

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

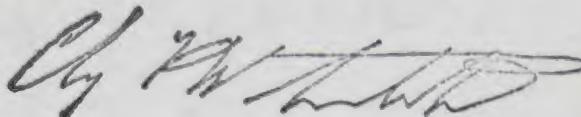
will largely determine the extent to which the benefits of the communications revolution are realized by the public and by industry -- and whether communications regulation by the Federal Government will be locked into the same kind of morass as transportation and power or whether a more competitive,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

A handwritten signature in dark ink, appearing to read 'Clay T. Whitehead', with a stylized, cursive script.

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 _____

See Davis

The Radio Act of 1927

13 Va. Law Review 611 (1927)

See { 67 Cong Record 12504
5483
also HR Report 404, 69th Cong 1st Session
HR Report 1918, 73rd Cong 2^d Session
re common
carrier
status

85 Harv LR 689 (1972)
L. Jaffe: The Ed Response of the Broadcasters
NYT v Sullivan 376 US 254
Briefs for ABC, NBC, CBS, Post-Newsweek Stars
in CBS v DNC

→ They have more incentives: looking competitive interest, they compete against the govt, like a continuing football game to generate more "game-like" desire to "follow the action" on the part of the consumer.

If the press is to function as a check on government corruption and a source of public information, it must have incentives to do so effectively and consistently. The principal incentive^s it might have, ~~is of course~~ ^{are those provided by} competition, provided that this "role" has a high survival value in the marketplace. (Competition rewards firms which best satisfy consumer demand; if consumers do not want this information, competition will not provide it.) It seems pretty clear that the public does relish scandal, and government corruption has sold a lot of newspapers. We can count on the press to perform this role so long as it must in order to survive in the retail marketplace. (Of course, if tastes are not taken as given the press may wish to cultivate a demand for news of misgovernment.) A monopoly press does not have the same vigorous incentives to perform this role, or at least has a great deal more discretionary power in deciding on the extent and degree of its coverage. It is not difficult to imagine situations in which the profit seeking owners of a monopoly press can gain by selective performance, and even by implicit cooperation with the politicians whom they are supposed to watch. Certainly it has always been supposed that an "establishment press" has this characteristic vis a vis scandal in the social and economic establishment itself.⁵

This brings up a major issue regarding freedom of expression. The "watchdog" theory of the press, however recent, has much to recommend it, as the Watergate scandals illustrate. But there is a school of thought which holds that courageous exercise of this function requires that the media be large, wealthy organizations with the resources necessary to "subsidize" investigative reporting. If so, there is some conflict between this theory and the "more is better" theory of

freedom of expression with respect to the number of editorial gatekeepers competing in the marketplace. It is certainly true that the monopoly media wereresponsible for the decisions to publicize the Water-gate scandals, but it is not clear that this took any extraordinary degree of courage. The original stories in the Washington Post by Woodward and Bernstein do not appear to have required the massive resources of a great organization; it is far from clear that these or other reporters employed by a more competitive press would not have broken the story just as soon.⁶ Indeed, it might have broken sooner if newspaper editors and their electronic counterparts felt more competitive pressure and less sense of "social responsibility."

The "countervailing power" theory of the role of the press must, it seems to me, be rejected.⁷ It requires a belief in the efficacy of of conscious moral action by institutions with at least sometimes contrary incentives, and it depends unduly on the frail reed of human nature. Neither the profits nor the prophets of the press are themselves "elect." We are far better off with a system in which it is assumed that everyone is following his own self-interest; behavior is then predictable and can

be discounted appropriately. When an institution sets itself up as the moral and ethical protector of "truth," and claims to stand above the incentives affecting its own self-interest, more than a few citizens may be seriously misled, and even those who are not will have difficulty interpreting the direction and extent of the inevitable biases. However, the basic issue is whether the press has economies of scale in the dimensions involved in investigative reporting. If so, then there is a countervailing power argument for a degree of concentration in the press. Unfortunately, investigative reporting seems to be done, on the national level, by newspapers which are both competitive and large, making empirical tests rather difficult. Little reporting of this kind is done by the network television oligopoly, no doubt in part because of disincentives provided by FCC regulatory policies. Periodicals seem to do the most investigative muckraking. But there is, apparently, no systematic study of this point in the literature. Given the presumptions of the First Amendment tradition, the burden of proof of the countervailing power hypothesis must lie with its proponents.

