

OVERVIEW OF THE OFFICE OF TELECOMMUNICATIONS POLICY

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
NINETY-THIRD CONGRESS
FIRST SESSION
ON
OVERVIEW OF THE OFFICE OF TELECOMMUNICATIONS POLICY

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Office over the past year and to plan its plans for the coming year. These activities are set out in great detail in a report submitted to the Committee by the Office of Telecommunications Policy, and at this point that report will be referred to the record.

Over the past months, Dr. Whitehead, your speeches, interviews and policy statements regarding broadcasting have caused a good deal of concern because they have touched upon the very sensitive areas of censorship, the free amendment, and government influence over the broadcast media.

For instance, in your recent speech in Indianapolis, you spoke of network news and license responsibility, and referred to "elitist gossip," "consistent bias," and "theological pharisee" amongst network newsmasters.

Subsequently, in a public address in New York City you went to great length to explain that the meaning of your Indianapolis speech had been misinterpreted and misunderstood by a great number of people.

In any event, Doctor, one of the main reasons you are here today is to clarify your position once and for all.

You have also spoken publicly about public broadcasting in ways that have led many people to wonder if you aren't really trying to limit the Corporation for Public Broadcasting somewhat.

Stripped of all rhetoric and subtleties, you told told the educational broadcasters that by your standards they were not programming their stations properly, so unless they change it—and you were quite specific

Staff members assigned to this hearing: Nicholas Zarate and John D. Hoffman.

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OVERVIEW OF THE OFFICE OF TELECOMMUNICATIONS POLICY

TUESDAY, FEBRUARY 20, 1973

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11 a.m., in room 5110, Dirksen Building, Hon. John O. Pastore, presiding.

Senator PASTORE. The hour of 11 has been reached and we will call this hearing to order.

OPENING STATEMENT BY SENATOR PASTORE

Today the Director of the Office of Telecommunications Policy is appearing before the committee to inform us of the activities of that Office over the past year and to outline its plans for the coming year. These activities are set out in great detail in a report submitted to the Committee by the Office of Telecommunications Policy, and at this point that report will be inserted in the record.

Over the past months, Dr. Whitehead, your speeches, interviews and policy statements regarding broadcasting have caused a good deal of concern because they have touched upon the very sensitive areas of censorship, the first amendment, and government influence over the broadcast media.

For instance, in your recent speech in Indianapolis, you spoke of network news and licensee responsibility, and referred to "elitist gossip," "consistent bias," and "ideological plugola" among network newscasters.

Subsequently, in a public address in New York City you went to great length to explain that the meaning of your Indianapolis speech had been misinterpreted and misunderstood by a great number of people.

In any event, Doctor, one of the main reasons you are here today is to clarify your position once and for all.

You have also spoken publicly about public broadcasting in ways that have lead many people to wonder if you aren't really trying to make the Corporation for Public Broadcasting moribund.

Stripped of all rhetoric and subtleties, you told the educational broadcasters that by your standards they were not programming their stations properly, so unless they changed—and you were quite specific

Staff members assigned to this hearing: Nicholas Zapple and John D. Hardy.

as to how—permanent financing would always be a thing of the future. As part of your announced effort to help public broadcasting, you have also persisted in urging 1-year authorizations for the Corporation despite the repeated testimony of experts that a 2-year authorization is the minimum necessary if the Corporation is to have the financial stability to function and plan effectively.

Congress, of course, created the Corporation and gave it a mandate. Many of us still believe the way to change that mandate or to assure it is being carried out is through Congress, and not by OTP recommending funding which is patently inadequate.

And this, Dr. Whitehead, is another very important reason for your appearance today.

I would hope, therefore, you will disdain generalities, and explain precisely what you mean in these very sensitive areas. You owe the American people that much.

When the Office of Telecommunications Policy was created it appeared there was an agency of government which would develop an overall telecommunications policy for the country. At least many of us in Congress were under the impression that this was the issue with which OTP would be concerned.

We supported the reorganization plan because initiative from the executive branch was long overdue and answers had to be forthcoming if the American public was to receive maximum benefits from communications technology.

When Dr. Whitehead appeared before the committee in 1970, I recited in detail the history of our efforts to obtain such a policy, and emphasized the urgency of the matter. He agreed with the committee, and stated his intention to proceed.

I do know that this committee has specifically urged the interested agencies of Government to adopt a policy regarding provision of satellite communications for international civil aviation; and about a year ago the President instructed Dr. Whitehead to proceed with an updated statement of policy in this area.

For whatever reasons, an aeronautical communications satellite is not yet a reality. The same may be said of a maritime satellite.

In August 1971 this committee asked for the administration position regarding CATV. In Dr. Whitehead's report to this committee last year he said:

There is urgent need for policies to guide the development and regulation of cable in such a fashion that its enormous benefits can be rapidly achieved without depriving the society of its healthy programming industry and its essential broadcasting services.

I would hope Dr. Whitehead will tell us specifically when we may expect policy recommendations and legislation to implement them.

Our witness today, Dr. Clay T. Whitehead, is Director of the Office of Telecommunications Policy. This office was established by the Reorganization Plan No. 1 of 1970. Dr. Whitehead serves as the adviser to the President of the United States on all telecommunications matters. I have a prepared statement which I will not read, but will insert in the record.

I see that you have a written statement, Dr. Whitehead. In the spirit of the first amendment, I will not deny you from reading it. I would assume that it contains the good things that you have done. We are also

going to talk to you a little about a few of the speeches that you have made.

As a matter of fact, I want to say, at this juncture, that I have read your speeches several times, both with reference to public television, and also commercial television. I read your speech of December, the one you made in Indianapolis—four times.

I have read the speech that you made at the Americana in New York—I have read that twice. In your Americana speech, you said your Indianapolis speech was greatly misunderstood. I am going to give you an opportunity, today, to explain yourself so that we can all understand you.

I want to say this. There has been a tremendous amount of alarm generated by your recent speeches in all sectors of our country.¹ There has been a barrage of editorial comment on some of the statements that you made. There seems to be a feeling that somehow, there is an antipathy on the part of the administration toward the networks. In an interview, for example, you talked about the dominance of the networks, and how it is affecting the growth of CATV.

We would like to have you get into that. In other words, I think, for your benefit, and for the benefit of everyone concerned, I think we ought to put our cards right on the table today, and get a clear understanding of exactly what we mean.

I want to say this to you; there is some justification for this alarm on the part of people. Not to long ago, as you will recall, a certain commentator—I'll mention his name—Dan Schorr—was being investigated by the FBI, under the pretext that he was being considered for a position that he had never heard about and nobody had ever asked him about. He wasn't even interested.

Naturally, of course, a lot of people were disturbed, that the strong arm of the White House might be reaching out to inhibit the independence of the broadcast media. I think that if there are any unreasonable fears, they should be allayed here, today; and on the other hand, if there is any justification for some of these matters that you have discussed I think we ought to scrutinize them very closely. In the long run, we want to preserve the spirit of the Constitution.

I am one of those who is a firm believer in freedom of expression. I have had my gripes with the broadcasting industry, and I don't want to be placed in the position of being the devil's advocate today. I have praised the industry and I have criticized it. But, through it all I am a firm believer in the freedom of expression. I come from a State whose capitol has one of the four unsupported domes in the world. There is an inscription on that dome, and it captures the spirit of America, I think.

Indeed, it is the spirit of Rhode Island which is the cradle of religious freedom. It is a statement made by Tacitus, and the translation is, "Rare the felicity of the times, when it is free to think as you like and say what you think."

That is the predicate on which America was built. That is the predicate of the first amendment. I hope that we can take it from there.

Senator BAKER. Mr. Chairman, I commend you on an eloquent and timely opening statement.

¹ A compilation of newspaper articles appears at pp. 55.

I would not burden the committee with a long, detailed dissertation of my own, except to say that I recall that Dr. Whitehead in a previous appearance before this subcommittee, in connection with the confirmation of the Deputy Director of his office, said, that he conceived his job to be to dramatize the work of OTP.

I hope you do not think me frivolous, when I say, you sure have dramatized the job of OTP in the last several months.

I too have read carefully, and considered the legislative proposals, that have emanated from your office. I think they are of a high order, competence, and show a great amount of thought and concern.

They meet headon many issues that have been languishing for a long time. At the same time, there are many of your proposals and some of your statements that have been highly controversial, and that may or may not be fully understood or misunderstood.

For my part, I look forward to these hearings and your appearance before this subcommittee as an opportunity to thoroughly ventilate your viewpoints with respect to specific legislative proposals, such as license renewal, cable TV copyright, and many, many others, as well as your more general points of view vis-a-vis, the role of television, of network television, and network news coverage.

Whether that is coupled with specific legislative proposals or whether it is not in your point of view, is also an important matter.

So, I join with the chairman in welcoming you to this subcommittee hearing, and we look forward to a lively and energetic conversation, and I once again, say, if you set out to dramatize the job of OTP, some of your speeches have certainly been successful.

Senator PASTORE. Any further comments on the part of the members of the committee, before we hear from Dr. Whitehead?

Senator MOSS. Not at this point.

Senator PASTORE. You may proceed, Doctor.

STATEMENT OF DR. CLAY T. WHITEHEAD, DIRECTOR, OFFICE OF TELECOMMUNICATIONS POLICY

Dr. WHITEHEAD. Thank you, very much, Mr. Chairman.

This is the first occasion that I have had to appear before this subcommittee to discuss the activities of the Office of Telecommunications Policy, and I appreciate the opportunity.

I share your feeling that the open exchange of views and the airing of these matters is of utmost priority, and I welcome the opportunity to do that, today.

I have prepared a statement covering the programs and activities in the Office in 1972 and 1973. With your permission, I will introduce that for the record, and briefly summarize it here.

Senator PASTORE. Without objection, so ordered.

(Copy of Office of Telecommunications Policy's activities and programs 1972-73 follows:)

FOREWORD

Calendar 1972 was the second full year of operation of the Office of Telecommunications Policy. The following report summarizes the principal activities of the Office in the four broad areas of its concern, and sets forth the principal programs contemplated during the present year. Omitted are those activities related to internal organization and management, and also to routine operations, such as review of legislation referred for comment by the Office of Management and Budget.

I. DOMESTIC COMMUNICATIONS

A. COMMON CARRIER COMMUNICATIONS

Common carrier communications is for the most part a monopoly public utility service provided by the Bell System and independent telephone companies. The performance of the industry has come under increasing criticism in recent years, and it has been proposed that various segments of common carrier operations be opened to competition. In response to such proposals the carriers have asserted that the benefits of economy of scale and operational integrity derived from integrated ownership and operation far outweigh any potential customer benefits from competition.

OTP has initiated several investigations into these questions. The ultimate aims of these studies are, first, to develop recommendations as to which aspects of common carrier operation can safely be opened to increased competition, and which should remain under integrated control; and, second, to determine the regulatory principles and practices best designed to ensure that noncompetitive operations remain efficient and innovative.

Principal studies and findings to date include the following:

1. *Domestic Satellite Communications*

OTP has consistently found that there are insufficient economies of scale in domestic satellite communications to warrant government restriction of competition. It therefore recommended to the FCC that any technically and financially qualified applicant be allowed to establish and operate satellite systems on a competitive basis, and participated in the FCC hearings on this subject. Subsequently, the FCC adopted what is essentially an open entry policy with respect to the provision of communications services via domestic satellites.

2. *Specialized Communications Carriers*

The entry of new communications carriers offering "specialized" services (generally any services other than public telephone, e.g. data, private line, video interconnection) in competition with the existing telephone carriers was approved in principle by the FCC, but a number of issues which could determine the practical feasibility of competitive entry were left unresolved—such as the allowable monopoly pricing response and interconnection constraints.

To assess the implications of these issues for long-range public policy, OTP initiated three major programs. First, OTP undertook a major study to identify and quantify scale economies in the provision of all significant voice, data, and video common carrier services by individual functional areas (i.e., long-haul transmission, toll switching, local distribution, terminal supply, and general provision of service). This is necessary in order to decide where monopoly should be protected from competition or is inevitable, from where it is not. OTP also explored various pricing policies with a view toward determining which of these policies would promote the greatest efficiency in the monopoly area, as well as prevent hidden subsidies from arising, and best promote competition.

Second, OTP began to investigate the technical and economic implications of alternative interconnection policies which, among other factors, will be a major determinant as to whether competition in the supply of terminal equipment (e.g., telephone and data sets) to be used with the existing telephone network is viable. This investigation will serve as the basis for recommendations for new legislation or regulatory policy.

Finally, OTP began an examination of the benefits and feasibility of a brokerage market—i.e., a market in the resale of communications services by non-common carriers—and an evaluation of possible impact of removing current restrictions on such activities on common carrier operations, revenues, revenue requirements and service arrangements under various policy alternatives.

Taken together, these three programs will provide guidelines for public policy regarding the major structural characteristics desirable in this industry group.

3. *Common Carrier Regulation*

Even if it is feasible to allow new communications services to develop on a competitive, rather than monopoly basis, and to introduce competition into selected existent aspects of common carrier operations, this will affect only about 10-20% of current total common carrier operations. Most common carrier operations, notably the public telephone service, will continue to be monopolistic for some time.

Effective regulation of monopolies is necessary to prevent investments in inefficient facilities, excessive rates and profits, technological obsolescence, service degradation, and other problems, but it is difficult for government to second-guess a large public utility on detailed investment and operating decisions. For this reason, in the coming year OTP will continue to explore the desirability of encouraging better public performance of regulated utilities through improved policies rather than increasingly detailed regulation.

a. *Depreciation Programs.*—The common carrier industry is heavily capital intensive, requiring sums for the expansion and replacement of facilities of close to \$10 billion per year. OTP is very much concerned with the cost of obtaining such large amounts of capital, as well as the impact of the demand for such capital. Consequently, it is carrying out a study of common carrier depreciation policy with the aim of determining how capital can be generated internally under various depreciation alternatives, at what costs, and to whom; and also how depreciation policies generally can affect the rate at which new technologies capable of reducing both capital and operating costs are implemented. Common carrier equipment is typically depreciated over very long periods corresponding to the expected *physical* life of the equipment, although the *useful* life is often much shorter due to rapid technological advances. This is only one aspect of depreciation policies that affect common carrier financial decisions and customer rates; other aspects are disposition of fixed asset salvage, separation of depreciable and nondepreciable investments, and purchasing policies of common carriers along with the pricing policies of their suppliers. In 1972, OTP made an overall investigation of the depreciation practices, objectives, effects, and alternatives in the common carrier industry.

b. *Accounting Programs.*—OTP is also conducting an in-depth study of the FCC's Uniform System of Accounts for common carriers, the objective of which is to identify the full range of operating incentives implied for the carriers by this regulatory reporting system and the effect these in turn have on the quality and cost of service. One of the study's major findings to date is that the classification for capital facilities costs and for operating costs bears no relationship to the classification for service revenues, and thus the Uniform System currently can provide little or no guidance in assessing the reasonableness of the rate of return for particular services. Other issues which will be considered within the study this coming year are the types of incentives and controls under the existing system of accounts that govern the classification of expenditures as either capital or operating costs, the treatment of asset salvage, and the method of tax accounting. Additionally, the possibility of making certain changes with respect to station connection accounting and installation procedures—changes which could add substantially to common carrier cash flow as well as to customer options in instrument selection, payment and rearrangements—will be explored.

