voting for Journal, while 106 had decided to buy Perspective. But when WNET guaranteed the 21 stations that their price would not go up—in effect putting up another sixth of the production cost, for a total of two-thirds—the program was declared purchased for the 21 SPC members. Over the next six rounds, 17 more stations decided to purchase Journal; and WNET was relieved of its guarantee. Even with this new group of purchasers, the program will be seen on only a quarter of the PBS stations. Black Journal, like Animation Festival, seems to have had a solid core of stations that were committed to buying it. It is not clear, though, whether it would have survived without the price cut. It also seems that the program was seen by stations as "quality" material for black viewers, but financial limitations kept the stations from coming back after Round 1.

Washington Straight Talk, Zoom, Lilias Yoga, and Hollywood TV Theater were all successful programs that started out solidly but did not develop enough of a bandwagon to generate as many purchasing stations as most of the other programs. Straight Talk cost $260 per minute, twice as much as Washington Week In Review, but much less than the other three NPACT series from Washington (which were all dramatically rejected). It seems to have been the decision that categorizes SPC members who were relatively more or less interested in having a quantity of national public affairs material; as such, it will be used by less than 55 percent of the stations.

Zoom ($700) and TV Theater ($850) were the two highest price per minute programs purchased by the SPC. Although both started with more than half of the stations voting for them, they were limited by the fact that a solid number of stations simply could not afford the price. Zoom was also hindered by the ability of stations to broadcast old episodes for free—a factor that further lowered the incentive to spend precious money for this high priced material. In the end, two-thirds of the stations bought TV Theater and 57 percent bought Zoom.

Lilias Yoga was around for stations that found a little money left (as prices for what they bought declined) and felt the need for some non-prime-time material that would not cost too much. About 60 percent of the stations purchased Lilias. Not a few of them are now trying to find a good place for it in their schedules.

Aside from these 11 special cases, there were 65 rejected proposals and 17 purchased programs. For these, the voting patterns were fairly simply and clear. The rejected programs all started with votes from less than a quarter of the stations. By the fifth round, none of them had more than five votes, and only three had more than two votes. The successful programs, on the other hand, all started with support from more than half of the stations and all finished the SPC having been purchased by more than 83 percent of all stations.

In regard to costs, the total price of the SPC-purchased programs was $12.5 million. With a 7 percent surcharge, this came to a total of more than $13.3 million. These SPC funds amounted to 31.5 percent of the money that was spent on new PTV production during the season. More than two-thirds of all funds allocated for public affairs and more than 85 percent of all public affairs air time were the result of SPC purchases. In contrast, less than a third of all production money and less than 44 percent of all production hours came through the SPC.[8]

National Production: SPC and Other Sources of Funds and Hours

		Program Type[1]			
	All Programs	Cultural	Public Affairs	Children's	Other Educative
SPC Funds	$12,460,304	$ 2,623,517	$4,012,203	$ 5,445,000	$ 379,584
Other Funds	27,065,126	12,498,305	1,922,321	6,352,000	6,292,500
TOTAL	$29,525,430	$15,121,822	$5,934,524	$11,797,000	$6,672,084
SPC as % of Total	31.5%	17.3%	67.5%	46.2%	5.7%
(SPC Hours)	(711)	(127)	(259)	(227)	(97.5)
Adjusted[2] SPC Hours	455.5	77	224.25	109	45.25
Other[3] Hours	587	255.5	38.75	173.5	119.25
TOTAL	1,042.5	322.5	263	282.5	164.5
Adjusted SPC as %	43.7%	23.2%	85.3%	38.6%	27.5%
$Per Minute SPC[4]	$ 456	$ 567	$ 298	$ 832	$ 140
$Per Minute Other	848	815	496	893[5]	879[6]
Price Ratio[7]	1.86	1.44	1.66	1.07	6.28

1Data and categories from PBS mimeo "National Program Funding and Program Distribution" (Gingras, 7/31/74). In some cases they do not correspond to categories elsewhere in this paper.

2Figures adjusted for partial support. E.g., Sesame Street received 42% support from SPC, thus 42% of its hours are credited to SPC purchase.

3Fully supported programs plus partial support within SPC.

4Does not correspond to Table 1 data, which treat underwriting differently.

5Villa Allegra and Carrascolendas hours removed.

6High value partly due to CTW health series, "Alive and Well."

7($Per Minute Other) ÷ ($Per Minute SPC).

One interesting funding pattern is the relative price per minute for different types of programs. Children's programs were given the most money per minute of production, next came cultural programs, and finally public affairs. At first glance, this may seem to be a bias—and it certainly was reflected in program production characteristics and quality. However, the differences in production price per minute may be easier to understand if converted to *price per minute of air time.* Children's programs are very repeatable; cultural programs can be shown again later in the year; public affairs material is typically

8There may be some debate over the computation of hours used here. It does not follow figures presented by PBS. However, it seems unfair to credit the SPC with all production hours of programs for which it paid only a fraction of the total cost. Thus, in my computations, hours for such programs were divided between SPC and "other funds." This also enabled computation of meaningful dollar per minute comparisons.

useless after a week passes. So if "repeatability" helps explain the different amounts spent for a minute of production, it may also help explain the differences in production quality between the various program categories.

The 25 SPC–Purchased Programs

	Hours	Percentage of Outside Funds	Number of Purchasing Stations
A. Talk/Discussion Programs (8)			
World Press	26	39%	127
Wall $treet Week	26	33%	139
Washington Week in Review	26	None	144
Washington Straight Talk	19.5	None	80
Firing Line	46	None	143
Woman	19.5	None	131
Black Perspective on the News	26	None	127
Book Beat	22.5	None	143
B. Moderate Quality Productions (5)			
Romagnoli's Table	6.5	None	127
Lilias Yoga	78	57%	91
Consumer Survival Kit	13	53%	138
Solar Energy	3	25%	112
NPACT Special Events		None	129
C. Musical Programs (3)			
Evening at the Symphony	13	None	140
At The Top	4	50%	146
Soundstage	15	33%	142
D. Repackages of Foreign Material (2)			
Japanese Film	26	96%	149
Animation Festival	6.5	None	34
D. High Quality Productions (3 adult, 4 children)			
American Chronicles	13	75%	85
Black Journal	13	50%	38
Hollywood TV Theater	20	50%	102
Zoom	16	51%	87
Mr. Rogers	32.5	17%	135
Sesame Street	130	58%	145
Electric Company	65	58%	143

Another consideration is that outside agencies were relatively more likely to fund cultural, historical, scientific and educative projects, and these outside agencies were willing to fund their projects at 86 percent more per minute than the SPC. (Outside funding sources included private corporations, government agencies, CPB, foundations, and individual stations.) Children's material was the only category in which the SPC did not spend considerably less per minute than outside sources of money.

On the basis of the figures, we can conclude that the relationship between price per minute and program quality is obviously debatable. Simply compare the 21 non-children's programs in the table with the following list of *series*[9] funded outside the SPC: *The Ascent of Man, Accion Chicano, Journey to Japan, Boarding House, Boston Pops, Wolftrap, Masterpiece Theatre, Theater In America, Romantic Rebellion, The Way It Was, Interface, Arabs And Israelis, Nova, Feeling Good.* News and public affairs are barely represented in this group. On the other hand, it is doubtful that anyone familiar with programs would find the SPC group superior. (And the best of those were partially underwritten.) Also note that far more of the outside funded programs were *new ideas.*

III. The Future of SPC—Analysis and Proposals

Statistical analysis led to several clear conclusions about the SPC outcome:[10]

1. The stations bought the same old programs and rejected innovation.
2. They limited purchases to series and projects with large numbers of hours.
3. They preferred low price per minute material and rejected ambitious projects.
4. They were aware of bargains due to underwriting, but they did not follow through on these bargains as strongly as might have been expected.

In the first SPC, neither diversity nor quality were strikingly evident among the programs outside the children's block. The bright spots were music, repackaged foreign material, two old programs (*Black Journal* and *Hollywood TV Theater)*, and the two series that were significantly underwritten (*Chronicles*—75 percent and *Consumer Survival*—53 percent). The rest was the same old stuff that has brought public broadcasting its tiny audiences drawn almost entirely from the educated elite—and disproportionately from the older members of the elite. The first SPC purchased no history, almost no science (three inexpensive hours of *Solar Energy*), no dance, no comedy or satire, and no programs for target groups other than women and blacks.

Public affairs was not slighted by the SPC; there were plenty of hours, although the production quality of the purchased series offered viewers little more than people sitting in studios. The SPC rejected a lot of truly terrible proposals, but it also rejected several creative new projects. These projects might have either failed mightily or brought new dimensions to public television. As it was, if SPC material had been the only thing on public TV in 1974-75, PBS would have had a mighty boring year for all but viewers under the age of seven.

Scheduling became another major headache. PBS could not give good time slots to programs purchased by less than two-thirds of the stations. It would have been unfair to force a "hole" into that many schedules. PBS was also faced with the problem of what to do with stations that did not buy *Special Events*. If there had been impeachment hearings, for example, over 20 stations would have had the right to demand the SPC programs they bought, while everyone else would have preempted those programs. Should 144 stations have paid for *Washington Week* so that 20 could use it in a regular time slot while the rest were preempting? This scheduling problem remains and will continue to be truly difficult. However, it will allow for more local diversity and autonomy as soon as stations have enough videotape equipment to make themselves more independent of the national feed and better able to serve local needs.