The proper performance of the social and political role of the press ought not to be a matter of "courage" but a matter of survival. Whenever there is an element of discretion⁸ in the performance of the press, there is danger of abuse and an imperfection in the theoretical structure on which the First Amendment is based. Given human nature the process cannot safely depend on "fearless" editors and it cannot depend on "responsible" editors. It must depend on editors concerned for their competitive survival in the marketplace. *i.e., what the consumers want.*

The positive argument for the preceding position need not, it seems to me, depend on the apology that truth will necessarily prevail. In the first place, a pluralistic debate is unlikely to reach a broad or long-lasting consensus. In the second, what emerges can hardly be independently verified as "the truth." That truth will result from unfettered debate is therefore an untestable hypothesis. Freedom of expression, in the sense of freedom from government intervention and freedom from fortuitous economic monopoly, can be justified on more fundamental grounds in which it is the process of free debate, and not the result of that debate, which has ethical merit. I shall not try to reproduce here the moral arguments for freedom which are so well put elsewhere, as in Nozick [59], but the underlying assumptions involve a belief in individual human dignity and therefore consumer sovereignty.

They do not have this power if they are "simply" responding to consumer demand, where their survival as economic entities depends on their selecting just the right mix of messages. Probably the best examples of this are the magazine trade and the book trade. But sometimes, for various reasons, editors do have great discretionary power. Then there exists a wide range of choices available to them, all of which are compatible with economic survival. Newspapers and television are examples of media with some degree of this power, and it is here that "numbers" play an important role, though they are not the whole story. Sometimes this power is channeled by implicit or explicit professional codes, which move the journalist or editor in the direction of "leading" the public's opinion, and which impose standards of responsibility. These are a rather unsatisfactory response to the problem of monopoly power.

The editor who competes with other editors for survival serves as a surrogate for the consumer. He must be able to assess with great accuracy the tastes of his readers or viewers. This job may be equally difficult for the general publication and the highly specialized

limited circulation media. Often the editor must worry not merely about his audience's tastes but the kind of audience desired by his advertisers. Clearly different content will produce different audiences, and not all audiences are equally valuable to advertisers.

The transmission stage of mass communication involves "broadcast" of the messages selected by the editors. This can take the form of printing presses and delivery boys or the U. S. mails, or the electro-

→ very low, editor implicitly select right order / editorial mix that provides consumer benefit, by best benefit/cost tradeoff

*in any event,
they have less time now
for reading!*

to spend reading. That this has some sort of social and cultural significance, there is no doubt, but there is wide disagreement about the nature of this significance.

For our purposes the crucial point about technological change in the transmission stage is that it has frequently been the occasion for new legislation and new judicial interpretations of the First Amendment. If the First Amendment can be fairly characterized as libertarian and antipaternalistic in spirit, then more recent acts of government have been the opposite. One of the questions we shall try to answer in this monograph is whether this change is justified by the technology or social context of the new media.

The three stages of mass media message production are all, of course, related. Different media have structured the relationship among the stages in ways which are dictated partly by the demands of technology and partly by the forces of economic self-interest. Sometimes the government mandates a certain relationship. As we shall see, it is in the relationships among these stages that much of media structure and behavior can be explained.

In the next three sections we shall explore the economic sources of concentrations of private power in the media.

Diversity

Most people seem to think that diversity is a good thing, but it is not obvious why this should be so. In the area of freedom of expression, a "diversity of viewpoints" is often used synonymously with freedom itself, or as a measure of the success of the "safety valve" theory, and this has resulted in much judicial mischief. After all, a totalitarian state might, if it wished, offer the public access to a "diversity" of viewpoints, even though no one had any freedom of expression.