B. CABLE TELEVISION AND BROADBAND COMMUNICATIONS

Broadband cable systems represent a new communications medium which can increase consumer choice in television programming and provide many new communication services hitherto unavailable. The immediate effect of cable expansion, however, is to disrupt some of the distribution practices of the existing television industry and to threaten the economic position of some broadcast stations and copyright owners. There is urgent need for policies to guide the development and regulation of cable in such a fashion that its enormous benefits can be rapidly achieved without depriving the society of its healthy programming industry and its essential broadcasting services.

In 1972, OTP undertook a series of studies and investigations to identify and illuminate particular aspects of broadband cable development that require policy consideration, and to develop policy recommendations.

Two of these studies have been completed:

(a) A study of the present and projected costs of broadband cable systems, to serve as a basis for estimating future growth patterns and rates of development of cable distribution systems;

(b) A study directed to the development of an industry simulation model to be used in conjunction with the results of (a) and (c), below, to predict future industry development.

A third study has yielded significant information and is close to completion:

(c) A study on projected consumer demand for cable television as a function of population and market characteristics, to enable the formulation of alternative regulatory policies appropriate for different economic environments.

In addition, the following study was initiated in January of 1973:

(d) A study to determine the most economical way of conserving and enhancing broadband communications services in low density rural areas, where cable technology may not be economically feasible.

In addition to these studies, OTP has provided supporting analysis and developed alternative policy options for the President's Cabinet committee on cable television. In this work it has examined, among other matters, the economic and social effects of vertical integration in the production and distribution of cable television programming; the probable impact of expected cable growth on the broadcast and copyright industries; the problems of access to the cable media for all segments of the public and industry; and considerations pertaining to joint ownership of broadcast, cable, and telephone facilities. Policy alternatives pertaining to these various matters were developed for consideration by the Cabinet committee. The results of this activity have been presented to the committee, which is expected to complete its report in the near future.

A significant achievement in the cable television field was resolution of the long-standing controversy concerning distant signal importation, that is, cable use of signals broadcast by out-of-market television stations. The distant signal question involved complex, interrelated issues such as CATV's need to offer this service in order to attract capital and begin its growth, the effect of distant signal competition upon the economic stability of local radio and TV stations, program suppliers' need for copyright protection, and the public need for a wide diversity of quality program services. Since OTP believed that delay and uncertainty would be harmful to the public interest, it agreed to act as mediator in the dispute. The principal private parties ultimately agreed upon a compromise plan, the main feature of which was to supplement the then existing FCC rules with regulatory and legislative copyright and exclusivity provisions. Main elements of this plan were ultimately reflected in rules which the FCC adopted in March of 1972. Congress is still considering the copyright provision of the plan, the main element of which is to establish a schedule of fees governing the use of copyrighted programs, or if such a schedule cannot be agreed on, compulsory arbitration. OTP will retain its interest in this area and follow developments closely.

In addition to the above activities, OTP is coordinating, with HUD and HEW as major participants, the design of a demonstration program that would show effective and economical uses of broadband communications for the delivery of public services and would allow industry to test earlier than otherwise possible the potential of broadband communications for innovative non-public services. The program would be a joint government and industry undertaking that would ultimately benefit both the private and public sectors. During 1973, OTP will continue its coordination of interagency effort, and will guide the demonstration program through its various stages, including the planning of specific experiments, the selection of demonstration sites, and the enlisting of state and local government participation. Finally, also during 1973, OTP will initiate a study to evaluate the economics of allowing consumers to purchase television programs directly over cable. This study will enable an assessment of the desirability and feasibility of such systems and their potential role within the broadcasting and cable industries.

C. BROADCASTING

1. Public Broadcasting

The Public Broadcasting Act of 1967 created a framework for educational and instructional broadcasting, largely as envisioned by the Carnegie Commission on Educational Television. However, the means of establishing a stable source of federal support funds which would avoid detailed government oversight of program content, was left unresolved and has remained so. In addition, the years since 1967 have witnessed the development of important new technologies for which no provision is made in the Public Broadcasting Act.

During the past two years, OTP sought to achieve amendments to the Act which would eliminate both these deficiencies. It consulted with interested organizations in public broadcasting and with the relevant agencies of government, and reviewed a range of approaches to new legislation.

Last year, OTP worked with the Congress and submitted a bill providing for an additional year of funding for CPB and assuring federal funding of individual public broadcast stations. Congress, however, adopted a different bill which would have increased the federal funding of public broadcasting by more than \$115 million over a period of two years. As a practical matter, the bill would have undercut any hope of resolving the various problems that have developed in public broadcasting regarding its structure and the various relationships between the local stations and the national organizations. Consequently, the President vetoed the bill.

In the coming year, OTP will prepare legislative proposals to continue funding of public broadcasting by the Federal Government.

2. *License Renewal Policy*

One of the major broadcasting controversies of recent years has involved the triennial license renewal process. Although all can agree that a broadcaster who has performed well in the public interest should have his license renewed, the Congress, FCC, and the courts have struggled with the questions of what is good performance and what standard should be used to judge the incumbent licensee's performance in the face of a challenge to his renewal application.

Because the search for standards comes at a time when community interest in licensee performance is strong and when competition for licenses is increasing, a certain amount of undesirable instability has been injected into the broadcasting industry. The regulatory process has become fraught with delay and uncertainty, and the industry's ability to serve the public has suffered.

Late in 1971, OTP developed and proposed for public discussion a wide-ranging series of suggestions for modifying the Communications Act of 1934, one of which dealt with license renewal policy. OTP pointed out the dangers of adopting renewal standards that led to government supervision of program content. It proposed for discussion a more "neutral" renewal standard that would place the primary emphasis on the licensee's being attuned to the programming needs and interests of his local audience. Using this standard, a premium would be placed on the obligation to be directly responsive to community problems and issues; licensees who had met this obligation would be assured license renewal. This would lead to needed stability in an industry that must make relatively long-term commitments to public service.

In December of 1972, following further study of the license renewal process, OTP proposed that the legislative provisions governing license renewals be revised. It proposed an amendment to the Communications Act of 1934 which would make four revisions in the present renewal process: the extension of the term of license from three to five years; the requirement that policies concerning qualifications to hold a license be made solely through rule-making; the establishment of specific procedures to be used in the event that a renewal application is challenged by a competing application; and finally, the prohibition on use by the FCC of predetermined performance criteria to be used in evaluating renewal applications.

The proposed legislation seeks to establish a regulatory environment which allows for competition for the grant of a license, and, at the same time, reduces the uncertainty and instability that has beset the industry.

3. *Fairness Doctrine and Access to the Broadcast Media*

Another critical issue—one that is central to the role of the mass media in an open society—is that of public access to the broadcast media for discussion of and information about controversial public issues. The FCC's Fairness Doctrine requires the broadcaster to make time available for the presentation of contrasting viewpoints once a particular side of a controversial issue of public importance has been expressed. Although not originally contemplated, this "fairness" obligation is now being enforced on an issue-by-issue, case-by-case basis, instead of through an overall evaluation of whether the broadcaster has kept the public well informed, with reasonable time for contrasting views. When enforced in this manner, the broadcaster's journalistic determinations are repeatedly second-guessed by the FCC and the courts, and since these are agencies of government, the decision as to who shall speak on what issues becomes part of the governmental process. This diminishes the "free press" discretion of the licensee and tends to convert broadcasting from a private enterprise activity to a government supervised service.

A major incentive for case-by-case application of the Fairness Doctrine is the fact that individuals' access to the media for discussion of controversial issues

can only effectively be achieved through that device. Broadcasters do not ordinarily sell their advertising time for such purposes—partly because they may be compelled to “balance” such presentations in their program time.

In 1971 OTP studied the history of Fairness Doctrine enforcement and the closely related problem of access to the media. As part of the series of suggestions for modifications in broadcast regulation made in October 1971, OTP proposed that there be considered a right of nondiscriminatory access to TV advertising time, accompanied by the elimination of any requirement that paid views be “balanced” by views expressed in program time. In program time, OTP suggested that the fairness obligation ultimately should be enforced by an overall inquiry into the licensee’s journalistic responsibility at license renewal time, rather than in the case-by-case fashion now employed.

Under the present structure of broadcasting—the technical scarcity of channels available as broadcast outlets, and the reliance on persons entrusted with these outlets to serve as a vehicle for informing the public—the Fairness Doctrine itself is necessary for the time being as a means of preserving the public’s right to be informed. However, the means and mechanisms of enforcing the Doctrine must be improved, and governmental intrusion into program content must be minimized. Enforcement of the Fairness Doctrine through a review of the broadcaster’s overall performance and programming at license renewal time, rather than through case-by-case adjudication, would be a step in this direction.

OTP will continue during the present year to explore various alternatives for solving the fairness and access dilemmas. It will seek to assist the Congress and the FCC in devising mechanisms to enhance free expression and to minimize government intervention in the marketplace of ideas.

4. Radio Regulation

For many years, radio broadcasting has been regulated as an afterthought to television. Some of the rationales and assumptions, such as scarcity of outlets and restricted entry, which shaped early radio regulation and still justify regulation of television stations, have been rendered meaningless by the phenomenal growth in the number of AM and FM radio stations, offering widely diversified special program services to the public.

In 1971 OTP proposed to the FCC that it undertake an experiment in radio deregulation, with a view toward lessening the regulatory controls on commercial radio programming, commercial practices and other nontechnical operations. The proposal was supported by an OTP Staff Paper setting forth the reasons such an experiment seemed appropriate and promising. In response, the FCC instituted a program to reassess its regulations governing radio, and is in the process of acting on its findings. OTP will continue working with the Commission, broadcasters, and public to provide recommendations as to how radio regulation can be improved.

5. Reruns of Network Programs

In recent years, the portion of network prime time devoted to reruns of original programs has increased dramatically. The increase in reruns has resulted in a diminution in the variety and creativity of programming available to the public and, by contracting the market for new programs, has threatened the economic underpinnings of the program production industry.

However, it has been unclear what the cause of this change is, and what are the available techniques for dealing with it. On the one hand, the shift to more reruns may be attributable to unfair use by the networks of their monopoly position in buying and distributing programs. Or, on the other hand, the trend may be due to inexorable market forces, such as increases in program production costs not covered by commensurate rises in advertising revenues. Better knowledge of this is required as a basis for determining whether Federal action is necessary.

In view of the importance of this matter to the viewing public and to the health of the program production industry, the President requested that OTP inquire into the causes of increases in network reruns, and, if appropriate, recommend remedial action. OTP is completing its study and is preparing its report for the President.

D. FEDERAL-STATE COMMUNICATIONS

Issues affecting state and local governments arise in every area of communication policy and in varying contexts. For example, the planning of a national emergency communication system requires state and local participation; regula-

tion of the communications common carrier industry has traditionally been divided between the Federal Government and the states. Regulation of CATV systems has involved both federal and local authorities; public broadcasting and educational communications involve state and local governments to a significant degree; the operation of public safety communications systems (police, fire, ambulance, etc.) is usually under the direct operational control of local officials; and in many cases, local governmental communication facilities and services are funded in whole or in part through federal grant-in-aid programs.

To provide guidance and assistance to state and local governments, OTP undertook and completed the following tasks: (A) a review of the various federal telecommunication assistance programs; (B) the issuance of OTP Circular Number 2 requesting all executive agencies to provide information on their current and planned telecommunications research programs which might affect state and local programs; (C) studies for the states of Hawaii and Alaska to identify their unique communications requirements; (D) the preparation of a Cable Communications Handbook for local government officials to provide a basis for community planning and decision; (E) a conference between communications officials of Hawaii, Alaska and the U.S. Trust Territories to strengthen their communication planning procedures.

To provide national policy guidance to state and local governments on the implementation of the nationwide emergency telephone number "911", OTP has prepared a coordinated national policy, contracted for a community planning handbook on "911" implementation, and provided for the establishment of a federal information clearinghouse on "911."

To provide support for public safety telecommunications, OTP is seeking the improvement of the national law enforcement teletype system (NLETS), which services state and local law enforcement agencies in 48 states. OTP is also pursuing an effort to identify the issues that arise from the potential delivery of public services via modern communication methods (CATV, satellites, etc.) with particular emphasis and priority on the communication aspects of the delivery of emergency medical services.

Finally, OTP maintains a continuing program of consultation with state public utility commissions and with the FCC concerning the impact of specialized communication carriers, cable systems, spectrum usage, data communications and other developments in communications which involve regulatory policies and practices. OTP engages in an active dialogue with state and local officials in order to respond to communications problems and issues as they arise.

E. MOBILE COMMUNICATIONS

The frequency spectrum available for mobile radio services has been tripled by the FCC in a series of actions taken in 1970 and 1971. The mobile communications industry should no longer be limited by a frequency shortage but will face more clearly classical supply and demand limitations. This will raise a number of issues as to appropriate types of new systems, new services and the institutional structure to support them and the manner in which the larger bloc of spectrum will be sub-allocated among the competing mobile services. The transition from spectrum scarcity to spectrum abundance must be regulated to create an industry structure that is sensitive to future demands for communications services of all types, including improved mobile telephone services for all areas, integrated dispatch services, and public telephone services for domestic aircraft. It is equally important, as the spectrum available for mobile communications expands, to provide for the maximum amount of competition, both in the manufacture and sale of equipment and in the actual provision of service to the public.

In early 1972, OTP commenced a program, using staff, contract, and Policy Support Division resources, to assess the technical, economic, and institutional effects of proposed new mobile systems and services and to formulate policy guidelines for the development of the expanded industry including guidelines for the introduction of competition. It is expected that the results of this program, along with recommendations to the FCC concerning policy guidelines for mobile communications will be forthcoming soon. Additionally, in cooperation with the FCC, DOT, LEAA, HEW, and HUD, OTP will continue to assess the feasibility of a pilot program to demonstrate innovative uses of mobile communications services in support of public safety, emergency health services, highway safety, and transportation in general.

F. NEW TECHNOLOGY

During the past decade, there have been radical improvements in communications technology resulting from independent research and development of U.S. industry, research in the academic community, the U.S. space program, and other government-sponsored R&D. These technologies provide opportunities for vastly improved and expanded communications services, which could have significant social and economic effects if exploited properly.

OTP maintains in conjunction with the National Science Foundation and the Department of Commerce, an ongoing study effort designed primarily to identify areas in which new technological advances are occurring and to evaluate the effect of these technologies upon the existing structures of the domestic communications industries. In 1973, OTP plans to identify the current state-of-the-art in the major fields of communications technology, to determine the existence of any gaps in research, and to anticipate any potential future policy problems. If necessary, OTP will recommend policy guidelines regarding the applications of new technology.

G. COMPUTERS AND COMMUNICATIONS

In recent years, the two separate industries of computers and communications have come to intersect in several important areas. The use of computers in communications has enabled, or made considerably less costly, new modes of transmission, switching, network design, and system administration. Conversely, the use of communications in conjunction with computers has permitted the sharing of data-processing resources and the pooling of information banks, and has provided an access to computers that has opened up new opportunities across the entire spectrum of endeavor, including business, education, and social services, to name only a few.

The concerns in this area are in part common with those of other areas of domestic communications: Determining the division between competition and regulation, and for the latter, defining a governmental role which avoids inhibiting or restricting the flow of ideas and information. At the same time, however, computers and communications pose some issues which are unique, such as the threat to privacy, equal opportunities to information, and the protection of intellectual property rights.

