

February 11, 1971

MEMORANDUM FOR MR. FLANIGAN

You asked for some suggestions that might serve in constructing a rationale in a decision as to White House arrangements coordinating top level interactions with the private sector.

1. This is a time of transition in the economy in many ways. The war is winding down, the President is attempting to change many of the Nation's priorities, and we are in a difficult fiscal situation. The ability of macro-economic policies to deal with the inevitable transient dislocation and structural stresses in the private sector of the economy is clearly too limited. The overall direction of government policy may be adequately handled that way, but the many specific problems that arise require the ability to deal with the leaders of the specific sectors of the economy.

2. Our economy is becoming much more complex in many ways. The rate of technological change affecting the economy has become a significant factor in that complexity. The corporate interests and the public interest are increasingly intertwined in many issues, leading to more direct and not so direct government involvement in detailed aspects of the private sector. Many departments deal with commercial leaders, but not necessarily in a coherent fashion and there should be a central figure available to coordinate this when necessary.

3. This is a time of increasing concern with so-called 'public goods' such as pollution, medical care, and so forth (or at least they are being preserved as public goods rather than services to be dealt with by the private sector). There is a strong tendency towards mistrust of corporate power, toward misunderstanding of the responsibilities of major corporations, and increasing pressure for the government to interject itself in increasing detail into the workings of the private sector. Government alone is clearly not capable of making wise decisions on these important matters, and

there needs to be a place of oversight in the government where thoughtful corporate leaders can exchange ideas with some confidence that they are understood and will be acted upon.

4. This Administration particularly must assure a healthy balance between the use of market mechanisms in the private sector and direct government funding or control of major domestic problem areas. There will be pressures to demarket many things, such as housing, transportation, communications, and health services. The pressure for government action cannot be ignored but we can be successful in maintaining some balance of this kind only if we can deal candidly with the top leaders of the private sector.

5. We should recognize that much of the President's political support comes from the leaders of the private sector. I would like to think that one of the main reasons for this is that this Administration will take a responsible attitude toward understanding and dealing with the kinds of problems I have mentioned above. If we view these people only as another political interest group, the cynicism is likely to be noticed and we will not have served the country well.

The emphasis on Federal support of research and development is increasingly shifting to make R&D closely geared to the problems we face as a Nation and to potential economic applications. You will recall this was one of my major arguments with respect to the type of Science Adviser we need. But the research community cannot alone make the judgments necessary; the Science Adviser needs someone to work with who can deal with the top level generals of the private sector.

6. International economic matters impact heavily on this area in many ways. I think the most important point, however, probably is that the macro-policies of international economic affairs do not necessarily take sufficiently into account things like our future comparative advantage (largely technology based) and the growing impact of foreign anti-competitive actions on the United States' domestic business, sector by sector.

Clay T. Whitehead

March 24, 1971

MEMORANDUM FOR

Mr. H. R. Haldeman
The White House

You will recall my recent request, relayed through Pete Flanigan and Chuck Colson, that I be included in the President's meetings with the senior executives of the television networks. There are a number of factors related to this that I would like to call to your attention:

1. There is a distinction between television as a news medium and as an industry. I recognize the President's and your prime concern with the news aspects and pretend no special competence or need for involvement in those matters. But as the principal Administration official responsible for policy toward the industry aspects, it is essential that I be aware of and, where appropriate, included in pertinent White House activities involving the industry.

2. I was not aware that these meetings were occurring until after the ABC people met with the President. It is both awkward and reflects badly on the Administration when I have to cover up (or show) my ignorance of such meetings in dealing with these people.

3. The President asked Chuck Colson during the ABC meeting to deal with Dean Burch on getting a cable TV policy developed -- I am sure you can guess the message the ABC people read into that regarding how much the President plans to look to the Office he created for that purpose.

4. I have been told nothing about concerns raised by the CBS people or about the President's statements to them that might affect this Office's actions -- but the press is now reporting network officials' views of Presidential inclinations on important issues.

5. One of the Congressional concerns expressed most strongly in connection with the establishment of OTP was that the President personally be involved in policy development and that the Director have immediate access to him. At my confirmation hearing, Senator Pastore raised pointed questions regarding the access I would have to the President. I have not pushed this issue because I understand well from my White House days that an agency head's demands on the President's time must be minimal. But it will be an issue in my appearances before the Congress -- especially if the word gets around, as it now may, that I am not even included or consulted in the most perfunctory Presidential meetings in my area of responsibility.

6. The establishment of OTP was a Presidential initiative. It was well received, and as we get more and more favorable press attention, it is beginning to reflect credit on this Administration. A team effort has to be reciprocal. It is not easy to set up a new agency, and this town is unfortunately very sensitive to external signs of power, influence, access, and the like. I ask you to be aware that incidents like this make my job more difficult and OTP less helpful to the President.

Clay T. Whitehead

cc: Mr. Whitehead

CTWhitehead:red/jm 3/24/71

057

May 25, 1970

To: Mr. Flanigan

From: Tom Whitehead

If the President approves this, we should get Dwight to schedule a meeting as quickly as possible and you should talk with Secretary Rogers before the meeting.

Attachment

cc: Mr. Whitehead
Central Files

CTWhitehead:ed

ACTION
Science Adviser

MEMORANDUM FOR THE PRESIDENT

On April 24, I recommended that you approve offering Dr. DuBridge the position of Ambassador-at-Large for Scientific Cooperation and naming Dr. Edward E. David, Jr., as Science Adviser (Memorandum attached at Tab A). You approved that recommendation, but asked that we delay action for thirty days.

We are now ready to implement that decision. Dr. David must make a decision within two weeks about another position.

RECOMMENDATION

1. That you meet with Dr. DuBridge as soon as possible to discuss international scientific matters and ask him to take the assignment of Ambassador-at-Large. If you approve, we will prepare a background paper on this subject for your meeting.

_____ Approve _____ Disapprove

2. That you subsequently meet with Dr. David.

_____ Approve _____ Disapprove

Peter M. Flanigan

Attachment

cc: Mr. Flanigan
Mr. Whitehead
Central Files

CTWhitehead:ed

THE WHITE HOUSE

WASHINGTON

April 24, 1970

ACTION

Science Adviser

MEMORANDUM FOR THE PRESIDENT

After reviewing the problems we face in the science policy area and considering possible successors to Dr. DuBridge, I recommend Dr. Edward E. David, Jr., Executive Director, Research, Communications Systems Division, Bell Telephone Laboratories, for appointment as Science Adviser. He is a Republican, age 45, originally from Georgia, who was trained at M.I.T. and is highly regarded in the scientific community. (Resume at Tab A)

I have attached at Tab B a memorandum setting out the background of our current science policy problems and stating the pros and cons of appointing Dr. David. In summary:

- Pro:
- good scientific credentials and reputation
 - experience in relating basic research programs to practical development objectives
 - experience with both industrial and government science activities
 - objective and realistic view of science policy and science advice to government
 - appears very compatible with this Administration
- Con:
- trained as a scientific engineer rather than a scientist
 - not from the academic community
 - Bell Labs is prime contractor for Safeguard

Dr. David is a desirable appointment at this time because of his experience in relating basic research to practical development needs and his objectivity about Federal science policy. He would be a fresh, impressive, helpful, and articulate choice. Mr. Ehrlichman and Dr. Kissinger have met with Dr. David and agree that he would be a good choice. Bryce Harlow has some reservations about selecting someone from outside the academic world, particularly as Bell Labs is the prime Safeguard contractor, but concurs in this recommendation.

I have talked with Secretary Rogers about a possible appointment for Dr. DuBridge as Ambassador at Large for Scientific Cooperation, since I believe he would enjoy such a post. However, the Secretary is not eager to do so. If you approve this recommendation, I will again discuss the matter with Rogers, and he may wish to discuss this with you. If he does, I recommend that you urge him to make it possible for you to offer such a post to Dr. DuBridge as soon as possible. It would solve an important problem in the Executive Office and also give attention to the emphasis you place on international scientific cooperation. It will be important to handle this replacement skillfully, but I believe it possible to hold negative reaction of the academic community to a minimum.

Recommendation:

That you approve Dr. David as the replacement to Dr. DuBridge, and that Dr. DuBridge be offered the position of Ambassador at Large for Scientific Cooperation.

- _____ Approve
- _____ Want more information
- _____ Prefer another candidate
- _____ Wish no change

Peter Flanigan
Assistant to the President

Attachments

E. E. DAVID, JR.

(45)

Bell Telephone Laboratories

1/25/25

Edward E. David, Jr. is Executive Director, Research, Communications Systems Division at Bell Telephone Laboratories. He is responsible for the Electronic Systems Research Laboratory, the Computing Science Research Center, and the Computer Projects Research Center.

Dr. David was born in Wilmington, North Carolina. He received a Bachelor's Degree in electrical engineering from Georgia Institute of Technology in 1945, and the S.M. and Sc.D. Degrees from Massachusetts Institute of Technology in 1947 and 1950, respectively.

He joined Bell Laboratories in 1950 and worked subsequently in underwater sound and communication acoustics. Since 1963, he has specialized in computing science research, doing research in advanced computing techniques with particular emphasis on man-machine communication. He has been granted patents for his inventions relating to underwater sound, sound localization, and speech processing.

In 1958, Dr. David received the George W. McCarty Award from Georgia Institute of Technology as the outstanding young alumnus of the year. In 1959, he was designated by the Summit, New Jersey, Junior Chamber of Commerce as its outstanding young man of the year. He was selected by the honorary engineering society, Eta Kappa Nu, as one of the country's outstanding young engineers in 1954.

(more)

The author of many technical articles on communication theory, speech, hearing, speech recognition and processing, vocoders, and computing, Dr. David is co-author of two books: "Man's World of Sound" (with J. R. Pierce), and "Waves and the Ear" (with van Bergeijk and Pierce).

He is an advisor for the National Science Foundation, Department of Defense, Office of Science and Technology, National Institutes of Health, the Veteran's Administration and the American Foundation for the Blind, and a member of the National Academy of Engineering. He is a Fellow of the American Academy of Arts and Sciences, and a member of the National Advisory Committee on Education of the Deaf of the Department of Health, Education and Welfare. He is Vice Chairman of the Committee on Education of the National Academy of Engineering and co-director of its Engineering Concepts Curriculum Project, which is developing a new high school course. He is a fellow of the Acoustical Society of America, the Institute of Electrical and Electronics Engineers, and the Audio Engineering Society. He has served on numerous committees of the IEEE and ASA, and has served on the Executive Council of ASA. He is presently a member of the IEEE Board of Directors, Nominations and Appointments Committee, and Educational Activities Board. He is vice president of the Board of Directors of the Summit (N.J.) Speech School. He is also a member of the honor societies Eta Kappa Nu, Tau Beta Pi, and Sigma Xi. He is a member of the

(more)

Visiting Committee for the Department of Electrical Engineering at the Carnegie-Mellon Institute, Princeton University, and the University of Rochester.

Dr. David is a professor of electrical engineering at Stevens Institute of Technology.

Dr. David, his wife, Ann, and daughter, Nancy, live at 111 Countryside Drive in Summit.

#

2/69

THE WHITE HOUSE

WASHINGTON

April 23, 1970

MEMORANDUM FOR MR. FLANIGAN

Background on Federal Science Policy:

Since World War II, Federal science policy and the structure of the science community have developed out of a few massive technical efforts undertaken by the Federal government: nuclear energy, aerospace weapon systems, space exploration, and medical research. These efforts have required the participation of large numbers of academic physical scientists who have, as a result, become the dominant leaders in science policy formulation as well as in providing science advice to the government.

These academic scientists understandably have based U. S. science on the premises that (1) undirected basic research is the wellspring of technological advance, and that (2) this basic research is best performed on our Nation's campuses. Thus, technical education and basic research have been a joint enterprise in our universities, with heavy emphasis on the disciplines underlying the technologies mentioned above. And Federal science policy formulation has been heavily dominated by scientists from a narrow range of disciplines and with a strongly academic orientation.

This situation has been largely self-perpetuating because the academic science leaders not only provide most of the science advice to the government, but also formulate and administer Federal programs of research support and postgraduate education. They historically have focused science policy on undirected basic research and the rapid growth of Federal funds into those areas. An implicit assumption in all of this has been that Federal support would continue to grow at a rapid rate -- a major debate within the science policy community being whether a 12 percent or 15 percent annually is appropriate for the long-run.

Today we face a different set of problems in science policy. After a decade of very rapid growth, we have achieved a large, high-quality academic research and education establishment. The growth rate now

has leveled off. Further, the President and his staff require scientific advice on a much wider range of issues, including educational performance, housing, transportation, drug abuse, and the delivery of health services, as well as the more traditional areas of defense, space, and medical research.

We need to change the mix of federally sponsored research and to put relatively more emphasis on the tying of research efforts to national priorities. (For example, areas of basic research likely to have useful applications in pollution control have not been very heavily funded and have attracted correspondingly few high-quality researchers.) We also need to do a better job in managing Federal R&D programs now that such a rapidly growing budget is not available to help avoid hard decisions.

Many of our recent problems with the science policy area are related to this background. It seems difficult for many academic scientists to break out of past concepts and priorities and to make judgments on a broader base than that of the academic science community. For example, we find it difficult in Presidential appointments to science-related positions to get any consideration of how compatible candidates will be with the Administration's approach to policy formulation, and to get objective science advice uncolored by the scientists' political preconceptions.

It is important to recognize that the scientists who are esteemed and considered to have great judgment by other scientists are not necessarily the same people who are effective in relating science advice and science policy problems to broader policy issues. Scientists use different criteria in evaluating one another than we would apply in selecting a top Administration appointee. Thus, many eminent scientists with considerable experience and judgment in scientific research simply may not be the types of persons appropriate for the position of Science Adviser to the President. Science advice should be nonpartisan and nonpolitical, but Federal science policy must be attuned to the directions of broader public policy.

Pros and Cons of Appointing Dr. David:

Pro: Dr. David has outstanding scientific credentials. He has made impressive research accomplishments in very advanced technological areas and in the adaptation of technology to human physiological and psychological characteristics. He has been at Bell Labs since receiving his Ph. D. in 1950 and for the last two years has been responsible for facilitating the linkages between the basic research and the development programs of Bell Labs. His industrial experience would be of value in the position of Science Adviser, as would his

experience on government science panels and as a member of the National Academy of Engineering. He has a sound and objective appreciation of today's problems in Federal science policy, including defense; is bright and energetic; and has good judgment.

Con: Dr. David's strength is also his political weakness: he is not an inner member of the academic science cabal. He is trained as an engineer, not a scientist, but is recognized for his research ability. It would be a break with precedent to name a Science Adviser from outside the academic world. A further possible liability is that Bell Labs is the prime contractor for Safeguard, although Dr. David has not worked directly on that project.

An academician of greater official stature than Dr. David in the academic world might be a safer political choice in avoiding criticism from that community. However, the knowledgeable and influential segments of the scientific community probably would judge Dr. David to have outstanding scientific ability and accomplishments, and he has been sought after for important deanships at leading universities. Furthermore, many in the scientific community are becoming increasingly aware of the need to bring technology to bear on a wider range of domestic problems than in the past, and thus might welcome the appointment of someone like Dr. David. His appointment also would signal a sensible redirection of Federal science policy that would be favored by a much wider base of informed public.

Clay T. Whitehead
Special Assistant to the President

President

THE WHITE HOUSE
WASHINGTON

2/5/71

Personal & Confidential

FOR: Tom Whitehead

From; Chuck Colson

Please let me know when we
can get together to discuss this.

THE WHITE HOUSE
WASHINGTON

February 5, 1971

MEMORANDUM FOR THE PRESIDENT'S FILE

FROM: CHARLES W. COLSON *WR*

SUBJECT: Meeting with ABC Executives
January 28, 1971
4:15 p. m.

Those in attendance are listed at Tab A, attached.

There was a general discussion at the outset of the meeting regarding the economic condition of the network. Goldenson said the loss of cigarette advertising was a very serious economic problem for all three networks - a loss of approximately \$160 million in revenues. He indicated that, while the first part of the year would be poor from a revenue and earning standpoint, he expected a pickup by the Fourth Quarter. This will result from a general improvement in the economy, the generation of other advertising revenues, and a reduction in prime time network broadcasting to three hours.

Goldenson told the President that the industry now has had second thoughts about the principle of restricting advertising on the networks. He said that it had not initially objected to the restriction of cigarette advertising, but that now the principle threatened to extend into other fields. He thanks the President for vetoing the political broadcasting bill which was discriminatory.

The President asked for their views on the renewal of licenses situation. He said that he was aware of the difficulties which many of the stations were facing with "frivolous" challenges. Goldenson seemed very pleased that the President was aware of the problem and that in his phrasing of the question the President seemed to express considerable sympathy with the owners' problem. Goldenson said that the opinion was within the capacity of the FCC to extend renewal periods for up to seven years in order to avoid the harassment of "strike suits" every three years.

The President asked that I look into this question and then asked the network what they thought of the present members of the FCC. There was praise for Dean Burch but a very negative discussion of Nicholas Johnson. I explained that he was subject to censure by the Commission and that Burch was considering disqualifying him on any issues that he had predjudged publicly. Klein pointed out that this would cover almost every issue. Hagerty observed in response to a question by the President that President Johnson had appointed Nicholas Johnson only as a way of getting him out of the Maritime Administration.

The President said that he had noted ABC News had picked up in the ratings and that he expected - with a team like Reasoner and Smith - this would continue. All of the ABC executives seemed startled and pleased that the President was aware of their ratings and of the gains they had made vis a vis NBC news programming. Mr. Lower stated that ABC had gained, in some cases, 45-50% in their news ratings in recent weeks. The President said he thought that Reasoner and Smith were both balanced in their presentation, that they did not load it one way or the other. He commented particularly on Smith's knowledge of foreign affairs.

The President then asked the opinion of the ABC executives on the use of prime time for news conferences. He said that he had been considering the 6-7 p.m. period during the evening news time. The conclusion of Lower and the others was that this would not be desirable - that the press conferences might be held in the afternoon, in which case all of the networks would use the best five minutes during their evening news-casts (Kennedy style), or that they should be held during evening prime time, when there was something particularly newsworthy.

The President made the point that he felt he should be able to go on television when he had something important to communicate to the people but that he, of course, would not use this forum for partisan purposes. Erlick said that the decisions of the FCC last summer had raised questions about the requirement that the opposition answer the President. I interrupted to point out that this was not what the decision held and, as Erlick and I had discussed in New York, there was no right of any kind to reply to the President - that the Fairness Doctrine was not in any way changed by last summer's cases - if anything, the President's right

to use TV was reinforced. The President then said, "All I ask is that you give to them (the Democrats) the same amount of time you gave us when we were out. I think we got time once during the eight years". This drew a lot of nervous laughter, but the point was very forcefully made.

The President then discussed the possibility of a one-to-one interview and asked the opinions of the network executives as to the feasibility of this, and whether it should be a 30-minute, 45-minute, or one-hour interview. He asked whether ABC would like to start this with Howard K. Smith. The reaction was very affirmative. The consensus was that 30 minutes was insufficient, 45 minutes might make awkward programming, and that probably such an interview should be one hour. Ziegler asked whether all of the networks would carry an interview with one network anchorman, like Smith. Lower and the others felt that this would not be possible - that the other networks would not want an ABC commentator carried on their networks. The President then said that he would do this - that he would like to do this with ABC first, and then follow alphabetically with CBS and NBC next. The tongue-in-cheek use of the alphabetical procedure was not lost on the executives. There was agreement that Smith would be the questioner.

The President asked Goldenson what problems he would like to discuss. Goldenson raised the CATV problem, arguing that it was very much like the airlines which were in financial trouble because too many routes were awarded. CATV would do the same thing to the broadcasting industry. He pointed out that ABC loses more than \$16 million a year on its network operations. The President interrupted at this point to ask if I would give him a report on the airline operation. He referred to the earlier meeting with the airline executives and he said he was very concerned about what he had been reading regarding Pan American's losses. He said he wanted to get the airlines back for a meeting similar to the one we had before and he asked me for a memorandum outlining the problem of what had happened since the last meeting and what was going on at the CAB in the way of eliminating unprofitable routes. (Flanigan handled the earlier meeting to which the President was referring - he has been following the problem and I therefore subsequently asked him to prepare such a memorandum to the President). The ABC executives

were very impressed with the President's concern over the airline situation and realized that they were understood insofar as their problem was concerned.

Erlick made the point that they were not opposing CATV, but that very basic decisions are being made reflecting the future of the economy and the broadcasting industry, and that these are national policy issues which ought not to be decided by the FCC, but rather should be decided as a matter of national priority. The total cost of linking the entire country by cable, Goldenson said, would be over \$100 billion and that the result might well be to provide much worse programming for the public. The networks could not afford to continue their heavy investment since, in effect, the programming could be "stolen" without compensation. I suggested to the President that ABC officials should meet with Tom Whitehead. They said that Klein had arranged this the day before. The President then asked that I talk to Dean Burch about this and that I prepare a report for him. He also asked that I consult on this problem with Ehrlichman and Shultz because what is involved here is the development of national resources. He said he would like this looked at with a broad overview of its long-range implications and, again, raised the airline problem - "We don't want fragmentation of this industry the way it has occurred in the airlines". Goldenson seemed elated with the President's reaction. I told Erlick and Goldenson at the conclusion of the meeting that if they would prepare the material for me, I would take the matter up with the proper policy individuals in the White House.

The meeting closed with the President saying that this was the first of meetings he intended to have with the networks and that, in a month or two, he would bring in CBS and that he would again follow the alphabetical procedure.

In conclusion, I think the executives were startled and impressed by the President's knowledge of their problems - his relating it to the airline situation with which he was obviously very much concerned and very aware of, his praise for ABC and his quick response to the equal-time issue.

The meeting concluded at 5:50 p. m.

Participants

Leonard H. Goldenson	President
Simon B. Siegel	Executive Vice President
James C. Hagerty	Vice President for Corporate Relations
Everett H. Erlick	General Counsel
Elmer W. Lower	President of ABC News
Ronald Ziegler	
Herb Klein	
Charles W. Colson	

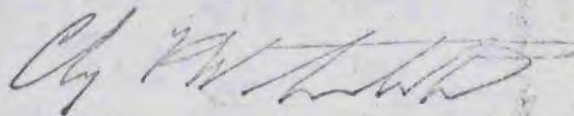
President

April 7, 1971

MEMORANDUM FOR MR. PETER FLANIGAN

Failure by the White House to differentiate between the networks as news organizations and as one segment of the jealous communications industry is going to cause more and more problems of this sort. The cable television people, ATT, the independent telephone people, and potential communications system operators have all made the point to me that they feel the networks had an unfair advantage in presenting their case on industry matters (cable TV, domestic satellites, competition, etc.) directly to the President.

I have emphasized to these people that the White House has a strong and legitimate interest in the network news function and that the President cannot refuse to listen to the network people when they choose to bring up industry matters. Had I at least been present at these meetings, the network people would not have been able to suggest that their industry interests were being considered and acted upon in a special forum, without regard for the advice of the Office with which their competitors must deal.



Clay T. Whitehead

Attachments

cc:
Mr. Whitehead ✓
Mr. Hinchman Subject File
Mr. Hinchman Reading File

WHinchman/CTWhitehead: sbw 4/8/71

DRAFT 4/7/71 CTWhitehead

Mr. William F. Karnes
President, National Trans-Video, Inc.
403 South Akard
Dallas, Texas 75202

Dear Mr. Karnes:

The President has asked me to reply to your letter of March 29, 1971, regarding the Broadcasting magazine report that the President has expressed a desire to restrict cable television growth. Neither the President nor the Office of Telecommunications Policy has made such a statement. While the Administration is properly concerned that communications policies not afford cable any unfair advantages over existing broadcast media, there is certainly no intention or desire to restrict its development.

The Office of Telecommunications Policy is actively reviewing cable television issues with a view to developing Administration policy recommendations in this important area. I have forwarded your correspondence to Mr. Clay T. Whitehead, the Director of that Office, and am sure he would welcome any further information which would assist in this process.

Sincerely,

Peter M. Flanigan

THE WHITE HOUSE OFFICE

REFERRAL

To: Clay T. Whitehead
Director
Office of Telecommunications Policy

Date: April 2, 1971

ACTION REQUESTED

- Draft reply:
- President's signature.
- Undersigned's signature.
- Memorandum for use as enclosure to reply.
- Direct reply.
- Furnish information copy.
- Suitable acknowledgment or other appropriate handling.
- Furnish copy of reply, if any.
- For your information.
- For comment.

NOTE

Prompt action is essential.

If more than 48 hours' delay is encountered, please telephone the undersigned immediately, Code 1450.

Basic correspondence should be returned when draft reply, memorandum, or comment is requested.

REMARKS:

Description:

Letter: Telegram: Other:

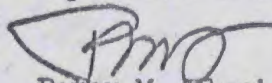
To: The President

From: William F. Karnes, Pres., Nat'l Trans-Video, Inc. 403 S. Akard, Dallas 75202

Date: March 29, 1971

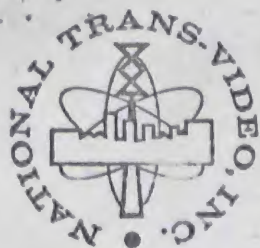
Subject: Cable television growth restriction

By direction of the President:



Peter M. Flanigan
Assistant to the
President

615a



NATIONAL TRANS-VIDEO, INC. / 403 SOUTH AKARD / DALLAS, TEXAS 75202 / PHONE: RI 1-3464

March 29, 1971

Richard M. Nixon
President of the United States
Washington, D.C.