Similarly, a monopolist might choose to produce a wide range of opinions for his audience. This would go some ways toward relieving the effect of monopoly on consumers, or on the audience, but does not provide effective freedom for speakers. The First Amendment clearly is meant to apply to speakers, and while it may be based partly on the theory that freedom for speakers is good for the audience, this does not justify the substitution of government-or monopoly-supplied "diversity" in place of freedom for speakers. (This is a fundamental error of the Supreme Court's decision in Red Lion Broadcasting Co. v. FCC 395 U.S. 367 (1969).)

It is conceivable on the other hand, that a completely "free" society could be so homogeneous that there was no diversity of ideas or opinions, expressed or unexpressed. As we shall see below in the context of broadcast regulation, the courts have concluded that the government has the obligation to provide the public with a "diversity"

or "little" diversity. Monopolies in U.S. aren't terribly diverse & one could argue that would be the case in any stable society. A problem, however, arises in stimulating/leading non-mainstream material. Those who don't relate to mass media get more often for their taste material. may seek govt action to get more other for their taste in the media (e.g. FD in Red Lion, CPB, etc.)

of viewpoints, but have rejected the notion that there is any private right of access to the media in our society.

Even from an economic point of view, diversity has little normative content. There is no necessary relationship between the extent of diversity of media content (as conventionally measured; see Levin [46], Land [42]) and consumer welfare. This is particularly true if there are economies of scale. There is certainly no presumption that people would be better off with a choice of blue, orange, and yellow aspirin at \$1.00 per bottle than they are with white aspirin only at \$.50 per bottle. They might be, but we cannot say for sure without knowing the structure of preferences.

Finally, diversity of content is terribly hard to measure. In broadcasting, the standard approach is to think in terms of "program types" (such as Westerns, situation comedies, and quiz shows).

print media, one uses "content analysis" (essentially categorizing and counting adjectives and nouns.²³) These methodologies are infirm, since they are not grounded on any theory of consumer psychology or perception.²⁴

It is simply not true that one situation comedy is a perfect substitute for any other, for many people, or that one "pro-Labor" word is equal to another and exactly equal to minus one "pro-Management" word.

But accepting this "right" doesn't mean we should (in the face of VI) require those who have monopoly control of transmission to restrict or redefine their message to ease purchase of time/space on a common carrier basis (eg newspaper inserts v. pages v small ads)

ed messages for which some one else has built up a paying audience and goodwill. To accept this as a right would in effect destroy the incentive to invent and compete in the market for edited packages of messages.

Of course, the extent to which a right of paid access is undesirable depends on the consequent changes in the economic integrity of the product. This will be different for different media, and will depend on the "rules" surrounding the right. For instance, a right to buy newspaper space in units not smaller than one page, or TV time in units not smaller than one hour, may have significantly different effects than when smaller units are involved; similarly, much depends on the extent to which editors retain control of placement or scheduling.

These considerations suggest that it would be unwise, for instance, to legislate a "right" of free (zero price) access to newspapers, magazines, or TV channels as presently conceived. But they do not bar a right of paid access to the means of transmission.

Freedom of access must mean a general right to put before the public (not force on the public) messages which can only be delivered effectively via the mass media. Such a right exists with respect to the postal service for magazines, although it is not entirely unrestricted.²⁸ Because it does exist, and because the transmission stage of this medium is not vertically integrated, there is great competition in the magazine

Proposal for a Book on Public Policy Issues
in the Regulation of Television

Clay T. Whitehead
March 1975

Background and Purpose

The media of mass communication have always had a special and central role in American life. Television, our newest mass communications medium, has now become a major factor in our social, economic, and political affairs -- and some say it is now our dominant means of mass communication. But unlike newspapers, magazines, or motion pictures, television is regulated directly and extensively by the Federal government.