OTP has commenced one program in this area which will be vital to the task of providing policy guidance. It initiated a review of the basic economies which underlies computers and communications, and therefore, to a great extent, control both its own development and the requirements for policy. From this program, it is expected that a basic understanding of this new combination of industries, as well as the analytic tools and concepts needed to guide it, will be developed.

II. GOVERNMENT COMMUNICATIONS

A. FEDERAL COMMUNICATIONS POLICY AND PLANNING

The Federal Government's own communications consume from 5 to 10 billion dollars per year. The major concerns in this field are avoidance of duplication, effective management of the acquisition of new systems, achievement of compatibility among systems, and satisfactory operating performance.

The major objectives of the OTP program in the area of Federal communications are: first, identifying all the communications activities and resources of the Federal Government; second, determining the needs for effective information exchange among the various departments and agencies; third promoting economy in the government's use of communications, through sharing of facilities, elimination of duplication, and effective use of commercial services; and finally, encouraging the use of communications to improve productivity and enhance coordination of Federal Government activities. During 1973, arrangements for the interagency coordination required to achieve these objectives will be strengthened and aligned as appropriate with the Administration plan for the coordination of departmental activities. The areas of government communications to be involved are: communications networks, aids for radio navigation, satellite programs, communications of the Executive Office, audio-visual activities, equipment and facilities standards, and procurement practices.

In the previous year, OTP completed a review of all existing studies and analyses pertaining to the integration of the two largest communications networks in the Federal Government, the AUTOVON network and the Federal Telecommunication System. Based on this review, it was decided that the systems should not be merged. However, this review revealed conflicting considerations concerning the degree of interconnection and inter-usage that should be sought. To resolve these conflicts, OTP directed a field test of service to selected military installations to obtain first-hand data relative to economic and service benefits which might accrue as a result of mutuality of service. The test has been completed and the results are being analyzed. Completion of the analysis will provide adequate information upon which to base decisions concerning further integration or interoperability of military and civilian communications activities.

OTP has completed a review of existing and planned radio navigation aids operated or used by various elements of the Federal Government. It has begun work with the affected Federal departments and OMB to (1) coordinate the navigation satellite programs of the various departments; (2) determine the minimum mix of navigation aids and systems to meet government and civilian requirements; and (3) structure a coordinated national navigation program.

It has formulated a plan to designate a single system for long-range general purpose navigation and will issue this plan to the affected department for planning and budgeting guidance and to the civil community for its information.

The major portion of review of the government's present communications satellite program initiated last year will be concluded in 1973. The collection of information with regard to such programs is nearly complete. Several programs have already been identified for a more detailed analysis which will be aimed at identifying satellite systems which can be (1) reduced or eliminated, (2) consolidated with others, or (3) expanded to serve additional users.

A major consideration in the design of government communications systems is selecting the best means of meeting unique needs, particularly those of the national security community. Special requirements for survivability and security, for example, can be met by highly specialized systems, or by designing general purpose government networks to include these features.

Meeting such requirements creates a dilemma for policy makers. Specialized systems with limited capacity are relatively inefficient for day-to-day use, and seem costly if relegated solely for emergency or backup use. On the other hand, incorporating special features in general purpose systems raises the cost of such systems for all users and can result in an unwarranted expansion of the demand for such features. This dilemma must be taken into account in developing policies and plans affecting Federal communications and a more explicit strategy must be developed for resolving it, including the development of good working relations with the Department of Defense and other national security agencies.

A study has been completed of the applicability of new communications technology to the unique needs of the Executive Office of the President. Particular emphasis was given to the possible utility of wideband and high speed data services. This study provides guidelines for the introduction of new equipment when and as needed, while ensuring that all equipment fit into an integrated system capable of evolution as technological potential and government needs change. During 1973, key technical and economic questions will be resolved, and a demonstration of selected new capabilities will be begun. This will also provide a basis for recommendations on other inter-agency communications systems.

OTP is conducting an interagency study to improve the management of all audio-visual activities within the Federal Government. This study will review in-house versus contract decisions for the production of audio-visual materials, the volume of and need for government-owned facilities and equipment, and the potential for interagency coordination and cooperation for effective utilization of such facilities and equipment.

An improved process for the development of Federal communications standards has been established with initial emphasis on standards for data communications and standards to promote the interoperability of government communications networks. In 1973, emphasis will on one of the key elements of such networks, modulator-demodulators, or modems.

A review of government policies and practices for the procurement of telecommunications equipment and services has been started. Its goal is to develop updated and improved government policies and practices in the light of recent

changes in regulatory practices and in the structure of the industry, particularly the introduction of competitive suppliers of specialized services and interconnecting equipment. One important factor in the study is the clarification and application of the government's policy of maximum reliance on the private sector for the provision of services and facilities. Another is the problem of reconciling conflicting approaches to computer and communications procurement when systems composed of both elements are involved. A third factor of importance which will be considered is the unique and difficult problem relating to the procurement of satellite communication systems and services.

Finally, OTP has established the Government Communications Policy and Planning Council. The Council, consisting of representatives of key Federal agencies, will provide a focal point for bringing the potential benefits of communications technology to all Federal agencies as a means of increasing productivity, coordinating operations, and improving the delivery of services to the public. The Council will enable these benefits to be obtained without costly duplication or bureaucratic delay, and through effective cooperation among all of those responsible for Federal communications policy and planning.

B. EMERGENCY PREPAREDNESS

The purpose of the emergency preparedness program is to insure that national and Federal communications resources will be available and applied, in emergencies, to meet the most critical national needs. This is a demanding task, because of the numerous contingencies that must be provided for—both with respect to the nature and location of the disruption and with respect to the nature and location of the services which, in one or another circumstance, it must be considered vital to restore. Emergency communications plans and capabilities must comply with three basic principles: first, maximum dual use of facilities for both emergency and routine operations; second, balanced survivability among communications and the facilities which are supported by communications; and third, focusing of responsibility to assure accomplishment. These principles are implemented within the framework of the Federal Government's overall emergency preparedness program, only part of which deals with telecommunications.

Policies and plans for managing the nation's telecommunications resources during war emergencies or natural disasters have been completed. These plans delineate the responsibilities of various Federal agencies regarding telecommunication, and indicate the coordinating arrangements to be used.

In 1972, OTP engaged in a review of the policies and procedures under which critical private line services would be restored by the United States communication common carriers. This review resulted in issuance by OTP of revised policies and procedures for the restoration of such services under a system of defined priorities. Work is now proceeding in conjunction with other Federal agencies to evaluate the currently assigned and requested priorities and to determine whether, and how, the number of priority circuits should be reduced.

With regard to its responsibility of determining policy for warning citizens of attack or of emergencies, OTP in 1971 issued a policy that any use by the public of home radio receivers in a nationwide radio warning system would be strictly voluntary. At that time a number of studies were undertaken to determine the most effective and economic alternative approaches to providing warning. Several of these studies will be completed during 1973, and further actions for improving the provision of warning to citizens will be made.

During 1972, a new manner of activating the Emergency Broadcast System (EBS) was implemented under OTP's direction. Further changes to improve the effectiveness and efficiency of the EBS will be studied and implemented during 1973.

To provide increased understanding of communications problems which arise when natural disasters occur, several actual disaster situations were studied and the lessons learned were incorporated into pertinent plans and procedures. This practice will be continued in order to provide a larger base of experience for evaluating warning and emergency communications systems and procedures.

C. COMPUTERS AND COMMUNICATIONS

Recent technological advances in the field of computers and communications have produced the potential for several alternative industry structures, for the provision of data processing as well as data communications services. Which

of these alternatives will eventually become dominant will be determined both by the regulatory policies adopted by government, and the inherent economic characteristics of computers and communications. This process—the emergence of an industry structure—has already commenced; however, many important questions remain unanswered, and many pertinent areas have not even been explored.

The development of hybrid computer-communications systems has significant implications for the Federal Government in two important fields. First, it will affect procurement of the government's own data processing and communications services. In particular, new hybrid systems may allow economies to be obtained through the sharing of network services by departments and agencies now obtaining such services independently. Secondly, the development of hybrid computer-communications systems may lessen the need for the government to design and operate its own hybrid systems, by making these available in the private sector.

To assure that government use of computer and communications systems is effective and economic, OTP, during the past year, developed a model of hybrid networks that enables a thorough investigation of the economic implications of alternative system structures, sharing policies, and telecommunications tariff arrangements. During 1973, initial use of the model will be made to study high priority issues, including the economics of system sharing within the Federal Government. Also during 1973, an initial survey will be made of the security issues relevant to shared computer-communications systems, such as the maintenance of personal privacy and the preservation of confidentiality of personal information.

III. INTERNATIONAL COMMUNICATIONS

A. INTERNATIONAL SYSTEMS AND FACILITIES

1. General Policy and Industry Structure

Since its inception, OTP has conducted a continuing review of the operating and institutional arrangements of the international communications industry.

The structure and performance of this industry have been a concern to Congress and others for many years, and this concern increased with the advent of the new technology of communication satellites and the creation of a chosen instrument (Comsat) to represent United States interests in the international use of this technology. As a result of a highly complex and artificial industry structure (largely the creation of Government regulation), the traditional problems of rate and investment regulation are particularly acute in the international field; and, because of divergent incentives, there are widely divergent views in the industry with respect to the best "mix" of international transmission facilities (i.e., cables and satellites). It thus becomes necessary for the FCC to rule on competing or alternative proposals for new facility construction, and to allocate the traffic among various facilities and carriers, causing strains in foreign relations and in the relations of U.S. industry to foreign carriers.

OTP now has in the final stages of development proposals and recommendations which seek to enhance industry performance through improved incentives within the existing industry structure. These will soon be forwarded to the concerned Congressional committees in response to requests for Administration views on this matter.

2. International Communications Satellites for Mobile Communications

(a) *Aeronautical Satellites.*—OTP has concentrated on developing a U.S. Government position with regard to arrangements with the European nations to evaluate the use of satellite communications in improving air traffic control over the high seas. Negotiations with the European Space Research Organization (ESRO) on a coordinated evaluation program commenced in 1971 and were continued during 1972. It is expected that the satellite channels required for the evaluation will be provided by a new entity to be owned jointly by ESRO and a private U.S. company. The State Department, FCC, and DOT/FAA have closely coordinated their interests in this area with OTP throughout this year.

(b) *Maritime Satellites.*—OTP has actively participated in intra-governmental policy discussions aimed at providing satellite communications to civilian ships on the high seas. Current international discussion of this subject is taking place in the International Maritime Consultative Organization (IMCO). The U.S. Government is participating in the necessary preparatory work of defining the

maritime requirements for satellite services without prejudging operational or organizational aspects of how these services will be provided. Coordination with all agencies interested in this field is continuing.

The Department of Transportation (Coast Guard), the American Institute of Merchant Shipping, and the Department of Commerce (Maritime Administration) have adhered to the view that maritime satellite services will be required well before the end of this decade. OTP has worked with these organizations throughout 1972 to develop policy in the maritime satellite area and to consider the possible relation of such satellites with aeronautical satellites and the INTELSAT system. Study of these matters was continuing as the year ended.

While IMCO deals with many subjects in the maritime area, it has been particularly active in two areas of radio communications, namely, maritime distress communications and maritime satellites. Throughout 1972, OTP has followed the communications work being done in IMCO and continuously provided guidance to the U.S. Delegations attending the various IMCO meetings. Particular note should be taken that IMCO established a Panel of Experts on Maritime Satellites during 1972 that held two meetings during that year, and promises to be more active in 1973.

3. *Pacific Basin Facilities Planning*

In September 1971, AT&T and The Hawaiian Telephone Companies filed with the FCC a request for authority to lay a new submarine cable between the U.S. mainland and Hawaii. This application was subsequently supplemented by a request for authority to lay a new basin-spanning cable system, including links between the continental United States, Hawaii, Guam, Okinawa, and Japan. In addition to discussing this proposal with foreign officials and with the Governor of Hawaii, OTP officers have been engaged in an economic analysis and system study of the Pacific Basin requirements in the decade of the 70's. This study will produce policy guidelines and recommendations concerning the Pacific Basin and new facilities planning to meet projected requirements. OTP expects to complete this work early in 1973 and to coordinate a U.S. position that can be agreed to with other nations, thus avoiding the misunderstanding and bitterness in the international community that has characterized past negotiations.

4. *International Teleprocessing Systems*

Substantial international interest and activity are emerging concerning development of international systems for data transmission and for teleprocessing. During 1972, OTP has engaged in extensive interagency coordination on U.S. interests, activities and policies in this area. In addition, OTP has engaged in international bilateral discussions with Canada, England and Japan, and has coordinated U.S. participation in multilateral meetings on this subject, especially the meetings of the Organization of Economic Cooperation and Development (OECD).

B. INTERNATIONAL ORGANIZATION ACTIVITIES

1. *United Nations*

In recent years, international communications activities in the U.N. have largely centered on the use of communication satellites to broadcast television programs into the home, directly from one country to another. In 1969 and 1970, the Committee on the Peaceful Uses of Outer Space of the United Nations convened a Working Group on Direct Broadcast Satellites which rendered reports to the parent committee noting the need for more work to be done in other agencies before the U.N. could meaningfully consider the future of direct broadcast satellites. Subsequent to 1970 a number of important events bearing on this matter occurred. The International Telecommunication Union (ITU) held a World Administrative Radio Conference on Space Telecommunications; the World Administrative Radio Conference on Space Telecommunications; the World Intellectual Properties Organization was established; the United Nations Educational, Social and Cultural Organization (UNESCO) adopted a Declaration of Principles relating to the use of direct broadcast satellites; and most recently, the Soviet Union recommended U.N. endorsement of an international convention to control use of broadcast satellites. During 1973, the Legal Subcommittee of the U.N. Committee on the Peaceful Uses of Outer Space and the Working Group on Direct Broadcast Satellites will work on the proposed con-

vention as well as other cultural, social, legal and political aspects of broadcast satellites.

Throughout 1972, in coordination with the State Department, USIA, FCC, and other cognizant agencies, OTP has coordinated and participated in the formulation and presentation in international forums of U.S. Government positions on direct satellite broadcasting. The interagency studies and activities necessary in this area will intensify during 1973, and OTP will continue to discharge its policy coordination function to assure timely and responsive policy formulation.

2. UNESCO

UNESCO is an independent agency of the U.N. charged with promoting international cooperation in the areas of education, social affairs and culture. During 1972, UNESCO convened several meetings to develop guidelines for use of communication satellites in the international distribution, and possible international broadcasting, of radio and television programming. OTP has worked closely with the United States Patent Office, the Department of State, USIA, and the FCC, as well as various interested groups in the broadcasting industry, to establish and maintain a sound and consistent U.S. position on standards, codes of conduct, and protection of intellectual property rights.

In May 1972, a meeting of non-governmental experts in Paris under UNESCO auspices endorsed a draft Declaration of Principles relating to the use of satellites for direct broadcasting. The recommended draft Declaration was circulated by UNESCO in July and was considered and adopted by the UNESCO General Conference in October 1972. The United States strongly opposed the consideration of this Declaration on the procedural grounds that there was insufficient time to study the issues raised by the Declaration, and inadequate coordination with other international organizations. When these concerns were ignored by other countries, the U.S. strenuously voiced its strong opposition to the substance of the Declaration, but was substantially out-voted. Continued effort, growing out of the UNESCO experience in 1972, will shift to U.N. organs which will be active in this area in 1973. OTP will continue extensive work in integrating policy coordination and position formulation.