Dear Mr. President:

I have just finished reading the lead article in the March 22, 1971 issue of Broadcasting Magazine, which states that you think cable television should be restricted in its growth. I have no idea where Broadcasting could have obtained its information, but I would certainly hope it is incorrect since our industry is certainly, at present, in no position to harm anyone and since, as the article reports, the "President's present thinking about cable television is bound to be welcomed by broadcasters," I can only assume that if their information is correct, our industry would be ill-served and severely hampered in future growth.

We are currently under the scrutiny of the FCC and under the white-hot light of public inquiry into our future; we are opposed by television broadcasters, by network television, by copy right interests, and by many others with special axes to grind, and I implore you to defer your own decisions until we have had a chance to fully demonstrate our capabilities. I hope that Broadcasting Magazine is in error -- as it has been before -- and that its report of your personal feelings does not reflect your current thinking.

Sincerely,

William F. Karnes
President

WFK/mas

Go-slow signal from the President?

Rush to cable, free-for-all in domestic satellites are said to worry Nixon; Agnew renews media attack

President Nixon, who has been permitting subordinates to state administration policy on telecommunications matters, is beginning to make his personal views known. Some of those views differ so sharply from those that have been expressed by administration spokesmen as to indicate that basic revisions in policy may be in the wind.

For instance:

On CATV, the President is known to be professing concern about cable systems proliferating to the point that they might threaten the viability of television stations, particularly those in secondary markets. He also is worried about CATV's possible impact on television networking.

On domestic communications-satellite policy—in a time when all administration road signs have pointed to an open-arms approach to competition—the President is said to be backing toward preference, if not for a "chosen instrument," at least for a limited few multipurpose systems. He feels that national policy permitting a multiplicity of systems could result in ruinous competition, and has drawn an analogy to the fiscal hardships experienced by airlines on some routes that two or more of them have been permitted to share.

In still another area of concern to broadcasters, Mr. Nixon has said he favors complete repeal of Section 315, the political-broadcasting provision of the Communications Act. Section 315 requires equal treatment for all political candidates, no matter how obscure, and contains the only legislative recognition of the FCC's fairness doctrine.

The President's present thinking about cable television is bound to be welcomed by broadcasters who feel personally threatened by cable development. His advocacy of repeal of Section 315 is similarly expected to arouse a warm response, if only as a sign of relief from the trend toward tighter and lighter government control that has persisted in recent years, including the two

that have passed since Mr. Nixon took office.

Mr. Nixon's opting for a more limited domestic satellite-communication systems approach may evoke a less enthusiastic reaction. Broadcasters at the moment see the opportunity of becoming buyers in a buyers' market, with a number of applicants for domestic systems competing for their business. There are now eight proposals for satellite systems before the FCC (see page 126).

The reports of Mr. Nixon's desire to conserve the present broadcast structure and to avoid excessive competition on the frontiers of domestic telecommunications emerged, curiously, at the same

time his Vice President was reviving attacks on broadcast journalism. In a speech in Boston last Thursday night Spiro T. Agnew berated the "national news media" for distorting the news. CBS was singled out for explicit criticism. There was no external indication of coordination between the Vice President's latest outburst and the gathering of presidential thoughts on CATV, domestic satellites and Section 315.

The President's thinking presumably has been discussed during his recent meetings with top executives of ABC (BROADCASTING, Feb. 1) and CBS (BROADCASTING, March 15). The President has also discussed the issues with



Never same time or same station

Not only has Richard M. Nixon been considering basic policies of governmental regulation of broadcasting; he has also been experimenting with personal appearances on radio and TV.

Last Monday 45 minutes of an exclusive interview with Barbara Walters (see photo) were carried on NBC-TV's *Today* show. And at 9:30-10:30 tonight

the President is scheduled to be interviewed live by Howard K. Smith, ABC Radio and ABC-TV. White House sources indicated similar one-on-one interviews in prime time will be given to CBS and NBC anchormen. Several weeks ago the President chose 11:30 as the time for a radio-network address. The diversity in times, media and formats is part of a plan intended to reach the President before a wide variety of audiences in a wide variety of circumstances ("Closed Circuit," Feb. 15)

White House aides. However expressed, these views on CATV and domestic-satellite policy are in apparent conflict with the procompetitive, nonprotectionist philosophy that has been consistently expressed by other administration figures.

The Justice Department, in a number of filings with the FCC, has backed an encouragement of CATV growth and has urged a light regulatory hand. The department even has gone so far as to file a separate brief in a case in which the commission's rules requiring program origination were being challenged; it did not, technically, oppose the com-

Nixon opposes televised trials

When it comes to the issue of cameras in the courtroom, that Wall Street lawyer, Richard Nixon, lines up with Chief Justice Warren E. Burger—in opposition to the cameras.

President Nixon, speaking at the National Conference on the Judiciary, in Williamsburg, Va., managed to work his thoughts on the subject into a speech on the need for speeding up and improving the administration of justice.

Asserting that the right of the accused to a fair trial "is eroded by prejudicial publicity," he said he agrees with the Chief Justice's view "that the timing of judicial proceedings, or the introduction of live television to the courtroom, would be a mistake. The solemn business of justice cannot be subject to the command of 'lights, camera, action.'"

"The white light of publicity can be a cruel glare, often damaging to the innocent bystanders thrust into it, and doubly damaging to the innocent victims of violence," the President continued. "Here again a balance must be struck; the right of a free press must be weighed carefully against an individual's right to privacy."

mission's position, but it made clear its view that the commission has gone "too far" in the restrictions it has imposed on pay-TV distributed by cable (BROADCASTING, Jan. 18).

The Office of Telecommunications Policy in the executive branch has not yet formally adopted a position on CATV, but its director, Clay T. Whitehead, in a speech before the National Cable Television Association last year, predicted that, if cable offered diverse sources of programming, the FCC would not "arbitrarily foster marginal UHF stations, or protect the revenues of any TV station" (BROADCASTING, May 4, 1970).

administration spokesman—he speaks for an independent agency. But he is a presidential appointee, and he has acquired a reputation as an advocate of liberalized regulation of cable. Chairman Burch told the NCTA last June that "the time is ripe for a breakthrough for your industry" (BROADCASTING, June 15, 1970). In the same month, at an ITT Public Affairs Seminar, he criticized past commission policies that, he said, were passed off as answers to regulatory problems but resulted merely in "freezing" the cable industry. The chairman has, however, referred to the need to protect television broadcast service in secondary markets. He raised that point again last week in questioning during the FCC's CATV seminars being held before the agency reaches decisions on cable rulemaking (see story, page 60).

The President's reported position on domestic satellites represents an even sharper departure from what up to now has passed as the administration's policy. In January 1970 a White House report recommended that the FCC permit wide-open competition; that, subject to technical limitations, it permit any operator with the necessary financing and skills to establish a domestic satellite system (BROADCASTING, Jan. 26, 1970).

Dr. Whitehead, who as a White House aide at the time was the report's principal author, said in a speech before the Electronic Industries Association two weeks ago (BROADCASTING, March 15), that nothing had changed. The original position, he said, "remains the policy of OTP and of this administration."

How—and whether—the President's reported views will be translated into the revolution in administration policy they seem to call for was not clear last week. But knowledgeable sources expect Chairman Burch and Dr. Whitehead to be invited to a White House meeting on telecommunications policy matters soon. The President would be expected to attend, along with White House aide Peter Flanigan, whose area of responsibility includes communications matters. New directions in the nation's telecommunications policy would be almost certain to emerge from such a meeting.

Any marked change in policy, especially in the domestic communications-satellite field, would probably be taken as a blow to the prestige of Dr. Whitehead, who is, by law, the President's adviser and spokesman on telecommunications policy—as Dr. Whitehead has repeatedly made clear in his public addresses. There are those in the communications community who would applaud such an undercutting; to some,

garded as brash and overly ambitious.

There is, however, no sign that the President lacks confidence in Dr. Whitehead. Indeed, there is said to be high-level talk at the White House of enlarging Dr. Whitehead's staff. One recent White House visitor came away with the feeling that Dr. Whitehead is regarded by the President as "a fair-haired boy."

If the President's recent remarks about Section 315 may be taken at face value, he would like to see the whole section, fairness doctrine and all, scrapped in its application to candidates everywhere. That would take him beyond the chairman of the Republican National Committee, Senator Robert Dole (R-Kan.), who has called for repeal only of the equal-time provision and only as it applies to candidates for federal office (BROADCASTING, March 8).

Repeal of the section's application to candidates for the Presidency and Vice Presidency was part of the campaign-reform bill that the President vetoed near the close of the last session of Congress. In various degrees of change it figures in several measures now before the Senate Commerce Committee, which is attempting to work out a new campaign-reform bill (see story, page 57).

Children's-TV draft on way to President

President Nixon will soon receive the final draft of 1970 White House Conference on Children. It will contain recommendations aimed at radical changes in TV programming.

In the draft section on "Child Development and the Mass Media," a number of recommendations have been added that spell out distinct actions to be taken by the FCC, the networks and broadcasters.

Among its new suggestions, the mass media panel now suggests among other things; that the FCC and the Federal Trade Commission notify TV broadcasters and advertisers that the use of public airwaves for the broadcasting of programs intended to influence children "is a privilege that must be earned and re-earned by a strong emphasis on accurate presentation and by the maintenance of acceptable standards for appeals to so vulnerable an audience."

It also calls on advertisers and networks to undertake next fall "meaningful innovations in the current TV advertising structure, including tests of clustering commercials" to assure uninterrupted programs. And, further, it recommends that advertisers and networks test the elimination of all commercials, except for credit lines, in chil-

President

THE WHITE HOUSE
WASHINGTON

April 9, 1971

MEMORANDUM FOR: THE PRESIDENT

FROM: PETER M. FLANIGAN

SUBJECT: Office of Telecommunications
Policy

Bob Haldeman advised me that a short memorandum setting forth the principal responsibilities and activities of your new Office of Telecommunications Policy might be helpful. This new office resulted from a review of federal government communications policy undertaken by Bob Ellsworth's staff and continued by my office after his departure. Our study as well as ones such as the Rostow Report undertaken in the prior administration showed that there was no central point for the development of communications policy within the Executive Branch. A somewhat similar condition existed in the transportation field prior to the establishment of DOT. Thus communications policy to date had developed through the ad hoc piecemeal effort of the Congress, the FCC, and the various Executive Departments having substantial specific missions in the communications field.

As you know, contact between the Executive Branch, particularly the White House, and the various regulatory agencies has been historically a highly sensitive issue. While such agencies as the Anti-Trust Division have never been criticized for active intervention in a regulatory proceeding, the Congress has always been highly suspicious of any effort by the White House to provide policy direction even in a general way to the regulatory agencies. Of course intervention in pending adjudicatory proceedings has always been off limits to the White House. The net result of this condition has been that the communications, transportation, and energy regulatory agencies have been left free by the White House and usually by the Congress to exercise enormous power and make decisions greatly affecting the future without any central guidance or control. You are, of course, familiar with the highly uneven results produced by such a scheme.

Your new Office of Telecommunications Policy has two principal missions: first, it will seek to make more efficient the vast array of telecommunications systems already employed by the federal establishment. These include the massive Department of Defense world-wide networks and the civil defense emergency alert systems, as well as the Federal Aviation Authority communications systems, and many others. Second, and of more current importance to the White House, the office will provide a means by which the Executive Branch can express in a way acceptable to the Congress its views on major policy issues in the telecommunications field. Such issues, of course, include currently the development of community antenna television (CATV), the FCC limit of prime time network programming to three hours, and the development of a domestic communications satellite system. In the past, the White House was dependent upon ad hoc interventions by such agencies as the Anti-Trust Division to express a view to a regulatory agency such as the FCC. Or else an informal view could be expressed by the White House to a regulatory agency chairman. However, the agency chairmen often find themselves reinforced if the views of the Executive Branch can be expressed openly in a manner acceptable to the Congress. The OTP office now provides such a vehicle in the field of communications, and I believe it would be most useful and prudent for us to use it.

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504
June 20, 1972

W/H chron
background
on
materials
DIRECTOR
Petersen
in CPB folder

MEMORANDUM FOR:

THE PRESIDENT

FROM:

CLAY T. WHITEHEAD *[Signature]*

SUBJECT:

Current Broadcasting Issues

License Renewal Protection: WHDH case in 1968 created a risk that an incumbent licensee's performance could be outweighed by a renewal challenger's promises. Broadcasters sought legislative relief, but the Senate lost interest in face of charges that license protection was racist. Since dissident and minority groups use renewal uncertainty to gain concessions, broadcasters will continue to press for legislation. POSITION: Administration recognizes need for legislation, but OTP has cooled off broadcasters until after election.

Program Content Control: The effort to exercise program control includes:

- (1) FCC restrictions on the amount of network programming a station can carry during prime time. POSITION: The objective of this rule is the same as the goal of the network anti-trust suits. OTP has questioned the mechanics of the rule, but supports the objective of lessening the networks' dominance.
- (2) Proposed restrictions on violent content of TV programs and affirmative controls on children's programs. HEW is studying both problems and the FCC may act shortly. POSITION: Support the need for limitations on excesses in these program areas. Industry self-regulation should in general be the enforcement tool, but some special rules may be needed for children's programming.
- (3) FCC proposals setting detailed guidelines on amounts and types of programs to be carried. POSITION: OTP has strongly opposed such guidelines.

Fairness Doctrine and Access: Court and FCC decisions on the Fairness Doctrine (requiring the provision of time for contrasting views on controversial issues), and the demands of interest groups for direct access to airtime have steadily increased the detail of Federal regulation and have caused an unhealthy Government intervention in the media editorial process. The Fairness Doctrine is becoming a genuine economic burden on the broadcaster. POSITION: Monopolization of the airwaves by broadcasters' and networks' own views should be prevented, but reasonable private enterprise discretion should be preserved. Perhaps legislation is needed to control the more expansive court applications of the Fairness Doctrine. It cannot be eliminated entirely, however, as long as the networks continue to permit their news departments to indulge their biases.

Counteradvertising: FTC and some consumer groups have proposed a right of free reply to TV ads, to point out inaccuracies and discuss negative aspects of products. This could scare off advertisers and erode broadcasting's economic base. POSITION: OTP, on behalf of the Administration, has sharply attacked this proposal and has urged the FCC to reject it.

Cable TV/Pay TV: Recent FCC rules dealing with cable importation of broadcast signals from other markets ("distant signals") may affect the growth of broadcaster profits. An Administration-sponsored compromise among cable, broadcasting, and motion picture companies underlies the rules. Broadcasters want quick enactment of new copyright legislation (referred to in the compromise) and restrictions on cable use of "free" TV programs as a basis for pay TV. POSITION: The Administration supports the compromise, including the agreement on copyright legislation, and the FCC "distant signal" rules. The "long range" aspects of cable regulation, including the pay TV issue, will be the subject of recommendations by the Cabinet committee appointed last summer.

Newspaper-broadcasting Ownership: FCC and Justice have proposed general restrictions on cross-ownership of newspaper and broadcasting holdings in the same city. POSITION: OTP has stated that effects of such cross-ownership should be dealt with on a case-by-case basis rather than by general rule.

cc: DO Records
DO Chron
Mr. Whitehead - 2
Eva
GC Subj
GC Chron

Copies hand delivered to: Mr. Flanigan
Mr. Ehrlichman
Mr. Klein
Mr. Colson
Mr. Snyder

Orig. and 2 copies went to David Parker

THE WHITE HOUSE
WASHINGTON

June 19, 1972
4:30 p.m.

6/22/72
6 pm
cocktails
dinner

MEMORANDUM FOR: CLAY T. WHITEHEAD
FROM: HERBERT G. KLEIN *H.K.*

You are invited to meet with key multiple TV and radio station executives over cocktails and dinner at Blair House this Thursday, June 22, beginning at 6:00 p.m. Prior to this the group will have attended a foreign policy and economic briefing in the Cabinet Room followed by a discussion with the President.

The dinner is planned as a working session with you and a few other selected guests for the occasion who will participate in an open discussion with the broadcasters.

I strongly urge you to join us because of the importance of this meeting. Please have your office reply to Al Snyder on extension 2682.

C O P Y

6/16/72

MEMORANDUM TO MR. WHITEHEAD FROM BOB MILLER

I am attaching a copy of the memorandum from David Parker to Herb Klein concerning the June 22 affair for the broadcast executives who have multiple station holdings. Herb Klein is to work with Chuck Colson, John Ehrlichman, and Peter Flanigan in "setting up necessary arrangements and briefing papers for the session."

Additionally, Herb Klein is to make appropriate arrangements for key staff people to brief these individuals prior to the President's meetings with them at 5:00 p.m. on the 22nd of June.

Would you please let me know what, in your opinion, we should do to assure Flanigan participation in this session, and if you want to carry the ball, I'll be glad to have you do so.

The President and Mr. Flanigan want you to do this. They would like you to be available on the 22nd from 3:30-6:00. The meeting will be in the Cabinet Room starting at 4:00. You and the other "key staff people" would meet with the broadcast executives from 4:00-5:00. The President would join the meeting from 5:00-6:00.

June 12, 1972

MEMORANDUM FOR: HERB KLEIN
FROM: DAVID N. PARKER

The President has asked that you set up a meeting with the various broadcast executives who have multiple station holdings (list attached) in the Cabinet Room for Thursday, June 22 at 5:00 p.m.

You should make appropriate arrangements for key staff people to brief these individuals prior to the President's arrival at 5:00 p.m. The President will participate in the meeting for probably 20 or 30 minutes. At the conclusion of the meeting, you should adjourn and take these individuals to the Blair House for an evening dinner.

The Blair House dinner should be attended by some Cabinet Officers.

Would you please work with Chuck Colson, John Ehrlichman and Peter Flanigan in setting up the necessary arrangements and briefing papers for this session. The meeting will not be announced until after it has occurred, however, there will be an opportunity for an "Ollie" photograph.

If you have any questions please call.

cc:
Oliver Atkins
Steve Bull
Alexander Butterfield
Charles Colson
John Ehrlichman
Peter Flanigan
David Hoopes
Nick Ruwe

EXECUTIVE SECRETARIAT
CHIEF

1972 JUN 13 PM 4 48

THE WHITE HOUSE
WASHINGTON

LIST OF POSSIBLE PARTICIPANTS

Jack Harris
President
KPRC and KPRC-TV
Box 2222
Houston, Texas 77001

Arch L. Madsen
President
Bonneville International Corp.
145 Social Hall Avenue
Salt Lake City, Utah 94111

John E. Fetzer
President
Fetzer Broadcasting Co.
590 W. Maple Street
Kalamazoo, Michigan 49001

Rex G. Howell
Chairman
XYZ TV Inc.
Box 789
Grand Junction, Colorado 81501

J. Ballard Morton, Jr.
President
Orian Broadcasting Co.
725 S. Floyd Street
Louisville, Kentucky 40203

Thomas S. Murphy
Chairman and President
Capital Cities Broadcasting Corp.
24 East 51st Street
New York, New York 10022

C. Wrede Petersmeyer
Chairman and President
Corinthian Broadcasting Corp.
280 Park Ave.
New York, New York 10017

LIST OF POSSIBLE PARTICIPANTS

John W. Kluge
Chairman and President
Metromedia Inc.
277 Park Avenue
New York, New York 10017

Peter Storer
Executive Vice President
Storer Broadcasting Co.
1177 Kane Concourse
Miami, Florida 33154

Ward L. Quaal
President
WGN Continental Broadcasting Co.
2501 Bradley Place
Chicago, Illinois 60618

Donald H. McGannon
President and Chairman
Westinghouse Broadcasting Stations
90 Park Avenue
New York, New York 10016

Leonard Reinsch
President
Cox Broadcasting Station
1601 W. Peachtree St., NE.
Atlanta, Georgia 30309

Pres.

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504
June 20, 1972

DIRECTOR

MEMORANDUM FOR:

THE PRESIDENT

FROM:

CLAY T. WHITEHEAD



SUBJECT:

Current Broadcasting Issues

License Renewal Protection: WHDH case in 1968 created a risk that an incumbent licensee's performance could be outweighed by a renewal challenger's promises. Broadcasters sought legislative relief, but the Senate lost interest in face of charges that license protection was racist. Since dissident and minority groups use renewal uncertainty to gain concessions, broadcasters will continue to press for legislation. POSITION: Administration recognizes need for legislation, but OTP has cooled off broadcasters until after election.

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

W/K Chron

DIRECTOR

June 26, 1972

To: Peter Flanigan

From: Tom Whitehead

Attached is a memorandum for the President reviewing our efforts in the public broadcasting field and the recently passed legislation for funding the Corporation for Public Broadcasting. We conclude that the President should veto the legislation. The option of a Pocket Veto is not an attractive option since a veto on grounds of principle will have more impact and provide us with more initiative.

John Mitchell sees no problem with this course of action, and Cap Weinberger poses no objection. I have sent copies to Colson, Ehrlichman, and MacGregor. I urge that this be handled urgently to permit the President's statement to go forward before I leave Friday morning.

Whichever course of action the President chooses, it is very important that the substance of our draft signing and veto statements be retained. Any major changes should be checked with us.

Attachment

P.S. Pat Buchanen and Max Friedersdorf also concur in this decision.

cc: DO Records
DO Chron
Mr. Whitehead
Mr. Scalia
Mr. Lamb

Mr. Flanigan (Orig. and 1)
Mr. Ehrlichman
Mr. Colson
Mr. MacGregor
Mr. Friedersdorf

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


June 26, 1972

DIRECTOR

MEMORANDUM FOR:

THE PRESIDENT

FROM:

CLAY T. WHITEHEAD 

SUBJECT:

Public Broadcasting

Background

The Congress has just passed legislation authorizing funding of the Corporation for Public Broadcasting (CPB) for \$65 million and \$90 million in FY73 and FY74 respectively. The current authorization expires June 30 this year. Funding for FY72 was \$35 million, and your budget recommended a one-year authorization for FY73 of \$45 million. The legislation also contains other provisions, the most important of which are the establishment of a permanent Public Broadcasting Fund, and the requirement that five of the fifteen CPB board members be managers of public TV stations.

The Senate has appropriated the full \$65 million for the coming year; but the House has made no appropriation. The conference this week is likely to approve something over \$45 million.

The legislation is essentially that proposed by Torbet Macdonald, Chairman of the House Communications Subcommittee. It was actively and effectively supported by CPB and most of the public TV stations around the country. I opposed the Macdonald bill in the House hearings, and OTP introduced an Administration bill in support of our position. The vote on our funding position lost 183-166 in the House and 58-26 in the Senate. We succeeded in generating active debate and dissension in both the House and the Senate over the direction of CPB and public broadcasting generally.

Our five recent appointments to the CPB Board have been confirmed and will attend the July meeting. Both John Macy and Frank Pace are expected to leave this year. We expect that Macy will be

replaced with Henry Loomis or Neal Freeman and that our appointment to the Whitney vacancy will be elected to replace Pace.

You will recall that your decision to support an increase of CPB funds from \$35 million to \$45 million was based on the expectation that a substantial reduction in politically controversial news and public affairs programming would ensue. That has not occurred, and there is no sign that the professional public broadcasting community intends any such action. It will require active control by the new CPB Board and management under real funding constraints to make progress in this area.

Options

You must decide whether to sign or veto the CPB authorization. (Draft signing and veto statements are attached at Tab A.) The major objectives are (1) containing the growth of Federal funding, (2) showing CPB and Congress the seriousness of your concern, (3) achieving answerability on the part of CPB and the local stations in their use of tax dollars, and (4) reducing the use of Federal dollars for support of politically controversial programming.

Whichever course you choose, I believe we should retract our commitment to the early development of a plan for long-term, insulated financing for CPB. While the goal of insulating CPB from governmental pressures is sound, the public broadcasting community has not yet demonstrated the responsibility or maturity to justify such funding.

Option 1: Sign CPB bill

Pro:

1. Avoids making an issue of the subject this year and giving the appearance of hostility toward public broadcasting.
2. Easily relieves us of our commitment to develop long-range financing for CPB by acknowledging that the two-year authorization and annual appropriation pattern set by Congress is the most appropriate approach for the present.

Con:

1. Risks large increases in funding for CPB both this year and next, and makes \$90 million the floor for FY 75 authorizations.

2. Casts doubt on our desire and ability to restrain public broadcasting, since CPB has pushed this legislation through against our strong opposition and despite our criticism of their performance and responsibility.

3. Places very heavy reliance on our CPB Board appointments to support positions that they may not be able to maintain. It will be hard for them not to support appropriations up to the full authorization, and extension of the authorization to three or five years.

4. Because of the high funding levels and the doubt cast on the seriousness of our concern, it will be more difficult for the CPB Board to cut back funding of news and controversial public affairs programming.