The basic precepts and the legislative foundation for the government's regulatory power over television stem directly from the early days of radio, before broadcasting was recognized as a legitimate and important means of communication.

As with every area of Federal regulation, serious questions are now being asked about the objectives and the efficacy of Federal regulation of television after several decades of technical, social, and economic change. But with television regulation, something more serious and more profound has been happening. Television regulation is becoming more and more concerned with what the FCC calls the "core" of television service, the programming offered by the stations and the networks, raising important and complex questions about how the First Amendment's guarantee of free speech and free press can be given real meaning in our increasingly electronic age.

For the most part, the evolution of television regulation has taken place through successive ad hoc refinements by the FCC of its interpretation of the statutory "public interest" standard for license renewal and by frequent judicial restriction or mandate on FCC action. There has been little change in legislation and almost no serious national debate on the directions of public policy in this field. Therefore, we are approaching a time when both the internal consistency of our television regulation and the broader public policy purposes surrounding governmental regulation of a major medium of expression need to be analyzed carefully.

The purpose of this study and the resulting book is to identify the major alternatives for future television regulation, to analyze the impact of those alternatives on our broader public policy goals, and to suggest how the complexity and conflicts that currently characterize television regulation might be reduced through greater emphasis on regulation by policy. The prime focus of the book will be on the effects of television regulation on the terms and conditions of how ideas and entertainment are communicated in a free society and, in particular, on the scope and interpretation of the First Amendment in an area of the media organized into a few large corporations regulated by the Federal government.

Research approach

Most serious studies of television regulation have been historical or based on the rather narrow field of administrative law. The popular literature and most journalistic attention to television has

focused on futuristic treatments of technological developments or on critical review of the quality of social desirability of television programs. More recently, there has been an increased interest in economic studies of the television business and in revisions of the law regarding political use of television.

For the most part, studies of television regulation have lacked an integration of technical, legal, economic, and organizational factors into an analysis of how various regulatory actions impinge on broader public policy considerations. As a consequence, we have no tradition of designing regulation to achieve the best overall long-term results; indeed, there is not much careful consideration at all in our society of what long-term results we think important for television.

The research component of the study effort will focus on analysis of the major issues currently identifiable in the regulation of the television industry, on the future implications of those issues for relevant public policy goals, and on the public policy choices necessary and available for the future.

The analysis of present trends in television regulation will start from a synopsis of what is known about the various technical and economic factors and incentives that shape television as we know it today and a review of what the present state of television regulation is, in theory and in practice. From this base, the major unresolved regulatory issues will be identified. It is reasonably clear already that the major issues to be looked into intensively are: (1) the concept of favored program categories used by the FCC in applying the statutory public interest standard for license renewals and in other program-related rules such as the Prime Time Access Rule; (2) the interrelated concepts of Fairness Doctrine enforcement and the public's rights to

gain access in various ways to television for direct expression; and (3) the application of competitive principles and anti-trust remedies to the television industry.

The relevant public policy goals can be identified quite easily: diversity, freedom of expression, adequate competition in both dollar and idea marketplaces, economically strong news organizations, responsiveness to public needs and interests, no excessive concentrations of private power over television programming, minimal opportunity for improper governmental control, and so on. The difficulty in studies of television regulation is that these goals often conflict -- especially if choices of regulatory action are too narrowly constrained.

The most significant and most difficult part of the research, therefore, will be the categorization of public policy goals into a useful taxonomy and tracing the implications of various plausible regulatory actions in each of the issue areas chosen for examination in terms of their impact on the public policy goals.

Some of the regulatory approaches will be seen to be distinctly sub-optimal compared to others, while the desirability of others will depend on judgments about the plausibility of various assumptions and the relative importance of different public policy goals. In any event, it is precisely this systematic tracing out of the broader regulatory alternatives and their connection to higher public

policy goals that is most missing in our national discussion of television regulation and that will be the major effort in this study. A similar analysis for cable television and other new television technologies will also be carried out.