3. International Telecommunication Union

The International Telecommunication Union (ITU), a specialized agency of the United Nations with 143 member administrations, maintains and extends international cooperation for the improvement and rational use of telecommunications of all kinds. The Union uses world conferences of its members to review and update the international regulations needed to assure the smooth flow of global radio and telegraph communications. A principal function is the allocation of radio frequencies among the respective radio services (amateur, broadcasting, fixed, aeronautical mobile, communications satellites, etc.). During the past year, OTP provided guidance and, in some cases, representatives, for U.S. participation in ITU activities. Additionally, matters came up during the year that required OTP personnel to work directly with the ITU headquarters representative in Geneva, Switzerland, and there were two visits during the year of the ITU Secretary-General to Washington.

During 1971, the World Administrative Radio Conference on Space Telecommunications produced agreements that will influence space and satellite matters for the next decade. Throughout 1972, OTP developed the necessary policies and directives to implement these agreements, all of which became effective on January 1, 1973.

In September 1973, the ITU will convene a Plenipotentiary Conference to review the entire content of the ITU Montreux Convention of 1965 and to discuss the structure and roles of the ITU. More than 100 nations are expected to attend and participate in this conference. Preparatory work has been in progress for more than a year within the United States. During 1972, OTP has provided policy guidance and assured coordination of U.S. positions on a wide range of issues both within government and within industry. In addition, OTP provided the chairman for an intra-agency group to review and recommend changes in the Convention. Preparatory work for the Plenipotentiary Conference will continue during 1973, and OTP will continue to coordinate and play an active role in this effort.

The ITU maintains two major international coordinating bodies known as the International Consultative Committee on Telegraph and Telephone (CCITT) and the International Consultative Committee on Radio (CCIR). These orga-

nizations have numerous technical study groups which examine problems regarding international standards, practices, system planning, and rates applicable to the international communications services. OTP is responsible for coordinating the preparation of U.S. positions for such activities, particularly those dealing with technical and operational aspects of radio frequency spectrum planning, allocation, and use. During 1972, OTP participated in negotiations leading to the revision of the work of the ITU World Plan Committee; and also participated in the CCITT Plenary Assembly which met in Geneva during December of 1972.

A World Administrative Telegraph and Telephone Conference will be held in Geneva in April 1973. OTP is now actively engaged in the preparatory work which is underway for this Conference. It is expected that the existing agreements concerning telephone regulations will be substantially revised so as to permit the United States to become a signatory to these agreements for the first time.

A World Administrative Radio Conference on Maritime Telecommunications is being convened by the ITU in Geneva in April of 1974. The agenda for the conference was published by the ITU in June 1972. However, U.S. preparatory work in anticipation of both the 1974 Conference and its agenda was commenced during the fall of 1971 and continued throughout 1972 and into 1973. Preliminary views of the United States for this conference were published and distributed through the Department of State to the 143 administrations of the ITU for their comments.

4. INTELSAT

The International Telecommunications Satellite Consortium (INTELSAT) is an organization of 83 nations that provides satellite communications on a global basis. New Definitive Arrangements for INTELSAT were concluded in international negotiations in 1972 and enter into force February 12, 1973. Under these arrangements, COMSAT, the U.S. representative, will no longer hold the controlling vote in the globe satellite system's governing body, and COMSAT's role as Manager will be limited to technical and operational management of the system's satellites. During the transition to the permanent structure of the Definitive Arrangements, the obligation of OTP to advise COMSAT in its role as U.S. Representative—in conjunction with the obligations of the Department of State and the Federal Communications Commission—will take on special importance. This is especially so in the preparation for and participation in the crucial initial meetings of the new principal organs of INTELSAT established under the Definitive Arrangements: (1) the Board of Governors, which meets at six to eight week intervals; (2) the Meeting of Signatories, which is convened annually; and (3) the Assembly of Parties, which meets biennially. The Board of Governors and the Meeting of Signatories will convene for the first time during 1973 and the Assembly of Parties will convene for the first time no later than February 1974.

The FCC is beginning to authorize applications for domestic satellite systems, many of which propose to provide services between the mainland and Hawaii, Alaska and Puerto Rico that have heretofore been provided by INTELSAT. The possible transfer of these services from INTELSAT to the new domestic systems could have significant impacts upon the U.S. role in INTELSAT, general foreign policy relationships between the U.S. and other INTELSAT members, and planning for Pacific Basin communications. OTP's role in this area is of considerable importance because OTP is the only governmental entity having responsibility under the Communications Satellite Act of 1962 and pertinent Executive Orders to coordinate domestic and international communication policies. Similarly, OTP has worked in a coordinating role on policies concerning U.S. carrier use of the Canadian domestic satellite system for communication within the U.S. In addition, OTP will continue to work in conjunction with the Department of State and NASA concerning the impact on INTELSAT of proposed regional satellite systems, such as the French-German "Symphonie" system.

5. CITEL

In 1971, the Inter-American Telecommunications Conference (CITEL) became a specialized agency within the Organization of American States and was granted a significantly broader charter signifying its rising importance and influence. In general, CITEL promotes the continuing development of the telecommunications in the Americas and conducts studies for the planning, financing, construction and operation of the Inter-American Telecommunications Network.

It also deals with questions of regional telecommunications standards and technical assistance. During 1972, OTP participated actively in preparation for and representation at CITEL meetings in Mexico.

It is important that we strengthen U.S.-Latin American relations in the communications area. This can be helped by more active participation by U.S. entities in CITEL affairs. For example, U.S. views concerning the forthcoming ITU Plenipotentiary Conference and the World Administrative Radio Conference will be presented at the CITEL meeting scheduled for June 1973. As part of an overall program to improve U.S. relations with Latin America in the communications field, OTP commissioned a study which was completed in 1972, and, in conjunction with the Department of State, is now seeking to implement certain recommendations resulting from it.

C. ANTICIPATION OF FUTURE PROBLEMS

The development of communications policy on an ad hoc basis has become a chronic problem, and totally unsuited to the needs of the increasingly complex problems in international communications. Moreover, much policy has been formulated in response to situations after they have reached a critical stage. To correct this problem, policy support studies and activities are being undertaken which will provide a basis for the determination of policy in a more stable environment. A program is under way to gather information needed to formulate policy on existing as well as potential future problems. The information resulting from this program will include data on existing and planned international communication facilities on all existing and planned specialized regional and foreign domestic satellite communication systems; on new technological developments and applications; and on development of service and traffic demand forecast models.

IV. SPECTRUM PLANS AND POLICIES

There is intense national and international competition for the use of the radio spectrum for all forms of radio transmissions (radio communications, navigation, broadcasting, radar, air traffic control, etc.). In the United States the Federal Government is the largest single user of the spectrum. The Director, OTP, assigns frequencies for these uses, and to this end, OTP coordinates all Federal Government activities related to spectrum management and planning. This includes cooperating with the FCC to develop plans for the more effective overall use of the entire spectrum, for both Federal Government and non-Federal Government purposes.

Specific tasks involved fall basically within the categories of allocation and assignment for particular uses, planning to meet Federal Government and non-Federal Government needs, and evaluation of possible biomedical and other side effects of electromagnetic radiations.

In the allocation and assignment area, much progress was made in the past year. An improved data processing system, 90% completed by the end of the year, and an expanded engineering capability made it possible to improve the management of radio frequencies assigned to Federal Government radio stations, and to permit over 48,000 specific frequency actions taken by OTP during 1972.

Communications-electronics systems of the Federal Government continued to increase in complexity. In order to cope with the technical problems inherent in providing the spectrum support necessary to operate them, improved access to the advice and assistance of skilled experts from within the departments and agencies of the Federal Government was necessary. This was accomplished by the establishment of study groups related to such issues as standards, radio noise abatement, improved telecommunications systems, and frequency sharing. Expanded engineering capabilities were used during 1972 to investigate and conduct analyses to assure radio frequency compatibility (reduction of interference) among systems competing for the same spectrum resources. Specific areas included: Collision Avoidance, Aeronautical and Maritime Satellites, and Altimeters in the 1535-1660 MHz band; Air Traffic Control and Military Radars in the 2700-2900 MHz band; Aeronautical Satellites and Terrestrial Microwave Landing Systems in the 5000-5250 MHz band; Earth Exploration Satellites, Fixed Satellites and Terrestrial Microwave Systems in the 7250-8400 MHz band; and Fixed Satellites, Radionavigation Radars, Fixed and Mobile Communications, and Space Research all in the 13.4-15.35 GHz band.

OTP plans to continue the development of this engineering and electromagnetic compatibility analysis capability. This is particularly important in light of the OTP directive recently issued in coordination with Government agencies to ensure spectrum availability prior to budgetary requests for development of communications-electronics systems.

During the previous year (1971), some 8,000 MHz of spectrum, formerly reserved for exclusive Federal Government use, was made available to the FCC for shared use by non-Federal Government interests. This precedent was continued into 1972, and an additional 1763 MHz of spectrum was similarly made available to the FCC. This effort will be continued in the coming year.

In the category of spectrum planning, the study initiated during the previous year was continued to develop alternative methods for allocation of spectrum resources giving more weight to all relevant technical, economic, and social criteria. Plans for implementing the results of the 1971 World Administrative Radio Conference (WARC) for Space Telecommunications were completed and put into effect as regards the Federal Government on January 1, 1973. Joint efforts with the FCC looking toward allocation planning were continued. With new technologies developing for operation of communications-electronics systems on higher frequencies than before, and with the introduction of lasers, more specific planning will be required for the portion of the spectrum above 10 GHz. The Office will also continue to maintain in a state of readiness the national emergency readiness plan for use of the spectrum, and will monitor Federal Government agency compliance with allocations resulting from past ITU Conference agreements (1967 Maritime WARC and 1971 Space WARC).

In response to some evidence and much apprehension about the hazards of electromagnetic radiations to humans and to the environment in general, the OTP announced a coordinated inter-agency "Program for Assessment of Biological Hazards of Nonionizing Electromagnetic Radiation," in the latter part of 1971. This program, which is interdepartmental in nature, will extend over a five-year period commencing in fiscal year 1974, at a proposed funding level of \$63 million, a portion of which is already included in departmental budget planning. During 1972, OTP guided and coordinated the implementation of the program, i.e., by seeking to increase the level of activity in this area in departments where it would be the most productive, eliminating duplication of effort, and finding ways to avoid gaps in research activities. These efforts will be continued into 1973.

Dr. WHITEHEAD. The first area covered in our statement is common carrier communications. This sector of the communications industry historically has meant only traditional telephone and telegraph services, provided on a monopoly basis by vertically integrated companies. In recent years, however, new communications technologies have been developed and specialized services and service concepts like computer time-sharing, telephone answering, interconnection, and brokerage have come into being on a competitive basis. Indeed, vigorous competition in this new field is economically inevitable, unless artificially prohibited by Government policy. OTP's efforts are aimed at coming to grips with the difficult policy question of how this new competitive sector, and the traditional sector which may remain monopolistic, can coexist in the public interest.

Cable TV is a second area of OTP involvement. Cable has the potential for becoming a medium of major significance in its own right, providing a technological basis for more consumer choice and diversity. Cable can also be the vehicle for new communications services, such as widespread access to computers, education, and the like. However, there is no satisfactory division of regulatory authority at the present time between the Federal Government and the States, and cable is too often viewed by industry and Government alike solely as an adjunct to over-the-air broadcasting. The FCC has recently issued rules designed to end the long freeze on cable growth, and we are at work on a long-range policy to guide cable's future development.

In the broadcasting field, we have been examining various aspects of the regulatory environment to determine where it is possible to lessen Government's involvement in the process of getting information—news and entertainment—to the public. Our most fundamental goal is to find ways of enhancing first amendment rights and interests. We are continuing to work with the FCC and the Congress on the lessening of radio regulation, which we proposed in 1971. We have developed legislative proposals for the modification of license renewals policies and procedures, which we expect to submit to the Congress for its consideration this year.

In the area of Government communications, there has long been a concern that better management and policy direction were needed. Last year, we took several steps to reduce expenditures and improve our communications capability. Various problems in the Emergency Broadcast System and emergency warning procedures were resolved. The long-standing FTS/AUTOVON merger controversy was resolved. Important technical and managerial improvements in the spectrum allocation process were begun. We also established a planning process for coordinating anticipated Government satellites and navigation systems. We have concluded in this area that the best approach to Government communications planning and policy is prospective; and to that end, last year OTP created the Government Communications Policy and Planning Council.

We have also reviewed the structure of the U.S. international communications industry and have developed a policy framework within which regulatory practices can be improved, and industry can continue to improve its performance and efficiency. I believe that our policy in this area will provide a sound foundation for guiding and evaluating whatever specific changes in legislative or regulatory provisions may be necessary or appropriate in the future.

Mr. Chairman, I have reviewed only briefly some of the most important aspects of OTP's work, and briefly at that. I hope that this short review, together with my longer statement, provides the subcommittee with a good picture of the role we play in developing communications policy and, on behalf of the executive branch, acting as a partner in the policy process with the FCC, the Congress, and the public. In particular, I think OTP and the Commission have maintained a sound balance between the FCC's independence in administering the Communications Act and its function as an arm of the Congress, on the one hand, and its ability to cooperate with the executive branch on long-range policy considerations on the other.

Mr. Chairman, I believe that OTP has made a good start in grappling with some of the basic communications issues we are facing in this country today. Only recently have we as a people come to understand how extensively communications affect us: How we deal with one another, how we form our national character and identity, how we engage in our political process, and how we make our economy more productive. We can turn the tremendous advances in communications technology to our benefit only if there is informed public debate and discussion on major communications policy issues. This is what we have been endeavoring to do, and I am glad that to-

gether with the Congress, the FCC, the industry, and the public, we are making good progress.

Mr. Chairman, I would be pleased to respond to any questions.

Senator PASTORE. Taking your last statement, why are you so opposed to public affairs being discussed on public television?

Dr. WHITEHEAD. Mr. Chairman, we have no objection whatsoever to discussion of public affairs on public television. To the contrary, public television stations, and noncommercial stations have the same obligation as FCC licensees to further discussion of these matters as do commercial stations.

Senator PASTORE. Doesn't the fairness doctrine take care of that? You were opposed to that.

Dr. WHITEHEAD. The fairness doctrine certainly applies to non-commercial stations as well.

Senator PASTORE. That is right, but you have been opposed to that, you wanted to see it eliminated, didn't you?

Dr. WHITEHEAD. I made some proposals over a year ago that our long-run goal should be the elimination of the fairness doctrine—

Senator PASTORE. Isn't that the only thing that guarantees the balance you talk about?

Dr. WHITEHEAD. You have to differentiate between the "fairness doctrine," which is the case law that has grown up in the FCC, and the fairness obligation. We certainly are not opposed to the fairness obligation.

Senator PASTORE. Suppose you make the distinction?

Dr. WHITEHEAD. The fairness doctrine is a body of cases and interpretations that has evolved as the FCC has tried to deal with various cases brought before it dealing with the broadcaster's general obligation to be fair and objective. It is hard for anyone to be opposed to the idea that the broadcaster should be fair and objective in how he discusses his views or in who he lets on to discuss various points of view.