Option 2: Veto CPB bill

Pro:

1. Keeps both authorization and appropriation at lower levels.

2. Calls attention to the direction and performance of public broadcasting.

3. Will help avoid the growth of CPB into a highly centralized full-scale TV network instead of the experimental and educational program production entity originally envisioned.

4. Limiting funds this year will assist CPB Board in shifting priorities away from news and public affairs toward educational programming.

Con:

1. Will produce some criticism that your Administration is trying to intimidate the media and is unsympathetic to the cultural and educational benefits of public TV.

2. Will cause short-run, and perhaps long-run, animosity against us by professional public broadcasters.

3. May antagonize Senators Magnuson and Pastore.

Recommendation:

There is not a large viewing audience for public TV, nor does the public seem very aware of it. The professional public broadcasters at CPB and in the local noncommercial stations, however, are becoming an effective lobbying constituency in the Congress. In the name of "public" broadcasting, they are seeking funds and independence to create a TV network reflecting their narrow conception of what the public ought to see and hear. This should not be allowed to happen.

I strongly recommend that you veto the CPB financing legislation.

Attachment

Signing Statement

In forwarding for my signature the Public Broadcasting Act of 1972 (H.R. 13918), the Congress has presented me with a poor approach to public broadcasting financing and a difficult personal decision. I have decided to sign this legislation, but I do so with serious reservation.

Congressional consideration of this legislation has brought to the surface many fundamental disagreements, not only in the Congress, but within the public broadcasting community itself, concerning the directions which the enterprise has taken in the past and should pursue in the future. Serious questions were raised concerning lack of adequate support for the educational programming that was the principal purpose of the Public Broadcasting Act; concerning the establishment of a system of fixed schedule, coast-to-coast networking, that as a practical matter gives inadequate freedom to local stations in the selection of programming; and concerning the fair distribution of programming funds among local stations in various regions of the country. Most important of all, there was expressed serious and widespread concern that an organization originally intended only to serve the local stations was becoming instead the center of power and the focal point of control for the public broadcasting system.

The present legislation does little or nothing to resolve these problems, while at the same time purporting to establish a framework for long-range, insulated funding. The one cannot responsibly be done without the other. Nor is it responsible, in the face of such fundamental and unresolved disagreement over past and future directions, to increase the Corporation's authorization by some 200 per cent over the next two years-- at a time when the public treasury is under heavy pressure to provide even essential services to our citizens.

The public and legislative record generated by the present bill and the Congress' inability to resolve the basic issues which it presented, have convinced me that the original reasons for withholding high-level, long-range, insulated funding still obtain. The Corporation for Public Broadcasting has not reached sufficient maturity, and has not sufficiently fixed the course of its future development, to enable the Congress to make the necessary judgments concerning the conditions under which it can be entrusted with large amounts of public money free of the public control exercised through the budgetary process. The Congress evidently felt the force of these considerations,

because although this legislation prematurely establishes a structure for long-term, insulated funding (namely, a separate Public Broadcasting Fund in the Treasury), it makes no real use of that structure and provides instead for annual appropriations.

Rather than jeopardize the future of public broadcasting, especially the further contributions it can make in the area of educational programs, I have chosen to sign this bill. In so doing, I do not mean to approve either the level of funding that it provides for the next two years or the structure that it establishes for long-range, insulated funding in the future. To the contrary, I would hope that the appropriations approved under this legislation will be no more than \$45 million for Fiscal 1973 and that consideration of genuine long-range, insulated funding will be deferred until the structure of public broadcasting is more firmly established and its performance can be more intelligently evaluated. I urge the Corporation's Board of Directors to exercise restraint in the use of Federal funds, to restore the Corporation to the path of compliance with the statutory requirements for public broadcasting, and to exceed substantially the minimum 30 per cent of the Federal appropriation that H.R. 13918 requires the Corporation to distribute to local educational radio and television stations.

Veto Message

I find it necessary to veto H.R. 13918, which is intended to provide improved financing for the Corporation for Public Broadcasting and to modify the Public Broadcasting Act of 1967 by making various changes in the structure of the noncommercial, educational broadcasting system. Educational and public broadcasting can offer many benefits to the public, especially high-quality, educational and cultural programs reflecting diversity and excellence. Educational children's programs such as "Sesame Street" and "The Electric Company" have begun to repay the investment America made in the 1950's when channels were reserved for educational purposes. Because of public broadcasting's potential, as well as its accomplishments, I feel that a thorough explanation of my action today is in order.

The Public Broadcasting Act of 1967 made localism the motivating force for the educational broadcasting system. Consistent with the philosophy reflected in the very structure of our Federal Government, localism places the principal public interest responsibility on the individual educational radio and television stations licensed to serve the needs and interests of their own communities. It was widely recognized when the Corporation was established that it would be undesirable for the Government to influence or control a broadcast network. Such influence or control should be avoided, whether it springs from intimidation by the Government or the desire of the broadcast entity to assist an Administration with which it agrees. In 1967, the Congress had no clear idea of how the various parts of the system it created would work, and it therefore deferred consideration of a plan to insulate the system by providing Federal financial assistance on a long-range basis without regular Congressional review. The Congress realized that until the system matured sufficiently it would be unwise to entrust the Corporation with such financing.

Prior to the Congressional deliberations on H.R. 13918, I was concerned about the priorities and directions of the Corporation, especially its apparent desire to become a centralized, fixed-schedule network operation controlled in Washington. This simply undermines the statutory imperatives of localism and structural checks and balances. I was, however, confident that these issues could be resolved if the Congress explored them fully and in the interim funded the Corporation for an additional year at a reasonable increase in appropriations.

Instead, the Congress rushed through legislation that glosses over fundamental problems. This bill was passed in the Senate without comprehensive hearings. The floor debate on amendments designed to correct deficiencies in the House bill was cut short on a number of occasions. The Congress must be sensitive to the implications of proceeding in this manner, without careful consideration of the problem of excessive centralization of the public broadcast system and the risk inherent in government establishment of a broadcast network.

The legislative record of the bill shows that there are many in the Congress who share my concerns about present trends in public broadcasting. In my opinion, their views did not receive sufficient consideration. The Congress has adopted a plan which changes the statutory framework for public broadcasting without solving the genuine problems, prematurely establishes a structure for long-range insulated funding, and fixes a level of appropriations that is excessive in view of the uncertainties regarding the Corporation's future direction.

I cannot approve such action and therefore cannot sign this bill. The public and legislative debate regarding passage of H.R. 13918 has convinced me that the problems posed by government financing of a domestic broadcast system are much greater than originally thought. They cannot be resolved until the structure of public broadcasting has been firmly established, and we have a more extensive record of experience on which to evaluate it. I therefore urge the continuation of carefully measured funding for the Corporation, under the present statutory framework, subject to regular budgetary oversight and review.

I request that the Congress take immediate action to enact a one-year extension of the Corporation's authorization at the \$45 million level specified in my budget. This represents a 30 per cent increase for the Corporation, and in light of past increases and the need to hold down expenditures in the coming year is exceedingly generous.

The Board of Directors of the Corporation is made up of men and women of intellectual stature and independence of mind. I urge them to restore the Corporation to the path of compliance with the original philosophies and statutory objectives for public broadcasting. As they work to correct the short-comings in the present system, we shall continue the long, difficult process of reviewing the roles of the Corporation, the local stations, and other entities involved in public broadcasting, and determining what part Federal funding can appropriately play.

CPB

June 28, 1972

To: Peter Flanigan

From: Tom Whitehead

Attached is a memorandum for the President as we discussed on the status of the four major issues raised by the broadcasters in their meeting with the President last week.

Implicit in the discussion are several questions regarding our future course of action that you may wish to call to the President's attention. Alternatively, I will be raising these for his consideration later in the summer.

Attachment

cc: Mr. Whitehead - 2
DO Records
DO Chron
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GC Subject
GC Chron

July 1 1972

MEMORANDUM FOR THE PRESIDENT

FROM: PETER M. FLANIGAN

SUBJECT: Status of Issues Discussed in Last Week's Broadcasters Meeting

You requested a status report on Administration plans regarding the concerns raised by the broadcasters in your meeting with them last week. While we are already instituting remedies to several of the problems the Administration may be forced to act more aggressively on some issues depending on future FCC and court developments. The summary below highlights the decisions we may face in the next few months. A more detailed discussion of the issues is contained in Clay T. Whitehead's memo attached at Tab A

License Renewals: In recent years challenges to renewal of broadcasting licenses have markedly increased. Challenges emanate from third parties as well as the FCC and several court decisions have exacerbated the likelihood of attack and the extent of litigation a licensee must endure.

A statutory solution will be required to alter this trend, and the Administration has indicated it will support appropriate legislation (now being drafted by the Office of Telecommunications Policy) next year.

Broadcast Advertising: The broadcasters are strongly opposed to the FTC's January proposal that the FCC require broadcasters to provide "free" equal time for reply to television commercials that raise controversial issues or are silent about negative aspects of the advertised product. In addition to the possible impact on advertising revenues which would be much more dramatic than even the recent extension of the FCC's Fairness Doctrine, the broadcasters see this proposal as an example of persistent regulatory agency antagonism to the private broadcasting industry.

The Administration has publicly urged the FCC to reject the FTC proposal, and we expect the FCC to so vote. The FCC might even attempt to exempt from the Fairness Doctrine "implicit issues" raised by ads, but legislation may be necessary to accomplish this, and could be tied to a license renewal bill.

Fairness Doctrine: As applied to both programming and advertising, enforcement of the Fairness Doctrine on an issue-by-issue basis has imposed an increasing economic burden on broadcasters. Recent FCC and court applications of the Doctrine had also injected the government into program content review in a persistent and unhealthy way.

The FCC is now concluding its Fairness Doctrine inquiry. For the time being, we are not promoting legislative proposals, but the FCC may find that the case-by-case application of the Doctrine cannot be changed without a new statutory mandate. If it proves necessary, the OTP is prepared to draft such legislation for your consideration. However, Chuck Colson feels strongly that we would not want to make changes that defuse one of our few levers over the networks.

Cable Television: The broadcasters' current concerns focus on two issues:

- restrictions on cable use of "free" TV programs as a basis for pay TV, and,
- getting quick enactment of copyright legislation pursuant to the CATV compromise endorsed by OTP.

Until the passage of appropriate copyright legislation appears imminent, it may be desirable to urge the FCC to delay cable authorizations under the new rules. Furthermore, the FCC's evolving structure for cable regulation must be carefully monitored to assure that the Federal role is not unnecessarily extended in a new field when we are at the same time hoping to deregulate other broadcast media. This and other long-term cable issues, including pay-TV, will be covered in the report of the Cabinet Committee on CATV, due later this year.

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

June 28, 1972

DIRECTOR

MEMORANDUM FOR:

THE PRESIDENT

FROM:

CLAY T. WHITEHEAD 

SUBJECT: Status of Issues Discussed in Broadcasters' Meeting

Attached is a brief discussion of the status of the four main issues raised by the broadcasters in your meeting with them last week. In summary, they are:

1. License Renewals: OTP drafting legislation for next year.
2. Broadcast Advertising: OTP opposing FTC counter-advertising proposal; FCC and OTP are attempting to cooperate to exempt product ads from the Fairness Doctrine. Legislation may be needed next year.
3. Fairness Doctrine and Public Access: FCC inquiry not yet completed; court challenges may follow completion. OTP studying legislative solution, if needed.
4. Cable Television: FCC rules reflecting OTP compromise on distant signal issue among TV, cable, and movie interests are now in effect; copyright liability yet to be resolved. Cabinet committee report on long-term cable television issues to be sent to you later this summer or early fall.

In addition to these aspects of regulatory policy, OTP has been espousing a general philosophy of private enterprise broadcasting free of burdensome regulation and bureaucratic control of broadcast content. The liberal members of the FCC and D.C. Court of Appeals, in supporting anti-establishment groups in fairness, access, and license renewal cases, have interpreted the First Amendment's application to broadcasting as a right of the public to hear various views. This inevitably makes the government the arbiter of what the public has a right to hear. If sustained by the Supreme Court in a case now pending, this approach will be a disheartening and dangerous change in our national policy of separation of government from the media.

Attachment

STATUS OF ISSUES RAISED IN BROADCASTERS' MEETING

1. License Renewals.

Issue: The FCC, in part at the direction of the courts, has been placing an increasing number of general and detailed program and operating requirements upon broadcasters. Compliance is subject to challenge--by the FCC and third parties--when the license comes up for renewal every three years. License challenges take two forms: (1) competing applications from groups seeking to operate the station; and (2) complaints that the broadcaster has violated FCC requirements and should not be renewed. In the competing application proceeding, the burden is on the broadcaster to demonstrate that he is the better applicant. In the complaint proceeding, the challenger has the burden, but the broadcaster is subjected to extensive litigation to retain his license. Even when the danger of losing a license is slight, many so-called public interest groups use the broadcaster's vulnerability at renewal time to exact concessions in programming, minority hiring, and the like, and the broadcaster may have to pay all legal fees. The FCC has tried to solve the problem itself but the courts have disallowed this, and legislation will be necessary.

Status: We have indicated we would support appropriate legislation next year. OTP is drafting legislation that would lengthen the license term, place the burden of proof on challengers, and keep the FCC out of detailed program regulation. But some firmer assurance may be required before the election, since the FCC is likely to deny renewal to one or two major TV stations this year. This would panic broadcasters and stimulate challengers, as did the recent loss of the WHDH-TV license in Boston to a competing group.

Finally, as you requested, we are preparing a report on use of tax-free funds to assist license challengers. We know that it is extensive and involves the Ford Foundation, Stern Foundation, the United Church of Christ, and others. These groups are also active in the field of cable television, urging the FCC and local governments to adopt extensive regulation and to impose substantial "public interest" requirements on cable operators.

2. Broadcast Advertising.

Issue: In 1967 the FCC held that the Fairness Doctrine (requiring free response time if necessary) applies to controversial issues implicitly raised in cigarette advertising. The ruling was recently expanded to automobile and gasoline ads (i.e., the pollution issue), and it has since become apparent that almost any commercial could raise some controversial issue subject to the Fairness Doctrine. The FTC recently recommended that, even when no controversial issues are raised, free time should be made available to groups who wish to call attention to the negative aspects of products advertised or to dispute advertising claims.

Status: OTP has strongly criticized both the extension of the Fairness Doctrine to product ads and the FTC's proposal. It is likely that the FCC will reject the FTC's proposals. The new FCC majority probably would like to go further and exempt "implicit issues" raised by ads from the Fairness Doctrine, but the courts are not likely to permit this. OTP has suggested that such an exemption be required by statute. To facilitate passage, this should be tied to a requirement that broadcasters not discriminate in the sale of advertising time. Such advertising legislation could be tied to a license renewal bill.

3. Fairness Doctrine and Public Access in General.

Issue: Broadcasters' concern about the Fairness Doctrine goes beyond its application to advertising. Even as applied to programming, Fairness enforcement on a case-by-case, issue-by-issue basis rather than by a review of performance at renewal time imposes a burden on broadcasters and makes them subject to harrassment by the FCC staff and public interest groups. In the overwhelming majority of cases, Fairness complaints are made by anti-establishment groups--since free time can be obtained only when the contrasting view has received insignificant coverage. Most responsible views do receive such coverage, so the Fairness Doctrine has not proved useful for moderate and conservative groups. In the political issue area, the Doctrine has been used far more effectively by Democrats than by Republicans.

Further, the case-by-case application of the Fairness Doctrine by the FCC and the courts has injected the government into programming in a continuing and unhealthy way. It requires the government to decide what issues are of public importance, what points of view deserve and have received adequate coverage, and who are acceptable spokesmen for the contrasting points of view. Charges of censorship aside, the outcome is typically a deadening influence on both programming and the national debate.

Status: The FCC is now concluding its Fairness Doctrine inquiry. Dean Burch agrees that the Doctrine has become a quagmire, but it is probably not feasible politically for the FCC to change its basically case-by-case enforcement of the Doctrine without some legislative mandate. The courts might even prevent it. Some of your staff feel that a change in enforcement procedures would eliminate one of the few levers we have over the TV networks; others feel that there are equally effective tools to use against the networks, and the value of the Fairness lever is minimal and is more than counterbalanced by the dangerous precedent of government control of media content. If the FCC does not or cannot deal with the problem, OTP is prepared to propose legislation for your consideration. This too could be done in conjunction with license renewal legislation.

4. Cable Television.

Issue: Two issues of immediate concern to broadcasters are: (1) cable "importation" of TV programs from distant cities without copyright liability,

thereby competing unfairly with local broadcast stations, and (2) cable use of free broadcasting's programs as the basis for pay-TV. Ultimately more important than the broadcasters' concerns is the issue of the regulatory framework to be established for cable as a new medium in its own right. The recent FCC rules create a framework that would allow the Federal bureaucracy to exclude state and local governments from cable regulation and to extend broadcast-type control over programming to cable, where there is little legal or economic justification.

Status: OTP brought about a compromise among broadcast, cable, and program production interests on the program importation issue, which allowed the FCC to proceed with cable rules. Broadcasters and the programming industry will feel betrayed unless we assure compliance with the compromise and obtain agreement on new legislation establishing cable's copyright liability. This may require the FCC to agree to delay cable authorizations under the new rules, until the cable industry supports specific copyright legislation.

The issue of cable pay-TV is one of the many problems connected with the longer-run development of cable television. All of these problems--including the issues of broadcaster ownership of cable systems, state vs. Federal jurisdiction, program content regulation, etc.--are under consideration by the Cabinet committee on cable television you established in June 1971. Its report will be submitted to you later this year.

W. H. Chron

June 28, 1972

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Attachment

cc: Mr. Whitehead - 2
DO Records
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GC Chron

JUN 28 1972

cc: Mr. Whitehead - 2 ✓
DO Records
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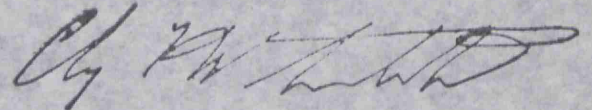
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MEMORANDUM FOR:

THE PRESIDENT

FROM:

CLAY T. WHITEHEAD



SUBJECT: Status of Issues Discussed in Broadcasters' Meeting

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1. License Renewals: OTP drafting legislation for next year.
2. Broadcast Advertising: OTP opposing NTC counter-advertising proposal; FCC and OTP are attempting to cooperate to exempt product ads from the Fairness Doctrine. Legislation may be needed next year.
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Attachment

STATUS OF ISSUES RAISED IN BROADCASTERS' MEETING

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Issue: The FCC, in part at the direction of the courts, has been placing an increasing number of general and detailed program and operating requirements upon broadcasters. Compliance is subject to challenge--by the FCC and third parties--when the license comes up for renewal every three years. License challenges take two forms: (1) competing applications from groups seeking to operate the station; and (2) complaints that the broadcaster has violated FCC requirements and should not be renewed. In the competing application proceeding, the burden is on the broadcaster to demonstrate that he is the better applicant. In the complaint proceeding, the challenger has the burden, but the broadcaster is subjected to extensive litigation to retain his license. Even when the danger of losing a license is slight, many so-called public interest groups use the broadcaster's vulnerability at renewal time to exact concessions in programming, minority hiring, and the like, and the broadcaster may have to pay all legal fees. The FCC has tried to solve the problem itself but the courts have disallowed this, and legislation will be necessary.

Status: We have indicated we would support appropriate legislation next year. OTP is drafting legislation that would lengthen the license term, place the burden of proof on challengers, and keep the FCC out of detailed program regulation. But some firmer assurance may be required before the election, since the FCC is likely to deny renewal to one or two major TV stations this year. This would panic broadcasters and stimulate challengers, as did the recent loss of the WHDH-TV license in Boston to a competing group.

Finally, as you requested, we are preparing a report on use of tax-free funds to assist license challengers. We know that it is extensive and involves the Ford Foundation, Stern Foundation, the United Church of Christ, and others. These groups are also active in the field of cable television, urging the FCC and local governments to adopt extensive regulation and to impose substantial "public interest" requirements on cable operators.

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Issue: In 1967 the FCC held that the Fairness Doctrine (requiring free response time if necessary) applies to controversial issues implicitly raised in cigarette advertising. The ruling was recently expanded to automobile and gasoline ads (i.e., the pollution issue), and it has since become apparent that almost any commercial could raise some controversial issue subject to the Fairness Doctrine. The FTC recently recommended that, even when no controversial issues are raised, free time should be made available to groups who wish to call attention to the negative aspects of products advertised or to dispute advertising claims.

Status: OTP has strongly criticized both the extension of the Fairness Doctrine to product ads and the FTC's proposal. It is likely that the FCC will reject the FTC's proposals. The new FCC majority probably would like to go further and exempt "implicit issues" raised by ads from the Fairness Doctrine, but the courts are not likely to permit this. OTP has suggested that such an exemption be required by statute. To facilitate passage, this should be tied to a requirement that broadcasters not discriminate in the sale of advertising time. Such advertising legislation could be tied to a license renewal bill.

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Issue: Broadcasters' concern about the Fairness Doctrine goes beyond its application to advertising. Even as applied to programming, Fairness enforcement on a case-by-case, issue-by-issue basis rather than by a review of performance at renewal time imposes a burden on broadcasters and makes them subject to harrassment by the FCC staff and public interest groups. In the overwhelming majority of cases, Fairness complaints are made by anti-establishment groups--since free time can be obtained only when the contrasting view has received insignificant coverage. Most responsible views do receive such coverage, so the Fairness Doctrine has not proved useful for moderate and conservative groups. In the political issue area, the Doctrine has been used far more effectively by Democrats than by Republicans.

Further, the case-by-case application of the Fairness Doctrine by the FCC and the courts has injected the government into programming in a continuing and unhealthy way. It requires the government to decide what issues are of public importance, what points of view deserve and have received adequate coverage, and who are acceptable spokesmen for the contrasting points of view. Charges of censorship aside, the outcome is typically a deadening influence on both programming and the national debate.

Status: The FCC is now concluding its Fairness Doctrine inquiry. Dean Burch agrees that the Doctrine has become a quagmire, but it is probably not feasible politically for the FCC to change its basically case-by-case enforcement of the Doctrine without some legislative mandate. The courts might even prevent it. Some of your staff feel that a change in enforcement procedures would eliminate one of the few levers we have over the TV networks; others feel that there are equally effective tools to use against the networks, and the value of the Fairness lever is minimal and is more than counterbalanced by the dangerous precedent of government control of media content. If the FCC does not or cannot deal with the problem, OTP is prepared to propose legislation for your consideration. This too could be done in conjunction with license renewal legislation.

4. Cable Television.

Issue: Two issues of immediate concern to broadcasters are: (1) cable "importation" of TV programs from distant cities without copyright liability,

thereby competing unfairly with local broadcast stations, and (2) cable use of free broadcasting's programs as the basis for pay-TV. Ultimately more important than the broadcasters' concerns is the issue of the regulatory framework to be established for cable as a new medium in its own right. The recent FCC rules create a framework that would allow the Federal bureaucracy to exclude state and local governments from cable regulation and to extend broadcast-type control over programming to cable, where there is little legal or economic justification.

Status: OTP brought about a compromise among broadcast, cable, and program production interests on the program importation issue, which allowed the FCC to proceed with cable rules. Broadcasters and the programming industry will feel betrayed unless we assure compliance with the compromise and obtain agreement on new legislation establishing cable's copyright liability. This may require the FCC to agree to delay cable authorizations under the new rules, until the cable industry supports specific copyright legislation.

The issue of cable pay-TV is one of the many problems connected with the longer-run development of cable television. All of these problems--including the issues of broadcaster ownership of cable systems, state vs. Federal jurisdiction, program content regulation, etc.--are under consideration by the Cabinet committee on cable television you established in June 1971. Its report will be submitted to you later this year.

DRAFT
CT Whitehead;jm
6/26/72

MEMORANDUM FOR THE PRESIDENT

Subject: Status of Issues Raised in Broadcasters' Meeting

A. Issues:

1. License Renewals. You will recall that the broadcasters considered

this their most important problem. The FCC, ~~in part at their own~~

~~insistence~~ and in part at the direction of ~~reports~~ ^{the courts,} is placing increasingly

detailed requirements on broadcasters, ~~at the peril of not having their~~ ^{in the form of which has interested}

~~licenses renewed at the end of each three year license interval.~~ Many ^{and broadcaster compliance is weighed "in the public interest" at license renewal each three years.}

public interest groups, ^{both} ~~some~~ legitimate and ~~some~~ self-styled, are

using the FCC's procedures to try to wrest licences away from existing

broadcasters ^{or} to extract concessions in programming, hiring, and the like

^{in return} ~~as the price~~ for not petitioning the FCC to deny the stations' licenses.

~~2. We~~ We have worked with the FCC ~~to~~ to find a way to rectify the

problem with the FCC's own authority, but the courts have struck down ~~such~~

attempts ~~to deal with the problem in that way.~~ ~~As a result,~~ it is now

generally concluded that legislation will be necessary. ~~We have~~

~~discouraged broadcasters from pressing the issue this year, and action~~ ^{what is so}

~~is not being pressed on pending bills.~~ ^{However} The FCC may deny renewal of

one or two big television station licenses this year. ^{Following} With the recent

loss of the WHDH-TV license in Boston to a public interest group, such

action would infuriate broadcasters and encourage the public interest

States:
9
challengers. We have indicated that the Administration would support ~~some~~ *next* legislation ~~this~~ year, but it may be necessary to give a more firm commitment before the election.