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[9] If specials were included, the point might be supported even more strongly.

[10] In the course of this section, the outcome and implications of the SPC will be discussed. Because some problems are considered at length, there is the danger that this airing will be seen by some as an attack on or a threat to the system. This is not the case—the intention is merely to discover and present suggestions that may improve the system. If change in the SPC is indicated, that certainly does not diminish the accomplishments and the smooth, efficient functioning of the system's first experimental year.

Before turning to proposals for future improvement, let us consider more specifically the major difficulties of the current SPC:

Problems to be Overcome, Controversies to be Resolved

During and after the operation of the SPC, several problems appeared. Some of these have already been discussed. Some are interrelated with others. Some offer no easy solutions. Here is a brief outline of most of the major issues:

Prior to the voting:

1. *It is not clear whether producers other than PTV stations should be allowed to offer proposals to the SPC.* Despite the fact that *Sesame Street, Electric Company* and *Mister Rogers* are not produced by stations, the question of who should be allowed to place programs in the catalog becomes a major controversy. Producing stations want to keep outsiders out of the SPC. They argue that there is a need to guarantee production capability within the PTV system, and they fear that outside producers may be willing to take losses to undercut station-producers and enter the SPC market. Consuming stations (and producing stations in their role as purchasers) are interested in getting the best programs at the lowest cost, and barring outside producers limits their options. Hanging over the debate is the question of whether such a restriction would be legal, for there are clear "restraint of trade" implications.

2. *Stations were presented with only minimal information about proposals and promotional statements made by producers.* The only "objective" information about proposals was qualitative—cost, duration, length of series. Descriptive materials and pilots were prepared by the producer, who naturally had an interest in making his proposal look as good as possible. No disinterested party evaluated the quality of the proposal, its value per unit cost, the track record of the producer, the appropriate scheduling of such a program, etc. The 152 decision makers could have used better information about catalog offerings.

3. *There was insufficient information about the free, underwritten programs that would be available to all stations.* A schedule-analysis worksheet was distributed along with the program catalog. It listed all programs that were known to be underwritten for the next season. Unfortunately, a considerable number of programs were funded after the close of the voting. (These included *Zee Cooking Show, Behind The Lines,* and *U.N. Day Concert,* all of which failed in the SPC.) Thus, the coming season appeared, at the time of voting, much more empty than it proved to be. Decisions were based on "needs" that proved to be illusory. (It was also a problem that the SPC voting took place relatively late in the year for planning a TV season. Yet, the earlier the vote is taken, the less information is available about the quantity and quality of programs that will be available free to all stations.)

During the course of the voting procedures:

4. *Program proposals could not be changed by voter initiative.* Stations were faced with a take-it-or-leave-it choice and were unable to negotiate changes that might have made proposals more attractive. There is no way to tell why *The Advocates* was rejected or whether the hard core of stations that wanted *Animation Festival* preferred 26 or 13 episodes. Nor is it clear how much stations might have paid for *World Press* as a series of 52 half hours rather than a biweekly series of 26 hours. If a network had been buying programs from a group of producers, it would have bargained back and forth about prices, series length, production standards, and so forth. Outside underwriters do this,

CPS does this, food cooperatives negotiate with suppliers, and the Eastern Educational Network bargains with program producers on behalf of its member stations. But the SPC provided no way to discuss changes with producers after the catalog had been distributed, and only unofficial discussion was possible at an earlier date.

5. *It was not clear when or if changes in proposals were going to take place.* It was difficult for stations to plan purchases when they could not be sure how much material of a given type they might buy and what they would have to pay. For example, a choice between two programs might have been made on the basis of available room in a schedule, balance with other purchases, and cost. Price and length changes always upset planning; and hardly anyone knew if and when they would be made.

6. *Producer-to-station communication was difficult.* PBS procedures allowed each producer time for a closed circuit pitch for his proposals prior to the first round. But after the voting began, it was difficult for producers and stations to communicate the results of the first few rounds. Prices were cut, series lengths were changed, formats were reorganized, scheduling innovations were proposed. Michael Rice of WGBH writes: "Happily, after some sad experience, PBS wisely and responsively abandoned trying to discriminate 'promotional' from 'non-promotional' material in messages that producing stations were desperate to send out to all stations via PBS DACS (the teletype system connecting all stations) during the short periods between bidding rounds."[11] It should be noted, though, that communication via DACS was not thought out or organized. Long distance phone calls proliferated as producers tried to save their projects and obtain maximum exposure for purchased programs. Most of this was done outside SPC channels.

7. *It was difficult to form coalitions of purchasers.* Purchasing coalitions would seem to be a natural and advantageous outgrowth of this kind of system. If several stations could jointly decide to purchase a program, they could be assured that the price to each of them would fall under a predetermined ceiling. However, the data required for forming such coalitions was hard to come by. You had to know who was not buying a program. You had to contact members of a group and get tentative agreement to buy if all others agreed. You had to know how to compute price changes (and program managers are not statisticians). You had to communicate confirmation to everyone. The information and facilities were simply not available. Producers might have been able to organize groups to buy programs if they had known whom to contact and how to organize purchasing groups to create price drops. (Instead, WNET underwrote its own proposals with hard cash.) KQED was one of the few stations that managed to put together a small coalition that achieved a significant price reduction by buying *Animation Festival* in the eleventh round.

8. *Stations in overlapping markets were often unaware of purchases by other PBS members in the same community.* In several major television markets, there are two or more member stations. It would seem that local communities could be best served when these stations coordinated plans for purchases and schedules.

9. *Too much money was committed to "must have" programs, leaving too little for programs that would create a regular evening schedule.* If a station started out with the certainty that it was going to buy *Sesame Street, Electric Company, Mr. Rogers,* and *Special Events* (hard to avoid when you expected impeachment hearings), it had already committed more than half its discounted funds. This produced:

a. Voting based on the psychology of poverty. When half your money goes to three programs for children and an unknown group of specials, you tend to avoid anything else

[11] August 2 memo from Michael Rice to PBS Programming Committee.

that will cost a great deal. The problem has as much to do with spending that fraction of available funds so quickly as it does with a lack of total available funds. It is psychological as well as economic.

b. Voting to get enough material to fill an empty evening schedule. Half the money was gone and there were still no purchases for scheduled prime time. The catalog listed all the old series that were counted on. If you voted for a special or a high priced series, there would be no money left to buy Firing Line. Two proposals, Play It Again Sam, Uncle Sam and The Thin Edge, would have provided a total of 12 hours of material for almost the same total price as all eight weekly talk programs purchased by the SPC.

10. *New proposals without significant underwriting were almost ruled out.* The key factors here seem to be the proliferation of varied proposals and the relation of price to number of purchasing stations. All 152 voters behaved independently, rather than as a single entity. They were not able to use the procedure to settle on a few new programs. The bandwagon effect forced out new proposals which got low initial support, and all new proposals inevitably will get low support in early rounds unless they are significantly underwritten or extraordinarily cheap.

11. *There was no financial incentive to go above the limit set by available matching funds.* Despite all the talk about poverty, and despite the selection of relatively inexpensive programs, 99 stations spent more than their limits. Only 16 spent less than 90 percent of their discount dollars. The decision to provide a $10 million pool of matching funds at a 3:1 ratio almost predetermined the total amount spent by the SPC. It punished stations that wanted to go beyond the group of staples purchased by almost all other stations. For example, if a program manager bought all the popular material, he had to spend unmatched station funds to add *Black Journal* or *Animation Festival.* (These were expensive to each of the few purchasers, so the problem was compounded.) Conversely, he could afford to depart from normative buying patterns and stay under the matching limit only by rejecting such popular series as *Zoom* or *Mr. Rogers.* (At least in those cases, you could hope to keep the series on your station via reruns from earlier years. Future SPC's will offer more complicated options. What happens to someone who buys *Sesame Street* this year and decides not to buy it next year? What happens if *Zoom* was not purchased this year and a station wants it next year?)

12. *Stations that did not reach the limit of matching funds were encouraged to make last minute buys.* To the extent that stations were under the limit for the 3:1 match, they were wasting potential resources which could not be recovered. The following was a common attitude in later rounds, as prices settled lower: "Well, I have so many dollars left now, so I guess I can buy . . ." In some cases, this may have been a good thing, but in others it was an incentive to purchase relatively unneeded, unwanted, and/or marginally appropriate programs. For example, *Solar Energy* picked up 22 stations between Rounds 10 and 12; *American Chronicles* picked up 10 and *Yoga* got 8. No other proposal gained more than five votes. The three that got added support were available and bargains. Thus, the incentives for last minute purchases produced decisions based more on availability and price than programming needs.

13. *PBS interconnection scheduling options have been limited by the number of stations purchasing a program* as well as by more appropriate programming considerations.

14. *A program like* Special Events, *when it is not purchased by everyone, can only cause severe philosophical and legal disputes when it preempts other programs.* Should topical public affairs programs be produced if they will be preempted on all but a handful of stations? Should first runs of *Evening At Symphony* (purchased via SPC) or even

The Way It Was (not SPC) be held back from stations that do not want *Special Events*? What would be done about *America*—a series that required sequential viewing and had rights for only one weekly play—if a major event preempted its time slot?