This is a very great power that the broadcaster has and he certainly should exercise it in a fair way. However, in the absence of any clear and definitive policy as to what that means, the FCC and the courts together have been interpreting this on a case-by-case basis. As a result there is a confusing welter of precedents, opinions, judgments, and rough guidelines, and I think it is safe to say that the broadcaster and the public at large are very hard pressed to know what the fairness doctrine as an embodiment of the fairness obligation, means, and how it is to be interpreted.

Senator PASTORE. Won't balancing the news mean a different thing to different people? It certainly would mean a different thing to you than it might be to me.

Dr. WHITEHEAD. That is quite true.

Senator PASTORE. If anybody said anything about the Democratic Party I might get a little excited. If anybody said anything about the Republican Party you might get excited, yet I might jump with joy. Who will decide this balance that you keep talking about? That is the big question. You said in your speech you wanted the local licensee to be responsible no matter where programs emanate, whether from the network or wherever.

The big question I ask you is how can that individual make that proper balance, and who decides whether or not he is balancing correctly? Who is going to decide that?

Dr. WHITEHEAD. Mr. Chairman, that is the core of the problem. That is the issue that we have been discussing. We feel that in the first instance that responsibility should be borne by the licensee. That is nothing more, nothing less than what the Commission has held from the beginning of its existence.

Senator PASTORE. That is true under the law today, right?

Dr. WHITEHEAD. That is correct, sir.

Senator PASTORE. A licensee is accountable when he comes up for renewal be it 3 years or 5 years later. He has to prove he has followed the spirit and the provisions of the law. That is the law today, right?

Dr. WHITEHEAD. It is as I understand it.

Senator PASTORE. Why do we have to change it? You are suggesting a change? You said there are 14 categories which are the criteria today for the renewal of the license, you said this is too cumbersome.

Well, as a matter of fact there are not specifically 14. The FCC has been very explicit since 1960 in saying these are the major program elements usually necessary to meet the public interest, but the elements were neither all embracing, nor constant.

Now you are actually advocating there be two criteria, one is as to whether or not the licensee has served the local community.

Now isn't that required under the law today?

Dr. WHITEHEAD. It certainly is.

Senator PASTORE. So why do we have to change it?

Dr. WHITEHEAD. We think that it was in everyone's interest to have the criteria spelled out more clearly.

Senator PASTORE. Did you think that you spelled it out? Are you going to spell it out in your bill?

Dr. WHITEHEAD. I think the legislation we are preparing will set that out very clearly, yes.

Senator PASTORE. Well, I will be a very surprised man if it happens.

Now, No. 2, you said—and I agree with you that a matter of policy should not be settled in the contest of a license renewal proceeding. In other words, if you don't want a newspaper to own the television station you ought to change the rules. I go along with that. There is some substance in what you have to say about reruns. But when you get to the first amendment you get yourself a little messed up, Mr. Whitehead. You get yourself a little messed up because you are arguing here that the only way you can enforce the first amendment is by making the licensee the watchdog of what the commentators have to say. Yet you have never been specific about what your gripe is.

You used the word "ideological plugola." When will you tell me what that means?

Dr. WHITEHEAD. The concept I had in mind there involved the ideological or political realm. The concept of plugola, which is fairly well known in the broadcasting community, involves plugging a product because it is in the personal interest of the reporter or disc jockey to do so. I simply pointed out in my speech that people plug ideas because they favor those ideas just as they may plug products because they have a financial interest in those products.

Senator PASTORE. Don't you think the President does that every time he has a news conference? Doesn't he try to plug ideas?

Dr. WHITEHEAD. We all do.

Senator PASTORE. Well, that is the point. Why is it so bad?

Dr. WHITEHEAD. What I was referring to in my speech, Mr. Chairman, is the practice which some people claim to see on television where objective news reporting, objective analysis of what is happening in the world is portrayed but what is in effect coming out is the favoring of one particular side.

Now, I was simply using—

Senator PASTORE. Give me an example.

Dr. WHITEHEAD. I don't know that I can come up with—

Senator PASTORE. Of course you can't come up with it. That is just the point. That is just the point that bothers us. You are asking this Congress to remedy an ill when we don't even have a diagnosis of the ailment.

Dr. WHITEHEAD. Mr. Chairman, I don't agree. I am not asking the Congress to remedy these matters. I am addressing the problem of how the FCC under the guidance of the Congress is going to deal with disputes in these areas. My speech said that where these kinds of problems exist, where people do have complaints, where there is something that somebody thinks falls into the category of ideological plugola, who should take corrective action. I said it is our very strong feeling that the first correction should take place in the profession of the news journalist and in the broadcasting station. Those are the people who have a responsibility for self-correction, self-criticism, and self-improvement. We are looking to that process rather than to the process of the Government to deal with these problems.

Senator PASTORE. But you are not saying that. You are not talking about self-discipline. You are talking about the local licensee being held responsible at renewal time for not balancing the news. That is what you said.

Am I wrong?

Dr. WHITEHEAD. That is not what I recall saying, Mr. Chairman.

Senator PASTORE. Well, now, do you want me to read your speech to you?

"The idea is to have the broadcaster's performance evaluated from the perspective of the people in its community and not the bureaucrats in Washington."

Now you tell me who is the "bureaucrat" in Washington that you are talking about. Is it you? Is it me? Is it Dean Burch? Who is this bureaucrat you are talking about?

Dr. WHITEHEAD. I am talking about all the employees of Government in Washington who have something to say about how licenses are renewed and how the industry is regulated.

Senator PASTORE. Does that make you a bureaucrat?

Dr. WHITEHEAD. In that context I suppose it does.

Senator PASTORE. Is this dramatization—to begin calling people bureaucrats?

Dr. WHITEHEAD. I do think, Mr. Chairman, the public does understand the word bureaucrat better than they understand some of the titles in Washington.

Senator PASTORE. That is true and I know how you used it, too. This idea of generating emotion among audiences—that may be dramatization to some people but I think it is unfair for a man who works out of the White House to be calling his colleagues who are appointed by the President bureaucrats.

Then you say that in your view—now listen to this, it is on page 25 of *Broadcasting Magazine*, February 12, "cable television has not thrived thus far because of network dominance."

"* * * the power he [Whitehead] feels that the networks can bring to bear at the FCC and the Congress."

I don't know what that means.

Now what do you mean by that? You mean to tell us that this committee is overpowered by the networks?

Dr. WHITEHEAD. I don't mean on—

Senator PASTORE. This is rather reckless language for a man who is an adviser to the President of the United States.

Then you go on to say "Because the Commission is protective * * * it has frozen the growth of cable."—I remind you this is a Commission whose members are appointed by the President.

Do you believe that?

Dr. WHITEHEAD. Mr. Chairman, I believe that the growth of cable television has been slower in this country than it would otherwise have been—

Senator PASTORE. That isn't answering my question.

Has it been thwarted by the Congress or FCC?

Dr. WHITEHEAD. I think the FCC has slowed the growth of cable; yes, sir.

Senator PASTORE. You think that? Don't you think the President ought to do something about it?

Dr. WHITEHEAD. I think the President should concern himself with those matters.

Senator PASTORE. I think he should do something about it rather than you making speeches about it.

Now here is another thing about cable television. Are you familiar with this letter sent out by a cable system?

Now I know that President Nixon—and I know this from personal knowledge—is very much opposed to pornography in television, in the theaters, and in literature. I know that for a fact. He told me so. According to this letter a cable system is offering a wide selection of movies recommended for children rated G and GP such as "Living Free," "Black Beauty," and the "Pipe Piper," but there will also be a great many pictures meant for adults—complete and uncut—such as "Klute," "Dirty Harry," "Sunday, Bloody Sunday."

Are you familiar with that?

Dr. WHITEHEAD. No, sir; I am not.

Senator PASTORE. What do you think about it?

Dr. WHITEHEAD. I think that anyone who undertakes to use the electronic media to intrude into the privacy of the home and portray things that are excessively violent, obscene, or things that are directed at children and are damaging to the development and moral character of those children, certainly should not be doing what he is doing. I think it is perfectly appropriate for the Congress and FCC to adopt measures to assure that the privacy of the American home is not invaded in that way. I share the President's concern and I share your well-known concern about these problems, Mr. Chairman. They are very important.

Senator PASTORE. Let me ask you a question. If you made that speech of December over again, would you say the same things over again? [Laughter.]

Dr. WHITEHEAD. Mr. Chairman—

Senator PASTORE. I am giving you an opportunity for contrition.

Dr. WHITEHEAD. Mr. Chairman, I have to say in all honesty that if I had it to say over again, I would say the same things.

Senator PASTORE. You would.

Dr. WHITEHEAD. But I think I would take a little more time and bore by audience by making a little more clear just what I meant by some of those things.

Senator PASTORE. I see. And you would use the words "ideological plugola." And what was that other beauty, "elitist gossip." Can you tell me what that means?

Dr. WHITEHEAD. Well, that is rumors circulated by people who think they are better than other people.

Senator PASTORE. You think that comes over the networks?

Dr. WHITEHEAD. I think a lot of people feel it does, Mr. Chairman, and what I was dealing with in that speech was, given the diversity of the American people—as you pointed out in your opening statement—everyone sees these things differently—

Senator PASTORE. That is right.

Dr. WHITEHEAD. Objectivity is much in the eye of the beholder, and it is a very difficult thing for the process of government to deal with, in any fair and objective way. Where these things occur, where you may feel or I may feel or a citizen somewhere may feel that he sees something that he thinks is elitist gossip or ideological plugola, then he has every right to complain about it, and we have to be concerned that we have placed the responsibility where it belongs in our society.

My judgment that I set forth in that speech is that that responsibility is best exercised, first of all, by the station managers and by the heads of the networks.

Senator PASTORE. Now they have some of these feminine programs on radio, they have some of these talk-back shows; I have received quite a bit of literature, quite a number of letters. I send them down to the FCC, nothing happens. Do you want me to send them to you from here on?

Dr. WHITEHEAD. No, sir. I do not think I should be in the business of regulating—

Senator PASTORE. But that is just the point. That is just the point. As a matter of fact, here we are calling upon the local licensee to be the overseer of the networks and become responsible for this, that, and the other; and when we make a complaint, nothing ever happens.

We send the letters down there, nothing ever happens. Then renewal time comes up, and there is an automatic renewal. Now you say it shouldn't be 3 years; you say it should be 5 years. If it were 5 years, people have to wait just a little longer. Five years might be the answer to the problem. Chances are there ought to be something done about the criteria.

I am not prejudging that at this time because I have not received your recommendation. But the fact still remains that won't you admit that trouble at the FCC is that they do not have the personnel?

Dr. WHITEHEAD. Under the current system, that is quite correct.

Senator PASTORE. All right now, why does not the administration ask for more help?

Dr. WHITEHEAD. Mr. Chairman, because we feel very strongly that the answer to the problems of television today does not lie in the direction of more and more Government employees monitoring and correcting what goes out over the television airwaves.

Senator PASTORE. How will we ever know whether or not the licensee is living up to his responsibility? How do you ever know that?

Dr. WHITEHEAD. I think we are forced to rely on the evaluations and the complaints from the community that is being served.

Senator PASTORE. But you do not. You are ignoring these complaints. I mean where does John Doe in Rhode Island go to complain if he does not like what is coming over the screen? Where does he go?

Dr. WHITEHEAD. In my view, Mr. Chairman—

Senator PASTORE. He comes to the Senator, does he not?

Dr. WHITEHEAD. He has several places to go.

Senator PASTORE. All right, you tell me.

Dr. WHITEHEAD. I think it is important where he is supposed to go. First of all, he goes to the local station that broadcasts the material.

Senator PASTORE. And they don't give him any satisfaction.

Dr. WHITEHEAD. All too often they are referred to the network or to Washington. He goes to the network and is very likely told that they cannot respond to each and every complaint because there are too many people watching these shows. That is that. He comes to the FCC or Congress, and he is told we do not have a remedy.

Senator PASTORE. You have it all wrong. The first people they write to is their Congressman and their Senator. We get the mail. The only trouble with us is once we get the mail, we do not know what to do with it because the executive department apparently is not doing what it is supposed to do.

Now, as far as criticizing the networks and criticizing the broadcasters—what you ought to do is take a look at yourself in the mirror to find out how good a job you are doing. Find out if you are clearing these complaints as they come in. That is not being done.

Dr. WHITEHEAD. Mr. Chairman, I cannot really speak to how efficient the FCC is in handling these complaints. It is not a matter that I have looked into.

Senator PASTORE. Every time they come here, they say they do not have enough help.

Dr. WHITEHEAD. But I reiterate, Mr. Chairman, that it is our viewpoint that these problems are not well handled by having the FCC grow ever larger and having ever more controls over the broadcasting industry.

Senator PASTORE. Let us stop playing cops and robbers.

Dr. WHITEHEAD. That is damaging to the first amendment. We think the first responsibility has to be exercised by the people who produce and broadcast those programs. In this country, that means the local station manager and that means the network that provides so much of the programming we see today.

If we cannot expect these people to make a voluntary accommodation to the concerns of the American public, if we cannot get them to accept the responsibility for what they produce and what they show the American people, then I really have to wonder what we mean by having a free enterprise broadcast system.

Senator PASTORE. The Congress gives you the tools. It is in the law. Licensees are accountable under present law to make sure that they

serve the public. They must serve the public interest, convenience, and necessity. That is the requirement.

Then you have the fairness doctrine. Any time there is a violation of the fairness doctrine, it comes to the attention of the FCC, and the courts have sustained the fairness doctrine. You know that.

Dr. WHITEHEAD. Yes, sir.

Senator PASTORE. You know that. And you were opposed to that. And that is the one leverage we have to make sure you get these subjects discussed.

Now you are coming along with the strong arm of the White House and saying to the networks that what they have is a lot of "ideological plugola" and "elitist gossip." You are making these charges. You are saying to the local broadcaster from now on, they are going to be responsible for those programs, now the only way they can balance these programs is through the fairness doctrine which you oppose. I am beginning to wonder if you are not meeting yourself coming down the hill.

Dr. WHITEHEAD. I really do not think so, Mr. Chairman. I have been opposed to the fairness doctrine as a way of enforcing the fairness obligation. It is critical in any discussion of these issues to differentiate between the two. The fairness doctrine has become a confusing morass of case law of who gets to say what about what issue and it is virtually incomprehensible.

That is the reason the FCC has a proceeding going on, to clarify it.

Senator PASTORE. That is right. The chairman of the UNC asked for time after the President appeared, and the networks would not sell the time. Are you ready to say now that the networks were wrong?

Dr. WHITEHEAD. I do not recall that case specifically.

Senator PASTORE. Of course you do not recall it, but everybody in the world knows about the case.

Dr. WHITEHEAD. I remember the case; I do not remember the—

Senator PASTORE. Of course you do. And the networks said we have no obligation to sell you the time. And the Democrats did not get an opportunity to answer the President. The only rule you could invoke was the fairness doctrine.

Dr. WHITEHEAD. Mr. Chairman, the fairness obligation is something that I do not think is a question here. The FCC is the body that has to interpret what that means.

Senator PASTORE. Subject to appeal to the courts.

Dr. WHITEHEAD. Subject to appeal to the courts.

Senator PASTORE. Are you going to eliminate the courts?