→ OTP is drafting license renewal legislation that would lengthen the license term, place ~~a~~ *the* ~~greater~~ burden of proof, *on the challenger,* and make clear that the FCC is not to inject itself into detailed regulation of broadcaster programming.

We will have a report for you shortly on tax-free foundation support of groups that challenge *9* for petition to deny *broadcast* licenses, ~~from the FCC.~~ It is clearly extensive, ~~and~~ involving the Ford Foundation, the Stern Foundation, the United Church of Christ, and others. ~~In addition,~~ these groups, *also* are becoming very active in the field of cable television, ~~franchising,~~ *adopt extensive* urging the FCC and local governments to ~~enact restrictive~~ *regulation* legislation, and levy significant public interest requirements on cable franchisees.

2. Broadcast Advertising

Issue: There is a growing movement ~~among public interest groups,~~ ~~minorities,~~ ~~and various activist organizations~~ to extend the FCC's Fairness Doctrine into advertising. The Federal Trade Commission recently recommended that free time be made available to groups who wish to call attention to the negative aspects of products advertised or to *disputed* ~~inflate~~ advertising claims.

Status: OTP has strongly criticized both the extension of the Fairness Doctrine ^{to product advertising} and the Federal Trade Commission's proposal ~~on behalf of the Administration~~. We ^{are hopeful} believe that the FCC will ^{neither} not extend the Doctrine nor adopt the ^TFCC's proposals.

Issue: Many public interest groups, minorities, and activist groups are also using the Fairness Doctrine to gain free time to present their point of view on "controversial" ^{issues} of public importance raised in commercials.

As the Fairness Doctrine has come to be applied by the FCC and the Courts, almost any ^{commercial} ~~add~~ ^{some} raises controversial issues of ~~public importance~~ for example, automobile ads ^{are} held to promote highway building ^{over} or mass transit; gasoline ads ^{raise} pollution issues, etc. Indeed, some groups have ^{claimed} argued that advertising in general promotes a materialistic lifestyle and are ~~attempting to~~ claiming time under the Fairness Doctrine to present an opposite point of view. While the new majority on the FCC would like to correct these problems, it is not clear that the courts will permit the FCC to exempt advertising ^{even} time from the Fairness Doctrine ~~if~~ it wants to do so.

Status: OTP has ^{ed} submitted the suggestion that ~~it would insulate~~ advertising time ^{could be exempted} from the ~~advertiser's~~ Fairness Doctrine ^{such legislation} obligations. ~~It~~ probably would ^{have to be tied to a} be ~~necessary to couple~~ such legislation with a requirement that broadcasters not discriminate in the sale of their advertising. ^{time. Because} ~~we are studying~~ ^{license challenges & the Fairness} ~~legislation that would complement the~~ Doctrine are ^{the only vehicles for access to the broadcast media,}

it may be necessary politically to couple this with ~~license renewal legislation discussed above, but have chosen not to~~
~~renewal legislation.~~
~~present the matter during this year.~~

4. Fairness Doctrine and Public Access in General

Issue: As ^{your} ~~the~~ discussion ~~in the meeting with~~ ^{with} the broadcasters indicated, their concern about the Fairness Doctrine goes much beyond its application to advertising. As currently interpreted ~~and enforced~~ ^{by} the FCC and the courts, it can be used very effectively to ~~beckon~~ ^{beckon} broadcasters into providing free time or ~~many~~ ^{making} other concessions. In the over whelmingly majority of cases, these moves are made by anti-establishment groups ^{or} since the criteria ^{on} for getting free time is that the point of view to be articulated has not received significant coverage, ~~by the broadcasters,~~ and most responsible views do receive such coverage. The utility of the Fairness Doctrine ^{has had little utility for} ~~is~~ responsible, moderate, and conservative groups ~~has been small.~~ Similarly, ~~in the area of partisan politics,~~ the Fairness Doctrine has been used quite effectively by the Democratic Party, but almost not at all by the Republican Party. ^{of the courts} Further, the case-by-case adjudication of the Fairness Doctrine by the FCC ^{frequently} ~~mentioned by the courts~~ has injected these two arms of government ~~into broadcast programming~~ ^{into broadcast programming} and the broadcast, press, and communications media editorial processes in a fundamentally unhealthy way. The FCC is increasingly being forced to decide what issues are of significant public importance, what points of view deserve ^{of} ~~have~~ have received sufficient coverage, and who

is an acceptable spokesman for the points of view to be recognized. As you pointed out in the meeting, this is unhealthy in our system of government, and there becomes an increasingly fine line between adjudication and censorship.

Status: The FCC has conducted a broad inquiry into the Fairness Doctrine and is now considering what action it can take. Dean Burch agrees that the Doctrine has become a quagmire, but there is little likelihood that the courts will allow the FCC to walk away from the hearing and adjudication requirements of the 1934 Communications Act or from the precedents that have evolved over the years of FCC and court decisions. Some in this Administration feel that the elimination of the Fairness Doctrine would eliminate one of the few levers ~~this we~~ ^{have} ~~Administration has~~ ^{over} the television networks; other feel that the value of this lever is minimal and is counterbalanced by the dangerous ~~of excessive bureaucratic~~ ^{control of media content.} ~~and~~ ^{is monitoring the processes and} ~~is monitoring the processes and~~ ^{should the FCC not be capable of} ~~dealing with the problem or not/allowed by the courts to~~ ^{deal with} ~~the problem in a satisfactory~~ ^{OTF} ~~OTF~~ ^{do so} ~~OTF~~ ^{for your consideration,} ~~OTF~~ ^{We may} ~~OTF~~ ^{so recommend a revision of the fairness obligation to coincide with} ~~OTF~~ ^{ense renewal legislation.}

5. Cable Television

It offers the opportunity for a wide variety of specialized programming over many channels since the public airwaves are not used.

important

Issue: Cable television presents a host of complex, interrelated problems of competition for the broadcaster and policy issues for the Government. In general, the two issues of immediate concern to

broadcasters are: (1) The threat that cable systems will import, without copyright liability, television signals from distant cities to compete

unfairly with local broadcast stations, and (2) ~~the~~ ^{*if*} fear that cable will

become an important medium in its own right, ~~offering a wide variety~~

~~with broadcasting but which broadcasters will not be allowed~~
~~of specialized programming that will reduce the over-the-air~~
~~to participate in.~~ *status:*

~~broadcasters' audience status.~~ ^{*^*} OTP brought about a compromise on

the distant signal importation issue in conjunction with recent FCC rules

that threatened a ^{*fight in Congress*} ~~political deadlock~~ between broadcasters, cable,

~~owners,~~ and program producers ^{*tion interests.*} Broadcasters and movie ^{*producers*} people will

feel betrayed unless we see that the terms of the compromise are complied with; this may require FCC delay of cable authorization under

the new rules until the cable industry supports, as agreed, specific

copyright legislation. ^{*^*} The longer-run development of cable television,

involving pay television, rules of ownership, access, Fairness Doctrine,

and the like, are subjects of the Cabinet committee on cable television

you established last summer. That report will be submitted to you

later this summer.

INSERT

immediate
 Beyond the ~~narrow~~ economic concern of the broadcasters is ~~the question~~
~~of~~ the regulatory framework ~~of~~ cable *to* ~~both~~ *of* as a medium in its own right,
~~and via a vis over the air broadcasting.~~ If the regulatory structure ~~of~~
~~adopted by the~~ *most* recent FCC rules is allowed to become firmly established,
 we will have handed over to the federal bureaucracy an industry *that,*
~~because it does not use the air waves and because it~~
 could be left much more free ~~than~~ *than* broadcasting *and could help*
we get out of the trap of Federal controls on program
on broadcast programming.

May 3, 1972

MEMORANDUM FOR MR. FLANIGAN

Our posture on the Fairness Doctrine should be broken down into three areas:

1. The keeping or scrapping of the Fairness Doctrine itself. You will recall I made a package of proposals relating to broadcast regulation for purposes of discussion, including among them the elimination of the Fairness Doctrine. Colson was upset that this would eliminate the only lever that could be used directly against the networks on coverage of political issues. Based on his reactions and other considerations, I agreed that I would refrain from espousing that aspect of the proposals.

2. The detailed working of the Fairness Doctrine. OTP has no particular expertise, nor does the Administration have any serious policy concern, with the myriad details and complexities of the Doctrine as it has evolved. Dean Burch has enough trouble in the Commission's current Fairness Doctrine inquiry without the Administration second-guessing him. I have, therefore, refrained from any recommendations or criticisms on particular details of the Fairness Doctrine and intend to continue that. My comments on the workings of the Doctrine itself have been confined to what Dean Burch has said and what every serious observer of broadcast regulation realizes--that the Doctrine has gotten out of hand and needs serious attention to limit and clarify it, preferably by the Commission itself if the Courts will allow it.

3. The extension of the Fairness Doctrine into product advertising, the use of the Doctrine to require counter-advertising as proposed by the Federal Trade Commission, the twisting of the Fairness Doctrine into a mechanism for free access by various radical groups to get their viewpoints on the air, etc. In the case of counter-advertising, we agreed to put the Administration in the opposition to the irresponsible FTC proposal that the Fairness Doctrine be extended to product ads. In other areas, we have not taken any firm Administration positions, but have cautioned against unnecessary and undesirable extension of this kind of regulatory control over the broadcast and advertising businesses and its extension into the print media. License renewal policies, channel limitations, ownership restrictions,

SENSITIVE

SENSITIVE

access demands, advertising, and the like have been entangled by the FCC and the courts with the Doctrine, all growing basically out of the spectrum limitation. It is one of the key areas for policy resolution in cable. It is impossible to deal with broad or specific policy without touching on the fairness obligation and the Doctrine.

In summary, I have gone out of my way to make clear that this Administration does not endorse removal of the Fairness Doctrine; I have avoided any detailed comment on the Doctrine itself; and have confined public statements to drastic extensions of the Doctrine beyond the areas to which it is traditionally applied, and to the relation of the broader fairness obligation to such important policy questions as license renewal criteria, cross-ownership, cable television, and the like. The comments you saw in the news summary were directed at extensions of the Doctrine into advertising, the increasing tendency of the courts to ignore the spectrum scarcity rationale, and the desire by many activists to extend the Doctrine into the print media; I did not touch on the current workings of the Doctrine and specifically acknowledged that the broadcasters (Colson: read as "networks") have a fairness obligation that cannot be removed as long as we have Federal licensing of the airwaves. You will recall that Chuck Colson and I discussed this in preparation for my testimony before the Ervin Committee and agreed the only area he was upset about was the removal of the Doctrine as it relates to the networks. My public positions in this area have been low key and consistent with my understanding of our agreements.

Clay T. Whitehead

CTWhitehead:sr/jm

cc: Mr. Whitehead
Eva ✓

SENSITIVE

report has been made "virtually invisible." Aspin said "if there were a conscious conspiracy to prevent public scrutiny of the impact statement, it couldn't be accomplished much more effectively than this."

The Senate Labor Comm. approved a \$9 billion anti-poverty bill after altering a key provision that would transfer the Legal Services program out of OEO to an independent corporation. Javits sponsored the change that would give RN control, saying he felt it essential to prevent another veto.

Leon Jarworski, Pres. of the American Bar Assoc., said "the legal profession has the responsibility to provide legal services not just for a part -- but for the whole of our nation's society. Jarworski again voiced the ABA's backing of the federally-funded Legal Services program and criticized the VP, without naming him, for the VP's alleged interference with it.

A three-judge Federal panel ruled (2-1) that a New York law under which State funds have been used to aid parochial and other non-public schools violates the Constitution. While the majority cited the First Amendment, the dissenting judge said he refused "to participate" in destroying the act by judicial action, saying "a majority of the legislature and the governor have determined that this...statute is a legitimate area of state concern and action."

Bobby Baker was granted parole effective June 1....A 10-2 approved House Ethics proposal designed to force Dowdy to relinquish his Hill voting rights, but not his seat, may never make it to the Floor. Rules Chmn. Colmer indicated his Comm. may not send it to the Floor. In an interview, Colmer, who helped set up the Ethics Comm., said he didn't see how Congress could pass such a resolution, that it would look "kind of silly" for him to judge a man guilty before the final court order.

Clay Whitehead warned newspaper publishers that the Fairness Doctrine is a "runaway theory" that might someday be applied to them as well as broadcasters....The FCC's implementation of the Fairness Doctrine has a "chilling" effect on broadcast journalism said the exec. officer of the Post-Newsweek stations.

McWhorter
Tom -
I thought that you had agreed to stay of this subject?
Can you please explain this to me?
Pete

Media Report/White House static over structure, funds keeps public broadcasting picture fuzzy

by Bruce E. Thorp

TW
FYI

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NATIONAL
JOURNAL
6/1972

The folks who gave the nation *The Great American Dream Machine* are in trouble with an important viewer.

The viewer is President Nixon, and what he does not like is the way public broadcasting's own dream machine has developed since passage of the Public Broadcasting Act of 1967 (81 Stat 365).

Mr. Nixon has not spoken personally on the issue; his views are relayed through Clay T. Whitehead, director of the White House Office of Telecommunications Policy. (*For a report on OTP, see Vol. 3, No. 7, p. 338.*)

Whitehead, who is charged with drafting legislation for long-term financing of public programs, has not done so because, he says, public broadcasting is too centralized.

Too much authority for funding and programming is concentrated in the Corporation for Public Broadcasting, a private, nonprofit company set up by the 1967 act, says Whitehead, and too little control has been left to individual stations, which were supposed to be the heart of the system.

Shows offered by the Public Broadcasting Service—the public stations' network—dominate the system, according to Whitehead, and public-

affairs shows, in turn, dominate PBS scheduling.

Whitehead said in a recent interview, "They want to be something different from what anyone thought they were going to be."

Industry leaders dispute Whitehead's charges. They say they have followed the intent of the Carnegie Commission on Educational Television, which recommended federal funding of public broadcasting in 1967, and of Congress.

Whatever imbalance there may be in the system, they argue, comes mainly from inadequate federal financing.

With less money than they anticipated, CPB officials have used it to develop their network first, putting the money where it will do the most good. As federal funds increase, they say, so will development of local stations and local programming.

The larger philosophic controversy has been focused on a financial conflict over long-term funding for public broadcasting.

The Carnegie Commission originally proposed that the industry be given federal funds outside the annual appropriations process.

But the 1967 Congress left it to future Congresses and Administrations to devise such a plan, and it has not yet been done.

Whitehead says that unless the industry structure is made to conform to what was envisioned, "permanent financing will always be somewhere off in the distant future."

Stymied in its effort to obtain long-term funding, the industry is putting its energies into support of a two-year authorization initiated by Rep. Torbert H. Macdonald, D-Mass., chairman of the House Interstate and Foreign Commerce Subcommittee on Communications and Power.

The bill, HR 13918, has cleared the full Commerce Committee with only two dissents and it could be approved early in May.

In the meantime, both the industry and the Administration have been moving quietly toward changes that may resolve the controversy.

The industry has taken steps to give local stations a greater voice in system funding and programming, which could go far toward satisfying the Administration's complaints.

The Administration has been preparing a list of five persons to be appointed soon by the President to the 15-member CPB board of directors.

Assuming confirmation by Congress, Mr. Nixon would have his first real majority on the board, which presumably would begin to reflect his views.

Funding and politics

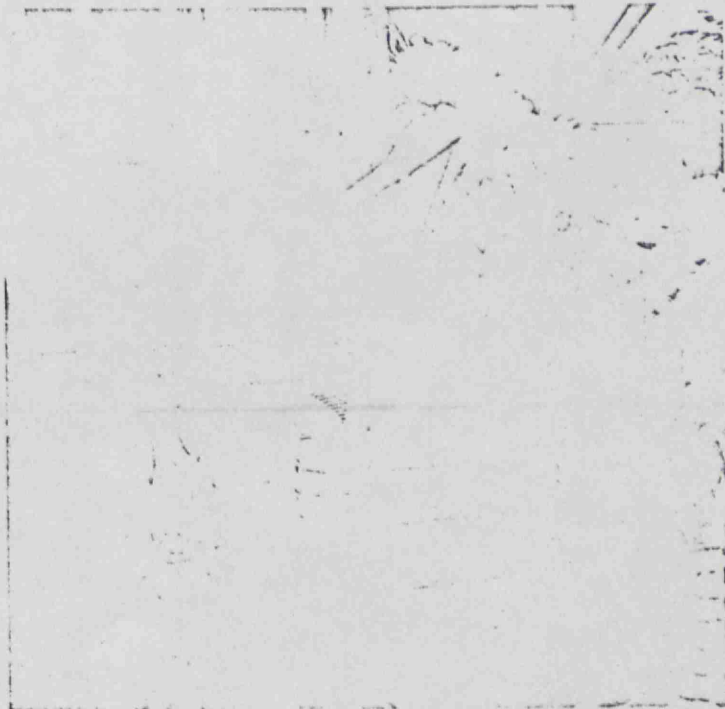
The Carnegie Commission proposed that public broadcasting receive its federal money from a special trust fund.

The fund could be fed by an excise tax on new television sets, the commission said, estimating that a 5-per cent levy would produce \$100 million a year at a cost of not more than \$2.50 a year per set during the useful life of even the most expensive receiver.

The commission argued for permanent funding to insulate public programming from government involvement.

"The commission cannot favor the ordinary budgeting and appropriations procedure followed by the government in providing support from general funds," it said. "We believe those procedures are not consonant with the degree of independence essential to public television."

However, in creating the corpora-



Scene from "Sesame Street," the award-winning children's show on public television

tion. Congress purposely omitted a permanent or even long-range funding plan, saying that it needed more study. Since then, the industry has depended on annual appropriations.

The result has been less money than the commission envisioned and a situation that the commission expressly hoped to avoid: political wrangling over public broadcasting.

White House: Whitehead said in an interview that once the current disagreement over industry structure is settled, consideration should be given to funding for at least three years but no more than five.

"But it's not just a question of how many years the authorization is for," he said. "You want to have some kind of a scheme so that, if it's a three-year plan, every three years you don't have to re-fight the battle."

The authorization could be renewed almost automatically, Whitehead said. "It should present no problem, whatsoever, assuming that they're doing what is reasonably expected."

But, Whitehead emphasized, it is vital to address the important, long-range questions—such as those OTP has raised about industry structure—before a long-range plan is adopted.

Whitehead, speaking for the Administration, said that he opposes permanent funding as "bad public policy."

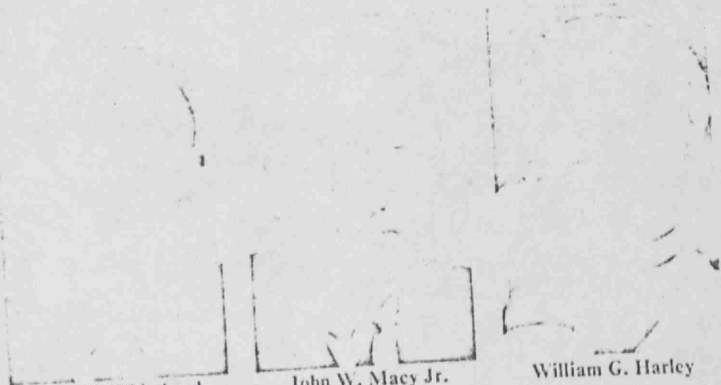
"I think an institution like the corporation ought to be answerable to the Congress," he said. "They ought not to be harassed and harangued every year; they ought not to be harassed and harangued, period, if they're doing a reasonably good job."

"But I think that being answerable over a period of time for their general performance is good. There ought to be an opportunity to review their broad, over-all performance. How much of what kinds of programs have they had? How useful are they?"

"Those kinds of questions are legitimate questions, and the corporation, as long as they're using public funds, ought to have to answer those questions from time to time."

Industry: Members of the public broadcasting industry are torn between the kind of funding plan they would like to see and the kind they think is politically feasible.

Macy—CPB president John W. Macy Jr. said that even a five-year plan probably would require annual appropriations from Congress, and therefore would be no more than "an interim approach."



Clay T. Whitehead

John W. Macy Jr.

William G. Harley

"I'm still hoping that we can make an effective case for some form of income that is going to be independent of the annual appropriations process," he said.

Macy said it is an executive-branch responsibility to find the right plan.

"The Congress has been looking to the Administration from the time the act was passed in 1967—both the Johnson and the Nixon Administrations—for a plan for long-range financing," he said. "Without a plan, we're just half of what was intended."

Harley—William G. Harley, president of the National Association of Educational Broadcasters (NAEB), said few local station executives believe they ever will get permanent funding.

"Three years I think we may be able to get," he said. "And I'm not altogether sure that that would be so bad. The Congress feels it must have an oversight responsibility for the expenditure of public funds, and if the committees involved behave responsibly and do not attempt to delve into operational matters and individual programs, the general-accountability factor is one that we should be perfectly willing to face up to."

Taverner—Donald V. Taverner, president and general manager of station WETA-TV, the public station in Washington, D.C., said there is no way to insulate the industry from government when it must apply for funds annually.

The ideal, he said, would be dedicated funds, independent of the appropriations process. But Taverner, who was president of the National Cable Television Association in 1970 and 1971, said he doubted that public broadcasting ever would escape dependency on Congress.

"I happen to think that insulation

from the government is almost impossible," he said. (For a report on Taverner and the NCTA, see Vol. 3, No. 33, p. 1706.)

Philosophic battle

The argument between the Administration and the industry is over the balance of funding, programming and content control between the public network and local public stations.

It built up privately for nearly a year, during which time Whitehead's OTP and the directors of the corporation tried—and failed—to agree on a bill to be submitted to Congress. Miami: On Oct. 20, 1971, Whitehead made public OTP's complaints about the industry.

Speech—He told public broadcasters who had gathered in Miami for an annual convention of the NAEB that the Administration opposed the centralization developing in the industry.

"To us, there is evidence that you are becoming affiliates of a centralized, national network," he said.

He said that programming was dominated by the CPB and the PBS, instead of by local stations, as intended by the commission and Congress.

He said that public stations were playing the same rating game that commercial broadcasters play.

"Once you're in the rating game, you want to win," Whitehead said. "You become a supplement to the commercial networks and do their things a bit better in order to attract the audience that wants more quality in program content."

The corporation, he said, was jeopardizing the ability of local stations to serve community needs with local programming by aiming for national impact and putting the goal of per-

manent financing above all others. "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?" he asked. "If it can't, then permanent financing will always be somewhere off in the distant future."

Witherspoon memo—John P. Witherspoon, CPB director of television activities, sent station managers a memorandum Nov. 5 in which he accused Whitehead of having injected politics into public broadcasting.

Quoting Whitehead's comment about permanent financing, Witherspoon said:

"That statement, coming from Dr. Whitehead—a man who has been charged by the President to come up with a long-range financing plan for public broadcasting, and who speaks for the Administration in telecommunications matters—says in straightforward language that until public broadcasting shows signs of becoming what this Administration wants it to be, this Administration will oppose permanent financing...."

"Until Miami, CPB could honestly say that our relations with government had been free of political influence in the affairs of public broadcasting."

Goldberg—In a March interview, Henry Goldberg, senior attorney in the OTP general counsel's office, said the Miami speech—which Goldberg said he helped draft—"was not an ultimatum—not at all. If it had not been so widely misunderstood, it would be funny."

The OTP complaint was that the local public broadcasting stations did not know in what direction their system was heading and the language in Whitehead's speech meant that they could not expect to get permanent funding until their direction was better known, Goldberg said.

Whitehead "was not saying anything new," Goldberg said. "What CPB did was to cry 'political foul,' and that, to me, was a copout."

Funding balance: One of the Administration's complaints about public broadcasting is that a small percentage of CPB funds has gone to local stations and the bulk to national programming.

In fiscal 1971, when CPB resources totaled \$27.8 million (including \$23 million in federal funds), the corporation used 14.1 per cent for commu-

The Quarrel Over Public Affairs

Should federal money be used to pay for public-affairs programming on public television?

That question was raised by Clay T. Whitehead, director of the Office of Telecommunications Policy, in an interview broadcast by National Public Radio on Jan. 12 and the subject has been debated ever since.

Whitehead: "There is a real question," Whitehead said, "as to whether public television, particularly I guess really the national federally funded part of public television, should be carrying public affairs and news commentary, and that kind of thing, for several reasons."

"One is the fact that the commercial networks, by and large, do, I think, quite a good job in that area...."

"Another consideration is that we have a very strong tradition in this country that the press and the government stay at arm's length, that they keep apart from each other. So that when you're talking about using federal funds to support a journalism activity, it's always going to be a subject of scrutiny."

Broadcaster response: Those remarks, by an official who speaks for the President on telecommunications matters, were enough to disturb public broadcasters more than anything Whitehead already had said about them.

Day—James Day, president of the Educational Broadcasting Corp. (which includes WNET) in New York City, told a meeting of fellow public broadcasters in San Francisco on Feb. 28 that "if we permit Dr. Whitehead to operate on the body of public television and remove its vital organs of news and current affairs and opinion, it will not be worth our time to keep the body alive...."