15. *Producing stations lacked incentives to submit ambitious new projects to the SPC.* Expensive new projects were resoundingly rejected by the SPC because they would have required money for planning and development. Pilot funds would have been wasted on ambitious projects for the SPC. In the future, ambitious proposals are likely to be tailored more to the tastes of underwriters than to the needs or desires of stations. There is a clear danger that public affairs programs with high production values (and costs) will be squeezed out of public television by talk shows (SPC) and cultural programs that can be underwritten.

16. *Decisions on whether or not to produce high quality programs for public television were made outside PBS.* The directors and staff of PBS retained the ability to veto distribution of programs funded outside the SPC, but they had no ability to decide what would be underwritten or even what would be proposed to underwriters. A few stations, in their role as producers, had to decide what pilot projects to underwrite themselves, what price cuts to offer the SPC, and what programs to bring before potential underwriters. Thus, salesmanship replaced planning as the determinant of quality and diversity in public TV.

17. *The stations and their representatives were unable to implement any plan for balance between program types, service to diverse communities, and overall quality of the national service.* PBS is hamstrung by the current situation. It must take everything the SPC buys, regardless of quality, diversity or need. It will also be offered underwritten programs, most of which are superior in quality to SPC purchases. Obviously, these programs cannot be left out of the national feed. In fact, the underwritten programs will demand better scheduling, since they go to *all* of the stations and typically have larger potential audiences than SPC purchases. On the other hand, if the PBS staff identifies a gap in the schedule, it has no resources to develop material to fill that need. PBS cannot underwrite pilots, encourage the growth of production centers, or guarantee that partially underwritten programs will be bought at all or aired by any number of stations. The possibility falls to CPB and other entities willing to fully finance program production.

18. *Underwriters are discouraged from providing partial support for programs entering the SPC.* The experience of McDonald's, which paid for half of *Zoom* and found that 40 percent of the stations would not pay the additional price to carry it, should relay an unfortunate message to potential underwriters. The National Geographic Society put up two-thirds of the cost of *Pictures Of A Revolution*, a bicentennial project scheduled for the fall of 1975. Only 23 stations expressed interest in the first round, and even a price cut could not induce more than 13 stations to support the project in the third round. Thus, future underwriting will undoubtedly bypass the SPC, since those supporting program production are interested in the widest possible distribution and exposure.

19. *A great quantity of relatively low quality programming could retard the growth of quality and innovation.* Having purchased a great number of hours, program managers are committed to airing them all. Free offerings fill out the schedule, leading to the premature abandonment of the policy of repeating high quality programs. Justification for funding ambitious projects declines as the cumulative audience for single programs (i.e., viewers of any airing or repeat) declines. A full schedule without viewers means that PTV is not performing a useful function.

While summarizing the several shortcomings in the SPC selection, we must also acknowledge some important mitigating factors. First of all, the SPC lacked the funds to buy anything new after it had supported the basic programming that public TV needed simply to stay on the air. Stations voted for the programs they needed, and there was no money left for anything else. Second, reality dictated that more public affairs had to be purchased, because these programs are the most difficult to sell to underwriters. Third, most of the programs purchased had a solid and loyal following and could not be dropped without bringing down the wrath of angry viewers deprived of their favorites.

In other words, considering the financial limits of the SPC and the need to provide for a full year of broadcast material, the purchases were fairly diverse. They included national news review, interviews with newsmakers, review of the foreign press, documentaries on America, a program about the stock market, a program about books, materials for consumers, women's programming, black programming, material for children of various ages, contemporary classical music, feature films and animation, original dramatic productions, yoga, and cooking.

Looking toward the Future

The most meaningful way to look at the SPC is in terms of what it promises, and this view could be rather critical and pessimistic unless there are major changes. For example, it is difficult to imagine a scenario in which this type of voting procedure can ever support innovative programming. In fact, it is difficult to imagine how this type of voting procedure can do much more than sort through old programs to determine which stations want which. It is a case of the sum of the parts adding up to less than the whole. A single decision-making entity, or a deliberative body meeting face-to-face, might ponder questions of balance, diversity, innovation and quality; but the accumulated decisions of 150 entities create a statistical force toward the known, the safe, the cheap. This is compounded by the fact that when fewer stations vote for a proposal, the cost for each purchasing station goes up.

Given the limited funds and the built-in bias of the noninteractive[12] participatory system, it is difficult to see the SPC as anything more than a "meat and potatoes" purchasing agent. (And there are some who wonder just how much meat is coming along with all those potatoes.) This may not inhibit the growth of quality and diversity in public television, but it will certainly not help. First-year funding for *Sesame Street* and *Nova* could not have been drawn out of the SPC. It is not difficult to imagine the typical response at 40 or 50 stations: "Millions of dollars for this wild idea for pre-school kids . . . are you kidding? We still don't have enough color equipment, and meeting the payroll is already a day-to-day crisis!" The steep price to each interested station would increase even more, and too few stations would finally be willing to support the project.

The SPC also has a potentially dangerous effect on long-term underwriting prospects. Partial underwriting becomes a dangerous gamble. If McDonald's pays for half of *Zoom*, it wants all the youngsters in the country to have a chance to tune in. But when more than 40 percent of the stations will not carry the new *Zoom* episodes, the hamburger people are forced into a position of all or nothing. They are encouraged to *avoid* the SPC. This in turn reduces the ability of the SPC to purchase high quality programs. Partial outside underwriting was the key to much of the quality that was found in the first year's purchases. If the present system is not modified, this partial outside funding for SPC proposals is likely to decline.

[12] The system is "noninteractive" in the sense that decision makers do not communicate with each other. The "interactive" computer system is no more than a sophisticated abacus that tallies votes quickly.

The SPC experiment included an important lesson for the producing stations as well: They learned that they cannot afford to gamble development money on the hopes of an SPC purchase. Currently, producers receive only production costs and overhead for their programs. This gives them no incentive to spend local money to develop pilots or concepts for submission. In addition, if we consider the track record of SPC, it is clearly wasteful to spend local money on program development. The voting in the first year soundly rejected all ambitious new projects. However, this rejection is not really a fair indicator of the mood of the stations. Rather, it is in large part an artifact of the voting procedure. For example, if 15 new programs are each supported by 10 stations, there would be no new programs purchased even though 150 stations all wanted something new.

What is the prognosis? Left unchanged—with limited funds, no central planning, no contingency money, poor interstation communication, low incentives for partial underwriting, a single PBS interconnection line, and a voting system that precludes innovation at the national level—the SPC is a serious threat to improved national service. Too many cheap programs could create a downward spiral: There is no room for repeats; ambitious projects can only be shown one time; the cumulative audience for a project is low (i.e., its impact is low); the justification for funding ambitious projects declines and fewer projects are funded; the audience then declines in the face of weaker material; and, finally, nothing is left but a few professors in swivel chairs talking via television to a few elderly intellectuals sipping wine in front of their sets.

Clearly, the system will not be allowed to fall to such a state; but adequate planning is preferable to emergency reactions. Program managers are already finding that they have a bit too much material on their hands, so that they have minimal space for repeats of high quality programs. Certainly, given limited audiences at any single airing and the limited production budgets, it would be most premature to abandon public TV's longstanding practice of repeating its best programs.

In the best of all worlds, the system would be quite different. A voting procedure like the current SPC mechanism might re-fund and upgrade popular programs for those stations that wanted them. A *representative* executive body, deriving its authority from the stations, would finance projects for quality, balance and innovation across the schedule. Program quality would be consistently improved, with a corresponding growth of audience and impact on society.

The most likely future for the SPC is somewhere between these two poles. The SPC will probably continue to support the solid core of successful programs from prior years (the meat and/or potatoes), and public affairs materials with low budgets (depending on total SPC funds available) will continue to predominate. Outside the cooperative, corporate underwriting will be the key to noncontroversial programs in the arts. These programs may be of high quality, but it is also fairly certain that they will be "safe." Government agencies and foundations may add funding for a significant number of "goal"-oriented programs—history, humanities, health, and minority content. And secondary producers will be able to upgrade a few local series (*Black Perspective, Consumer Survival Kit*) to national status. The major producing stations will develop outside sources for first-year funding and will look for SPC support only *after* their series have become an integral part of the public TV schedule. Unless member stations are willing to pay considerably higher dues and/or overhead charges to PBS (and neither seems likely at the moment), the Public Broadcasting Service will operate an interconnection and plan a feed schedule. It will be able to exercise a minimal veto power over unacceptable material funded outside the SPC, and it will have some power by virtue of its scheduling responsibility. But PBS will be unable to *lead*, in any sense of the word, despite its status as a station-run organization.

The vacuum of *programming* leadership in the above scenario seems a highly probable outcome of decentralized, noninteractive decision making in an under-funded system. This does not reflect upon the current political or technological aspects of public TV. Technical things seem to be functioning very smoothly at the moment, and political problems are apparently suspended for the time being. But one problem remains quite troublesome—there seems to be a vague inattention to television *programs*. Well-negotiated contracts, efficient fund raising, and nice-looking schedules sometimes overshadow the fact that TV programs and their effects are the reason public television exists.