Dr. WHITEHEAD. Of course not, Mr. Chairman.

Senator PASTORE. You make a speech about the fact that the FCC should be given the right not to hold a comparative hearing. There is some merit to that suggestion, but the fact remains that you are leaving it to their discretion to order one when they desire to do so.

So if you have a Democratic body and a Republican comes along, they say there will be a comparative hearing; if you have a Republican body and a Democratic challenger comes along, they say you will have a hearing.

You are leaving a door open wide enough for a truck to go through. Now, we are getting all this razzmatazz, and all this dazzle and dramatics of how we will improve license renewals, and we are improving

nothing. We are only making speeches and getting a lot of people excited.

It is in the law, if you want to endorse it. It is in the law.

Dr. WHITEHEAD. I think the question, Mr. Chairman, is how it should be enforced. That is the issue we have been trying to come to grips with.

Senator PASTORE. Well, I hope you have that in your legislation when it comes up here, Mr. Whitehead. I hope when we ask you to come up, you would not exercise your executive privilege.

Senator BAKER. Mr. Chairman, thank you very much. I must say that in the course of first reading your Indianapolis speech, Dr. Whitehead, there was one thought that emerged, and I believe is little understood.

You might corroborate or disabuse me of a misinterpretation, as the case may be. In the Indianapolis speech you called on the newscasting staff of the several networks, and ultimately the local stations to decide whether or not there was fairness and objectivity in news coverage.

But what, in that speech, with respect to fairness, or as the Chairman says, ideological plugola, or elitist gossip—what in that speech was proposed, different from what the law is now, which places the obligation on the local licensee to fulfill the public interest, convenience and necessity? Did you propose a change in that obligation of the local station?

Dr. WHITEHEAD. Senator Baker, there was no change proposed in that regard.

Senator BAKER. Your speech simply reiterated what the law is, is that correct?

Dr. WHITEHEAD. That is correct.

Senator BAKER. That the ultimate responsibility for programs carried on the airways is the responsibility of the local licensee and not of the network?

Dr. WHITEHEAD. That is correct.

Senator BAKER. Is it true that networks are not regulated or licensed by the FCC or anyone else?

Dr. WHITEHEAD. The networks are not licensed.

Senator BAKER. I think that is a fact not generally understood by the public. The three major networks and for that matter, the public broadcasting system is not regulated, not licensed by any Federal agency as local stations are licensed, is that correct?

Dr. WHITEHEAD. That is correct.

Senator BAKER. The only indirect influence that the FCC has on the performances of network news or network programing in general, for that matter, is in two ways; one, through the responsibility of the local station to decide that it will, or will not carry a particular network program, and that is an indirect responsibility; and the second, is through the system of the five, owned, and operated stations that belong to the networks, the five company-owned stations.

This is the only way you have even indirect regulation of the networks as distinguished from local stations, is that correct?

Dr. WHITEHEAD. That is correct.

Senator BAKER. Now, Dr. Whitehead, I do not mean to put words in your mouth, and I do not mean to disagree with my distinguished chairman.

I believe, as a matter of fact, we are in substantial agreement on this point. But, is it the burden and thesis of your Indianapolis speech, and of your testimony today, that in lieu of any effort to regulate networks that we ought to reiterate that it is the responsibility of local stations, and the conscientious staffs of networks to police their own undertakings, instead of substituting Federal regulation?

Dr. WHITEHEAD. That is absolutely correct, sir.

Senator PASTORE. If you yield on that point, I will subscribe to that. That is like reciting the Ten Commandments. I will buy that.

Senator BAKER. I think we are well along the way to a better understanding of the Indianapolis speech, because I agree with that, too. It would be an unfortunate thing if we amended the Communications Act, or passed generic legislation that attempted to license or regulate networks as we do local licensees.

But, after we establish that point, we move on then, to the far more comprehensive point of who monitors the performance, the fairness, the program content, the innate sense of fair play that networks do or do not have, the treatment of a particular subject, and the general quality of news coverage?

If we assume, as I do assume, that we should not have statutes regulating networks, you have only two things left. One is to see that we call on the professionalism of the network news staffs, and program directors, to see that there is a sense of fair play; that we have a minimum of ideological plugola; that we have a minimum of elitist gossip; that we do, in fact, have the essence of fairness in programing.

And, second, that we have a system of monitoring, that the affiliated stations as distinguished from the O&O station, do, in fact, have an input into the program content of the networks.

Are there any others except those two to assure that we do get a fair shake from network coverage which, after all, originates most of the TV time in the United States?

Dr. WHITEHEAD. The only recourse to that, that I can see, Senator, is the Federal Government itself, applying its heavy hand to say what is, and is not, legitimate programing.

Senator BAKER. Are you opposed to that?

Dr. WHITEHEAD. Most definitely.

Senator BAKER. So am I.

Senator PASTORE. So am I. How do you reconcile this? You say—in your speech—who else but management should correct so-called professionals who confuse sensationalism with sense, and who dispense elitist gossip in the guise of news analysis. That is a complaint, isn't it?

Dr. WHITEHEAD. Senator—

Senator PASTORE. That is an accusation, isn't it?

Dr. WHITEHEAD. I do not think it is.

Senator PASTORE. Want me to read it again?

"Who confuse sensationalism with sense." That is an accusation, isn't it?

Dr. WHITEHEAD. I was saying where that occurs, somebody should correct it.

Senator PASTORE. All right. Where did it occur? Do you not think we are entitled to know where it occurred?

Dr. WHITEHEAD. I think my personal views are relatively immaterial. Senator PASTORE. Oh, no; they are very material to this committee.

Dr. WHITEHEAD. But you should not amend the law to reflect what the White House thinks is important in objectivity and coverage.

Senator PASTORE. The White House sends you out, making speeches you want the people to believe.

Dr. WHITEHEAD. That statement you read was intended to reflect the fact that, where abuses occur, the corrective process ought to take place within the profession, and within the industry.

Senator PASTORE. If you were to rewrite this phrase again, would you write it the same way?

Dr. WHITEHEAD. I think I would.

Senator BAKER. Mr. Chairman, let me make one observation at this point. I know Dr. Whitehead has strong views about the objectivity and fairness of network newscasting. He has expressed it very dramatically in this and several other speeches in the last months.

I hope it is not ungraceful of me to say that politicians and Government officials endure and suffer a great deal of criticism at the hands of the networks, and I really do not think that network news staffs ought to be that sensitive about criticism from someone else.

I believe the dialog that we are having today that the conversation we are having in this committee in public on the record, on the question of the fairness and objectivity of network news coverage, is of substantial importance in its own right.

Even if it results in no legislation—and I suggest that it very well may result in no legislation—the fact that we have ventilated these points of view will have a significant impact on the health and vigor of broadcasting in the United States in the years to come.

I do not mean that network staffs will change their viewpoint or ideas. It means that we have now, in this hearing, introduced a way to discuss objectivity, or lack of it. We have created a public forum where it can be examined and, I believe, examination of it is a healthy thing.

Senator PASTORE. You are absolutely right. But the point that remains is, where an interest or a business which is regulated by the Government, is strongly criticized by the White House, you have created fear in that industry. This is especially so in broadcasting because stations must be licensed by the Government. After Dr. Whitehead's speech, many editorials and news articles express fear at what he said and what they see happening. At this point, I would like to insert a number of such articles in the record.

Is this the strong arm of the White House? That is what we are talking about—here, Walter Cronkite does not care whether you or I criticize him. Dan Schorr does not care whether you or I criticize him. But when you begin to talk about faults that do not exist—and these people are subject to a license renewal requirement—it is only natural that you are going to scare the devil out of them. They will not get into controversial subjects, and everybody will talk about milk and honey, and nobody will discuss the issues of the day.

Senator BAKER. And whether fault exists, or does not exist, is a question open to debate. We will not debate it at great length, today, except to point out that no network need be afraid of its license being revoked because networks have no license.

Senator PASTORE. But the fact remains, they all own five broadcasting stations in the biggest communities of this country. That is where a

large part of their income comes from. I am not trying to defend them, either. Attempts have been made to put networks under regulation. It has been resisted—time and time again—and I do not think the Congress is ready for it.

Maybe they should be placed under regulation. I am not debating that one way or the other. But when you are telling certain people they are charged with this and charged with that, and you do not tell us what the crime is, and you do not tell us what the sickness is, how can we give you the remedy?

That is the question that prevails here. Editorials all over this country were opposed to that speech. You may say it was a docile speech, intended only to reaffirm existing law. Mr. Whitehead, you know that the repercussions of that were serious, were they not?

There was comment all over the country. Now, a lot of people were disturbed.

Senator BAKER. Mr. Chairman, I—

Senator PASTORE. That is all I am talking about. Please let us not leave the impression with anybody that, "if you do not do as Mr. Nixon says, or as Clay Whitehead says, or as Howard Baker says, or as John Pastore says that you will lose your licenses."

Senator BAKER. Mr. Chairman, I want to yield to our colleagues on the committee, but I—

Senator PASTORE. That is my job; I will take care of that.

Senator BAKER. But you may—

Senator PASTORE. I will take care of that.

Senator BAKER. You take care of your side, and I will take care of my side. But you made the remark that the White House is the most powerful house in the United States, and it is and it always has been.

Senator PASTORE. And I want it to be.

Senator BAKER. But I suggest that there is a strong argument to be made that network broadcasting has a greater impact on the public point of view and attitudes in the United States than any single institution in the United States save the composite of the Government itself.

In that respect, I think it is very important to consider regulation of the networks. But if we are going to forgo regulation of the public airways through regulation of the networks, it becomes doubly important that those secondary restraints, that those disciplines that are imposed by professionalism, by news staffs and renewal techniques of local licensees must be fully and vigorously enacted.

Dr. WHITEHEAD. Mr. Chairman, if I could offer one comment here. I think it is very important that everyone understand that it is not the White House, it is not the executive branch that has anything whatsoever to do with whether a license is renewed. To the contrary, we are prohibited by law from interjecting ourselves into any type of consideration of that at all. It is the FCC acting as an arm of Congress that makes these decisions in an independent way and nothing that I say can have any effect on that.

What I have been addressing myself to is the overall process and procedures, the policy, if you will, whereby these decisions are made, where they are made, and who has the first responsibility.

We in government necessarily have to concern ourselves with abuses. We generally trust to the private enterprise system and to competition.

And the processes of government are intended to deal with abuses. My speech was directed very simply and pointedly to the question, Where abuses occur, how should they be corrected?

My speech was directed very heavily at networks because three companies program about 60 percent of the television programming that the American people see. I focused very heavily on news because news is so critically tied to the purposes and objectives of the first amendment.

I also dealt with some other very important issues, such as violence, children's programming, and misleading commercials. I pointed out the responsibility of the broadcast industry, which is to exercise responsibility in the first instance, so that it is not necessary for the FCC or the Congress to apply more restraints to these areas.

Senator PASTORE. I want to say as sincerely as I can, Mr. Whitehead, that your presentation here today, and the last remark that you made is a lot different than the connotation of your speech which I read. I am pointing here to a Sunday, December 24, editorial in the Los Angeles Times and entitled, "Intimidation of the Networks."

The White House has decided that television is not as good as it should be and says it is going to do something about it. But hold your cheers for there is evidence it may be nothing more than a mask for an effort to intimidate network news and programming.

Now, that is generally the impression that was created abroad. That is the reason I asked you if you were writing that speech all over again, would you write the same speech. Then you turned around at the Americana and said you were misunderstood.

Now, apparently whatever you said confused a lot of people. It confused me. Scared the devil out of me, too; because I believe in the freedom of speech and I believe in the first amendment. And I think you do, too.

Dr. WHITEHEAD. Absolutely.

Senator PASTORE. But the point is that you operate out of the White House, and you made this very dramatic speech in December, and followed it up with another speech in January where you more or less retreated a little bit and tried to soft-soap the licensee by saying, "Now I am going to give you 5-year licenses and I am going to make it easier for you to avoid a challenge at renewal."

It kind of softened it up a little bit. I think the second time you were trying to appeal more or less to the people that you had hurt the first time. I would hope that today at least you will admit that there was misunderstanding, there was confusion, because of the speech that you made.

Dr. WHITEHEAD. Mr. Chairman, I agree there was misunderstanding, there was confusion. The subsequent speech I gave really did nothing more than elaborate on the legislation I discussed in the first speech. I will concede there was some strong and colorful language in that first speech.

But that was done because we think these issues are important. They are so sensitive that public attention should be called to them, and they should receive full and open debate. They should receive the kind of debate we are giving it today. Continued use of that colorful language, I agree, will not serve any very useful purpose.

Senator PASTORE. I want to pass on to my other colleagues. I think you will have to come back this afternoon, if you can. Can you?

Dr. WHITEHEAD. Yes, sir.

Senator PASTORE. I want to ask you a question about public broadcasting. When the Educational Facilities Act was passed in 1962 and the Public Broadcasting Act was passed in 1967, we had only 100 TV stations. We have 233. Now we suggested a 2-year authorization for the Corporation for Public Broadcasting.

I understand that you were the one that recommended that the President veto the bill that we passed which was for a 2-year authorization. Now, within a matter of days we have a request for another 1-year authorization that has come up. Now the testimony before our committee has always been that the Corporation needs a 2-year period in order to do the proper programing.

It takes almost 18 months before you make a contract and the program can get on the air. Now what is really your objection on the 2-year authorization when we had them for 2 years?

Dr. WHITEHEAD. Our objection is only an objection as to the time at which such an authorization could be adopted and the conditions that would prevail in it. My feeling is that 2 years is probably too short, that 3 to 5 years is a more nearly acceptable range for the purposes of providing a long-range basis for the planning of the Corporation and to provide a bit of needed insulation from the processes of Government.

However, as the President pointed out in his veto message, reflecting, I think, a concern of the Congress when it deferred the adoption of a plan for long-range financing, we have to think this through very carefully.

We have to make sure the structure under which funds are provided for that length of time does indeed encourage the kind of system that the Congress intended when it established the Corporation and reflects a sense of purpose and agreement within the public broadcast system—not just the Corporation, but also the stations—as to what the relative roles should be. We feel that as there is sufficient uncertainty about both of those aspects, it would not be responsible to recommend to the Congress a longer term of authorization.

Se we are going forward on a carefully measured basis, with annual appropriations, until some of these questions can be resolved. At that point in time we would expect to come forward—

Senator PASTORE. But is that not counterproductive? All the witnesses that have come before the committee have said that unless we get 2 years, we cannot have an adequate program. You insist on 1 year which means inadequacy of the programing.

You can discuss this with any of the members appointed by Mr. Nixon. The majority of that Corporation are Republicans and they will tell you they need at least 2 years. Why should that not be taken into account?

Dr. WHITEHEAD. It certainly should be.

Senator PASTORE. You keep saying we have to prove that it is adequate. The trouble is that you will never prove that it is adequate unless you put up the money, unless you put up the authorization. And that is what we have failed in.

Dr. WHITEHEAD. I disagree with that, Mr. Chairman. I think if we all understand that we are going to increase the funding for public broadcasting, then the Corporation can plan on a sound basis, and can do it on a year-to-year basis.

Senator PASTORE. On a 1-year authorization?

Dr. WHITEHEAD. Yes, sir, I think they can because it has—

Senator PASTORE. I ask you again, will you talk it over again with the members of that Corporation? That isn't what they have told me and they are in the business.