"I find his recommendation that public television not compete with commercial television in the area of news and public affairs so patently ridiculous that it virtually answers itself. When one realizes that commercial television devotes a scant 2 per cent of its prime time to news and public affairs in a country where self-government is dependent upon an informed electorate—whose people when polled cite television as their principal source of information—the only wonder is that the present Administration would permit itself to be identified with such a ridiculous and self-serving position."

Macy—John W. Macy Jr., president of the Corporation for Public Broadcasting, said in an interview: "We have the obligation to deal with the issues of our time in public broadcasting. This should be done in a form of video and audio journalism that is different and distinctive from that offered by the commercial broadcaster...."

"I feel that it was clearly intended that there be public-affairs programming.... I feel that this is part of our mission."

Harley—William G. Harley, president of the National Association of Educational Broadcasters, said, "We simply must have (public-affairs programming). It is very important that public broadcasting address itself to matters of great public concern. We're bound to get criticism, but this is the constant price of freedom in a democracy."

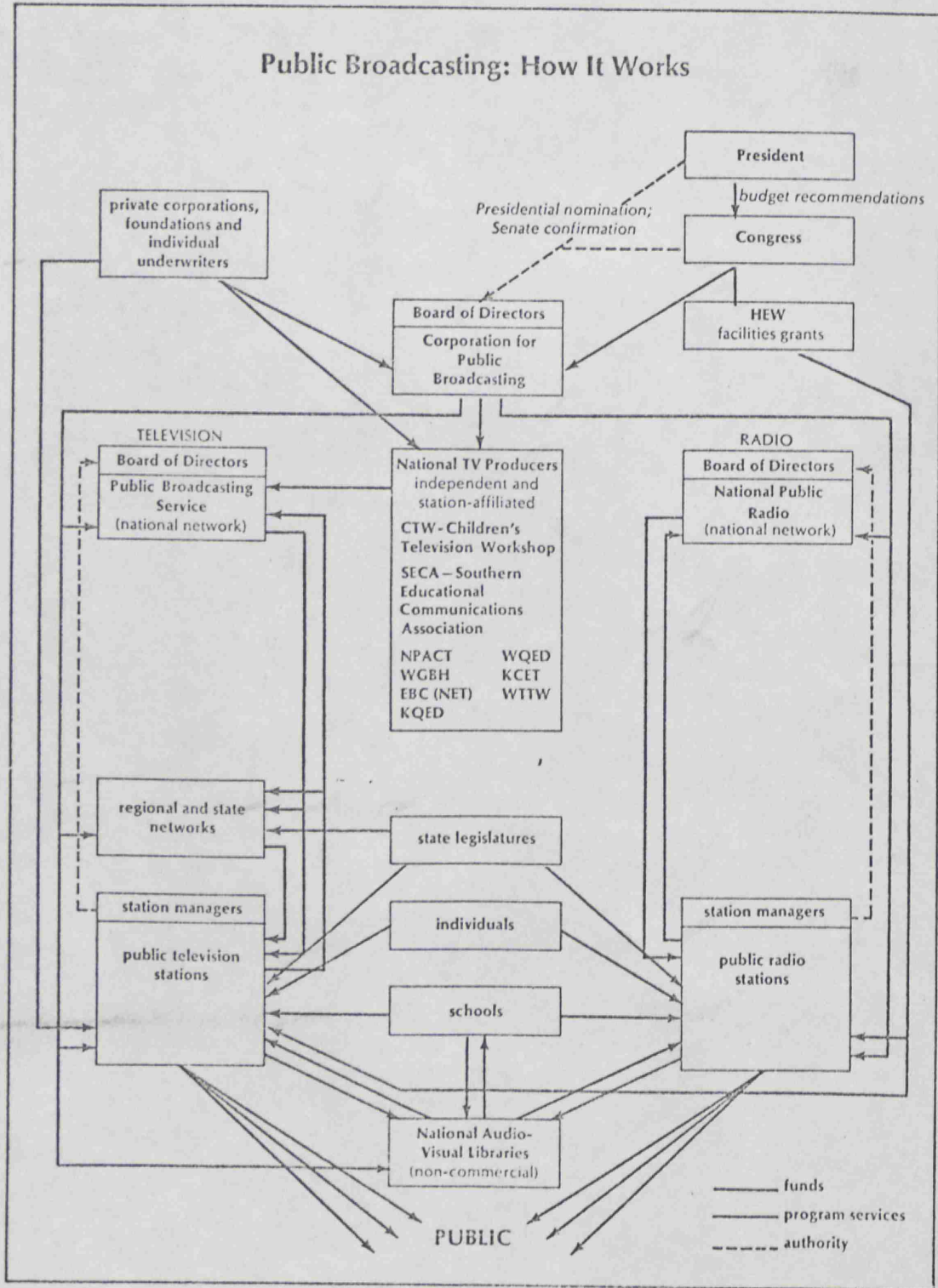
Whitehead rebuttal: In an interview, Whitehead said that his remarks were misinterpreted.

"I never questioned whether public affairs ought to be carried on public television," he said. "The only thing I have questioned was the extent to which federal funds ought to be used for public affairs on public television. And I was really thinking only about the controversial political type of public affairs."

"I have just simply raised the point that to the extent you're using federal funds to produce programming that is highly controversial politically, then you've got to expect that you're going to receive attention in the media, and that Congressmen, Senators, and so forth, are going to focus attention on the thing."

"I think that the way to put it is simply that the public television people shouldn't be surprised if they find themselves in the middle of controversy when they do controversial programming."

Public Broadcasting: How It Works



nity-service grants to local stations. It used 64 per cent for national programming.

In fiscal 1972, when resources have climbed to \$39.7 million (including \$35 million in federal funds), CPB is sending 15 per cent to the local stations and is using 71.6 per cent for national programming.

President Macy pledged a year ago that in the future the corporation would give at least 30 per cent of its federal funds to local stations. The CPB's proposed budget for fiscal 1973, when the corporation hopes for total resources of \$70 million (with \$65 million from the federal government), provides that 28.6 per cent of the total money (and 30.8 per cent of the federal money) will go to local stations and 60 per cent to national programming.

Scalia—Antonin Scalia, general counsel of the OTP, said in an interview that the 1971 and 1972 figures show the "disproportionate investment in national facilities" that has been made since the CPB began.

He said that when he began studies for the OTP a year ago, it was apparent that the trend in public broadcasting was more and more toward national development at the expense of local stations.

"At least it was time to sound the alarm," he said.

Scalia acknowledged that the corporation now seemed to be planning to provide increasing amounts to local stations, but said, "I would think that the emphasis should have come sooner."

To ensure that local stations are given an adequate share of federal funds, he said, the Administration has been trying to include a fixed formula in its proposed funding legislation.

"All we're trying to do is give them a bare minimum," he said.

He noted that Macy's pledge was for an aggregate amount and that there was no guarantee that every station would get enough money.

Scalia said he was against setting a fixed percentage for stations, anyway. As total funds go up, the percentage should go up, he said, because national expenses should level off and the number of local stations should increase.

Rebuttal—Macy said that the disproportionate spending of the past has resulted from the CPB's trying to get the most for its limited money.

A Growing Audience for Public TV

Public television is becoming more visible every year.

During fiscal 1971, which ended last June 30, the number of regular weekly viewers rose from 33 million to 39 million. The number of weekly viewers—those who tune in to a public station at least once a week—was 24 million two years earlier.

PBS: A major reason for increased viewing has been the national programming offered since 1970 by the Public Broadcasting Service. PBS now serves 219 noncommercial television stations with programs produced by local stations and national production centers, most of which are affiliated with local stations.

Radio: There are more than 500 public radio stations in the United States, mostly on the FM band. Only about one-fourth of them, however, qualify as "full-service" stations, carrying a complete broadcast schedule. Most of the others offer limited services to university campuses.

On April 20, 1971, National Public Radio began operating as the first live national network of public radio stations. At the moment, 135 stations are served by NPR.

CPB: Public radio and television stations are funded by governments, schools and nonprofit organizations at the national, state and local levels. The federal government share of funding is channeled primarily through the Corporation for Public Broadcasting, which was established by Congress in 1967 to assist in the development of public broadcasting in the United States.

The corporation also provides money to the PBS and NPR networks. The corporation this year has a budget of nearly \$40 million, which includes \$35 million from federal appropriations. By the end of the fiscal year, CPB expects to have spent \$25 million for the production and distribution (through PBS) of national television programs, \$3 million for the production and distribution (through NPR) of national radio programs, and \$8 million for development and support of local radio and television stations.

The remaining \$3 million will be used for administrative expenses for CPB itself, for planning, research and evaluation programs.

Next year's budget level still is unknown because Congress has not acted on CPB appropriations, but the corporation expects to increase its support of local stations by several million dollars.

Controversy: The Nixon Administration does not approve of the way CPB has been channeling funds, and would like to see much more money—as much as one-half of the CPB budget—going to local stations.

So far the Administration complaints have been directed primarily toward the funding of public television, where, of course, the vast majority of the dollars go.

"We have not been able to give the stations as much financial support as we would have liked," he said. "It was our belief that the increased (local) funding had to be deferred until we had met the mandate of having the interconnection and providing a broader range of quality programming than had existed prior to the establishment of the corporation."

Program balance: The Administration also is critical of the balance between nationally originated and locally originated programs seen on local stations.

OTP—In an interview, Whitehead amplified the criticism of his Miami speech:

"You've got to have the network," he said. "But nobody foresaw—and,

in fact, the legislative history makes it very clear that it was not intended that there be—what is called a fixed-schedule network."

He said the commission and Congress suggested connecting stations so that national programs could be fed to and exchanged among local stations for use as they saw fit.

Whitehead said that last year the CPB and PBS spent \$2 million on promotion, much of it to advertise a national, fixed-time program schedule. That "puts tremendous pressure on the local station to carry the network (live)," Whitehead said. "That just was never the intent. It was never intended that there be a monolithic, centrally controlled network."

Industry response—Public broadcasters defend their present practices on two grounds: lack of sufficient funds to use the network differently and the importance of national programming to local stations and to the system.

Hartford N. Gunn Jr., president of the Public Broadcasting Service, said that two-thirds of the public television stations on the network have neither equipment nor staff to record PBS programs for later showing. One-third have no color-recording machines, he said.

Those local stations, he said, must broadcast national programs live or not at all.

Chalmers H. Marquis, executive vice president of the NAEB, said that stations would need three \$100,000 color videotape machines to use the system Whitehead's way—one to record network and local programs, one to play them back for broadcast, and one for backup.

The NAEB's Harley said that national programs have enriched local schedules and helped draw attention to and support for public stations.

"We never really got into the public consciousness until we got into an interconnected system," Harley said.

Marquis defended advertising as an important device in gaining an audience for local as well as national programs.

"Every program has an intended audience," he said. "Unless people know it's on, it's a total waste."

"Getting the word out is the biggest single problem the stations have, aside from just staying alive."

Public-television promotion, he said, is not the same search for a mass audience that is made by commercial television, but an attempt to "hit most of the people in a community once each week."

A 50-per cent "weekly circulation"—in which one-half of the television sets in a market would be tuned at least once to the public station over a week's time—would be very good for most local stations.

The most outspoken defender of the PBS network has been James Day, president of the Educational Broadcasting Corp. in New York City. In that job, he heads station WNET-TV and its affiliated national production center.

Before the PBS was formed, Day's National Educational Television (NET) was the prime producer and

distributor of national programs for the public television industry.

Day freely admits that the PBS is a centralized network and argues that it should be.

"Originally conceived as a distribution mechanism for programs, it has evolved into a fourth network; we shouldn't be ashamed of that fact," he told the Western Educational Society for Telecommunications in San Francisco on Feb. 28.

"It is absurd to attempt to carry decentralization into that part of the public-television equation that is national programming," he said.

Control: Administration officials say that too much control is exercised by the corporation in funding programs and by the PBS in deciding what shows go on the network.

Public broadcasters deny the charge. They argue that the CPB is not involved in programming and that the PBS is controlled by station managers so that the stations decide what the network offers.

Administration—Scalia, addressing the telecommunications conference in San Francisco on March 1, complained that last year more than 90 per cent of prime-time programming on public television came from six national production centers.

"And even more distressing than the small number of production sources is the apparently growing tendency toward centralization of program decision making by CPB," he said.

In a later interview, Scalia said that corporation and PBS officials play an active role in initiating programs supposedly produced by independent production centers.

"Ask around how often the initiative comes from CPB itself," he suggested. "How often do they say, 'What

we need is a program on this and so?'"

Henry Goldberg of Scalia's office supported the charge.

"I don't think it's fair to say that these are six independent producers and CPB is just giving them money," he said. The system, he said, is "one production entity with six studios."

Industry response—Hartford Gunn agreed that the PBS plays an active role in coordinating the work of more than 20 producers who supply shows for the network. "It's our job to pull together the program schedule for the stations," he said.

Gunn also admitted that CPB approval of programming is necessary for approval of financing. "They in fact have the purse strings," he said. "PBS decides what should go into the schedule, but the man with the money has the final word."

However, Gunn said, he could not recall a major series that had been turned down by the CPB. "Generally, they approve the programs which we say are required to meet the needs of the system," he said.

Gunn said the PBS is responsive to the ideas of local station personnel. The PBS board of directors is dominated by station managers, he said, and he has constantly tried to give managers more say in what the network does.

John Macy disagreed with the OTP charge that program initiative comes from the top. "Most of the program ideas have been generated by the production centers," he said.

He said that program ideas generally flow up to the corporation for funding and, once produced, go out to the PBS for national distribution.

"In no sense is there a national program determination at a central point," Macy said. "The ideas are



James Day

John P. Witherspoon

Antonia Scalia

coming in from many different points."

James Day holds a view on network program control that falls outside those of both major adversaries.

Day's complaint is not that national programming is too centrally controlled but that the control comes from station managers—who are professional broadcasters—rather than from true public representatives.

He told the San Francisco conference that some way should be found to "place the control and policy of PBS in public hands."

Once that is done, network control over programming should increase, he said.

Local stations, represented by the NAEB, have mixed feelings on the general issue of centralization. Harley said that some views expressed by Whitehead in Miami had long been held by local broadcasters.

"I suppose, in a kind of a simplistic way, the stations feel that the corporation and any spin-off agencies that it creates are to be service agencies for the stations," he said.

"Some of the conflict has come with those who have been in charge of these agencies who tend to look at it from the other way around, as though they were an end to themselves, so to speak, and that the stations were a part of this centralized structure."

Harley said he remembered a press release from either CPB or PBS referring to local stations as "outlets," a term that local public stations detest. He said that the term "affiliates" is hardly better. Stations, which regard themselves as the heart of the system, do not like the term "network," either, Harley said, and prefer to call the station hookup an "interconnection."

But Harley took exception also to the way the OTP has criticized the system and brought the issues out into the public.

"The thing that Mr. Scalia and Mr. Whitehead have refused to recognize is that this is a whole brand-new enterprise," he said. "We're just putting the pieces together, and though we may be critical and we're concerned, we're not about to tear the thing down."

Accommodations

Several changes in the structure of public broadcasting have been made or promised in recent weeks. The changes could serve to cool Admini-

White House Motives

When the Office of Telecommunications Policy, as a spokesman for the Nixon Administration, began its open criticism of public broadcasting last fall, unattributed references began to appear both in the general and trade press assigning sinister motives to the White House.

The attacks came, the stories said, because the President and his staff react strongly against the views of Sander Vanocur, a former NBC television newsman, who was hired last September as a senior correspondent for the National Public Affairs Center for Television (NPACT).

Or, they said, it was because public broadcasting was beginning to siphon off viewers from commercial stations, which depend so heavily on mass audiences for advertising revenues.

Finally, some Administration critics said that the OTP attacks were aimed at protecting the President's chance for reelection in November, which could be hurt by national, prime-time coverage of political issues on public stations to an extent not even approached by commercial broadcasters.

Industry denial: During extensive interviews over the past two months, however, no public broadcaster would make such an accusation, even on a not-for-attribution basis. John W. Macy Jr., president of the Corporation for Public Broadcasting, went out of his way to avoid making this kind of allegation.

Macy was read the following quotation attributed to an unnamed "prominent public broadcasting figure" in the Feb. 17 issue of *Newsday*: "I am convinced that the White House is determined to eliminate all news and public affairs broadcasting in public TV. . . . They believe that national news and public affairs on public television are too independent and too critical to be allowed to continue unmolested."

Macy responded with a laugh and said: "You're not going to get any confirmation of that from me. They've not said that to me, and I don't take what I read in the paper very seriously."

He said that he takes OTP criticism "at face value" and just tries to answer each individual charge as it comes up.

William E. Dyke, CPB public affairs director, was asked if he thought the Nixon Administration was out to destroy public broadcasting.

"Sometimes it seems that way to me," he said, laughing. "But I can't believe it." He said the situation is aggravated, however, by the industry's "phenomenal success" and high visibility. "When you're not very successful, you have an easier time of it," he said.

OTP denials: When the question of political motivation was raised with Administration officials, they vehemently denied any such purpose.

Vanocur issue—The thought that Administration criticism is based partly on NPACT's hiring of Vanocur at \$85,000 a year is "hogwash," said Antonin Scalia, OTP general counsel. "We were at loggerheads (with the industry) before I even heard of Vanocur."

Commercial competition—Scalia also denied that his office's criticism was based at all on fears that public broadcasting was taking away audiences from the commercial system. The audience shares of public stations still are small, he said, and may be comprised mostly of people who would not be watching any television if it were not for the public stations.

"I don't think they're a threat at all to advertising-supported television," Scalia said. "It's foolish to think that our position has anything to do with a threat to commercial broadcasting. I've never had a commercial broadcaster express to me a fear of any threat."

Reelection drive—OTP director Clay T. Whitehead was asked to respond to suggestions that the Administration opposes public broadcasting because a highly active and highly visible public television system could be a detriment to President Nixon's reelection.

"I think the best way to respond to that," he said, "is to say, first, that it's not true, and, second, to offer my personal observation that I don't think public television is going to elect or not elect the President in '72. . . . I don't think it's that big a factor."

tration criticism, although industry officials deny that was its purpose.

Generally, the changes will give stations more control in the operation of the system, or in other ways further decentralize decision making and authority.

CPB: The corporation's board of directors, meeting in Anaheim, Calif., March 17 and 18, ordered a series of actions that a CPB information memorandum said was "designed to strengthen and improve the working relationships between noncommercial broadcasting licensees and the board and staff of the corporation."

Budget preparation—The board adopted a formal procedure to assure station managers a voice in preparing the CPB budget and disseminating funds to stations.

A panel of station managers, still to be named, will make budget recommendations to the CPB staff and will review budget proposals before they are submitted to the federal government. After Congress appropriates funds, the panel will review the adopted budget before any funds actually are distributed.

The panel will have an even greater voice in recommending corporation community-service grants to stations.

More meetings—The board also promised that board members would visit local stations more often in the future, would hold two formal meetings a year with station managers and that station managers would attend regular board meetings more often.

PBS: The Public Broadcasting Service, headed by Gunn, also took steps last month to broaden participation in its operations.

Expanded board—The PBS board of directors voted to increase its own membership from 11 to 19. The new board, whose date of formation still is undecided, will have 12 station representatives (compared with six now) and six public members (compared with two now). Two present members, the president of CPB and the president of the Educational Broadcasting Corp. in New York City, no longer will be on the board.

Evaluation panel—The board also decided to establish a 12-member evaluation panel to review the network's over-all presentation of public-affairs programming. The review will be made periodically, perhaps once a year, of programs already sent to stations. They also will occasionally preview controversial programs.

Ten members will be professional journalists from across the country and two will be public representatives from the PBS board. They will look at public-affairs programming in terms of adequacy, fairness, professionalism and similar qualities.

Coordinator—James C. Lehrer, news director of public television station KERA-TV in Dallas, was named by the board to the new position of public-affairs coordinator. He will seek to avoid duplication of public-affairs programs by the many production centers that offer shows to the network. He also will screen public-affairs programs before distribution.

Standards—Finally, the board adopted a series of journalism standards and guidelines that had been drawn last November by an advisory board headed by Elie Abel, dean of the Columbia University Graduate School of Journalism.

The standards stress fairness, balance, objectivity, technical accuracy and coverage of unorthodox as well as accepted ideas.

Constitution: In a speech to public television executives in Washington on April 4, John Macy called for a "constitutional convention" to help guide the industry.

He saw it as a "series of sessions which would gather the best minds from within our industry to define clearly the organizational structure, forms of governance and priority purposes of public television to guide us through 1977 and beyond."

He said they could be coordinated with separate meetings of a special industry task force to formulate a proposal for long-range financing.

"The need for a 'constitution' ... has been well demonstrated in this past year," Macy said, "when our internal stresses and strains sometimes reached painful proportions."

Planning, he said, is especially important because of public broadcasting's dependence on federal funds.

"As we receive more and more federal dollars—or maybe I should say before we receive long-range federal financing—we must build a complete case justifying that expenditure of the public's money," he said.

Assessment: Macy's statement sounded much like those that have emanated from the White House in recent months, and it is a sign that the major adversaries in the public broadcasting dispute are moving together.

Lamb—Brian P. Lamb, assistant to

the OTP director, said, "We're thinking much more along the same lines than we were six months ago." But he said the OTP still does not feel that the major issues have been resolved.

Macy—Macy maintained that the recent changes had been planned for a long time, and that they are part of an evolution in public broadcasting.

Furthermore, he said, "I think that basically Mr. Whitehead is supportive of public broadcasting. I think the areas of difference are far less than has generally been publicized."

Gunn—The PBS's Gunn said also that his board's recent changes had long been planned and were designed to put controls in the system.

"The public and the Administration have a right to know how the system operates," he said.

Referring to the evaluation panel, he said, "There have got to be people reviewing our activities. We prefer to have it done by professionals rather than by politicians."

Harley—The NAB's Harley said that the power and importance of local stations had become more appreciated by Congress and the corporation in recent weeks.

"I think this has all been very healthy," he said.

Legislation

Several public broadcast funding bills are before Congress, one of them already headed for the House floor.

The two most important bills were introduced by Democrats shortly after Whitehead's Miami declaration that the Nixon Administration would not soon ask for long-range financing.

Magnuson-Pastore: The first funding bill, S 2765, was introduced on Oct. 28 by Sens. Warren G. Magnuson, D-Wash., and John O. Pastore, D-R.I. Magnuson is chairman of the Senate Commerce Committee, to which the bill was referred. Pastore is chairman of its Communications Subcommittee.

The bill merely would extend for one year the present authorization for the corporation, which totals \$35 million in federal funds. An aide to Pastore said the bill was introduced to force some response from Congress and the Administration.

Without such a bill, the corporation would be left without any spending authority after June 30.

Macdonald bill: A much more ambitious bill was introduced Nov. 16 by Rep. Macdonald.

Public Broadcasting and Congress' Intent

In developing his arguments that public broadcasting has become too centralized at the expense of station autonomy, Clay T. Whitehead, director of the Administration's Office of Telecommunications Policy, relied heavily on the legislative history of the Public Broadcasting Act of 1967 (81 Stat 365).

Three documents provide most of this history—the final report of the Carnegie Commission on Educational Television, released Jan. 25, 1967; Senate Report 222, issued May 11, 1967; and House Report 572, issued Aug. 21, 1967.

Although these documents stress a need for national leadership and services in public broadcasting, they emphasize more than anything a need for strong local stations. They encourage the development of interconnections to link all stations together, but they call for a network much different from those now operated by commercial broadcasters.

There still is strong disagreement between Whitehead and public broadcasters about whether the intent of the study commission and of Congress actually is being followed, but the excerpts quoted below show what that intent was in the areas of station autonomy, interconnection and public affairs.

Station autonomy

"The local stations must be the bedrock upon which public television is erected, and the instruments to which all its activities are referred."

—Carnegie report

"... It should be remembered that local stations are the bedrock of this system and as such must be responsive to the needs and desires of the public which they serve. It is not intended, therefore, that these stations be mere conduits for the productions of other stations or other outside sources."

"We wish to state in the strongest terms possible that it is our intention that local stations be absolutely free to determine for themselves what they should or should not broadcast."

—Senate report

"... Local stations shall retain both the opportunity and responsibility for broadcasting programs they feel best serve their communities. Similarly, the local station alone will make the decision whether or not to participate in any interconnection arrangements, be it state, regional or national..."

"In the same manner that the bill strives to insulate the corporation (Corporation for Public Broadcasting) from governmental control, the bill provides and the committee intends to see to it that the local educational broadcasting stations conduct their operations without corporation interference or control."

—House report

Interconnection

"Ordinary networking of taped or filmed programs, inseparably linked with the concept of the single signal, appears to the commission to be incompatible in general with the purposes of public television. It presupposes a single audience where public television seeks to serve differentiated audiences. It minimizes the role of the local station where public television, as we see it, is to be as decentralized as the nature of television permits..."

"The commission consequently proposes that public television look to interconnection primarily as a device for the distribution of programs... There would be no expectation that the programs would be immediately rebroadcast by the local station (although of course there would be nothing to prevent such use). Instead, the local station manager would be expected to record those programs he might later use, ignoring the rest."