Unless there is a drastic, and highly unlikely, change in PBS, the Corporation for Public Broadcasting will be the only entity in public broadcasting that can innovate, balance the schedule, and fund projects of high quality. In other words, after evaluating both SPC purchases and all underwritten projects, the CPB can fill the gap if it chooses. It will be faced with the opportunity to supplant talking-head with documentary public affairs material. It can be the source of funds for programs relevant to neglected minorities. It can sponsor creative video artists. It can promote dialogue, stimulate the unusual, pioneer unexplored realms of television. In short, if it chooses, the Corporation will be able to exercise programming leadership. On the other hand, CPB can sit back and safely hand over its limited funds to "worthy" projects that have negligible effects on the social, intellectual, educational and cultural fabric of America. The role of [redacted] CPB *vis-à-vis* an unmodified SPC will be crucial to the success of public television.

What is likely to happen is that an unchanged SPC will leave a vacuum (in program quality and innovation) into which CPB, corporate underwriters, and government agencies may or may not choose to enter. Producers with new ideas will learn to shun the SPC until their series have run on public television for a year or two. Ironically, the system designed to place programming decisions at the local stations will actually transfer the most important decisions outside station hands. The stations will merely ratify and continue broadcasting materials that are developed with funds provided by other corporate entities. Exxon, Mobil, federal endowments, and CPB will become far more influential than stations in determining the level of quality and diversity on public television.

It has been argued that additional money will allow the SPC to go beyond "buying programs by the pound" and enter the realm of innovative, high quality materials. More money will be needed, of course, for such improvement. However, the money is a necessary, but not a sufficient, condition. Money alone—without system modifications—will not change the statistical forces toward the purchase of well-known, noncontroversial, inexpensive series without regard for a balanced, high quality schedule. The tendency is inherent in a voting system in which consensus is achieved by counting votes rather than by interaction among voters. Additional funds in the first SPC probably would have allowed more stations to buy *Zoom, Chronicles, TV Theater, Black Journal*, and *Animation Festival*. Several of the unsuccessful offerings, such as *Advocates, Day At Night* and *Opera Theater*, might also have been funded. However, these effects would not have significantly improved the quality of this season.

Some Suggestions for Improvement

With the exception of a comparatively small percentage of SPC members, local public television stations are not capable of producing more than an hour or two a week of strictly local prime-time material. Even with two playings of everything, this amounts to no more than one-seventh of the weekly air time between 7 and 11 p.m.[13] Thus,

[13]During the first five months of 1974, local production accounted for a bit more than 14 percent of prime-time hours.
(footnote cont. pg. 48)

local production, although it is the heart of community service, is relatively minor when compared to programming that has been prepared for wider use. Local public television schedules are diverse not because of significant amounts of strictly local material, but because of varying patterns of *acquisitions.* The national service, the PBS interconnected feed, must be seen as the heart of evening schedules, at least until hundreds of millions of dollars are available for local production budgets.

Two conclusions can be reached: First, more money is clearly needed for national program production. Thirty-nine million dollars is inadequate for a national service that seeks to provide a range of high quality material. Second, if the goal is to provide options within a national feed, *there should be a second PBS interconnection.* Both of these goals are far-fetched in the short run; but they should not be forgotten, since they may be the key to a future for the SPC.

If and when more money becomes available to public television, there will be several questions of policy that will have to be resolved in an effort to create an optimal system. The first issue concerns the proportion of programming money that should be allocated to local versus national production. Although local stations are crying for funds to use in local production, it seems that at intermediate funding levels, the stations would be better served by a stronger national service that appealed to more viewers and therefore had a greater potential effect.[14] The principle here is simply conservation of limited resources. There are too many local stations for public TV to be able to afford a local daily *Newsroom* at each one (more than half of all licensees have total operating budgets below the budget for KQED's famed local news program).

The second issue concerns the proportion of national programming funds allocated to the SPC. This is a difficult problem, because the SPC is still in a state of development. If the system seems to offer possibilities for innovation and a mechanism for balancing the schedules and filling national needs, then a higher proportion of national programming funds should go to PBS. But if the developing SPC seems to offer little incentive for quality and diversity, then a lower proportion would be in order.

In regard to a second PBS interconnection, there are three factors to be considered. The first is the need to provide service of equal quality to all time zones. The second is the problem of communities with more than one PTV station. Almost 37 percent of the population could be served by two PTV signals if all licensed stations were at full power. Such an alternate service could eventually mean PBS-1 and PBS-2 feeds similar to the lines of BBC's two-channel service.

A third consideration is the PBS goal of promoting local scheduling flexibility.[15] This desire may or may not be a good thing, but local autonomy is a philosophical principle that has widespread support. "We are not a fourth network" has become a

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13 (Cont.) This figure includes the creations of the major stations—WNET, WGBH, KQED—which offer more than average amounts of local material. Local origination is typically in-studio public affairs material, and there is good reason to believe that the availability of more money for local production would lead to improved quality, rather than an increased proportion of local offerings, during prime time.

[14] A pattern of growth among community-supported stations clearly depends on national programming. Attractive programs bring in viewers, viewers become station supporters, contributions from supporters provide the funds for local production.

[15] Once again the EETN provides useful background information. Members of that regional network are served by two interconnections. They receive the regular PBS feed and the EETN feed, which provides alternate air times for PBS materials along with additional acquisitions made by the regional network for use by participating stations. Scheduling flexibility is enhanced, and even now EETN members are using the second interconnection to fill "holes" created when stations have not purchased SPC offerings.

rallying call. On the other hand, there is no intrinsic need to have *Evening At Pops* shown at 8:00 Monday in one community and 8:30 Thursday in another. Local program managers can flex their muscles; but are the two communities better served by these managerial idiosyncracies? In fact, the communities and the stations are probably a bit worse off because national promotional efforts are disrupted. National promotion is a powerful and cost-efficient factor that is undermined by haphazard scheduling by local stations. In short, a second interconnection, although a long way off, might cut two ways.

Thirteen specific suggestions for SPC improvement are offered below. These suggestions are divided into four groups, presented in order from what is probably the least controversial proposal to what may be the most controversial. Virtually all of the suggestions also center around a single proposition: *The SPC system would be improved by a shift from what might be called participatory anarchy, with a limited information base, to a participatory/representative democracy, with fullest internal communication.*

Activity external to SPC operations:

1. *Arrangements should be made for negotiation and cooperation among stations with overlapping signals.* The negotiations should also involve PBS, in order to determine optimal price factors. In some cases, a single price for the whole market might be appropriate; in others, it would not. Community size and budgets must be balanced in an equation for setting price formulas for stations with overlapping signals. The current pricing formula had both WNYE and WNYC—which are completely overshadowed in New York City by VHF-WNET—paying more for a program than WETA in Washington. In fact, there were only seven licensees that had to pay more for programs than these secondary and tertiary outlets. The situation in Los Angeles and in other overlapping markets presented similar problems and there are enough of these markets to make the matter important.

The relatively poor communication between PTV stations with overlapping signals wastes a valuable resource for public broadcasting. Cooperation among them in SPC voting would lead to a greater diversity of programming in a given market. Channel 13 should tell its viewers, "Our next program is going to be . . . and if you tune to Channel 21, you can see . . ." The problem is no secret, but perhaps it will take an outside agency to convene open discussions between stations in markets with overlapping signals.

2. *CPB should use its funds to encourage development of programs needed to fill the gaps left by the SPC.* Although the Corporation now expends funds for new program development, more attention should be given to the purchase of programs to produce a *well-balanced* national schedule. An appropriate approach might be for CPB to study the SPC results and the available underwritten programs. Then the Corporation might issue requests for program proposals, specifying goals and production standards. Interested producers could then submit ideas for evaluation. This is a more active approach than the simple evaluation of unsolicited proposals. It would stimulate program production and implement a planned programming philosophy that would add needed programs to SPC purchases.

Improvement in SPC communication structures:

3. *Stations and producers should participate in a two-way evaluation process for many versions of proposals.* There were preference votes in the second SPC year, and these votes were a first step. However, in the future, a producer should be able to offer several

versions of the same basic proposal, with each version featuring different costs, different formats and different lengths. Stations could respond by voting and by explicit comments via DACS. Producers and SPC catalog editors would then know what is desired and why. Several such cycles of offer, response and counter-offer would approximate the negotiations that take place between typical funding sources and producers. The goal would be to have catalog offerings fit best with station needs and wants.

4. *PBS should evaluate each proposal in the catalog-rating quality, need, position in schedule, and value for cost.* Staff evaluations could be submitted to the PBS Programming Committee for approval and then transmitted as an integral part of the SPC catalog. Thus, a well-informed group of professionals—*employed by the stations*—would provide the information that is needed for station decisions based on more than guesswork. The procedure might also enhance the possibility of high quality new programs being purchased by the SPC. That is, favorable evaluations by the committee might produce the essential core of support in first-round voting. As things currently stand, new programs cannot succeed in the SPC unless they are either largely underwritten (and this is no guarantee) or very inexpensive.

Clearly, specific evaluations would arouse controversy and debate. However, we must assume that there are some standards of quality, value and utility that can be applied. Furthermore, a bit of controversy would be a small price to pay for keeping SPC voters well-informed and for giving some new programs a chance to be purchased.

5. *After each voting round, producers should be provided full lists of votes for and against their programs.* This is essential to the formation of coalitions to purchase programs after predetermined price drops. "Would you buy the program at half its current price?" is a fair question. By knowing whom to ask, producers might increase distribution of their programs while lowering the cost to each buyer. The criticism that too much salesmanship would be introduced by this procedure ignores the nature of any purchasing cooperative. If somebody is buying, somebody else is selling; and if the decision is in the hands of 152 voters, producers must be able to promote their wares with *each* of them.