This research necessarily will be integrative, drawing on what is already known in a variety of specialized contexts. Many inadequacies in that knowledge will appear, but this effort is still worth undertaking because it is highly probable that the interconnections of the various factors are more important to the shaping of television regulation than the detail of the factors separately. For example, consider the debate over access to television: In CBS v. DNC this issue went to the Supreme Court and in a strictly narrow sense the issue has been resolved: private individuals and organizations have no right to buy time on television for a direct presentation of their views to the public. But this Supreme Court ruling rests on the narrow provision of the 1934 Communications Act that broadcasters are not common carriers. It takes almost no account of the possibility or desirability of a change in the statute to require, e.g., the broadcaster not to discriminate in the sale of time among various uses and users; it ignores the procedural impact of the decision on the collateral provisions for Fairness Doctrine enforcement; and it appears to foreclose unnecessarily an important alternative for encouraging more diversity and competition in the provision of television programming from consideration in the Prime Time Access Rule and related anti-trust cases.

The final phase of the research will be an effort to synthesize two or three self-consistent alternatives for the broad future direction of public policy toward television. This will be undertaken to serve two purposes: first, to suggest how the more specific analysis developed above relates to some of the broadest considerations about our national future, and second, to provide a check on the usefulness and consistency of the analysis itself. The materials will be developed so that the reader can put together his own alternatives for television regulation with some assurance that they are self-consistent and capable of being clearly related to the most important public policy goals he has in mind. The two or three broad alternatives chosen for this effort will be selected to illustrate the implications of some of the current proposals for specific regulatory action and to span a reasonable range of points of view. For example, three such alternatives might be:

1. Continue the current process of ad hoc program-related regulation, anti-trust, "raised eyebrow", and so forth in response to public and political pressure.
2. Accept the economic concentration in the television industry as a quasi-public utility and design program-related regulation around the "public trustee" role of the broadcaster.
3. Reject program-related regulation as unconstitutional and design regulatory policies and anti-trust remedies to assure adequate competition.

The Book

Attached is a tentative outline of the book expected to result from this effort. A book following this outline could be aimed at several audiences with several different purposes. While it would be possible to turn this effort into a scholarly treatise or textbook, that does not seem to be the most worthwhile approach. Indeed, the television business and its regulation have too long been the province of a very narrow group of specialists. The issues and the analysis developed should be made accessible to a much broader audience than regulators, judges and professors.

Therefore, the book will be aimed at a wide, but informed and interested, audience with no particular knowledge of the specifics of the television business or its regulation. As stated above, the purpose of the book is to give the reader a better understanding of the public policy issues underlying television regulation and to give impetus to the idea of designing television regulation to achieve our most important public policy goals.

Chapters I and II will set the stage and bring the reader generally up to television and its regulation as it existed around 1960. Chapter III will cover some of the most prominent factors that shape the television business, the kinds of programming incentives inherent in that business, and what is known about how television affects viewers and how they perceive it.

Chapter IV will examine the state of television regulation today and how it has come to that point in each of several key areas. Each area of regulation will be examined to identify the various public policy goals to be served and to identify regulatory alternatives.

Chapter V will digress slightly to deal with the key issue of television's role in the political process and the specific changes in the law that have been made or proposed to deal with this issue. The circularity of television affecting politics and politicians regulating television will be particularly addressed.

Chapter VI will take the alternatives identified in chapters IV and V, restructure them into more coherent and analytically useful groupings, and trace the public policy goals and issues connected with each.

Chapter VII will provide the same kind of analysis as Chapters II-IV, dealing mainly with cable television and touching on other new television technologies as they impact broadcasting or cable or present potential regulatory issues.

Chapter VIII will deal with both broadcast and cable television, with emphasis on the former, to show how the various policy alternatives developed in preceding chapters can be (indeed need to be) combined into coherent overall directions for public policy toward television. The chapter will focus on designing a set of regulatory policies (from the alternatives already developed) based on a general policy direction in such a way as to minimize adverse public policy impact and to maximize the benefit, given the assumptions of the chosen general direction.