"We wish to make it clear that what we recommend here is an attitude toward interconnection and not a rigid set of procedures. Beyond any doubt, public television must be fully prepared to use live networking when the occasion warrants... What we recommend is simply that the ordinary use of the system be for distribution rather than networking."

—Carnegie report

"Although the fundamental concept of the noncommercial educational broadcasting system envisions strong local stations and hence de-emphasizes networking as we know it in commercial broadcasting, interconnection will play a crucial role. We, therefore, expect that the corporation will develop a policy on interconnection which will reflect its primary purpose of program distribution while also recognizing that occasions will arise where live or simultaneous broadcasting will be warranted."

"The corporation would use the interconnection facilities to distribute and transmit programs at all hours but each station would be required to make its own decision as to what program it accepts and broadcasts and at what time..."

"Fears were expressed (in the hearings) that if the corporation was given this authority it would tend to develop a fixed schedule, network-type operation and thus the local station would be placed in a difficult position to control effectively its broadcast schedule."

—Senate report

"Even with respect to live simultaneous broadcasts, local stations will have the absolute discretion to decide if such programs will be carried at the time the corporation has arranged for their transmission, at some other time, or not at all."

—House report

Public affairs

"Major theatrical and musical productions, documentaries on subjects of national concern or which require a national approach, programs dealing on a national scale with public affairs or with news commentary, are immediately appropriate (for national production centers)."

—Carnegie report

"Particularly in the area of public affairs your committee feels that noncommercial broadcasting is uniquely fitted to offer in-depth coverage and analysis which will lead to a better informed and enlightened public."

—Senate report

His original bill, HR 11807—which by now has been modified substantially by committee action and re-introduced as HR 13918—would have extended the authorization of the corporation for five years. Spending levels would have started at \$65 million in fiscal 1973 and risen to as much as \$160 million by fiscal 1977.

Macdonald introduced his bill after consultation with corporation officials, who considered it a major step toward long-range funding.

The bill contained many of the very features that Whitehead had said the Administration did not want.

Budget request: On Jan. 24, President Nixon committed himself to extending the authorization of the corporation for at least a year. In his budget request for fiscal 1973, he included \$45 million for public broadcasting, a \$10-million increase over fiscal 1972.

Administration officials have pointed to that increase in requested funds as proof that Mr. Nixon supports the concept of public broadcasting.

Hearings: The House Communications Subcommittee held hearings on public broadcasting on Feb. 1-3. Only Whitehead opposed the Macdonald bill.

Killian—An important witness, from the industry's standpoint, was James R. Killian Jr., who was the chairman of the Carnegie Commission and who now serves as vice chairman of the CPB board of directors.

That experience made Killian uniquely qualified to comment on the Administration charge that public broadcasting had developed in a manner not intended by the commission.

His testimony delighted corporation officials.

"In my view," Killian said, "public broadcasting has moved ahead steadily in the spirit of the Carnegie Commission recommendations and in accord with the wise provisions of the Public Broadcasting Act. . . ."

"At all times the corporation has sought to honor the autonomy, independence and diversity of local stations while evolving those guidelines and leadership principles which are its corporate responsibility under the Public Broadcasting Act."

Killian, who is chairman of the corporation for the Massachusetts Institute of Technology, said he was disappointed that Congress has neither funded the corporation at the level the commission had suggested nor established a trust fund.

"It was the view of the Carnegie



James R. Killian Jr.



Dean Burch

Commission—and I still strongly support this view—that the trust fund and the corporation are jointly essential to the insulation of public broadcasting from the dangers of political control," he said.

Killian urged the committee to approve HR 11807.

In an interview after the hearings, John Macy said that as long as Killian and others approved of CPB's operations, he was not so concerned about Administration disapproval.

Macy testimony—Macy also urged enactment of the Macdonald bill. He said that while he still favored permanent financing, the bill would be an improvement over the present annual funding.

"I cannot stress enough the importance of public broadcasting's knowing where its next year's dollars will come from," he said.

In addition, he said, "if public broadcasting is to rise to its full poten-

tial, it clearly needs to be freed of all potential of outside interference, and this freedom cannot exist in an insecure financial atmosphere."

Burch—Dean Burch, chairman of the Federal Communications Commission, said his agency does not consider itself expert on the funding of public broadcasting.

He said that FCC jurisdiction over the industry does not cover financing but is limited to the same areas as in commercial broadcasting, including licensing of stations and enforcement of the fairness doctrine.

Burch did call for long-term financing for public broadcasting, however, and said the commission supported HR 11807.

Asked by Macdonald whether he or Whitehead spoke for the Nixon Administration on the bill, Burch said that Whitehead was the spokesman.

Whitehead testimony—Whitehead told the subcommittee that the Administration opposed all CPB bills being considered. In specific reference to HR 11807, he complained that the funding was too high and that there was no guarantee that a certain amount of money would pass through the CPB untouched on its way to local stations.

"It would heighten the local stations' sense of autonomy and independence if they had available a stable source of funds of a known quantity, as a matter of statutory right and not CPB discretion," he said.

Whitehead said the Administration favored a one-year extension of CPB's authorization. A bill to achieve that, HR 13007, was introduced Feb. 7 as the Administration bill.

It provides for up to \$45 million in funds for fiscal 1973, but requires that \$15 million be passed on to local stations by the CPB in accordance with a formula set out by the bill. Each local television station would receive a minimum grant of about \$50,000.

CPB position: Spokesmen for the public broadcasting industry, noting the strong bipartisan support given the Macdonald bill so far, said they do not expect the Administration to fight the bill very hard.

"The Administration has more important things to do than fool around with this damn bill," said WETA's Taverner. "I don't think they're going to make an overt effort to oppose this bill."

But industry leaders are not taking the bill's passage for granted. They have been urging station managers

and even public broadcasting viewers and listeners to lobby for the bill.

Committee action

The Macdonald subcommittee and then the full committee approved a bill soon after the hearings ended.

Although HR 13918 pledges dollars over fewer years than the original Macdonald bill, it still was a victory for the broadcasters and a defeat for the Administration.

Provisions: HR 13918 authorizes spending by the corporation of up to \$65 million in fiscal 1973 and \$90 million in fiscal 1974.

The original Macdonald bill, HR 11807, would have authorized CPB spending for five years, with the first two years at the same levels as those in HR 13918.

Both versions called for appropriations to be placed in a new Public Broadcasting Fund before transfer to the CPB. The fund would have little effect at first, but it could be a step toward the Carnegie Commission's trust fund.

Both versions also contained a requirement that the corporation pass on to local stations at least 30 per cent of the money it receives from the fund. There is no formula, as there is in the Administration bill.

The final committee bill called for a change in the makeup of the CPB board so that five of the 15 members would represent stations. All present members are public representatives.

The final version also called for up to \$25 million for facility grants to stations in fiscal 1973—an increase of \$10 million over present law. Facilities grants are distributed by the HEW Department.

Revisions: Almost all of the revisions of Macdonald's original bill came in subcommittee executive sessions.

"We went in there very closely divided," Macdonald said. "However, I accepted some amendments from the Republican side which I think didn't do any injustice to the bill."

Asked whether the changes were made to accommodate the Administration, Macdonald said:

"The only compromise was on the period of funding. I had put five years in the first bill because that is what the corporation wanted. But I told them I wasn't going to hold out for five. I held out for three—as strongly as I could."

Because he was concerned that Republican members would damage the bill, he said, he settled for two years.

"But that's the only real compromise," he said. "There was no compromise in the amount of funding. There was no compromise, either, about the composition of the board. It just seems to me that someone should have thought of that a long time ago."

Macdonald said Rep. Clarence J. Brown, R-Ohio, first proposed the change in board membership. (On Feb. 1, Brown had introduced a bill, HR 12808, that would have curtailed the authority of the corporation.)

Rep. Robert O. Tiernan, D-R.I., also endorsed the idea, Macdonald said. (Tiernan, whom public broadcasters consider an ally, had introduced in April a five-year funding plan, HR 7443.)

"Brown's amendment started it. Tiernan polished it and, in modesty, I re-polished it and we came out with the thing that you see now, which Brown agreed to," Macdonald said.

"That's a strengthening compro-



Hartford N. Gunn Jr.



Jim Karayn

mise," he said. "It wasn't a compromise to the Administration. It was a compromise to get in a good idea. I just wish it had been in my original bill."

Votes: The final vote in the subcommittee on March 16 was 8-1, with only Rep. James M. Collins, R-Tex., dissenting. Seven of the eight (Rep. Goodloe E. Byron, D-Md., is the exception) listed themselves as cosponsors of the reported bill, an indication of strong bipartisan support.

The full committee approved the bill with just two minor amendments.

One change, proposed by Rep. James T. Broyhill, R-N.C., would limit annual salaries of CPB officers and staff to executive level 1—Cabinet rank—which now is \$60,000. Present officeholders would be exempt, however, so that Macy's \$65,000 salary—the only one at CPB above the limit—could continue. Performers and other personnel in the rest of the industry would not be affected.

The other amendment came from Brown. It stipulates that none of the money granted by CPB to local stations under the 30-per cent formula could be used for facilities. That would ensure its use for programming and other operating expenses.

Committee approval came on a voice vote. Macdonald said he heard only one dissent, but when the committee report was issued April 11, Reps. Collins and John G. Schmitz, R-Calif., included dissenting views.

Legislative prospects

With such strong committee support, HR 13918 has an excellent chance of passing the House.

"I'm sure there will be amendments on the floor to weaken it by reducing the money or keeping it to one year," said William E. Duke, public affairs director for CPB. "If I had to bet, though, I'd bet it would come out pretty much as it is now."

Jim Karayn, president and general manager of the National Public Affairs Center for Television (NPACT), said that in the past "the House has always been our difficult place to get legislation—not the Senate."

This year, he said, there seems to be a "backlash" to Administration criticism of public broadcasting that might help the bill in both the House and Senate.

Karayn said he was more confident of getting multi-year funding now than he was two months ago.



Torbert H. Macdonald

Administration: The Nixon Administration still is against the Macdonald bill, even in its revised form.

"We think it ought to be one year," Whitehead said. "Two years would just take away any pressure to come up with a long-range financing plan."

When asked where the pressure was being applied, he said, "It's on Congress, and it's on the Administration, and it's on CPB."

Whitehead explained that his office had two major complaints about the first Macdonald bill that remain valid with the revised version: the funding is too high and there is no minimum guarantee for each individual station.

Macdonald: Rep. Macdonald said that he found it incredible that Whitehead still opposed the bill.

"Is he blind enough not to see that he's in a lost cause?" Macdonald asked. "I don't think they can come out and say they're for it after they've attacked it all over the country. But if they've got any sense—you know, they've had two defeats, subcommittee and full committee, why should they risk a third on the floor?"

"I personally, from 18 years experience on the Hill, would be surprised at their political judgment if they choose to fight this bill."

"I have no qualms in saying it will pass the House anyway, whether they oppose it or not."

Senate: There are no signs that public broadcasting has much to worry about in the Senate.

"I have discussed the committee bill with key Members of the Senate, and they have raised no objections," Macdonald said.

If the bill does go over to the Senate



Donald V. Taverner

—and even if it does not—hearings are certain to be held by the Senate Commerce Subcommittee on Communications, headed by Pastore.

An aide to Pastore, who did not want to be identified, said he expected the Senate committee to wait and see what happens in the House. Although Magnuson and Pastore have their own bill, S 2765, pending in committee, they would prefer not to hold hearings until the committee could consider a House-passed bill, the aide said.

"If the House fails to go ahead, you may find us moving very rapidly," he said. "But right now, it's foolish for us to go ahead with a hearing on our bill and the Administration bill, when the House has already cleared its own bill through its committee."

The aide said that Magnuson and Pastore "have been chief proponents of public broadcasting since its inception," and that they might very well favor the two-year and other provisions of the House bill. He said they would not take a stand, however, until the bill is before them.

Lobbying: Not wanting to take anything for granted, leaders of the public broadcasting industry have been asking their associates to contact their House and Senate Members to urge passage of the legislation.

Donald Taverner said he has been encouraging his station's board of directors to lobby for the bill. They have unique opportunities to do so because of their location in Washington, he said.

"I've been telling them, 'Don't write to these Senators. Have cocktails with them. Go to parties with them.'"

John Macy told a convention of



William E. Duke

public television managers in Washington on April 4 that they also should try to get more grass-roots support for the industry.

"I continually hear the complaint from our often-tested friends on Capitol Hill that one of their most difficult problems is that Members of Congress rarely hear from the audiences of public broadcasting."

"We must find ways to inform our viewers that this is vital if public broadcasting is ever going to receive the level of federal support it needs," he said.

New effort—At a closing session of the convention, those attending discussed the possibility of organizing representatives of local-station boards for a new lobbying effort.

Hartford Gunn of PBS said these board members, who usually are prominent community leaders, could form "a blue-chip effort" toward the industry's funding goals.

There was some hesitation about establishing a new, formal organization within the industry, but the station representatives all seemed to agree that their board members could be an important new resource for lobbying.

Macy said the idea would be pursued further with station boards.

Fortune cookie—In what has become a traditional joke between the two men, William Harley of the NAEB handed Macy a Chinese fortune cookie just before the conference closed April 6.

Macy opened it and read its message to the conference:

"It is well to remember that a House united guarantees nothing in the Senate."

(Res)
6/22/72

THE WHITE HOUSE
WASHINGTON

August 1, 1972

TO: Tom Whitehead

FROM: John Wells

FYI --

THE WHITE HOUSE

WASHINGTON

July 19, 1972

~~ADMINISTRATIVELY CONFIDENTIAL~~

MEMORANDUM FOR: MR. PETER FLANIGAN

FROM: BRUCE KEHRLI *BAC*

SUBJECT: Comments on Report of
Broadcasters Meeting

Your memorandum to the President of July 1, 1972, on the "Status of Issues Discussed in Last Week's Broadcasters Meeting" has been reviewed and the following comments were made:

1. Strong agreement was indicated with the third paragraph of the first page.
2. Approval of the measures described in the first paragraph of the second page was indicated.
3. The third paragraph of the second page contains the following note:

"...But the FCC may find that the case-by-case application of the Doctrine cannot be changed without a new statutory mandate. If it proves necessary, the OTP is prepared to draft such legislation for your consideration.

Referring to the underlined portion, it was noted that this tactic is favored but at a later date.

cc: H.R. Haldeman
Alexander P. Butterfield

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
NOT NATIONAL SECURITY INFORMATION

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

December 6, 1972

DIRECTOR

MEMORANDUM FOR

Honorable John Ehrlichman
The White House

Since its inception two years ago, OTP has enabled the Administration to play a larger role in communications policy. Many of our accomplishments have resulted from quick reaction to immediate problems, such as the President's concern with television reruns and the FCC's inability to deal with the domestic satellite issues. Now OTP is prepared to advance a series of affirmative initiatives that can be tied to the President's program for next year.

I believe this package is consistent with the President's programs, restructuring government to let the private sector play its role, and enhance rather than erode our most important traditions regarding government and the communications media. Almost no Federal expenditures are involved, and some budget savings could be realized. A brief summary of the most significant of these initiatives is attached at Tab A. The first two (broadcasting and cable) have by far the largest political implications.

During the past twenty years, the communications industry has grown rapidly and undergone great technical change. It has contributed greatly to GNP and had great impact on our national life. The pace of both the economic and technical advance is clearly going to continue to increase at even faster rates over the next few years. Everyone -- particularly minority and special interest groups -- wants some type of political or ownership control over the media; and many business interests want a share of the new communications markets. The FCC's procedures (like those of most Federal regulatory agencies) are ill-suited to deal effectively with the rapid technical change and the politically charged issues of communications.

There will, therefore, be both the opportunity and the need for firm Administration leadership in establishing some basic policy directions. Decisions made during the second Nixon term

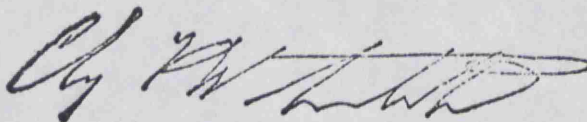
will largely determine the extent to which the benefits of the communications revolution are realized by the public and by industry -- and whether communications regulation by the Federal Government will be locked into the same kind of morass as transportation and power or whether a more competitive, free-enterprise framework is created.

The OTP initiatives are intended to restructure government regulation in an evolutionary way to guide the growth of communications technology and services in keeping with two main principles: (1) there should be more reliance on free enterprise and competition in communications rather than monopoly and government regulation, and (2) bureaucratic controls over the content of the media should be minimized. If the OTP program can be implemented in keeping with these principles, we can encourage the growth of at least three new multi-billion dollar industries: the broadband cable television industry, the computer information services industry, and the mobile communications industry. Such growth would contribute substantially to our economy and could help relieve unemployment in such critical sectors as the aerospace, electronics, and the film and television production industries.

As a result of the public broadcasting issue and our key role in the cable TV compromise, OTP is visible politically on the Hill and therefore vulnerable if we do not advance a substantive program of accomplishment. Similarly, the Administration's image on communications matters has been colored by the network news battle, and we need a more statesman like record of policy development and advocacy to stand on.

I am sending this same package to Pete Flanigan, emphasizing the international area, and have discussed the broadcasting section with Chuck Colson. I believe the President should be appraised of the overall effort, with special emphasis on broadcasting and cable TV. If time permits, it would be highly useful for me to discuss the most important aspects with you and him. However, the most important thing is to get approval to proceed so we can be ready to go early next year.

I would be happy to discuss this with you or to supply any further information you need.



Clay T. Whitehead

Attachment

I. BROADCASTING

Goal

Bring broadcast regulation more in line with our private enterprise media philosophy, stem the tide of demands by activist groups for free broadcast time, and correct the anticompetitive power of the TV networks.

Initiatives

A. Support statutory extension of broadcast license terms to five years; place burden of proof on renewal challengers; prohibit FCC establishment of program standards.

B. Support eventual elimination of detailed case-by-case enforcement of the Fairness Doctrine, but only when public confidence in broadcasting warrants and Congressional passage is feasible (not 1973).

C. Attempt to reduce obstacles blocking establishment of new commercial TV networks by changes in AT&T tariffs, FCC networking rules, and possible antitrust actions.

Impact

Initiatives A and B will be supported by most broadcasters, although they would prefer a simple extension of the license term. Minority and activist opposition would be mixed. There is likely to be little general public interest. Would require some effort to get key Congressional support.

Initiative C would be opposed by all broadcasters but should find some public and Congressional support if handled in the positive tone of more programming diversity and competition. Initiative A (and to a lesser extent B) is a prerequisite to the success of C as well as to establish our credibility on First Amendment issues.

II. CABLE TELEVISION

Goal

Create a new legislative framework for development of broadband cable television and the many entertainment, informational, and educational services a new cable television industry could provide (following Cabinet committee report).

Initiatives

Introduce legislation following recommendations of the Cabinet committee to create a statutory policy framework (now lacking) for the development and regulation of the cable television industry. This would resolve such issues as programs and channels for pay, networking competition with broadcasting, cross-media ownership of cable systems, and division of jurisdiction between the Federal Government and the States.

The committee recommends a pilot program to evaluate the use of cable to deliver government services more efficiently and to shorten the lag in bringing the technology to the marketplace. The program will cost \$25 million in FY74.

Impact

Assuming a moderate level of Presidential impetus, there is a good chance that some influential Congressmen and Senators, cable operators, broadcasters, and other media people would support such legislation. Others in the cable and broadcast industries will oppose it; but in the public's eye, they could be depicted as protecting their narrow economic interests by keeping more program choice from the audience. The biggest political issue would be "pay TV." The ability of customers to buy programming directly by the program or by the channel over cable is too important to allow it to be prohibited, but it is unlikely that the Congress would pass cable legislation that did not, in some way, retain certain program types (like professional sports) on "free" TV. Privacy safeguards would be built into the legislation to counteract "Big Brother" fears. Cable is here (10% of homes) and growing rapidly (up to 50% of homes by 1980). Hard-line broadcasters and theater owners are the only opponents. This is a positive initiative--costing no tax dollars--one the President can get behind and make the growth of cable service a Nixon accomplishment. The pilot program will help make this a more exciting initiative, convey movement in bringing technology to bear on government programs, and accelerate the marketability of the new technologies.

III. DOMESTIC COMMON CARRIER INDUSTRY

Goal

Promote more efficiency and competition in the domestic common carrier industry as new communications services arise.

Initiatives

A. Legislation to promote competition:

1. To authorize bulk leasing, brokerage, and resale of common carrier services;
2. To require identification of the extent of cross-subsidization among various common carrier services and enterprises;
3. To include economic efficiency, as well as equity, as a criterion for FCC approval of facilities and rate structures;
4. To limit the scope of FCC jurisdiction over non-monopoly services;
5. To extend domestic rates for telephone calls to Hawaii and Alaska.

B. Create an interagency study group to analyze and determine policy regarding the future role of the Bell Telephone System in providing common carrier services in competition with specialized competitive communications services.

Impact

The major impact would be to increase competition to AT&T, a move that would be vigorously opposed by that company and many of its stockholders, but supported by major elements of the electronics and communications industries. The public has little love for the phone company, and the Congress would feel little grassroots pressure to leap into the fray to protect AT&T's monopoly services.

IV. INTERNATIONAL COMMON CARRIER INDUSTRY

Goal

Restructure regulation of the U.S. international common carrier communications industry to eliminate artificial distinctions between voice and record (data) message carriers, to enhance the private enterprise character of Comsat, and to introduce more competition into satellite and undersea cable construction.

Legislation Initiative to Correct Deficiencies in the International Common Carrier Industry

A. Require the FCC to coordinate with the executive branch so that effective government-industry agreements with foreign governments regarding international communications facilities can be negotiated.

B. Terminate privileged common carrier ownership and participation in Comsat and eliminate Presidentially appointed directors from the Board.

C. Clarify statutory guidance to the FCC for regulating U.S. international carriers to allow more competition, redefine the classes of such carriers to reduce the obsolete distinction between voice and data communications, and to put satellites and undersea cables on a comparable basis under law.

Impact

The Byzantine structure of the U.S. international communications industry, as shaped by the FCC, is inefficient and not competitive. There is almost no public perception of the issue, and since there are only a few companies in the international market (AT&T, RCA, ITT, Comsat, and Western Union International), the general press is likely to interpret this mainly as an economic decision without political overtones. Industry opposition would probably not be uniform, and some companies would support those parts of the initiative that benefited them. Provision A may be opposed by FCC which would view it as a transfer of some FCC power to the executive branch. We have been under pressure from the Congress to submit our policy since last year and have delayed as long as possible. We will really take heat if we do not now proceed.

V. GOVERNMENT COMMUNICATIONS

Goal

Improve the Federal Government's own use of communications resources to achieve national security objectives. Minimize overlapping responsibilities, improve performance of public safety agencies, and realize government savings in the procurement of communications facilities and services.

Initiatives

A. Reorganize and streamline government communications and computer systems management to achieve more effective mechanisms for Presidential guidance, and to cut present budget and staff levels.

1. Short-term communications management improvements:
 - a. replace National Communications System staff and responsibilities with formal coordination by the Council for Government Communications Policy and Planning.
 - b. streamline responsibilities and functions of Defense Communications Agency.
 - c. eliminate non-essential Department of Commerce communications functions and shift OTP support functions to National Bureau of Standards or GSA.
2. Combining communications/computer systems management.
 - a. assign OTP lead responsibility for computer/communications area; to be coordinated with OMB computer responsibilities.
 - b. establish arrangements for coordination of Executive Office computer/communications systems.
 - c. Direct agencies to combine management of computers and communications.

B. Establish executive branch policy for purchasing of telecommunications services and equipment, including coordination of procedures for budgeting and frequency assignments.

C. Coordination and consolidation of government radio navigation systems and satellite communications systems.

D. Policy statement and experiment on the inclusion of economic value in assignment of radio frequency to government agencies.

E. Program to determine the environmental aspects of electromagnetic radiation.

F. Review Federal department and agency funding of programming (including public service announcements) intended for broadcast to the general public or for schoolroom instructional purposes.

Impact

With the exceptions of initiatives F and G, this package is entirely an executive branch "housekeeping" matter, and, as much, will have little or no outside impact. The environmental study initiatives (F) are noncontroversial and "pro-consumer." Initiative G could generate public controversy, since it will be seen in part as an attempt to cut back on the HEW efforts to mold "child development" through TV programs. In view of a general public and congressional tolerance of HEW "social engineering," the Administration could be painted as regressive on this issue. However, the "Big Brother" fear works for us here.

I. BROADCASTING

Action

Approve _____

Disapprove _____

Comment _____

II. CABLE TELEVISION

Action

Assuming the Cabinet committee report comes out with a responsible policy, which can be reflected in legislation, the initiative should be followed as discussed above.

Approve _____

Disapprove _____

Comment _____

III. DOMESTIC COMMON CARRIER

Action

The goal and the initiatives set out above should be approved as a general approach, with OTP to prepare the legislation outlined above and process it through the OMB clearance process for final Administration approval.

Approve _____

Disapprove _____

Comment _____

IV. INTERNATIONAL COMMON CARRIER INDUSTRY

Action

The goal and the initiatives set out above should be approved as a general approach, with OTP to prepare the legislation outlined above and process it through the OMB clearance process for final Administration approval.