6. *The DACS system should continue to be available for uncensored limited message length use by producers between voting rounds.* This procedure, introduced in the second SPC season, is far less expensive and far more effective than using the telephone for negotiations. PBS should be allowed to monitor all communications via DACS, so that it can issue amplifications or replies if necessary. Indeed, some of the debates and disagreements that occur in this way might profit from a public airing. The thrust of this suggestion and suggestion 5 is to open interstation communication channels, so that coalitions can be easily formed. Consensus can then be reached after interaction among voters, rather than through a series of blind votes. Once again, the goal would be to bring stations together to make decisions that reflect their interests as a group (or as a series of subgroups).

Modifications of financial arrangements:

7. *Profits from sales outside the SPC should first be used to cover underwriting by producing stations. Additional amounts should be split on a fair basis between producers and PBS.* Foreign rights and nonbroadcast uses for programs have some value. Returns should go to producers as a form of incentive for further development and as a method of inducing producer underwriting of costs to the SPC. If a producer is willing to gamble half the cost of a series on the chance that it will be sold to the BBC, the SPC price is lowered and the producer has a chance to regain his gamble. Producers should also have a share of profits above production costs. Such income would support general station

activities and strengthen production centers for further projects.

8. *The ratio of matching funds to local funds should be reduced.* This change would draw more local money into the system. Because so many stations exceeded their matching limits this year it would appear that the high matching ratio held down local contributions and therefore reduced the total pool of money available to the SPC. (Ten million dollars provided for a 2:1 match might have produced $15 million, while a 2½:1 match might have produced $14 million.)

9. *After the close of voting, excess funds in the pool of matching funds should be proportionately distributed to stations that exceeded their limits.* The matching ratio would not be predictable for this rebate. Even so, stations would be encouraged to go beyond their limits to buy better and more diverse programs. Since there would be no assurance that any matching money would be left, stations would have to commit their own funds; but even a potential discount might draw more local money into national programming. This approach would reward stations that were willing to dig deeper into their coffers to finance high quality programming and a more diverse schedule.

Creation of a basic program service funded by member stations:

10. *PBS should arrange for funding of* Special Events *coverage with money from members, from matching funds, and from outside underwriting.* Special Events *would be provided to all member stations, and funding would be outside the voting procedures.* (Such a procedure could only be adopted with full agreement of the PBS Boards and Committees and an overwhelming ratification by the stations.) Unpredictable preemptions must be available to all stations. If events are important enough to be broadcast, they are important enough to be broadcast by everyone. A few stations (almost all of them in overlapping or noninterconnected markets) would have to take a service they did not want to buy during SPC's first year. However, the costs to this very small number of stations (which would be forced to duplicate a service already provided to their communities or to find local alternative materials) would be more than offset by gains and savings for the overall national system. Preempted material can always be held for later airings, sequential series (e.g., *America* or *Masterpiece Theatre)* could retain their order, and regular public affairs series might skip a week of production, thus saving some money for the system.

11. *PBS should arrange for funding of a small group of "must have" programs (such as* Sesame Street *and* Electric Company*) with money from members, from matching funds and from outside underwriting. These programs would be provided to all member stations, and funding would be outside SPC voting procedures.* This proposal is similar to that for the provision of *Special Events,* but it is suggested for different reasons (all of which also apply to *Special Events* funding). SPC voting would be more of a decision making procedure if the bulk of available funds were not taken off the top for "required" material. The current situation creates the psychological feeling that most of the money is gone before any "decisions" have been made. If a basic package of "must have" programs and *Special Events* were funded before the voting began, voters would feel more freedom of action among remaining offerings. This arrangement would also allow PBS to seek partial underwriting, with a guarantee to potential funding agencies that a particular program would be available to all stations.

12. *All programs purchased by over 80 percent of the stations should be declared purchased by the entire system.* All stations would be fed such programs, to use or not use as they saw fit. The price of the programs would be absorbed by the entire system.

There are several reasons to consider this proposal: First, it would make scheduling for the interconnection easier, while also avoiding holes in schedules of nonpurchasing stations. Second, it would make possible the purchase of individual one-shot programs for use in a "special of the week" type of series. Planning for the current S.O.W. is difficult, since all stations get underwritten specials but the SPC purchases vary among the different stations. The current SPC procedures work against single programs and specials, and this change might help.

Third, there is reason to believe that actual costs to individual stations would not go up if all programs with more than 80 percent support were declared fully purchased.[16] Gross costs for all purchased programs do not go up in any case; the only issue is redistribution of costs to individual stations. It seems that if the 17 programs with more than 80 percent support in the first SPC year had been assigned to all stations, the lower price for already purchased programs would have balanced the added cost for previously unpurchased programs.[17] If stations did not want a program purchased under this 80 percent rule, they would not have to use it, and they would have spent no additional money.

Proposals 10, 11 and 12 together define a basic program package. (Even if outside funding—proposals 10 and 11—were not implemented, the 80 percent rule would probably produce the same basic set of programs, including "must haves" and *Special Events.*) If stations wanted so little material that they would be harmed by this package, (that is, they would have to pay more for the basic package than they would have paid for their specific selections), they could simply decline SPC membership and negotiate separately with PBS for the few programs they wanted. (Only two or three stations would be likely to fall into this group.) The 80 percent rule is essentially democratic and it is similar to many majority-rule situations (though the 80 percent is far more than a simple majority) in other types of purchasing cooperatives.

13. *A discretionary programming fund should be available for use by the PBS staff.* By decision of its boards and its Programming Committee, PBS should be able to complete funding of partially underwritten projects and purchase materials to balance the overall national schedule. This proposal would require the establishment of a PBS bank account and might imply the application of matching funds to PBS purchases. The partial returns from non-PTV income brought in by SPC programs might supply some money. Post-market purchases might supply more. However, the bulk of the funds will probably have to come from the federal appropriation, via CPB or stations returning CSG money, and from any remaining Ford Foundation grants.

One approach for fund raising would be to increase PBS membership dues; another would be to create a surcharge on SPC purchases; a third would be to arrange funding from the CSG pool before it is distributed. These ideas are unlikely to be supported; and, in fact, the possibility of finding money for a PBS programming fund is slim. Nevertheless,

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[16] Consider a simplified example: Ten stations (WAAA, WBBB, WCCC, etc.) are choosing among ten programs (#1, #2, #3, etc.). Each program costs $16,000 to produce. Each station votes for eight programs. Each program gets eight votes (80 percent support). Under current SPC procedures, the stations selecting program #1 would each pay $2,000 ($16,000 ÷ 8) for #2, etc. Station WAAA may have chosen #1, #2, #3, #4, #5, #6, #7 and #8. The total bill would be $16,000. Station WHHH may have chosen #1, #3, #4, #5, #6, #8, #9 and #10. Its bill would also be $16,000. All ten programs would be produced; each of ten stations would pay $16,000; and each station could use eight programs. Under the 80 percent rule, all ten programs would be declared purchased for everyone. Each station would pay $1,600 per program ($16,000 ÷ 10). The total bill to each station would remain $16,000, but all stations might use all programs (but, of course, they would not have to do so).

[17] PBS is interested in a computer run to check this hypothesis, but the data could not be made available for this paper, since such a run would have required more time and effort than were available at that time.

the addition of such discretionary power to the body that represents the stations would clearly be another step toward implementing a responsive programming system.

A Fourth Network?

Many of the problems identified here were foreseen in Hartford Gunn's original article proposing station financing for national programs. Indeed, some of the suggested modifications come close to implementing Gunn's original plan. For example, the automatic purchase of "must have" programs and the 80 percent rule are quite similar to his "basic program service" providing subscribers with choices within a list developed by a consensus among member stations. None of my proposals need lead toward a centralized fourth network. Decisions are to be left in the hands of the stations and their designated representatives and employees. The basic model remains a representative grass-roots democracy.

However, within this democratic framework, it is necessary to establish better internal communications and a selection system that is more flexible and more responsive to the special demands of a medium which requires both long-range planning and rapid decisions. It would be asking too much if we were to require 152 decision makers to keep fully informed of the moment-to-moment changes or to spend the time and effort required for adequate long-range planning for a total national programming service. But such responsibility can fairly and easily be delegated by the stations (who would retain the ultimate authority and power) to their chosen representatives on the PBS boards and committees. Certainly, station representatives, and their designated staffs, would be in a position to consider and evaluate information and make decisions that truly reflected consensus at the local level.

For public television to fulfill its purpose, it must have both meaningful programming and people watching those programs. During the first five months of 1974, PBS provided 70 percent of all prime-time PTV hours, whereas local stations produced 14.3 percent of their prime-time offerings. These same proportions can be expected over the next five to ten years. The national service, then, is clearly the core of local service (especially when local stations can choose among nationally provided alternatives). This national service must be carefully planned to provide an optimal package of useful and high quality television programs. If member stations were to delegate some authority, PBS would provide itself with a responsive and efficient system of decision making. Such a system would also be responsive to local desires, open to innovation, protected from outside pressures, capable of responding quickly to unexpected events, able to provide for minority interests, aware of the need for a balanced schedule, and primarily concerned with improving the quality of public television programs.

PROGRAM RIGHTS IN PUBLIC BROADCASTING

EUGENE N. ALEINIKOFF

The United States is the only major country in the world in which commercial broadcasting preceded noncommercial broadcasting. And only American noncommercial broadcasting has gone through so many rapid and drastic changes in its recent evolution into today's national public television and radio systems. The result has been continuing difficulty in establishing and maintaining program rights policies which are peculiarly appropriate for public broadcasting.