This will illustrate what several coherent directions for public policy look like in some detail and will show how one's assumptions about government, society, industry, and so forth affect the design of public policy and the associated costs and benefits.

Chapter IX will conclude the book by asking some broader questions about the kind of society we want, comparing the various goals we might give priority, and discussing how the three broad directions developed in Chapter VIII compare on those levels. In this there can be no firm right or wrong, no clear cause and effect analysis. But this final chapter should serve to show why our choice of (or failure to choose) a direction for public policy toward television is likely to have a major impact on our future. Hopefully, readers will then have the background to engage in their own debate about which directions for television regulation make the most sense and to require both government and industry to be responsive to a wider audience and a wider range of considerations in shaping television's future role.

TELEVISION AND PUBLIC POLICY

- I. Introduction
 - A. Scope and purpose
 - B. Outline
- II. How Broadcast Regulation Has Evolved
 - A. Leading up to the First Amendment
 - B. Radio and the 1934 Communications Act
 - 1. Perceptions of the technology and the press
 - 2. Issues and debate
 - 3. What was (and wasn't) decided
 - C. Television as the major medium
 - 1. Radio with pictures
 - 2. Early television issues
 - 3. Television and the other media
- III. Why Television Is What It Is
 - A. The fewness of stations and the commodity of time.
 - B. Economics of advertising and networking
 - C. Economics of programming
 - D. Economic concentration
 - E. Front office vs. on-camera
 - F. Public television and cable
 - G. Television in other countries
 - H. Popular perceptions of television.
- IV. Television Regulation Today
 - A. The public interest standard and license renewal
 - B. Favored programming
 - C. Access and fairness
 - D. Networking and localism
 - E. Competition and anti-trust
 - F. Public television and cable
 - G. Regulatory institutions: Congress, FCC, Courts, Executive Branch.
- V. Television And The Political Process
 - A. Politics on TV
 - B. TV in politics
 - C. Campaign law.
- VI. Regulatory Alternatives And Public Policy
 - A. Homogeneity or diversity?
 - B. Is it press?
 - C. Access or fairness?
 - D. Vertical integration and cross-ownership
 - E. License renewal: What is the public interest and who decides?
 - F. Public Service requirements, advertising regulation, etc.
 - G. Public television.

- VII. Cable And Other New Technologies
 - A. History and technological trends in cable
 - B. Multi-channel broadcaster or common carrier
 - C. "Pay" or "free"?
 - D. National, local and nongeographic communities
 - E. Non-television services
 - F. Privacy
 - G. Other new technologies.

- VIII. Three Broad Directions
 - A. Continued sequential attention to goals
 - B. Explicit program regulation of the broadcaster as public trustee
 - C. Structural economic changes to allow realistic competition

- IX. Public Policy Choices For The Future
 - A. Mirror or shaper of society?
 - B. Free speech vs. free press and the marketplace of ideas.
 - C. Access vs. fairness
 - D. Who determines the public interest and how is it enforced?
 - E. The media industry
 - F. Can "Big Media" be a "free press"?
 - G. Anti-trust: applicability and remedies
 - H. The First Amendment of the future.

THE FUTURE OF TELEVISION

1. Introduction
2. How Television Got to Be TV
3. Why TV Is What It Is Today
4. Two Exceptions: Public TV and CATV
5. The Box that TV is In
6. New Kinds of Television for Tomorrow
7. The Bigger Issues in the Future of Television
8. The Way Out
9. The First Amendment of the Future