Approve _____

Disapprove _____

Comment _____

V. GOVERNMENT COMMUNICATIONS

Action

Instruct OMB and OTP to develop a plan for reorganizing government communications and computer systems management, as outlined in Initiative A, for review and decision by President.

Approve _____

Disapprove _____

Comment _____

Authorize OTP approach on Initiatives B through E, in coordination with OMB, as appropriate.

Approve _____

Disapprove _____

Comment _____

Direct OTP to study nature and extent of government funding of programs for broadcast to general public and for schoolroom instruction, and report back on results and recommended action.

Approve _____

Disapprove _____

Comment _____


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

Eva
ACTION

January 4, 1973

DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: CLAY T. WHITEHEAD 
SUBJECT: FCC Prime Time Rule

The FCC's prime time rule precludes TV stations from carrying network programs between 7:30-8:00 P.M. The rule was intended to break the networks' dominance of prime time entertainment programming and to give Hollywood producers an opportunity to reach directly the mass audiences that have been the exclusive province of the networks.

Contrary to the intent, the rule has hurt Hollywood and has enhanced the networks' economic power. The rule has hastened Hollywood's decline by reducing union employment and studio revenues. It has strengthened the networks by relieving them of three and a half hours each week of costly program production, but has not affected their revenues. They have simply raised their advertising rates to offset the reduced time available for sale.

Although the rule has been in effect only two years, the FCC is already considering its rescision. Hollywood is virtually unanimous for rescision of the rule. The networks have not taken such a uniform view. ABC has been consistent in favoring the rule, since it has benefited from it the most. NBC and CBS have cooled significantly in opposing the rule, privately preferring that it not be repealed by March 1, in time to affect the fall TV season. Still, many broadcasters, including NBC and CBS, would like to see the rule rescinded as a matter of principle.

Discussion:

Favoring repeal of the rule, it has: (1) hurt the Hollywood unions and production industry; (2) resulted in lower quality programs for the viewers; (3) failed to break the dominance of the networks over entertainment programming; and (4) intruded the FCC into station programming judgments.

Opposing considerations are that: (1) the general press and the public may view this as a pro-network step, indicating that the Administration is backing off from its concern with network power; and (2) with the prime time rule out of the way, it may be difficult to keep alive, in Hollywood and elsewhere, the deeper issue of network power and anticompetitive behavior.

Both opposing considerations could be overcome by having the FCC institute a further proceeding on network dominance at the same time it repeals the prime time rule. This could dovetail with the Justice Department's pending network antitrust suits, by proposing new regulation to deal with network power in an effective manner. Proposals to be considered could include mandatory access by non-network program suppliers to network interconnection facilities, non-exclusive affiliation agreements between networks and local TV stations, and an even stronger prime time rule.

The Hollywood unions and producers, together, care more about the repeal of this rule than about limitations on network reruns, although the unions alone probably feel more strongly about reruns. But neither the unions nor the producers support our underlying concerns about network power to mold opinion with their news and information programs. If we fail to convince the FCC to repeal the rule soon, we will lose a measure of credibility and support in Hollywood, and the networks will see it as the Administration's inability to deliver for Hollywood on this issue.

Recommendation:

On balance, I recommend that we actively urge the FCC to rescind the prime time rule, on the grounds that it has been ineffective in dealing with network power and has harmed the industry and public it was to have helped. But this should be done only if coupled with strong FCC action on the deeper problem of network power.

APPROVE/

DISAPPROVE _____

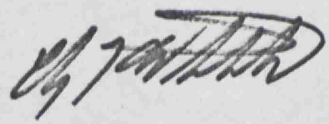
*Colson, Flanigan and Cole concur.

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

February 17, 1973

DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Clay T. Whitehead 
SUBJECT: Reruns and the Prime-Time Rule

In your September letter to John Gavin of the Screen Actors Guild, you agreed that something should be done about the increase of network reruns in prime time. You asked me to study the rerun problem and to seek a voluntary solution from the networks before exploring regulatory remedies. A copy of our report is at Tab A.

The study shows reruns and the unemployment they produce to be merely symptomatic of the root problem facing the program industry: the great economic power of the networks. CBS and NBC refused voluntary action; ABC was more polite, but no more forthcoming.

We have concluded that regulatory restrictions on percentages would simply lead the networks to lower program quality or to turn to foreign production. To be effective, such direct restrictions probably would require government rules on program quality, which we should not encourage. Our study also showed the prime-time rule to be as large a factor in Hollywood unemployment as reruns; my earlier memo on that rule, which you approved, is at TAB B.

I believe we should consider the following options:

1. Make the rerun report public, with no call for FCC action. Take no public position on repeal of the prime-time rule.
2. Send the rerun report to FCC for appropriate review, but make no recommendations as to their action. Take a low-key public posture that the prime-time rule should be repealed for this fall's TV season.
3. Send the rerun report to FCC, with a high visibility call for action on the rerun problem. Call for repeal of the prime-time rule at the same time.

**DETERMINED TO BE AN
ADMINISTRATIVE MARKING
NOT NATIONAL SECURITY INFORMATION**

Discussion:

Option 1 has the advantage of burying the rerun issue, when we cannot come out forcefully for percentage restrictions, and avoids the image of meddling in the FCC's prime-time proceeding. However, there is a risk of jeopardizing Administration credibility on these issues, given your personal commitment to Gavin, the networks' recalcitrance on the rerun issue, the importance of prime-time rule repeal to Hollywood, and my public criticism of the prime-time rule following your approval of our position on this matter.

Option 2 defers the rerun issue by having the FCC study it, while still keeping the spirit of your commitment to Hollywood. The publicity of an FCC review would keep the pressure on the networks at least to avoid future rerun increases. Hollywood would be pleased by our taking a public position in favor of the prime-time rule's repeal. However, the unions want more vigorous action on reruns, and this option seems to duck somewhat our rerun commitments. The press will see this as Administration economic pressure to achieve political ends.

Option 3 has the same advantages of Option 2, but the higher visibility exacerbates the negative side of that option. Even though CBS and NBC are on record for repeal of the prime-time rule, calling attention to our involvement in both issues could lead the press to see this as a serious intrusion into network program content. While this would keep the pressure on the networks, it could unnecessarily fuel the criticism of the Administration as being anti-First Amendment.

Recommendation:

On balance, I recommend that we follow the low-key, public position approach of Option 2, which keeps the heat on the networks. We must, however, take this position no later than February 20, since reply comments in the FCC's prime-time proceeding are due on February 26, and any later announcement by us would cause a delay. Such a delay would effectively preclude FCC rescision of the prime-time rule in time for next fall's TV season. My February 20 "oversight" hearing before Senator Pastore offers a good forum for us to take this type of public position, since it would be submerged in the overall hearings.

APPROVE _____ DISAPPROVE _____ OTHER _____

Tom Whitehead

THE WHITE HOUSE
WASHINGTON

*draft 1/23
(after lunch)
Ea*

January 18, 1973

MEMORANDUM FOR: THE PRESIDENT
FROM: CHARLES COLSON *cc*
SUBJECT: Attached Drummond Column

There has been a great deal of press attention on the so-called Whitehead Bill and the Whitehead speech. Most of it generated by the networks has been quite negative. The most perceptive supporting analysis was written by Roscoe Drummond. It is really a brilliantly simple explanation of the problem and points out the complete failure of the logic of the network position. In view of the controversy that the Whitehead speech has generated, you might be interested in reading our side of the case as Drummond has presented it.

Handwritten: 1/19 3 09 PM '73
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JAN 19 3 09 PM '73
COMMUNICATIONS SECTION

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JAN 23 3 08 AM '73
OFFICE OF
TELECOMMUNICATIONS
POLICY

THE DRUMMOND COLUMN

Los Angeles Times Syndicate / Los Angeles, California

RELEASE DATE: Friday, January 19, 1973

YON TV PROTESTETH TOO MUCH

by Roscoe Drummond

WASHINGTON--It is hard to understand why the network TV news people fly into such a tizzy when anybody in government criticizes their product.

Why should TV broadcasting executives, whose networks dispense so much dissenting opinion, yelp as if the sky was falling whenever somebody in government counters with a dissenting opinion?

And when the TV spokesmen reply, they usually do so not with reasoned argument but by accusing critics of being creeping repressionists who want to wipe out freedom of the press.

They protesteth too much. Such extreme sensitivity suggests a degree of guilt which makes them worried that the TV public might think too much about balance and fairness in TV news broadcasting.

Isn't it a pretty healthy thing for the public to think about these things? They are the consumers. In the end they can do much to compel more balance in network news.

Perhaps they need their own Ralph Nader--outside of government critics such as Vice President Spiro Agnew and Clay Whitehead.

-more-

* * *

The latest development, which threw the network spokesmen into a rage of protest, concerns amendments to the Communications Act proposed by the White House.

They like two of them and are furiously against the third. One extends station licenses from three to five years. They like that.

Another stipulates that no applicant for an existing station license will be heard by the FCC unless the license has already been removed. They like that.

The third proposal states that any station which uses network news must be responsible for what it uses. The networks don't like it.

For the life of me I can't see why such a provision is not entirely reasonable. It parallels print media law.

Network news is like the Associated Press and the UPI. Newspapers which print AP or UPI news are responsible for what they print. They can be sued for libel and it's no defense to say that the papers are only printing what the press associations send them.

The OTP

* * *

Furthermore, the proposed legislation on station responsibility duplicates existing FCC powers. If the White

House aide who drafted the amendment had consulted with the commission, he would have saved himself the trouble of proposing it.

Page Three...THE DRUMMOND COLUMN...January 19...proposing it.

But the fact that the Administration proposal neither adds nor subtracts from the FCC's authority does not keep the TV media from calling it a "threat" and an attempt to make station licensing a "political football."

* * *

The evidence is quite the contrary. The law which makes individual stations responsible for the network broadcasting they use has been operative since 1934 when the present Communications Act was passed by Congress.

Question: How many times has the FCC revoked or refused to renew a station license because it wanted to censor the news?

Answer: Zero; never in the history of the commission. The same applies to the years when Nixon appointees comprised the majority of the commission.

Should government officials criticize network news, calling some of it "ideological plugola"? Why not? There's plenty of criticism of government officials by network newscasters. Can't the broadcasters take it as well as dish it out? It's healthy and good for both.

If there was any attempt to censor broadcast news I would fight it as vigorously as I would fight censorship of the press. But the public has a right to balance and fairness in comment and reporting.

Tom Whitehead

THE WHITE HOUSE
WASHINGTON

*I read
after lunch
1/23
EWA*

January 18, 1973

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-more-

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The OTP

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OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

Tab B
ACTION

January 4, 1973

DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: CLAY T. WHITEHEAD 

SUBJECT: FCC Prime Time Rule

The FCC's prime time rule precludes TV stations from carrying network programs between 7:30-8:00 P.M. The rule was intended to break the networks' dominance of prime time entertainment programming and to give Hollywood producers an opportunity to reach directly the mass audiences that have been the exclusive province of the networks.

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Although the rule has been in effect only two years, the FCC is already considering its rescision. Hollywood is virtually unanimous for rescision of the rule. The networks have not taken such a uniform view. ABC has been consistent in favoring the rule, since it has benefited from it the most. NBC and CBS have cooled significantly in opposing the rule, privately preferring that it not be repealed by March 1, in time to affect the fall TV season. Still, many broadcasters, including NBC and CBS, would like to see the rule rescinded as a matter of principle.

Discussion:

Favoring repeal of the rule, it has: (1) hurt the Hollywood unions and production industry; (2) resulted in lower quality programs for the viewers; (3) failed to break the dominance of the networks over entertainment programming; and (4) intruded the FCC into station programming judgments.

Opposing considerations are that: (1) the general press and the public may view this as a pro-network step, indicating that the Administration is backing off from its concern with network power; and (2) with the prime time rule out of the way, it may be difficult to keep alive, in Hollywood and elsewhere, the deeper issue of network power and anticompetitive behavior.

Both opposing considerations could be overcome by having the FCC institute a further proceeding on network dominance at the same time it repeals the prime time rule. This could dovetail with the Justice Department's pending network antitrust suits, by proposing new regulation to deal with network power in an effective manner. Proposals to be considered could include mandatory access by non-network program suppliers to network interconnection facilities, non-exclusive affiliation agreements between networks and local TV stations, and an even stronger prime time rule.

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Recommendation:

On balance, I recommend that we actively urge the FCC to rescind the prime time rule, on the grounds that it has been ineffective in dealing with network power and has harmed the industry and public it was to have helped. But this should be done only if coupled with strong FCC action on the deeper problem of network power.

APPROVE/

DISAPPROVE _____

*Colson, Flanigan and Cole concur.

Tom Whitehead

THE WHITE HOUSE
WASHINGTON

*I read after
Jan 18/73
wa*

January 18, 1973

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The OTP

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

DIRECTOR

January 25, 1973

MEMORANDUM FOR

Honorable Ken Dam
Assistant Director
Office of Management and Budget

Attached is a copy of my memorandum to John Ehrlichman outlining OTP initiatives. As you can see, aside from direct responsibility for the Government's own communications and certain politically sensitive policy initiatives, the bulk of the substantive material falls principally in the economics line. Also attached is a possible division of coordinating responsibilities.

As we discussed on the phone, I think we should get together to talk about this before any irreversible decisions get made.



Clay T. Whitehead

Attachments

cc: DO Records
DO Chron
Whitehead (2)
BME Subject
BME Chron

DIVISION OF COORDINATING RESPONSIBILITIES

Shultz

- legislation or regulatory practices affecting communications generally
- radio spectrum allocation
- cable television development
- the television program production industry
- regulation of the domestic common carrier industry
- growth of competitive communications services
- domestic communication satellite systems
- international communications industry structure

Flanigan/
Kissinger

- INTELSAT and other international communication issues
- foreign relations aspects of such matters as the sale of communications equipment to China and Iron Curtain countries
- international negotiations on communications policy and facilities

Others

- broadcast regulatory policy
- broadcast license renewal legislation
- public broadcasting
- government communications systems
- emergency communications

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

wt
memo

January 28, 1974

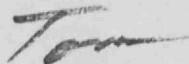
DIRECTOR

MEMORANDUM FOR BRAD PATTERSON

As discussed.

Again, I would urge that the President take no position at this time on the Cabinet Committee's recommendations, nor in any way make any statement, positive or negative, with regard to the report or the future of cable. The appropriate time for the President to take such a position is when legislation is actually submitted to the Congress.

If there is any pressure to go beyond the attached, please let me know.



Clay T. Whitehead

Attachment

cc: Ray Price
Ken Cole

For Inclusion in the President's State of the Union Message

I have received and am reviewing the Cabinet Committee's Report on Cable Communications. The Committee was formed at my request in June 1971 to develop proposals for a comprehensive, national policy on cable communications. I have asked the Director of Telecommunications Policy to prepare legislation to move toward the adoption and implementation of a national cable policy. I expect to forward such legislation to the Congress in the near future, in order to encourage the Congress to review carefully the issues cable presents the Nation and to further encourage the widespread national debate on these issues that the Cabinet Committee thought so important.

President

THE WHITE HOUSE
WASHINGTON

January 31, 1973

MEMORANDUM FOR: CLAY WHITEHEAD
FROM: W. RICHARD HOWARD

Chuck Colson asked me to send you the attached for your action. As you can see the President has approved your recommendation.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

January 26, 1973

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

MR. CHUCK COLSON

FROM:

BRUCE KEHRLI *BAK*

SUBJECT:

FCC Prime Time Rule

The attached memo to the President from Clay Whitehead has been reviewed and his recommendation was approved.

Please follow up with the appropriate notifications.

Thank you.

cc: H. R. Haldeman
Peter Flanigan
Ken Cole

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
NOT NATIONAL SECURITY INFORMATION


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

ACTION

January 4, 1973

DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: CLAY T. WHITEHEAD 
SUBJECT: FCC Prime Time Rule

The FCC's prime time rule precludes TV stations from carrying network programs between 7:30-8:00 P.M. The rule was intended to break the networks' dominance of prime time entertainment programming and to give Hollywood producers an opportunity to reach directly the mass audiences that have been the exclusive province of the networks.

Contrary to the intent, the rule has hurt Hollywood and has enhanced the networks' economic power. The rule has hastened Hollywood's decline by reducing union employment and studio revenues. It has strengthened the networks by relieving them of three and a half hours each week of costly program production, but has not affected their revenues. They have simply raised their advertising rates to offset the reduced time available for sale.

Although the rule has been in effect only two years, the FCC is already considering its rescision. Hollywood is virtually unanimous for rescision of the rule. The networks have not taken such a uniform view. ABC has been consistent in favoring the rule, since it has benefited from it the most. NBC and CBS have cooled significantly in opposing the rule, privately preferring that it not be repealed by March 1, in time to affect the fall TV season. Still, many broadcasters, including NBC and CBS, would like to see the rule rescinded as a matter of principle.

Discussion:

Favoring repeal of the rule, it has: (1) hurt the Hollywood unions and production industry; (2) resulted in lower quality programs for the viewers; (3) failed to break the dominance of the networks over entertainment programming; and (4) intruded the FCC into station programming judgments.

Opposing considerations are that: (1) the general press and the public may view this as a pro-network step, indicating that the Administration is backing off from its concern with network power; and (2) with the prime time rule out of the way, it may be difficult to keep alive, in Hollywood and elsewhere, the deeper issue of network power and anticompetitive behavior.

Both opposing considerations could be overcome by having the FCC institute a further proceeding on network dominance at the same time it repeals the prime time rule. This could dovetail with the Justice Department's pending network antitrust suits, by proposing new regulation to deal with network power in an effective manner. Proposals to be considered could include mandatory access by non-network program suppliers to network interconnection facilities, non-exclusive affiliation agreements between networks and local TV stations, and an even stronger prime time rule.

The Hollywood unions and producers, together, care more about the repeal of this rule than about limitations on network reruns, although the unions alone probably feel more strongly about reruns. But neither the unions nor the producers support our underlying concerns about network power to mold opinion with their news and information programs. If we fail to convince the FCC to repeal the rule soon, we will lose a measure of credibility and support in Hollywood, and the networks will see it as the Administration's inability to deliver for Hollywood on this issue.

Recommendation:

On balance, I recommend that we actively urge the FCC to rescind the prime time rule, on the grounds that it has been ineffective in dealing with network power and has harmed the industry and public it was to have helped. But this should be done only if coupled with strong FCC action on the deeper problem of network power.

APPROVE/

DISAPPROVE _____

*Colson, Flanigan and Cole concur.

President

THE WHITE HOUSE

WASHINGTON

January 31, 1973

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FROM: W. RICHARD HOWARD

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MEMORANDUM

THE WHITE HOUSE
WASHINGTON

January 26, 1973

~~ADMINISTRATIVELY CONFIDENTIAL~~

MEMORANDUM FOR: MR. CHUCK COLSON
FROM: BRUCE KEHRLI ^{BAK}
SUBJECT: FCC Prime Time Rule

The attached memo to the President from Clay Whitehead has been reviewed and his recommendation was approved.

Please follow up with the appropriate notifications.

Thank you.

cc: H. R. Haldeman
Peter Flanigan
Ken Cole

--- DETERMINED TO BE AN
ADMINISTRATIVE MARKING
NOT NATIONAL SECURITY INFORMATION


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

ACTION

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Discussion:

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Both opposing considerations could be overcome by having the FCC institute a further proceeding on network dominance at the same time it repeals the prime time rule. This could dovetail with the Justice Department's pending network antitrust suits, by proposing new regulation to deal with network power in an effective manner. Proposals to be considered could include mandatory access by non-network program suppliers to network interconnection facilities, non-exclusive affiliation agreements between networks and local TV stations, and an even stronger prime time rule.

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Recommendation:

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APPROVE/

DISAPPROVE _____

*Colson, Flanigan and Cole concur.

DRAFT
CT Whitehead:jm
2/8/73

mtg 2/5/73
w/President

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with the President, February 5, 1973,
H. R. Haldeman, Charles Colson, Clay T. Whitehead

The President opened the meeting saying how much he admired and appreciated the efforts Mr. Whitehead had made in recent months, particularly with respect to the problem of the networks in broadcasting. He indicated that this was a most serious problem that had to be pursued vigorously but one in which we were up against formidable adversaries. He stated that some in the White House did not share his view of the priority of this problem but that he wanted a clear staffing pattern established so that once decisions were made everyone in the Administration would be on board in public statements because we could not afford to appear indecisive.

The President requested Mr. Haldeman to hold an immediate meeting with Messrs. Colson, Shultz, Ehrlichman, and Whitehead to agree on coordination arrangements, to be followed by a meeting including Messrs. Klein, Ziegler, Buchanan, Moore, and Garment to discuss the directions being taken and make sure everyone was on board.

The OTP broadcasting license renewal bill was discussed, and the President indicated he favored that general approach in response to broadcaster problems with the current licensing scheme. He agreed with Mr. Whitehead's strategy that we should insist on broadcast industry support in improving network news in return for our vigorous pursuit of this bill. He also expressed agreement with the strategy of both seeking and professing First Amendment goals in broadcasting while at the same time working privately to get more exercise of local broadcaster responsibility and a wider range of points of view on TV news.

Cable television was discussed as the most likely long-run solution to many of the problems brought about by the current network dominance of broadcasting. / Messrs. Whitehead, Colson, and Haldeman all felt this should come as soon as possible, and the President generally agreed. He asked that the report of the Cabinet committee on cable television be forwarded as soon as possible.

The prime-time rule was discussed briefly, and the reasons behind the President's recent approval that we seek repeal

of the rule were also discussed briefly. The President reaffirmed his view that we should oppose the funding of controversial public affairs programming with tax dollars. Mr. Whitehead expressed concern that the various parts of the public television field were tearing themselves apart and that because of the strong tendencies to produce one-sided _____ political affairs programming he felt that it may become necessary in the future to eliminate the use of Federal tax monies to fund public television programming. The President appreciated that such steps might become necessary.

The meeting closed with the President reaffirming his concern that the Administration speak with one voice in these areas and stressing the need to establish a coordination mechanism to make sure that everyone in the White House "got the word" on broadcasting matters and to assure that the rest of OTP's communications programs received prompt staffing.

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

March 27, 1973

DIRECTOR

MEMORANDUM FOR THE RECORD

FROM: Clay T. Whitehead

We were advised by the White House today that the President still sees serious dangers in the existence of a Federally-funded broadcasting network. He is strongly opposed to control of the interconnect and its scheduling anywhere other than with CPB since that is the entity responsible to the Congress by law for the use of Federal funds. The effort Mr. Curtis is making to seek more involvement by the boards of local public broadcast stations and a more active partnership with them in funding programs has much good in it. But the President would have to oppose that plan and Mr. Curtis personally, both strongly and openly, unless the principles of board responsibility and of safeguarding against excessive control by private organizations are clearly incorporated.

President sees serious danger in existence of Federally funded network.

Is strongly opposed to control of interconnect scheduling anywhere other than CPB as entity response by law.

This effort has much good in it, but he would have to oppose it and you openly unless ~~it can be worked out along those lines~~ *that can be clearly*

Best if you would pass over this in hearing as still under discussion.

THE WHITE HOUSE
WASHINGTON

Ehrlichman
memo for

March 23, 1970

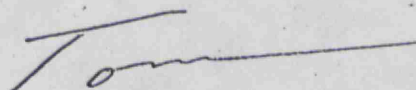
MEMORANDUM FOR MR. EHRlichMAN

Subject: Memorandum for the President
re the postal strike

Attached is a draft memorandum for the President describing an option for dealing with the postal strike that also would help us achieve longer-run postal reform.

The memo asks whether the President wants this option developed in detail. You may wish to make that decision yourself, but I would think it would help greatly in developing such an option to have an expression of his interest.

Paul McCracken agrees this is a good idea and will be sending you a separate memo.



Clay T. Whitehead
Special Assistant
to the President

Attachment

cc: Mr. McCracken
Mr. Flanigan
Mr. Cashen
Mr. Whitehead ✓
Central Files

CTWhitehead:ed

THE WHITE HOUSE

WASHINGTON

INFORMATION

Postal strike

DRAFT 3/23/70

MEMORANDUM FOR THE PRESIDENT

The postal strike presents a unique opportunity to hasten postal reform. On Wednesday, the Postmaster General permitted competitive private mail carriers to operate in the strike areas. You could extend this action nationwide indefinitely to encourage the development of orderly and efficient private mail operations, although you might have to ask Congress to certify that authority.

Some of the advantages of such an action would be the following:

- 1) Competitive private carriers would at least partly meet your pledge "to see to it that the mails will go through." Additional private companies would invest more resources in moving mail during the strike if they knew they would not become illegal overnight.
- 2) Competitive private carriers will work to the advantage of most postal employees and most users of the mail. Postal employees will gain new job alternatives, some of them better than their present opportunities.
- 3) Competitive private carriers will move a long way toward putting the U. S. Post Office out of business.
- 4) Such action would probably receive widespread support in view of the need to deal decisively with such a major strike of public service employees and the precedents that will inevitably be established.

The major disadvantage appears to be that some postal union leaders would be angry; they have already warned private carriers not to attempt to break the strike.

Would you like such an option developed further?