Special Nature of Public Broadcasting

The important considerations of public broadcasting with respect to program rights and payments differ considerably from those of American commercial broadcasting. Commercial network broadcasts are expensively supported by national advertisers, with affiliated-station air-time charges far exceeding most program production costs. And as production costs themselves have escalated, network shows have gradually included larger numbers of annual reruns as integral elements of their series. Consequently, commercial program payment patterns have been developed mainly in terms of individual network runs, and sizable residual fees can generally be provided for each national rerun without undue strain.

To administer this complicated system, the three commercial networks have centralized business and legal personnel who concentrate primarily on property acquisitions, production contracts and rights agreements. Experienced staffs of labor experts have been assembled to negotiate with the many talent unions involved, and sizable music departments handle clearances with the various music agencies concerned.

Commercial station syndication arrangements similarly require periodic additional payments for program elements. For example, whether a syndicated program is originally produced for network broadcast or for station syndication, star talent often has either an ownership interest or profit participation, and the talent union rates generally provide for percentage rerun residuals up to an ultimate "buy-out" figure. Program syndication may also require additional music fees for film or videotape synchronization rights—synchronization fees otherwise waived for network broadcasts because of the large performance rights royalties paid annually by the three networks.

But from its beginnings, however, public broadcasting has had to deal with a far different set of circumstances. First, program funds are generally available only at the time of production, and air-time payments are absolutely prohibited for both interconnection agencies and local stations. Thus, residual fees can present considerable financing problems, whether the program is originally produced under an external grant or through public broadcasting's own funding.

Second, with public broadcasting's limited finances, expensive production can often be justified only by extensive use over a number of years. Public television stations rebroadcast almost all national programs at least once during the same week, not only to fill out sparse schedules but also to provide multiple-viewing opportunities to interested audiences. Original production arrangements must therefore provide for immediate and extended program uses far beyond commercial network practice.

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Third, unlike commercial broadcasting, public broadcasting production is not concentrated in the New York and Hollywood network centers. National public television and radio schedules include programs and segments from many different stations and nonprofit agencies across the country, and the number of such program sources can be expected to expand as more public stations attain production capability and more outside organizations seek interconnection participation. Each of these national producers is an independent entity, determining specific rights and payment standards subject only to general national system requirements and budgetary approval restrictions.

Fourth, there is question about the appropriate extent to which public broadcasting should pay copyright fees under the existing "not-for-profit" exemptions. Up to now, the national organizations have taken the lead in suggesting strongly that for standard nondramatic copyrighted music, performance fees need not be paid by station broadcasters nor synchronization rights cleared by station producers. On the other hand, in anticipation of long-expected copyright law changes, serious negotiations have been underway for some time toward national program-music payments, irrespective of the present exemption. It is still not clear, however, in what manner and in what amount, or by what public broadcasting organizations and to what copyrighted music agencies, these national payments may ultimately be made.

Finally, as a historical matter, noncommercial broadcasting began on the exact opposite side of the rights spectrum from the commercial live-network broadcast. Since educational radio and television programs were originally distributed solely through kinescope and videotape recordings circulated directly to limited-audience broadcasting stations, most producers sought and obtained unlimited duplication and broadcasting rights—without any program payments beyond those made, if at all, at the time of production. National Educational Television, the only national educational television distributor for many years, was the first to find this wide freedom increasingly impossible to attain economically in foreign purchases. With the establishment as well of prime production services in New York City and Los Angeles, NET also had to agree fairly early with the performers', musicians' and directors' unions to limit national rights substantially in terms of restricted use periods and incremental residual fees. When national interconnection arrived on the noncommercial scene, the consequent desire for more topical and higher quality programming shifted producer pressure even further away from the original broad formulae for noncommercial programming.

Nevertheless, the initial concept of a so-called "national release," which includes multiple rebroadcasts during the same week, has always been steadfastly maintained with but few unavoidable exceptions in connection with foreign programs. Further, the early established minimum national requirement of four releases over a period of three years has continued as standing practice for nontimely programs with but rare modification primarily for feature films and gift programs. Both of these policies have been officially adopted and consistently enforced by the Corporation for Public Broadcasting in national program financing and by the Public Broadcasting Service and National Public Radio in their national program distribution activities.

Current Considerations for Public Broadcasters. As a general matter, the "four-releases-in-three-years" minimum rule does not appear to have been unduly restrictive for public broadcasting so far. But music personalities have at times expressed special concern about overly long exposure of past performances. Some theatrical agents have been unwilling to make well-known literary or dramatic properties available for public television for any length of time that might interfere with lucrative feature-film sales. This reluctance is, of course, intensified by the unfortunate inability of public broadcasting to be financially competitive for "star" performers or "hot" properties. Undoubtedly the problem will be encountered even more frequently in the future as public broadcasting has ever wider audience exposure and develops greater funding capability.

Consequently, some key factual questions about public broadcasting program rights bear serious reexamination: Do public stations actually make a practice of rebroadcasting national programs more than once during the week? What series reruns can be expected over which stations during the same year and in subsequent years? Is there any difference between national interconnected release and local station transmission practices? Finally, there is the overall question of whether public television and public radio broadcasting schedules should be considered separately or together.

The conclusion may well be that by reason of changing public broadcast patterns, narrower broadcast rights can now be accepted without reducing actual exposure. Moreover, because of organizational progress, distribution restrictions may now be more easily controllable without administrative difficulties. If so, reasonable modification of the "four-releases-in-three-years" principle would clearly be far preferable to rights deterioration through proliferating exceptions—not only as an obvious generality, but also for at least two special reasons: first, to help in meeting probable pressure from talent unions to minimize initial rights in order to maximize subsequent residuals; and second, to compensate in some degree for the supplemental nonbroadcast educational availability that has become an absolute necessity rather than merely an ancillary benefit for national prime-time programming. In short, public broadcasting must be far more consistent and realistic than ever before about negotiating for the exact program rights, no more and no less, that are actually useful and financially feasible.

Specific problems for public broadcasting are also arising in the allied areas of broadcast exclusivity, program ownership and talent fees. Although encountered not infrequently in the course of national productions, these questions have too often been settled on an ad hoc basis in the past.

Broadcast Exclusivity. In addition to the understandable desire for program prestige, public broadcasting stations have considerable fear of viewer confusion and audience loss if the same series is carried both by them and by their more powerful and better advertised commercial brethren. Public broadcasting producers are also concerned that their creative efforts will seem less inventive if there are commercial versions of the same performances, scripts and other artistic elements. National public broadcasting organizations are extremely reluctant to permit themselves to be used merely as temporary showcases for commercial sales. For all of these reasons, national public broadcasting programs have customarily been required to be exclusively eligible for public broadcast—except, of course, in noncovered areas where complementary nonsponsored commercial station broadcasts may also be allowed.

Program exclusivity has never really been disputed by domestic or foreign suppliers. Domestic program agencies have long been accustomed to commercial television's exclusivity patterns. Foreign broadcasters are sufficiently intent upon their own domestic exclusivitiy to be respectfully sympathetic to similar public broadcasting interests in America.

Nevertheless, the exclusivity issue has been forcefully raised by such public television nonstation producers as the Children's Television Workshop (*Sesame Street, The Electric Company, Feeling Good,* etc.), Family Communications, Inc. (*Mister Rogers' Neighborhood*), and the U.S. Office of Education's ESEA-funded children's minority instructional series (*Villa Alegre* and *Carrascolendas, Gettin' Over,* and the EDC *Project ONE* mathematics series).

In all of these cases, there is great concern about maximizing the series' usefulness through supplemental commercial television exposure. This concern is especially felt with target audiences which cannot be reached satisfactorily by local public television stations. On the other hand, national public television distribution organizations must defend against local cut-rate commercial carriage, and are bound to seek protection for public television stations against unfair commercial television competition. Moreover, supplemental commercial television distribution raises several new policy questions: What limited public television exclusivity should continue to be applicable? What public broadcasting agency—the national distributor, the producer or some other organization—should be the primary commercial distributor? How should commercial distribution costs be met and/or commercial distribution profits be disposed of? With a wary eye toward FCC program-availability requirements and antitrust law implications, these issues may be in some process of tentative resolution by public broadcasting as a whole, but can be expected to continue still to be bothersome for some time to come.

Program Ownership. In the past, the leading national public broadcasting agencies have successfully resisted continued efforts on the part of commercial producers, talent managers, and rights owners to obtain property interests in public television series. By definition, public broadcasting programs are produced with public funds by nonprofit agencies for noncommercial transmission. To permit any kind of private ownership would seem to violate the basic principles of public broadcasting under federal and state law. Moreover, possible commercial use of even a portion of noncommercial programming must inevitably lead to far greater clearance difficulties and higher talent fees for all public broadcasting series, regardless of the production source. As a result, outside ownership, other than by recognized nonprofit institutions primarily working within the public broadcasting community, has almost without exception been conceded only where public television or radio rights have been acquired in already existing or independently produced program materials.