① Intro

- A - look of future-oriented discussion of TV
- B₁ - importance of issues (allude to ch. 889)
- C₁ - prob of reg industries & describe reg instrs (FCC etc) briefly.
- C₂ - ref to ch. 5
- C₃ - electronic innov
- F₁ - list of mass media
(print; press in Eng, US; village press etc;
newspapers ca 1900; radio; magazines)
- G₂ - TV & other media
qual & quant comparisons
- B₂ - TV & no - behavior ~~behavior~~
- B₃ - TV & no - ~~mirror~~ mirror
- B₄ - TV & no - politics
- B₅ - TV & no - ult imp of rules of comm in democ
- ref ch 9.
- D - the 20-yr stagnation of TV : 60's & 70's.
(does it have a future?)
- E - time perspective - ~~seasons~~ seasons, decades, centuries
- G₃ - scarcity & time
- G₁ - TV as industry
- H₁ - M. S. Lukan & Davis : ~~shape~~ impression & structure.
- H₂ - ~~dragging speech~~ list of First Amendment (brief from ch 889)
- K₂ - ~~Reg instrs (ref pub int with LR & effects)~~
- G₄ - TV as public utility subj to pub int reg.

~~2~~ How TV got to be TV (incl old # II)

tech
radio & 3rd Oct

~~at that~~

TV as radio w/ pictures

evl of ind.

evl of reg

→ impact on other media
cable & translators.

~~3~~ Why TV is what it is today
[Old # III] [Old # IV] (sep or merged)

~~4~~ Cable ^{TV & public TV} & other new tech ~~new kinds of TV for~~
(old # VII) (spec TV to avoid probs discussed above)
(current ind & problems)

~~5~~ The box the box is in: paths to the future
(old # VI) (old # V) (+ reg issues of cable etc)

~~6~~ Cable & other new tech: new kinds of TV for tomorrow

~~7~~ The way out: bigger issues
(old # VIII) { ^{some who} ^{some poor} ^{some who} cable is rough
cable ind transition
↳ (contrast to # 5)

~~8~~ The way out: the way to go
lay out a policy framework & its rationale
(incl old # IX) (incl how count can out)

~~9~~ The way out: What do we want to be?
longer we go, harder to change
bec of vested interest & social impact of change.

new tech, new forms, new media.

9. What do we want to be ?

— The FA of the future .

2. How TV got to be TV

- A₁ - technology (early)
- B₁ - radio broadcasting: character of tech & ind.
- B₂ - 3 & 4 bet
 - perceptions of tech & the "press"
 - issues & debate
 - what was & wasn't decided
- B₃ - TV as radio w/ pictures
- C₁ - early ind & reg issues
 - ~~— channel alloc, et TV~~
- C₂ - evol of ind & reg in 50's
- D₁ - TV in the 60's & 70's
- D₂ - evol of reg in 60's & 70's
- D₃ - impact on other media
 - ~~— growth of adv~~
- E - " of percep; the critics & commentators
- C₃ - early concepts of TV future
-

3. Why TV is What it is today

- A - What is "TV"
- B - Fewness of stations & commodity of time
- C - Econ of advertising & networking
- D - Econ of programming { networking & localism
front office & talent
- E - What is bought & sold?
Reg favored progr (w/ ref to reg intro & pub int w/ LR)
- F - Access & fairness
- G - TV news
- H - Competition, viewing, etc
 - ~~concentration~~
 - ~~cross-ownership~~
 - ~~anti-trust~~
 - ~~FCC surrogates~~

~~Public TV~~
~~Cable~~

~~Regulatory institutions~~ → } to Chap 5
~~Public interest std & lic renewal~~ → }
~~Public~~ TV in other countries → Chap 4?
 H - impact of criticism; contrast critical eye & ind reality

4. Public TV & CATV

- Limits of orig alloc plan - geographical & scarcity
- Reserve for educ non-profit use
- Hist ed TV, Carnegie Comm
- Funding public TV - govt issues & pay
- Ult role non-comm TV { govt fundn, NEA?
audience etc \$
pub pol issues.
- Hist cable & translators
- dist sig issues incl regional stations
- ~~pay & copyright~~
- reg uncent & industry directions
- reg issues for future muddled.