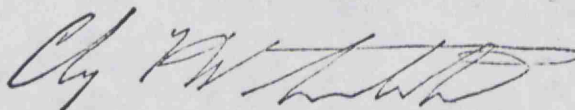
John Ehrlichman
Assistant to the President

11 FEB 1971

Comsat
WH Memos
Ehrlichman ✓
Chron
Pres
NSC
State

MEMORANDUM FOR MR. JOHN EHRLICHMAN

This is the final draft of the President's report to the Congress on the Nations' activities under the Communications Satellite Act of 1962. This draft has been reviewed and approved by the Department of State and the National Security Council Staff.



Clay T. Whitehead

JMThornell/ec/11Feb71

Thursday 2/11/71

3:35 Checked with Rose Ann Herold in Mr. Hopkins' office. Since this is for submission for approval (and not a final printed copy), they suggested we send 5 copies over -- to Hopkins' office and they would get it to John Campbell and Peter Flanigan.

Comsat
W. H. Memos
Ehrlichman ✓
Pres.
NSC
State
Chron

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

December 6, 1972

DIRECTOR

MEMORANDUM FOR

Honorable John Ehrlichman
The White House

Since its inception two years ago, OTP has enabled the Administration to play a larger role in communications policy. Many of our accomplishments have resulted from quick reaction to immediate problems, such as the President's concern with television reruns and the FCC's inability to deal with the domestic satellite issues. Now OTP is prepared to advance a series of affirmative initiatives that can be tied to the President's program for next year.

I believe this package is consistent with the President's programs, restructuring government to let the private sector play its role, and enhance rather than erode our most important traditions regarding government and the communications media. Almost no Federal expenditures are involved, and some budget savings could be realized. A brief summary of the most significant of these initiatives is attached at Tab A. The first two (broadcasting and cable) have by far the largest political implications.

During the past twenty years, the communications industry has grown rapidly and undergone great technical change. It has contributed greatly to GNP and had great impact on our national life. The pace of both the economic and technical advance is clearly going to continue to increase at even faster rates over the next few years. Everyone -- particularly minority and special interest groups -- wants some type of political or ownership control over the media; and many business interests want a share of the new communications markets. The FCC's procedures (like those of most Federal regulatory agencies) are ill-suited to deal effectively with the rapid technical change and the politically charged issues of communications.

There will, therefore, be both the opportunity and the need for firm Administration leadership in establishing some basic policy directions. Decisions made during the second Nixon term

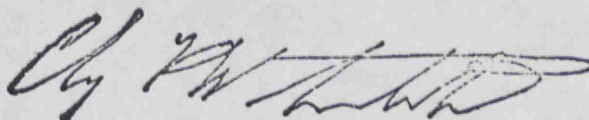
will largely determine the extent to which the benefits of the communications revolution are realized by the public and by industry -- and whether communications regulation by the Federal Government will be locked into the same kind of morass as transportation and power or whether a more competitive, free-enterprise framework is created.

The OTP initiatives are intended to restructure government regulation in an evolutionary way to guide the growth of communications technology and services in keeping with two main principles: (1) there should be more reliance on free enterprise and competition in communications rather than monopoly and government regulation, and (2) bureaucratic controls over the content of the media should be minimized. If the OTP program can be implemented in keeping with these principles, we can encourage the growth of at least three new multi-billion dollar industries: the broadband cable television industry, the computer information services industry, and the mobile communications industry. Such growth would contribute substantially to our economy and could help relieve unemployment in such critical sectors as the aerospace, electronics, and the film and television production industries.

As a result of the public broadcasting issue and our key role in the cable TV compromise, OTP is visible politically on the Hill and therefore vulnerable if we do not advance a substantive program of accomplishment. Similarly, the Administration's image on communications matters has been colored by the network news battle, and we need a more statesman like record of policy development and advocacy to stand on.

I am sending this same package to Pete Flanigan, emphasizing the international area, and have discussed the broadcasting section with Chuck Colson. I believe the President should be appraised of the overall effort, with special emphasis on broadcasting and cable TV. If time permits, it would be highly useful for me to discuss the most important aspects with you and him. However, the most important thing is to get approval to proceed so we can be ready to go early next year.

I would be happy to discuss this with you or to supply any further information you need.



Clay T. Whitehead

Attachment

I. BROADCASTING

Goal

Bring broadcast regulation more in line with our private enterprise media philosophy, stem the tide of demands by activist groups for free broadcast time, and correct the anticompetitive power of the TV networks.

Initiatives

A. Support statutory extension of broadcast license terms to five years; place burden of proof on renewal challengers; prohibit FCC establishment of program standards.

B. Support eventual elimination of detailed case-by-case enforcement of the Fairness Doctrine, but only when public confidence in broadcasting warrants and Congressional passage is feasible (not 1973).

C. Attempt to reduce obstacles blocking establishment of new commercial TV networks by changes in AT&T tariffs, FCC networking rules, and possible antitrust actions.

Impact

Initiatives A and B will be supported by most broadcasters, although they would prefer a simple extension of the license term. Minority and activist opposition would be mixed. There is likely to be little general public interest. Would require some effort to get key Congressional support.

Initiative C would be opposed by all broadcasters but should find some public and Congressional support if handled in the positive tone of more programming diversity and competition. Initiative A (and to a lesser extent B) is a prerequisite to the success of C as well as to establish our credibility on First Amendment issues.

II. CABLE TELEVISION

Goal

Create a new legislative framework for development of broadband cable television and the many entertainment, informational, and educational services a new cable television industry could provide (following Cabinet committee report).

Initiatives

Introduce legislation following recommendations of the Cabinet committee to create a statutory policy framework (now lacking) for the development and regulation of the cable television industry. This would resolve such issues as programs and channels for pay, networking competition with broadcasting, cross-media ownership of cable systems, and division of jurisdiction between the Federal Government and the States.

The committee recommends a pilot program to evaluate the use of cable to deliver government services more efficiently and to shorten the lag in bringing the technology to the marketplace. The program will cost \$25 million in FY74.

Impact

Assuming a moderate level of Presidential impetus, there is a good chance that some influential Congressmen and Senators, cable operators, broadcasters, and other media people would support such legislation. Others in the cable and broadcast industries will oppose it; but in the public's eye, they could be depicted as protecting their narrow economic interests by keeping more program choice from the audience. The biggest political issue would be "pay TV." The ability of customers to buy programming directly by the program or by the channel over cable is too important to allow it to be prohibited, but it is unlikely that the Congress would pass cable legislation that did not, in some way, retain certain program types (like professional sports) on "free" TV. Privacy safeguards would be built into the legislation to counteract "Big Brother" fears. Cable is here (10% of homes) and growing rapidly (up to 50% of homes by 1980). Hard-line broadcasters and theater owners are the only opponents. This is a positive initiative--costing no tax dollars--one the President can get behind and make the growth of cable service a Nixon accomplishment. The pilot program will help make this a more exciting initiative, convey movement in bringing technology to bear on government programs, and accelerate the marketability of the new technologies.

III. DOMESTIC COMMON CARRIER INDUSTRY

Goal

Promote more efficiency and competition in the domestic common carrier industry as new communications services arise.

Initiatives

A. Legislation to promote competition:

1. To authorize bulk leasing, brokerage, and resale of common carrier services;
2. To require identification of the extent of cross-subsidization among various common carrier services and enterprises;
3. To include economic efficiency, as well as equity, as a criterion for FCC approval of facilities and rate structures;
4. To limit the scope of FCC jurisdiction over non-monopoly services;
5. To extend domestic rates for telephone calls to Hawaii and Alaska.

B. Create an interagency study group to analyze and determine policy regarding the future role of the Bell Telephone System in providing common carrier services in competition with specialized competitive communications services.

Impact

The major impact would be to increase competition to AT&T, a move that would be vigorously opposed by that company and many of its stockholders, but supported by major elements of the electronics and communications industries. The public has little love for the phone company, and the Congress would feel little grassroots pressure to leap into the fray to protect AT&T's monopoly services.

IV. INTERNATIONAL COMMON CARRIER INDUSTRY

Goal

Restructure regulation of the U.S. international common carrier communications industry to eliminate artificial distinctions between voice and record (data) message carriers, to enhance the private enterprise character of Comsat, and to introduce more competition into satellite and undersea cable construction.

Legislation Initiative to Correct Deficiencies in the International Common Carrier Industry

A. Require the FCC to coordinate with the executive branch so that effective government-industry agreements with foreign governments regarding international communications facilities can be negotiated.

B. Terminate privileged common carrier ownership and participation in Comsat and eliminate Presidentially appointed directors from the Board.

C. Clarify statutory guidance to the FCC for regulating U.S. international carriers to allow more competition, redefine the classes of such carriers to reduce the obsolete distinction between voice and data communications, and to put satellites and undersea cables on a comparable basis under law.

Impact

The Byzantine structure of the U.S. international communications industry, as shaped by the FCC, is inefficient and not competitive. There is almost no public perception of the issue, and since there are only a few companies in the international market (AT&T, RCA, ITT, Comsat, and Western Union International), the general press is likely to interpret this mainly as an economic decision without political overtones. Industry opposition would probably not be uniform, and some companies would support those parts of the initiative that benefited them. Provision A may be opposed by FCC which would view it as a transfer of some FCC power to the executive branch. We have been under pressure from the Congress to submit our policy since last year and have delayed as long as possible. We will really take heat if we do not now proceed.

V. GOVERNMENT COMMUNICATIONS

Goal

Improve the Federal Government's own use of communications resources to achieve national security objectives. Minimize overlapping responsibilities, improve performance of public safety agencies, and realize government savings in the procurement of communications facilities and services.

Initiatives

A. Reorganize and streamline government communications and computer systems management to achieve more effective mechanisms for Presidential guidance, and to cut present budget and staff levels.

1. Short-term communications management improvements:
 - a. replace National Communications System staff and responsibilities with formal coordination by the Council for Government Communications Policy and Planning.
 - b. streamline responsibilities and functions of Defense Communications Agency.
 - c. eliminate non-essential Department of Commerce communications functions and shift OTP support functions to National Bureau of Standards or GSA.
2. Combining communications/computer systems management.
 - a. assign OTP lead responsibility for computer/communications area; to be coordinated with OMB computer responsibilities.
 - b. establish arrangements for coordination of Executive Office computer/communications systems.
 - c. Direct agencies to combine management of computers and communications.

B. Establish executive branch policy for purchasing of telecommunications services and equipment, including coordination of procedures for budgeting and frequency assignments.

C. Coordination and consolidation of government radio navigation systems and satellite communications systems.

D. Policy statement and experiment on the inclusion of economic value in assignment of radio frequency to government agencies.

E. Program to determine the environmental aspects of electromagnetic radiation.

F. Review Federal department and agency funding of programming (including public service announcements) intended for broadcast to the general public or for schoolroom instructional purposes.

Impact

With the exceptions of initiatives F and G, this package is entirely an executive branch "housekeeping" matter, and, as much, will have little or no outside impact. The environmental study initiatives (F) are noncontroversial and "pro-consumer." Initiative G could generate public controversy, since it will be seen in part as an attempt to cut back on the HEW efforts to mold "child development" through TV programs. In view of a general public and congressional tolerance of HEW "social engineering," the Administration could be painted as regressive on this issue. However, the "Big Brother" fear works for us here.

I. BROADCASTING

Action

Approve _____

Disapprove _____

Comment _____

II. CABLE TELEVISION

Action

Assuming the Cabinet committee report comes out with a responsible policy, which can be reflected in legislation, the initiative should be followed as discussed above.

Approve _____

Disapprove _____

Comment _____

III. DOMESTIC COMMON CARRIER

Action

The goal and the initiatives set out above should be approved as a general approach, with OTP to prepare the legislation outlined above and process it through the OMB clearance process for final Administration approval.

Approve _____

Disapprove _____

Comment _____

IV. INTERNATIONAL COMMON CARRIER INDUSTRY

Action

The goal and the initiatives set out above should be approved as a general approach, with OTP to prepare the legislation outlined above and process it through the OMB clearance process for final Administration approval.

Approve _____

Disapprove _____

Comment _____

V. GOVERNMENT COMMUNICATIONS

Action

Instruct OMB and OTP to develop a plan for reorganizing government communications and computer systems management, as outlined in Initiative A, for review and decision by President.

Approve _____

Disapprove _____

Comment _____

Authorize OTP approach on Initiatives B through E, in coordination with OMB, as appropriate.

Approve _____

Disapprove _____

Comment _____

Direct OTP to study nature and extent of government funding of programs for broadcast to general public and for schoolroom instruction, and report back on results and recommended action.

Approve _____

Disapprove _____

Comment _____

President

March 2, 1973

MEMORANDUM FOR THE PRESIDENT

FROM: Clay T. Whitehead
SUBJECT: Broadcast License Renewal Bill

The House Communications Subcommittee has scheduled hearings on broadcast license renewal legislation for March 13. We should aim, therefore, to submit the Administration bill sometime before March 9.

You will recall the strategy Chuck Colson and I developed, which you approved in December, prior to my Indianapolis speech. In the speech, we took the initiative, tying support for a pro-broadcaster renewal bill to a call for the broadcasters to exercise more responsibility and more local control over network programs, specifically including news. The initial press coverage misinterpreted the bill as imposing "censorship," but it is now being covered as a pro-broadcasting "carrot" in return for which we expect some greater balance in network news.

Our posture of reducing FCC controls over broadcast programming is strongly pro-First Amendment, even though the public does not perceive it as such at present. Broadcasters, including network management, badly want renewal legislation and realize they need our support to get it through the Congress. Moreover, there are signs that network executives and key broadcasters are willing to take some corrective action, as long as they are not pushed too hard publicly on the bias issue.

Our opponents find it difficult to box us in when we couple arguments for less Federal control of broadcasting with a call for exercise of more voluntary responsibility by broadcasters. Furthermore, many congressional supporters, such as Sam Devine and Bud Brown of Ohio have their own concerns about network dominance. They see that the mere presence of our bill in the Congress gives them, as well as the Administration and local broadcasters, leverage over the networks.

A summary of our proposed bill is attached at Tab A. The OMB clearance process drew FCC comments on the bill, which were largely technical. While we have incorporated many of the changes, the FCC will probably testify in favor of retaining more control over programming than our bill would allow.

Justice opposes our bill's approach. Justice prefers stronger authority for the FCC to set specific criteria for broadcast programming and seeks legislative endorsement of FCC rules to break up newspaper-broadcast combinations. We believe such endorsements would be superfluous in terms of existing antitrust mechanisms. Moreover, promoting a heavy governmental role in broadcast content, including standards for programming, is contrary to your stated intent.

Unless you direct otherwise we are proceeding to make final arrangements to submit our bill, taking a strong pro-First Amendment stance in the publicity and testimony regarding it. We should stress the reduction of governmental controls over broadcast programming and emphasize local control. We should also point out the concomitant need for more responsibility to be exercised by local broadcasters and network management, but further public pressure on the networks concerning the bias issue should not be necessary.

This bill could be introduced with or without a Presidential statement. The advantages of a statement (draft at Tab B) are: (1) Our First Amendment image would be enhanced by the greater visibility of the message, offsetting some of the recent anti-press image; (2) the general public would be receptive to your call for more responsibility for programming to be exercised by the local broadcaster and local groups; and (3) the Administration's initiative in this matter would be firmly established.

On the other hand, taking this visible an approach might reduce our flexibility in trading legislative points for broadcaster support in other areas. Moreover, there is not that clear a Presidential dimension to this issue. You may wish to reserve your personal involvement in communications for the more affirmative and comprehensive position on cable TV, which we will have ready for you by the end of this month.

RECOMMENDATION

I recommend that we introduce an Administration bill without an accompanying Presidential statement, but that OTP aggressively keep the lead on this issue. This approach keeps the pressure on and keeps the initiative with us, while preserving some room to trade as this and the many other proposed renewal bills go through the hearing process. We would also be in a position for you to make a statement at a later time, or to veto legislation if things get out of hand, as was necessary in public broadcasting.

APPROVE _____ DISAPPROVE _____ OTHER _____

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

1. License terms for radio and television stations would be extended from three to five years. When the Communications Act was prepared in 1934, the relatively brief three-year license term was a reasonable precaution in dealing with a new and untested broadcast industry. A five-year term, however, seems to be more reasonable at this stage in broadcasting's development. It would inject more stability into broadcast operations and would allow more time for the licensee to determine the needs and interests of his local community, and plan long-range programs of community service.
2. The bill would eliminate the present requirement for an automatic, lengthy, and costly comparative hearing whenever a competing application is filed for the same broadcast service. The FCC would be able to exercise its independent judgment as to whether a comparative hearing is necessary. The burden of proof as to the necessity for such a hearing would be on the renewal challenger and, if the incumbent licensee had performed in the public interest, he would be assured of renewal. A hearing would be required only if the challenger were unable to sustain that burden of proof and the Commission were unable to conclude that the broadcaster's performance warranted renewal.
3. Presently, the FCC can implement policies relating to broadcast industry structure -- such as a policy restricting newspaper ownership of broadcast stations -- through the criteria it uses to decide renewal hearings. This allows for the restructuring of the broadcast industry in a haphazard, highly subjective, and inconsistent manner.

The bill, therefore, would preclude the FCC from such restructuring through the renewal process. If these industry-wide policies affecting broadcast ownership should be imposed or changed, it would be done through the general rulemaking procedures of the FCC, with full opportunities provided to the entire broadcast industry and all interested members of the public to participate in the proceeding.

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

Statement by the President Upon Transmitting to the Congress
Legislation to Amend the Communications Act of 1934 to
Provide that Licenses for the Operations of Broadcast
Stations Shall be Issued for Terms of Five Years, and to
Establish Orderly Procedures for the Consideration of
Applications for the Renewal of Such Licenses.
March _____, 1973.

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

The broadcast media, however, are unique among our many outlets for expression, in that only they are licensed by the Federal Government. Our system of broadcasting presents this country with a unique dilemma that goes back to the basic policy embodied in the Communications Act of 1934. On the one hand, the Act requires a government agency -- the Federal Communications Commission -- to grant applications for broadcast licenses only if the public interest, convenience, and necessity will be served thereby. This necessarily means that, to some extent, the government will be involved in passing judgment on the heart of that broadcast service, which is the broadcasters' programming. On the other hand, the First Amendment, which applies fully to radio and television broadcasting, denies government the power of censorship and the power to interfere with our most valued rights of free press, free speech, and free expression. It is within the system of government licensing that these two somewhat contradictory objectives must be balanced. And, within the system of licensing, the most important aspect is the license renewal process. It is the pressure point of the system, because the manner in which renewals are treated goes to the core of the government's relationship to broadcasting.

The mere existence of the requirement to seek permission to continue in business and the threat of non-renewal can affect the daily operations of broadcast stations and the manner in which broadcasters exercise their public responsibility to foster and enhance the public's right to know and to learn. Concerns about license renewal could have a stifling effect on the free flow of information, which is so vital to the interests of a free society.

Under the First Amendment, there can be no authorized voice of government. Creation of such a voice, however, could result from the manner in which the government deals with broadcast license renewals. That danger exists when broadcasters, affected by the uncertainty and instability of their business and lacking assurance that they will be able to continue to exercise their local responsibilities, seek safety by rendering the type of program performance necessary to obtain renewal. If the government encourages this type of compliance by setting detailed criteria to determine such performance, the effect could be to turn broadcasters away from the communities that they are licensed to serve and to seek only to serve the government that charts the course for them.

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

At present the license renewal process is conducted in an unstable environment. I have, therefore, asked the Director of my Office of Telecommunications Policy to submit today a bill that would restore balance and stability to the license renewal process and enable the private enterprise broadcasters, operating with the rights and the responsibilities of the First Amendment, to serve the public's paramount right in the broadcast media.

[At this point in the Presidential statement the bill would be explained in the terms set out at Tab A.]

APR 4 1973

MEMORANDUM FOR

Honorable John E. Ehrlichman
~~The White House~~

The issue of siphoning, which you asked about, concerns the shift of feature films and sports programs from advertiser-supported network TV to pay TV, where programs are paid for directly by the viewer. It is not strictly a cable TV issue, although pay TV is technically much easier and more likely to become widespread on cable.

In "free" TV, the network buys program rights from producers to attract a mass viewing audience; and it is the audience that they sell to advertisers (on a cost-per-thousand basis). In pay TV, film studios or sports entrepreneurs will be able to offer their programming to the public on a "box office" basis by selling the program to the viewer, either directly or through an intermediate broker. This might be done on a per-program basis or a monthly per-channel basis.

The broadcasters' concern is that viewers buying programs directly could generate more revenues than the networks can get from advertisers, so that cable channel entrepreneurs could outbid the networks in buying program rights from studios. For example, the networks have paid on the order of \$2-3 million for TV rights to "blockbuster" movies (e.g., "Goldfinger," "Patton," "Love Story," etc.). But, it is unclear whether they will make profit on these pictures, since there are not many advertisers willing to pay the prices (roughly \$150,000 per minute) for ad time on these movies. When cable becomes widespread nationwide, pay programmers could line up 10 million homes paying 25¢ to 50¢ each and could outbid the networks for rights to such films. Thus, with larger revenues, pay TV entrepreneurs might be able to "siphon" popular programs now seen on TV (movies, the major sports events, the favorite network

series) away from advertiser support to direct viewer payment. Broadcasters fear that they and the networks would lose profits and argue that viewers would, to some extent, have to pay for some programming they now get free.

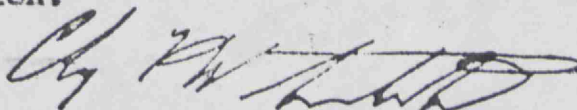
However, such direct viewer payment can increase the supply of programming and make it more sensitive and responsive to consumer demand. Cable with direct per-program or per-channel payment can generate revenues for programming that cannot otherwise attract an audience large enough to obtain advertiser support. Mixed advertiser and subscriber support (like in the magazine business) could expand this even more. Siphoning is a potential problem, but it can be limited by "anti-siphoning" restrictions that prohibit studios or sports interests from selling certain types of programs to anyone but networks or other broadcasters.

The Cabinet committee on cable did address these issues. While cable is growing to maturity and increasing its subscriber level, many areas will not have cable service. Siphoning of mass audience programming should be limited in this growth phase, if only to prevent free programs from being lost to over-the-air broadcasting without becoming available to those areas not wired for cable. During this stage, therefore, we specifically recommend that the FCC retain anti-siphoning restrictions.

In the longer run, cable will be widely available and there will be virtually no technical limit on the number of channels. Under the Cabinet committee recommendation, programming supply on cable channels will develop into a highly competitive industry. Also, technologies such as video cassettes and discs will enable a person to buy TV programs in the same way he buys musical records. If the consumer can buy programs in the store and view them at home, there is no reason to prevent him from buying them at home through a cable system.

The committee's position is that in this future environment, anti-siphoning restrictions would be unfair to the consumer and would deprive him of a wider range of choice of program fare. At the same time, keeping such restrictions in force

would permit the government to regulate programs and protect one set of businessmen--the networks, broadcasters, and theater owners--against competition from another set of businessmen. This makes no sense from either a First Amendment, free enterprise, or public point of view. The Report makes one exception: there may be a strong public demand for retaining major sports programs on free television.



Clay T. Whitehead

DO Records
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Mr. Whitehead ✓
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GC Subject
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HGoldberg/pab/4-4-73

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

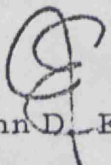
MARCH 20, 1973

FOR TOM WHITEHEAD

I had a pleasant get-acquainted session with Ev Erlick of ABC the other day. One piece of business which he raised was the failure of the Cabinet Committee on Cable Television to deal with the problem of siphoning of events.

Could you educate me on what the issue is and why the Committee is not dealing with this, if indeed that is correct?

Many thanks.


John D. Ehrlichman

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

*his
class*

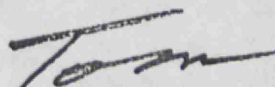
December 14, 1973

DIRECTOR

MEMORANDUM FOR AL HAIG

Dean Burch is really reaching the end of his fuse. He has done a tremendous job at the Commission, but needs to get out shortly. He deserves a meeting with the President.

Moreover, we have temporized in communications policy about as long as we can without further guidance directly from the President, and this is obviously tied to the need for quality appointments. I recognize the incredible pressures the man is under, but this is an area of some interest to him, and we cannot in good conscience go much further without discussing a few things with him.


Clay T. Whitehead

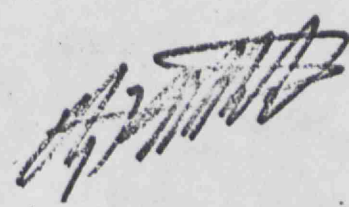
Attachment

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504
December 14, 1973

DIRECTOR

MEMORANDUM FOR THE PRESIDENT

FROM: Clay T. Whitehead



Dean Burch's imminent departure as Chairman of the FCC,, together with the other two vacancies and the expiration of Bob Lee's term in June 1974, creates an unusually high turnover of Commission membership in a short time.

Dean Burch is much concerned about the quality of our past appointments to the Commission and our seemingly inability to make good appointments. He is writing you to request a meeting with you and me to discuss this. In spite of the great demands on you at this time, I join Dean Burch in requesting a joint meeting with you at your earliest convenience.