But this public broadcasting philosophy has been seriously questioned by the National Endowment for the Arts and by similar artist/producer-oriented foundations when making production grants for public broadcasting programs. In addition, the insistence of more and more prominent film makers on retaining primary ownership interests in their own productions and granting only American television rights to public broadcasting has tended to blur the once-clear line between internal production and external acquisition—especially when the public broadcasting rights payment approximates the entire original production cost. Finally, the lack of a definitive policy between the Public Broadcasting Service/National Public Radio and their producing stations as to control of and profit from post-broadcast sources, such as foreign broadcast, 16mm distribution, cable origination, and cassette home-sale, has contributed to public broadcasting's increasing weakness in defending against outside demands for actual program ownership beyond mere profit participation.

It is clearly time that policy guidelines on program ownership, both within and without the public broadcasting community, be developed and articulated. Program ownership is too important to be left to individual station determination because of system neglect.

Talent Fees. Talent compensation has generally been a matter for decision by program producers, subject only to perfunctory administrative review and sporadically suggested ceilings. While pricing information on dramatic properties and feature films has been informally exchanged among the more experienced producing stations, no real standards have been developed in public broadcasting beyond current union scales and past payment precedents. Accordingly, new producing stations often have great difficulty in determining exactly what fee payments are appropriate for national services.

Perhaps more important, high talent and property fees paid on a single project soon become standard for all similar series. Union increases granted by one or more principal producers naturally tend to spread rather rapidly to other production agencies. Similarly, voluntary copyright payments by some may result in involuntary waiver of copyright exemptions by all.

Maintaining reasonable fees becomes even more difficult when expensive series are underwritten by substantial foundation or corporate grants, so that there is no question about abundant financial means. The producer is invariably unwilling to risk loss of important program elements by refusing requested program fees. Nor can any national funding or programming agency hope to police producer payment practices unilaterally. It would not only be impolitic and contrary to the democratic spirit of public broadcasting, it would also be outright impractical in the face of the many different production services engaged in national, regional, state and even local activities.

In short, public broadcasting's future maintenance of its past favorable payments patterns is extremely problematical. The early advent of substantial long-term federal funds cannot help but give strong impetus to growing demands for higher fees, residual payments, profit participations, etc. This impetus has already been activated by the well-publicized million-dollar program grants from government agencies, such as the National Endowment for Arts and Humanities, the Office of Education and the National Science Foundation; from such major commercial companies as Mobil, Xerox and IBM; and from well-known nonprofit foundations, such as Ford, Carnegie and Rockefeller. At the same time, producer rivalry for established talent and greater emphasis on production professionalism has made resistance all the more difficult.

If imposed control is an understandable anathema in American public broadcasting, however, voluntary coordination should not be. It does not seem improper or impossible for the public broadcasters, together with other expert agencies, to arrive at system-wide guidelines for property and clearance fees without violating the antitrust laws. They can certainly begin to negotiate jointly with talent unions (as the three commercial networks now do) in order to make the resulting national scales automatically available across the country. And it is past time for public broadcasters as a group to reach basic financial arrangements with the music and other copyright industries under the existing or future copyright laws.

Immediate Public Broadcasting Needs

There are two related areas—copyright revision and union negotiations—in which it is especially critical that public broadcasting immediately act in a truly coordinated fashion.

Copyright Revision. The copyright revision bill passed by the House in 1967 and by the Senate in 1975 contained no provision for noncommercial broadcasting other than a limited instructional television exemption. At public broadcasting's urging, a formal amendment has been introduced to accord to public broadcasting the same kind of "compulsory license" privilege that the revision bill already includes for cable systems, phonograph records, and even jukeboxes. At this writing, the amendment is in the middle of both Senate and House Committee consideration along with other proposed changes in the revision bills introduced in 1975.

While copyright revision has been in the works for some time, it is more important than ever that the public broadcasting community mobilize its resources anew in this rather esoteric field. A new task force, with expert professional strength and adequate back-resources, is urgently required to begin legislative preparation and system mobilization for what will probably be decisive legislative action. Otherwise, public broadcasting could irretrievably forsake clearance assistance under the new copyright law.

Union negotiations. The major producing stations have historically insisted upon handling their own talent-union bargaining separately and locally. The only exception has been the American Federation of Musicians negotiation, in which a few leading producers have been willing to act as a semi-committee to reach national program arrangements, which then have gone into effect for the whole country. No such concerted action has, however, been taken with respect to the other broadcasting talent unions, in spite of the tendency of major stations' arrangements to spread to other program producers. And yet the negotiations are becoming of immediate importance to all of the television and radio producer stations now active across the country.

It is to be hoped that the public broadcasting community will itself be more willing in the future to recognize the clear advantages in cohesive national negotiation of talent union agreements. If so, a qualified group of station representatives, together with interested national organizations, can and should be established immediately to evaluate past contracts and consider impending negotiations on an industry-wide basis. This, at least, is one instance in which commercial television network practice can be a useful precedent for public broadcasting.

REPORT ON THE THIRD ASPEN INSTITUTE CONFERENCE ON PUBLIC TELEVISION

JANUARY 9-11, 1975

> Programming is a lot of things: It's creativity; it's the stimulation of new, creative people; it's encouragement for people who have never been creative but who have it in them to become creative. . . . The priority today has to be programming; it's high time we got to it.
>
> —Robert Benjamin
> Chairman of the Board
> Corporation for Public Broadcasting

On January 9-11, 1975, the Aspen Program on Communications and Society convened its third annual Conference on Public Television at Endicott House in Dedham, Massachusetts. Its purpose was to bring together participants of varying perspectives to consider the future of public television away from the adversary atmosphere of Washington. Past conferences had been devoted to issues of financing and organizational structure to achieve independence and viability for the system. The third conference focused on problems of programming—how to nurture creativity for the system.

The participants in the Aspen Program Conference (see list) included representatives from the Corporation for Public Broadcasting (CPB), the Public Broadcasting Service (PBS), station managers, program producers, philanthropic foundations, communications lawyers, and officials from the Executive Branch and the Congress. They were asked to put emphasis on "yesable" propositions, on concrete proposals for dealing with specific problems. No attempt was made to poll the participants on various recommendations. Nor were participants asked to approve or disapprove this summary of the discussions. Attention was naturally devoted to problem areas during the conference, but the discussions also reflected a growing sense of progress and accomplishment in public broadcasting.

Among the background papers distributed to the conference participants in advance were the following:

Programming: The Illusory Priority—Richard Moore, producer and former General Manager, KQED-TV, San Francisco.

Public Television's Station Program Cooperative: An Analysis of the First Year's Experience—Natan Katzman, Director CPB/NCES Programming Project.

Program Rights in Public Broadcasting—Eugene N. Aleinikoff, communications attorney.

A Crisis of Identity: What Is Public Broadcasting?—Anne W. Branscomb, communications attorney.

Conference Summary: The Twelve Principal Topics of Discussion

I. The Most Urgent Tasks for Public Television

There was general consensus that in 1975 public television faces three urgent tasks:

1. To enact during the 1975 session of Congress the long-range financing legislation at the funding levels proposed by the Corporation for Public Broadcasting.

2. To create a program development fund which will be insulated from political and bureaucratic pressures.
3. To develop and refine the Station Program Cooperative.

II. Programming

Richard Moore's paper set the theme that programming always tends to rank last in public television's order of priorities. It was generally agreed that now is the time for the system to take initiatives to reverse this order. Throughout the conference, the participants probed the conditions that encourage creativity. One producer suggested that this really means the care and development of talented people, which will require: (1) sufficient and predictable sources of funds; (2) an organizational environment which provides a healthy balance between freedom and discipline; (3) incentives for the artist. Creativity in programming, it was pointed out, does not necessarily mean large monetary rewards; it does mean, however, a "climate," an "atmosphere" to which an artist feels attracted and in which he finds personal satisfaction.

One participant argued that during the long fight for institutional survival, limited funds have been dispensed simply to perpetuate the system. Therefore, the attitude has become ingrained that "the system is more important than individuals." To counteract this, programming authority should be independent and insulated from bureaucratic cautiousness. Producers should have access without necessarily going through individual station management. Other participants agreed that the mechanisms for funding and development of new program projects need improvement, but not by establishing still another organization in a system already overly organized. Instead, CPB should create an inviolate fund to be used exclusively for program development. Decisions on new programs would thereby be simplified and would not require review by multi-layered committees. Providing seed money for promising proposals might be handled by a revolving fund. Successful programs would eventually re-pay to this fund the initial investment in planning, scripting and piloting.

Addressing the public television leadership, one young producer complained, "You don't have a door." He voiced a frustration built up during his attempts to promote an idea for a new program series. There are in fact many doors, another participant countered, but there is no "road map" to those doors. The task for public television is to insure that entrance procedures are clear and widely known.

Finally, it was argued that while the quality of public television's programming has risen dramatically, a more sophisticated approach to program promotion, marketing and distribution has lagged far behind. Conferees pointed out that commercial television and movie producers spend large sums on selling their product. The time has come for public television to recognize this aspect of programming and to plan for it in the budgeting stage. A suggestion made at the conference was that CPB and PBS create a unit solely responsible for marketing and distribution.

III. Program Objectives

A repeated theme during the conference was that if programming decisions are not to be made in a vacuum, public television must develop objectives to measure the success or failure of a program. Such decisions must be made at many points: Once the planning stage for a program is completed, there is the basic "go/no-go" decision. Later, after a year or two, comes another decision on whether to continue a program series. Deciding when the time has come to kill a program has proved to be one of the most difficult problems in public television.