Dr. WHITEHEAD. I certainly will.

Senator PASTORE. Will you take it up with them?

Dr. WHITEHEAD. I will, sir.

Senator PASTORE. Senator Moss.

Senator MOSS. Thank you, Mr. Chairman. On our discussion here, Mr. Whitehead, we have all been saying that there is no regulation of the networks and indicating neither you nor the chairman nor anyone thinks there should be.

Well, were you not really suggesting a secondary level of regulation by putting the burden, as you said in your speech, on the broadcasting station. Because if the broadcasting stations go off the air the networks do not have anybody to sell to?

Dr. WHITEHEAD. No; Senator, I do not think they are, unless you want to view competition and listening to a wide variety of points of view as regulation. I think of it more as a system of checks and balances reflecting the diversity of the country. It is not a regulation from Washington in any sense of the word.

Senator MOSS. Is not that regulation if the revenue for one network is stopped off because of "elitist" gossip and "plugola" and ideological "plugola"; does not that regulate them? It puts them out of business.

Dr. WHITEHEAD. We are not talking about cutting off their revenues.

Senator MOSS. You are talking about license of the stations which would not be renewed if they did not regulate themselves as you would have them do.

Dr. WHITEHEAD. That is not the concept, Senator. The concept is simply that the community has the opportunity to evaluate the licensee's overall performance at license renewal time. That is what license renewal is all about.

What is going to serve the public interest in that community is the question. If the community is unhappy, it has as much reason to hold the broadcaster responsible for programing that he gets from the network as programing he gets from somewhere else.

After all, the network pays him to carry that program just as advertisers pay him to carry their advertising messages. We think it reasonable—in fact, this is nothing more than what the FCC has always held, that the licensee is responsible to the community for everything that he transmits. Our concept certainly was not that somebody in Washington would oversee that community and try to make judgments about whether the network programing they were carrying should or should not have been carried.

To the contrary, we were simply saying where the community is unhappy with the programing that the licensee produced himself, or got it from somebody else who paid him to carry it, the licensee is the man to whom the community has a right to turn to and complain to.

Senator MOSS. How is the community heard? That is the point. How is the community heard?

Dr. WHITEHEAD. Well, the theory is that the community should be heard by the licensee. Under the concept of the 1934 Communications

Act, the broadcaster undertakes to program his frequency in the public interest.

Senator Moss. All right.

Dr. WHITEHEAD. To satisfy the public, not for his own personal use. So, the community ought to be able to go to the licensee and say, "We are unhappy. You have put things on that we think are destructive; more likely you have left things out that reflect a need or interest we feel in our community, and we would like to see you cover more of that."

The concept of the Congress was, I think, that the licensee would say, "I am the man who has responsibility for seeing that all of that is treated fairly and is covered."

He would make those kinds of judgments, and the community, when they complain, would get a fair hearing and get some accommodation. Unfortunately, that does not happen as much as it should.

More and more, the licensee says, "Talk to the network, they produced it. I do not have anything to do about it." That is not a very constructive attitude.

Or, the licensee will say, "Write to the FCC," or "Write to your Congressman." Well, that is not very effective either. All we were saying was that these men out there, who take a license, who undertake the responsibility to serve the public, know what they are doing. They make plenty of money, they ought to be more attuned to what the community's complaints are than they are today.

Senator Moss. Well, all right, if a member of the community complains to the television station and says, "We do not like the program"; the television station answers back, that, "Well, all right, we will look into it."

The license comes along. How are they going to have any effect in that community on whether or not his license is extended?

Dr. WHITEHEAD. They have two ways. They can file a petition to deny that license, with the FCC; or they can get together and say, "We think someone else could provide us better service," and they can file a competing application.

Senator Moss. Is that any different than what they can do, now?

Dr. WHITEHEAD. No.

Senator Moss. It does not achieve anything, does it?

Dr. WHITEHEAD. What we were talking about in the legislation we are preparing to submit to the Congress, is a clarification of the process whereby the FCC renews licenses and considers competing applications.

The FCC has had a difficult time dealing with this. The courts have had something to say about how the law, as now written, should be interpreted, and Congress, in the past, has tried to deal with it.

We are going to propose a change that we think is very constructive, in that it gives the licensee a little more stability and provides a little more guidance from the Congress as to how the FCC is going to handle these matters.

By and large, that is in the direction of less regulation from Washington, less opportunity for the FCC to interject its own judgments about what the licensee ought, and ought not to do, and turn them more nearly to the task of evaluating whether the licensee has listened to his community.

If we are going to take away some of the controls of the FCC, the community is going to have less recourse to invoke the use of Government program controls. To the extent that we are asking the Congress to take that step; to the extent that the public is willing to go along with that; I think we all have to give.

If the Government is going to have less recourse over the broadcaster's actions, we have every right to expect, as a country, that the licensee will exercise that responsibility more conscientiously, on a voluntary basis.

That is all we are saying.

Senator Moss. In your proposed license renewal bill, the following statement appears in reference to the Commission's findings of the suitability of an applicant for renewal, and I quote:

The Commission shall not prescribe any predetermined performance criteria of general applicability respecting the extent, nature, or content of broadcast programming; except the Commission may consider the overall pattern of programming on particular public issues.

By this language, are you suggesting that the Commission's determination of suitability be based on subjective judgments?

Dr. WHITEHEAD. No, sir, I am not suggesting that, at all. That language was intended to reflect two considerations. First the FCC should not get into the business of prescribing what is good and is not good programming as an *a priori* matter. I do not think any of us want the Government here in Washington saying what will, and will not be programed. That is what that predetermined criteria means.

The second consideration goes to the concerns about the fairness obligation, which is already written into the act in a different section, and to the kinds of concerns that the chairman was expressing. The opportunity for the public to come to the Government and use the processes of Government to deal with the questions of fairness in the presentation of issues is an important recourse; one that we are not prepared to do away with at this point in time.

Now, therefore, we make an exception as to what the FCC can consider in terms of programing content. We say they may consider the overall pattern of programing only insofar as is necessary to enforce this fairness obligation section.

Senator Moss. Do you remain opposed to the fairness doctrine criteria?

Dr. WHITEHEAD. I am not opposed and have never been opposed to the fairness obligation that is written under the act. I am opposed to the chaotic enforcement scheme known as the fairness doctrine, which has grown up to enforce that obligation.

I think in the long run, that case-by-case enforcement by the FCC ought to be done away with. In the shorter run, I fully support the FCC's attempts to clarify this as to what areas it will be applied.

Senator Moss. You prefer to shift the enforcement, though, to a 5-year plan, right?

Dr. WHITEHEAD. It is my feeling that that would be constructive, yes.

Senator Moss. It would be remote in the political situation, would it not? Say the license would not be renewed?

Dr. WHITEHEAD. It would be remote and there would have to be clear exceptions where the issues are particularly significant and time-critical.

Political elections are certainly one case.

On the other hand, I think that it would be constructive if fairness of the licensee were evaluated from the point of view of the total, over-all programing, rather than on a case-by-case basis.

Senator MOSS. Can you give me the statutory authority for the existence of the Office of Telecommunications Policy?

Dr. WHITEHEAD. The office was established in 1970 by Reorganization Plan No. 1, that was submitted to the Congress.

Senator MOSS. It was never established by any congressional act, just by submission and no objection, is that what you are saying?

Dr. WHITEHEAD. That is correct. There was no objection.

Senator MOSS. And it has been operating under that, since that time?

Dr. WHITEHEAD. That is correct.

Senator MOSS. Well, Mr. Chairman, that is all I have for now, I may wish to come back.

Senator PASTORE. Mr. Stevens?

Senator STEVENS. As I read your Indianapolis speech, Dr. Whitehead, I want to call your attention to this reference where you said:

Since broadcaster success in meeting their responsibility be measured at license renewal time, they must demonstrate it across the board.

Dr. WHITEHEAD. Yes. The administration requested in its fiscal 1973 budget \$45 million for the Corporation for Public Broadcasting. That reflected a steady increase in funding since the administration has been in office. The appropriation of \$45 million was authorized. The appropriation, however, was caught in the vetoed Labor-HEW appropriations bill. As a result the Corporation for Public Broadcasting like all agencies in that bill, has been operating under a continuing authorization at the level of fiscal 1972 funding, which for the Corporation is \$35 million. In the President's recent evaluation of the budget recognizing that many harsh decisions had to be made because of the fiscal problems, we have reviewed the President's funding recommendations for fiscal 1973, and as you know, have recommended reduction. Recognizing the Corporation had been operating at the \$35 million level and was approaching the end of the fiscal year, we concluded that it would be appropriate to forego that increase since they were not able to use it in any event. Therefore we have asked for an increase to \$45 million in fiscal 1974 which starts this June.

Senator STEVENS. And the 45 is still included in the 1974 request?

Dr. WHITEHEAD. That is correct.

Senator STEVENS. I have been concerned about the level of the public broadcasting expenditures on these public affairs programs.

Do you know how much that has been in relationship to their total spending?

Dr. WHITEHEAD. I don't have the exact figures, but as I recall at one point, it was running in the vicinity of 30 percent for that type of programing.

Senator STEVENS. I don't have the exact figures; it seems to me that Mr. Buckley's program went something around \$750,000 and one of the others went a little over \$1.2 million.

Is that in the right vicinity?

Dr. WHITEHEAD. That sounds about right to me. I don't know the details either.

Senator STEVENS. I am most concerned because apparently the amount going to the local stations to assist in development of public broadcasting throughout the country as opposed to providing competition to the networks in the great east coast of the United States is diminishing.

The area where there is no public broadcasting seems to be suffering while we are entering into a great race with Walter Cronkite and also concerning public broadcasting.

Have you expressed yourself in any way?

Dr. WHITEHEAD. Yes, I have. The Corporation for Public Broadcasting has been devoting too large a share of its budget to producing programing and not enough to distributing money to the local stations to use for local programing or operations, or for whatever the stations think is important locally. The Public Broadcasting Act provided, of course, that the Corporation would provide moneys for both purposes, programing and support of the local stations.

They can no longer accept network standards of taste concerning violence, and indecency in programming. If the commercial is violent, or sadistic, or if the commercials are false or misleading, or simply obnoxious, the stations must jump on the problem, rather than wince as the Congress and FCC are forced to do.

Do you mean by that what happened in our largest city, Anchorage, and I forget the subject matter of the programing; but a group of local people went to the station and complained about a network program that was one of a series and as a result of the complaint, the station told the networks it would no longer carry that program.

Is that what you are talking about?

Dr. WHITEHEAD. That would be included as a special case of what I am talking about, Senator, but I had something much broader in mind.

Senator STEVENS. Well, broaden it for us, will you?

Dr. WHITEHEAD. I was thinking about what used to be a trend on children's television, toward more and more violence in programing, as a pattern over a period of time. Obviously many parents have been complaining to their stations and to the networks, and they did not get any satisfactory response.

As a result, more than 80,000 parents recently supported a petition to the FCC to do something about this. Now, the broadcast stations come into my office, they come into the FCC, and I am sure they come to the Congress, and complain about such provisions saying it is an intrusion into their business, it is a kind of regulation that is against the first amendment, it is the kind of legislation or Commission rule that unduly infringes on their business. It is burdensome and it should not be passed.

That is what I meant by wincing. They do not want the Congress or the FCC to deal with these issues but so many of them will not go to bat with their network to try to get the pattern changed.

It is unfortunate, but it seems to me that the only recourse that many licensees have, such as your station in Anchorage, is to cut out the program. We do not think that is a very constructive way to deal with these problems.

We think the licensee ought to listen to their communities as they did there, but then they ought to go to New York, and collectively work with their network and say, there is too much violence, let us deal with it. There is too much obscenity, let us deal with it.

Senator STEVENS. My memory is, those parents appeared before us last year, and complained about violence in children's programming. I do not think we had any more ability to deal with it than you do.

Can you tell the FCC what to do?

Dr. WHITEHEAD. No, sir, I cannot.

Senator STEVENS. Can the President direct them to enter into particular judgment in a particular case, such as a license renewal?

Dr. WHITEHEAD. No, he cannot.

Senator STEVENS. One of the things that bothered me is this question of public broadcasting.

Could you explain to us the rationale of the current submission which recommends I believe it is \$10 million less for the balance of the fiscal year than was originally requested and approved last year?

We think that this is a very important concept. It was one of the matters that caused the breakdown in discussions between us and the Corporation as to what should be incorporated in a long-run financing approach. We felt there should be some guarantee written into the law that the local stations are entitled to a certain share of this money for local uses they think are appropriate.

It is very easy merely to comment about how expensive good quality programming is, and that is quite accurate.

Senator PASTORE. Would the Senator yield on that point?

The point is you cut it down from 45 million to 35 million, and as I pointed out when we enacted the law there were only a hundred stations; now there are 233.

You begin to split up this pie of \$35 million among 233 stations, and I mean isn't this all counterproductive? What can they do with it? Their share will be so small. They can't program. Naturally they would have to use some money for operating expenses. They ought to be given more money but what you are doing is put the squeeze on the money, the squeeze on the authorization period, and what you are doing is suffocating the whole industry. That is about the size of it. And they are all complaining, you know that. They had a convention in Las Vegas not too long ago and they were all complaining.

What you have done is you have built a wall between the Corporation and the local licensee. Then you come here and say we don't want much money, and we want to constrict the lead time, but we want everybody to produce their own programs. It is almost impossible.

Dr. WHITEHEAD. Mr. Chairman, we have never stated that the local station should produce all the programs. We agree that there are expensive, very worthwhile programs that should be done at the national level.

Senator PASTORE. That is right. But they can't do that out of the \$35 million, so that cuts down the pie even more. You are expecting people to do something big with only a little, and it is impossible in this industry. You know that. You know the television industry pretty well. It is very expensive. You begin to produce your own programs or run your own station—many of them are being run at a loss, you

know that. If it wasn't for the subsidies by the Government, they would have to close shop.

Now, you have gone from 100 to 233 stations, and you cut down the money, shortened the authorization period—how can the stations do things that you would like to see done?

Dr. WHITEHEAD. On the issue Senator Stevens was discussing, I think it is very important to realize that even a little bit of money goes a long way for some of these stations, particularly the smaller ones. There are ways of doing programing that is very interesting, very important to a community, for production costs of \$1,000 to \$2,000 an hour. That would be sneezed at in New York City or in Hollywood, but nonetheless it can be very valuable local programing.

I think it is important to realize that in addition to considering the size of the total pie, we consider how it is allocated, because those stations need that money.

Senator STEVENS. I think you are absolutely right, and as a matter of fact I call my colleagues' attention to the fact that the cut was made when Congress didn't pass the budget. We are still operating on a continuing resolution, as I understand it, for public broadcasting, and there is every indication we will continue to do so through the balance of this year.

So the question of how much the administration has requested for the balance of this fiscal year is really immaterial. I don't know of any way apart from a supplemental, and if the chairman would assist with a supplemental, I would support it. But I don't want to see this division which puts almost 50 percent of public broadcasting into the area that has the most television. It is the rural areas of the country that don't have public broadcasting, don't have the ability to support local programing in a public sense, which needs this assistance.

We could take \$300,000 in a rural community in Alaska and have a lasting year-round program in the public service area. You put \$300,000 into one of these New York programs and you got 30 minutes.

Senator PASTORE. But the administration is against public affairs.