5. The box the box is in

B — structural incentives v. public policy goals
— incl vert integ

C — licensing & first amend incl politician/bc's
symbiosis

— court limits on media

— based on public nature, control of inv,
ent v. political, etc.

E — court interp of FCC author
(FA pt to 34 Act)

D — locking out tech change by govt fiat { as counterpart:
inabil to re-structure (base of
precedent, cited 2:2
in reg of new tech

A — The issues

— homogeneity v diversity; "quality" etc.

— is it press? in all forms?

— access or fairness incl equal time

— pub service requests & favored (promoted upon)
prop categories

— license renewal — who decides

— cable: tail on dog & why loops avoids

— public TV: alt on a shoestring w/ govt control issues

— politics — ~~equal time~~ symbiotic reln politicians & bc's.

F₁ — TV in other countries.

F₂ — How TV could have been/could be different

{ — VHF/UHF
— low power U
— common carriers of a sort
— drop-ins

6. Cable & new kinds of TV for tomorrow

- A₁ - Since box is in a box polit & econ, is there tech change to deal with that complicates or eases the situ?
- A₂ - Disting trans from what can be sent
- B₁ - Cable, sats, fiber optics et al.
- B₂ - Scarcity goes away; spectrum not used; but its a local nat monop bc of econ rule
- B₃ - access, monop control become big issues
- C - programming tech
- cameras etc.
 - ~~recorders & location~~
 - sats, microwave wholesaling
 - recorders, disto record/transmit capacity (stor & fwd)
 - uplinks tech & TV set design
 - info aces
 - nothing mech
 - ~~important for~~
- D - impact on fears programming:
- easy billing
 - flit in time of watching/seeing repeats
 - choose what rather than when to watch.
 - (watch progr, not watch TV)
 - spec advert - away from electronic mags.
- E₁ - The problem of uncertainty progr follows econ oppsty.
- E₂ - The monop control multi-channel bc problem - ^{inval to be created} ~~inequality of BC models precedent~~ - so look elsewhere.

7. The way out - big issues

- A₁ — Contrast possibilities w/ box of Chap 5.
- A₂ — FCC stifling of cable, trying to force it into the same bc box & dangers courts may legislatively interpret 34 Act to give them that power
- A₃ — is it wire; how do we go from here?
- B { — 3 big choices of direction
- continued ~~34~~ muddling under 34 Act
 - explicit prop. reg of bc & cable
 - structural reg of cable for realistic output
- costs, benefits, implic of each
- E₂ — Are media mirror or shaper of society? Both (Danger if controls are too easily grabbed by reg or priv. pers.)
- C₁ — Media industry / vert integ / Dupont article
- C₂ — Can Big Media be Free Press?
- D — Free speech v. free press; access
- F₃ — Can FA be tech dependent?
Yes (Sup Ct), but ult. NO.
- E₁ — Reiterate dangers of excessive public or private power
- ~~structural reg~~ ^{of polit & industry}
- F₁ — Bureaucratic momentum in current scheme
- (G) Nec of finding way to get workable corpct to avoid monop or govt control
- F₂ — cable eases or complics problem dep on reg route

8. The way out

~~Cable either complicates or eases the dilemma dep on choice of reg route~~

~~Digant speech / Digant article~~

A — Refer chap 5; imposs of getting out of box w/o cable

B — Print media as model

C₁ — Cable report / policy

~~C₂~~ — transition period for cable.

D₁ — Transition period for BC

D₂ — Access v fairness

~~BC as cable adjunct?~~

D₃ — Progr reg & LR

D₄ — Networks

E₁ { — Cable & BC as businesses in the future

— TV as business

E₂ { — Media business / consumers

E₃ { — What would be produced / watched?

F — Is it what we want? Are we

willing to forego freedom to control?

Is public interest something to be explicitly

determined, or to evolve w/in society?

What is a society anyway, how diff

from a "public" that is "governed" even

if by people chosen from the society itself?