Unlike commercial television, which simply measures success in terms of audience size and demographic composition, public television has no clear criteria for determining success. The conference participants agreed that attracting the largest possible number of viewers should not become the sole objective. However, they considered it important that some determinants of success, both qualitative and quantitative, be systematically developed. One participant suggested that in the future, every new program proposal be required to include a statement of objectives.

The temporary withdrawal of *Feeling Good,* the Children's Television Workshop's health series, had just been announced at the time of the Aspen Conference, and the implications of that decision were discussed. The primary reason for cancellation was that the series was not meeting the objectives set for it by CTW. Most important was its failure to attract enough of the program's target audience of 18- to 35-year-olds. According to Lloyd Morrisett, chairman of the CTW board, "We had to do in public television what *Medical Center* or *Ben Casey* was doing in commercial television. . . . I'm still confident that with effective production and the right amount of creativity it's possible to do it. We haven't done it yet, and that's why we decided to go back to the drawing board."

Mr. Morrisett also suggested that the problems of *Feeling Good* did not represent a failure of the "CTW model" (which succeeded so well in producing *Sesame Street* and *The Electric Company*), but rather a failure to apply the model properly. Unlike the earlier programs, a single team of researchers and creative producers did not see the program through from inception to broadcast. Nor did the producers follow the dictates of the model by using research results on viewer response to pilot films. Another participant noted that the Workshop should be commended for its willingness to recognize its problems and make the difficult decision to withdraw its own program.

IV. The Station Program Cooperative

The Aspen Conference participants examined the first year's experience of the Station Program Cooperative (SPC-I), a unique system in which the individual stations bid and pay for programs to be distributed by PBS. This year, SPC-financed programs account for nearly 50 percent of the total prime-time hours and 30 percent of the prime-time funding of public television.

One criticism expressed at the conference was that SPC-I funded only existing or slightly repackaged programs. It had functioned primarily as a refunding mechanism rather than a program innovator. As one participant stated, "The system is weighted in favor of the status quo." Other conference participants argued that SPC-I successfully accomplished its limited objectives: (1) to give stations responsibility to choose their own programs; (2) to preserve certain programs and to discard others; (3) to insulate public television from political and other pressures.

The consensus of the discussion was that both SPC-I and SPC-II, now in progress, must be considered experimental. The miracle is that this computerized marketplace has worked at all. Nonetheless, participants urged caution that the cooperative not be allowed to become a means for distributing only the tried, the true, and the most low priced programs. The system needs a way to encourage experiment and innovation. There was debate whether the marketplace cooperative should be weighted in favor of innovation or whether stations should rely on separate program development funds outside SPC. But there was clear agreement that the SPC should find ways to permit better communication among the stations during the bidding process, to provide better descriptions of program offerings, and perhaps to offer evaluations of lesser known programs. Planning should get underway immediately to make SPC-III, for the 1976 season, an improvement over the first two years.

V. Long-Range Financing

Since the passage of the Public Broadcasting Act in 1967, public television has received merely one-year and, most recently, two-year authorizations for federal funding. The present two-year authorization expires this June. Long-range financing, which would help to insulate public television from the political process, has been an elusive dream. Finally, this year, the White House recommended and Congress is now considering a five-year authorization and appropriation bill. The Aspen conferees agreed that the next six months will provide the crucial test of whether public television can achieve long-range financing to bring stability to the system. If the legislation fails this year, one participant warned, the dream may be postponed indefinitely.

Attainment of long-range financing, however, will not solve all of the financial problems. Public television faces acute pressures resulting from inflation, growth of the system, and the phasing out of Ford Foundation support. Board members of CPB (as well as PBS, National Public Radio, and the Association of Public Radio Stations) have all publicly urged a higher level of funding than the figures proposed by the White House.

The levels of federal support requested by CPB and those proposed by the Office of Telecommunications Policy may be compared:

	CPB Requested	OTP Proposed
FY 1976	88 Million	70 Million
FY 1977	103 "	80 "
FY 1978	121 "	90 "
FY 1979	140 "	95 "
FY 1980	160 "	100 "

Participants agreed that the higher funding levels are essential to maintain incentives for raising increased matching funds on the local level—a provision built into the federal formula. Even at the higher levels, the system will still have to operate on substantially less than was recommended by the CPB Long-Range Financing Report. More than one conferee stressed that Congress should be urged not to compromise on budget levels.

VI. Insulation from Government

Even with long-range financing, it was pointed out, there is a creeping danger of interference by a number of federal agencies (e.g., the Law Enforcement Assistance Administration) contracting directly with public television stations to produce programs for national distribution. While the contracts may contain provisions for "no editorial control" by the government agency, nonetheless the potential for abuse is there.

Several propositions were advanced during the Aspen Conference to deal with this issue: (1) CPB and PBS should work out a standard contract and voluntary guidelines for stations dealing with government agencies; (2) the Office of Telecommunications Policy should review and work out a government-wide policy; (3) Congress should forbid government agencies from funding public television programs directly; instead, all federal funds for production should be channeled through CPB.

The conference participants agreed that this represents a delicate issue. *Sesame Street,* for example, would not have been developed without generous HEW support. Public television will have to move skillfully to maintain its independence without unnecessarily slamming the door on badly needed program support.

VII. Corporate Underwriting

Public television has gained growing support through subsidy of programs by private corporations. Many excellent programs, such as *Masterpiece Theatre,* have been funded and promoted in this way. While the benefits of such underwriting to an impoverished system are obvious, there are also threats. The mere appearance of corporate names, particularly with public affairs programs, may cause public skepticism about the integrity of the system. As one participant said, "There are certain chemistries that don't mix." Corporate-sponsored advertising in newspapers and on commercial TV for public television programs may be reaching the outer limits of what is healthy for a noncommercial service. The Aspen conferees agreed that it is incumbent upon CPB and PBS to set forth clear guidelines for corporate underwriting.

VIII. Program Rights

How does a system which is so diverse in production centers develop a set of standards for negotiating with talent and labor unions? Traditionally, this has been done on an ad hoc basis at the local station level. However, public television is reaching a stage of growth when voluntary guidelines to negotiate program rights may be required in order to avoid both escalating costs and restrictions on program use. Conference participants with production experience argued that contracts should be generous in granting residual benefits to the talent in exchange for the right to extended broadcast usage. Public television must encourage repeated viewing of its best programs, unlike commercial television which sharply curtails such repetition.

IX. Copyright

Public television has historically benefited from "not for profit" exemptions in the present Copyright Law, which was enacted in 1909. However, these were almost lost in amendments considered by the Senate last year. The Aspen conferees argued that as the revised Copyright Law moves to final passage (likely in the present Congress), there must be a more watchful effort to make sure that public television's interests are fully and fairly treated.

X. Ascertainment

One conference participant described the "ideal cycle of programming" as: (1) ascertainment of community needs; (2) conceptualization of programs to meet those needs; (3) production; (4) evaluation. He noted that public television has rarely managed to carry out this cycle in its program development. Whereas commercial stations are required under FCC regulation to go through an extensive ascertainment procedure before each license renewal, noncommercial stations have been spared this requirement in the past. However, the FCC may now be preparing to require public television stations to ascertain problems and issues in their communities. A few stations have already taken initiatives.

The Aspen conferees expressed the view that this should be a welcome endeavor. However, instead of the costly, voluminous and often unread surveys conducted by commercial stations, public television should seek to develop a meaningful dialogue with its many constituents, real and potential. On-the-air public forums could be one effective way of ascertaining community problems and needs.

XI. Coverage of Congress

A joint House-Senate committee has recommended that Congress undertake a one-year, limited experiment with audio and video coverage of its plenary sessions. There have been indications that public television may be asked to contract for gavel-to-gavel video recording. This, it was argued by some Aspen conferees, represents an opportunity that public television should be happy to accept. The video record would be made available to commercial and noncommercial broadcasters alike. At the same time, there should be clear distinction between a contractual arrangement for video recording and public television's independent decision on broadcast use. Public television would undoubtedly wish to provide extensive airing of debates and legislative roundups, but the decision of what and how much to broadcast must be retained by PBS and local stations.

XII. Efficiency in the National System

One final area of conference concern about the structure of public television was the continued growth of the bureaucracies at CPB and PBS. Several participants pointed out that American public television is committed to a policy of decentralization. Although a single national agency (like the BBC) might be economically more efficient, it would be politically unacceptable. However, if more than 20 percent of public television funds are spent on administrative costs, Congress is likely to start raising questions. The conference participants urged a review of functions of both CPB and PBS to eliminate unnecessary duplication. (A joint committee has already been established to study budget priorities.) The conferees also suggested that if the system is to work smoothly, there must also be a clearer definition of the roles of each agency.

> What we end up with in the homes of this country is all that really matters. Structure, funding, everything else should lead to that one result. In my opinion, those of us who have had the responsibility to provide the mechanism for encouraging experienced creators, rising creators, and totally unknown creators to come to us have failed, except for minor, spotty results. . . . We've got to have some type of organization that cuts across all of the organizations to which people can come, submit their proposals, and get a quick answer. We should strive to have two or three major new program entries every fall season. If public broadcasting is going to continue to thrive, I think it is absolutely essential that we find a way to establish a staff with a separate program investment fund and hold that group answerable for the incubation of newness.
>
> —Thomas Moore
> Board of Directors
> Corporation for Public Broadcasting

The Third Aspen Conference on Public Television

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