Senator STEVENS. No, the administration, it seems to me, is against this big-name programing through the public broadcasting system when it should be going through the commercial system.

Senator PASTORE. Like "Sesame Street"? "The Advocates"?

Senator STEVENS. "The Advocates" I happened to appear on, and I think it is very good.

Incidentally, we don't get paid. That is not a costly program. You can put that on very inexpensively. But the problem is the allocation of this money. It seems to me that because they are so dependent upon the population centers, the public broadcasting system has responded to this demand for competition, and I think the networks have enough competition.

Dr. WHITEHEAD. I think it is important in that light, too, Senator, to recognize that public television was conceived as an alternative kind of medium. The need you are talking about is more acutely felt, I think, in the rural areas. That is a perfectly valid point.

It was never contemplated that the Federal role in funding this would become the major or dominant role. To the contrary, it was considered to be something that would be supplementary. The public television system was intended, as I understand it, to exist primarily

on funds from other sources, with the Federal contribution merely being an assist. That should not be forgotten either.

The public television people, to the extent they need more money, should be as concerned with raising their money from other sources in their communities as they are with getting more and more money from the Federal Government.

Senator STEVENS. I think the public system ought to be more interested in getting television in the areas where there is no television rather than putting on a fifth station in an area such as Washington.

It seems to me the obligation is to take the television experience out where it is not to begin with, and then to provide the programing and competition if they can afford to do it.

Let me ask you one more question—I have taken all my time—

Senator PASTORE. The Senator can use all the time he wants.

Senator STEVENS. I wanted to ask a question about the domestic satellites. I assume that is within the scope of this hearing.

Senator PASTORE. It is.

Senator STEVENS. I have noted the FCC has required that Alaska and Hawaii be included in the rate structure by any company wishing to put up a satellite under the domestic program.

As I understand, that is an integrated rate structure. I would like to ask you whether there is any impediment to the companies that provide service to Alaska and Hawaii of giving us an integrated rate structure now.

As I understand, they are willing to do it when we get satellite communications. Why can't they do it now?

Dr. WHITEHEAD. As I understand it, they can. As I further understand it, the FCC has directed the Bell System to look at this question and to recommend new integrated tariffs. The rationale is, of course, that with the advent of satellites for domestic communications, a separate tariff for Hawaii and Alaska would no longer be justified. We certainly support that, and I think the Commission, the telephone industry, and the common carriers, should move as promptly as possible to reflect that integrated rate structure and not wait for the satellites to actually get up there.

Senator STEVENS. I am pleased to hear that. We demonstrated right here in the Congress, the Senators and Congressmen from Hawaii and offshore areas and Alaska do not have the same communications between that those in what we call the south 48 do.

You can call anywhere in the United States supposedly for one fee after a certain time of night, but then if you look at the asterisk it says except for Hawaii and Alaska and the offshore areas. Either we will be one country as we are in the postage stamp system with the Postal Service, or we will have to find some way to give the offshore areas some assistance so that they can, in fact, be the equivalent of all the rest of the American States.

This is the one major impediment to taking television, national television into my State on a direct basis as the awareness of the integrated rate structure. I would welcome your assistance in that matter.

Dr. WHITEHEAD. I agree wholeheartedly and we will certainly do whatever we can.

Senator STEVENS. Going back to the public affairs program area—and I do not want to extend that out more than we should, but what do

you see for the future of the public broadcasting system as far as its relationship to the networks?

Dr. WHITEHEAD. I think the concept of public television, as an alternative to commercial television, is a sound one.

To be sure, commercial television in this country has its problems, but nonetheless, I think it is widely conceded that we have probably the best television of any country in the world.

Commercial television provides a great service and we should continue to rely on private enterprise broadcasting as our primary broadcasting system. Now, for a variety of reasons recognized by the Congress and by the FCC, there are certain types of programming that cannot command advertiser support, especially with the limited number of channels.

Such programs, however, should be available to the American television viewing public. Things like education, culture, and the arts are very important subjects. I think Sesame Street has shown how we can have interesting, vital, gripping television for children—television that is educational at the same time that it is entertaining.

We ought to be exploring more of that type of thing.

Senator STEVENS. Does the administration have any way to decrease support for public broadcasting?

Dr. WHITEHEAD. No; we do not intend that at all. We have steadily increased the funding for public broadcasting. The funds distributed through the HEW educational broadcasting facilities program, which provides money for construction of new broadcast facilities, cameras, tape recorders and the like, have been increased. In fact, in the President's budget, although many things were cut in the HEW budget, that item was not cut. That was held at \$13 million.

Senator STEVENS. With the chairman's permission, I would like to place in the record at this point a request for appropriations over the years since the public broadcasting system has come in.

Senator PASTORE. We have it right here.

Senator STEVENS. All right.

Senator PASTORE. We will put it in the record without objection. (The document referred to follows:)

CORPORATION FOR PUBLIC BROADCASTING

Fiscal year	1 or 2 year authorization	Authorization	Appropriation
1969	1	\$9,000,000	\$5,000,000
1970	1	\$20,000,000	15,000,000
1971	2	35,000,000	23,000,000
1972	2	35,000,000	35,000,000
1973	1,2	65,000,000	65,000,000
1974	1	90,000,000	35,000,000
1975	1	45,000,000	35,000,000

¹ Vetoed.

² Continuing resolution.

Senator STEVENS. Thank you.

Now, you say the reason for the 1974 request reducing it to \$35 million was a recognition of the situation that we are ending the balance of year at a current level.

Dr. WHITEHEAD. That is right.

Senator STEVENS. Yet we will start up in July at the \$45 million level.

Dr. WHITEHEAD. That is correct.

Senator STEVENS. In other words, you could not spend \$10 million, say, if we did get a bill out of here by April or first of May in the 2½ months available. It would be unwise to spend \$10 million and cut back down to a \$45 million dollar level, is that correct?

Dr. WHITEHEAD. That is basically right. The funds would carry into the next fiscal year, but the practical effect would be that for the fiscal year 1974, the Corporation would have funding of \$55 million, and we just thought that it was not wise to have the growth going at that rate.

Senator PASTORE. For the life of me, I cannot see why you keep resisting the 2-year authorization. The appropriation could still be done on a yearly basis. It is only the fortification that the Corporation needs on this long lead time that is necessary.

We would all be better off for it. Admitting the fact there are faults that have to be cured but like everything else, this is a new venture so to speak. And it has to go through a trial period. There is no question about that.

But you cannot suffocate it with less money by cutting down the authorization period. I do not see why this administration is so much opposed to it when the testimony before this committee both Republican and Democrat members of the Corporation have been that a two year authorization is necessary.

They have justified that in the record. We are not talking about appropriation; we are talking about authorization. I hope the President next time will sign a 2-year authorization bill. We have passed the bill and he has vetoed it. That is the reason for it. I am not saying that he may be alone on that. The fact remains he did veto the authorization for 2 years.

He did it on your recommendation, so I am pleading to you today that you give it a good look and talk with the members of that Corporation. Because I think that is where your fault lies. If we are going to expect them to do a good job, they need a little more time. And you understand these things. It ought to be done.

Dr. WHITEHEAD. Mr. Chairman, I certainly agree with the concept that there ought to be longer range funding. But I think there is more involved here than just the planning horizons of the Corporation.

Senator PASTORE. I know what it was, Sandy Vanocur and so on. I know what started all this. It is politics.

Dr. WHITEHEAD. We think there are—

Senator PASTORE. Politics, that is what it was.

Dr. WHITEHEAD. We think there are important issues the Congress ought to address in this area, and until this is done we think annual authorization would be a healthy matter.

Senator STEVENS. I would call your attention to the fact that we have an opportunity to put a 2-year authorization in and take it out of the political year. I would like to support increased funding for the public broadcasting on a 2-year basis and take it out of that election year complex.

I would urge the administration to take a look at it from that point of view. If the authorization would expire in a nonelection year, we

would have a lot more sanity about the way we face the problems of public broadcasting. I would urge you to take another look at the matter to see if we could not increase for balance of this fiscal year so we would in fact be spending for the balance of this fiscal year at the annual \$45 million rate.

I do not know what that would be, but it would seem to me we could start up that \$45 million rate May 1 or April 15, whenever we can get the bill through, if we can. I would urge we take this thing out of this bill—that is the thing that causes so much trouble—and fund it without regard to that other budget. It gets caught up in the HEW fight and it does not belong there. It has nothing to do with HEW and it is just an appendage to a bill that seems to be in continual controversy between the executive branch and the Congress.

I think we ought to find some way to lump it in with something else. Why don't you put it in with some of the independent agencies. Why should it be hooked on to HEW. It has no more sense being there than if it were an appendage to the FCC budget.

Would you take a look at that and see if there is not a way we can take it away from this area of veto conflict?

Senator STEVENS. Thank you.

Senator BAKER. Could I ask unanimous consent that three questions I have here dealing with copyright legislation, UHF broadcasting and radio reregulation be submitted for the record. I wonder if you would supply answers, Dr. Whitehead?

Dr. WHITEHEAD. I would be pleased to.

(The questions and answers referred to follow:)

SENATOR BAKER—RE-REGULATION OF RADIO

In December 1971 your office issued a staff research paper and released a letter you had written to Dean Burch recommending the development of a pilot program to test the feasibility of substantial de-regulation of radio. On February 8, 1973 I introduced a Joint Resolution, S.J. Res. 60, calling on the FCC to establish a project that would build on the FCC's previous actions and further revise the regulatory framework for broadcasters with particular emphasis on small market radio. Are you familiar with S.J. Res. 60, and if so, what is your position on it?

Answer. I am familiar with S.J. Res. 60, which I believe is an excellent means of giving further emphasis to the FCC's ongoing project of radio deregulation. I support it fully.

As you know, I proposed a review of radio regulation well over a year ago. Subsequently, the FCC, through a committee chaired by Commissioner Wiley, started to review its rules and has already made substantial progress. Your Joint Resolution not only provides a clear statement of congressional intent on the matter of radio deregulation, but shows that the Congress, FCC, and the Executive Branch can work as partners to introduce new concepts into communications policy and to make government regulation responsive to changing needs.

UHF

Dr. Whitehead, it is increasingly evident that our society benefits greatly from local participation in our national communications system. It is equally clear that local participation, in the form of more public access, greater sensitivity to community interests and needs, and increased local ownership and training opportunities means a stronger national communications system. For these reasons I have been studying ways to encourage development of low-cost UHF television broadcast facilities. (1) Do you think there is a need for greater development of the UHF spectrum? (2) Would your office be willing to undertake a study of the feasibility of developing such a system which might take the form of encouraging equipment manufacturers to design and produce and package relative low cost UHF facilities or using translators with greater local origination?

Answer, I agree with you completely that local participation, greater public access, and enhanced employment and training opportunities in the media contribute to the quality of our communications system and to our strength as a society generally. Low-cost UHF TV broadcast facilities are one way in which these benefits can be obtained. It may be that expansion in use of the UHF spectrum by encouraging the development and use of such facilities would therefore be desirable.

I intend to explore with the FCC the possibility of a study into these matters and to determine whether such specially designed low-cost station facilities, or translators could be produced.

COPYRIGHT LEGISLATION

Dr. Whitehead, last year you and Chairman Dean Burch worked together in conjunction with interested parties to arrive at an agreement that made it possible for the FCC to lift the freeze on cable. An essential provision of the consensus agreement was that the parties to the agreement would support copyright legislation in the Congress and in the event they could not agree on a fee structure, the legislation would provide for arbitration. In view of the fact that the parties have not yet agreed to support a copyright bill, do you expect to make any recommendations to the FCC that the regulations presently in effect be changed?

Answer, I have not fully determined a course of action, as it is not clear that copyright legislation supported by all concerned parties will not be forthcoming. I do feel, however, that such legislation is an essential element of the FCC's distant signal regulation, since the compromise agreed upon by cable operators, broadcasters, and the program suppliers, was predicted on the expectancy of copyright legislation requiring cable to pay its fair share to program production sources.

Nevertheless, if there is no agreement among the parties on copyright legislation, the essential copyright element of the FCC's cable rules will be missing. This would certainly require a reassessment of the rules, and perhaps they will have to be changed.

ECONOMIC CONCENTRATION

Dr. Whitehead, you have adopted as an overall communications policy encouragement of competition as a means of most effectively and efficiently meeting the needs of our society. In an effort to implement this process you have pointed to the limitations imposed on our national broadcasting system by our present dependence on the three TV networks. Your emphasis on diversity in several of your speeches is interesting and thought provoking. But what evidence do you have that the concentration of economic power in the networks is contrary to the viewers' interest? In view of the high cost of producing quality programs, what evidence do you have that there is any alternative to such concentration which makes possible the large investments necessary or, in other words, aren't networks the only entities that can afford the high cost of network programs?

In your speech to the Arts/Media Conference of the National Council on the Arts and the National Endowment of the Arts you talked of the "demand pull" of the viewer as an effective way to obtain more diversity on TV. (1) Don't we already have such a system through the reliance of the broadcasters on ratings which determine, for the most part, whether a particular show remains on the air? (2) Aren't you really getting back to the concept of specialized programming, not that programming directed at a mass audience as done by the networks?

While you emphasize the need for program diversity through specialized programming, I note in Advertising Age, a new publication entitled "Pay TV" and in Broadcasting Magazine that the prospective operators of pay cable systems envision for the most part concentrating on sports and feature films. As a policy matter how do we guarantee that (1) pay cable competes fairly with over the air broadcasting in view of the regulatory restrictions presently placed on broadcasters and I am thinking particularly of the public affairs and news requirements which are expensive and which are often not commercially viable; (2) how do we guarantee that pay cable and cable television achieve their potential and don't rely solely on sports and feature films; (3) if we do allow pay cable to carry sports that have been carried by commercial television, aren't we taking away the broadcaster's economic base? And if the broadcasters go out of business, how do we insure that the low income and rural residents don't lose their television service?

Answer. There has been a long standing and valid assumption that excessive economic concentration in industries controlling the means of communications is contrary to the public interest. For example, as early as 1941, the FCC stated that:

"[Congress] rejected government ownership of broadcasting stations, believing that the power inherent in the control over broadcasting was too great and too dangerous to the maintenance of free institutions to permit its exercise by one body even though elected by or responsible to the whole people. But in avoiding the concentration of power over radio broadcasting in the hands of government, we must not fall into an even more dangerous pitfall: the concentration of that power in the hands of self-perpetuating management groups." (*FCC Report on Chain Broadcasting* 72 (1941)).

This has been a consistent theme in government regulation of the broadcast media. The FCC has long been concerned with ways to reduce the television networks' control of access to the nationwide audience and control of that audience's access to diverse programming. Moreover, these same concerns underlie the Department of Justice's recent antitrust suit regarding the entertainment programming of the three television networks.

The burden of proof is usually on the broadcast industries to establish that their concentration of economic power is in the public interest.

It would be difficult, if not impossible, for the government to demonstrate conclusively that a less economically concentrated television network industry would be able to support high quality, diverse television programming, because one effect of network concentration is to preclude the development of additional competitive networks. Networks are, indeed, the only entities that can afford the high cost of network programs, because the networks exercise their economic power to vie for audience rating points by driving up the cost of prime-time programming.

With respect to my speech to the Arts/Media Conference, I referred to the concept of "demand pull" as an effective way to obtain more program diversity in television. I do not believe that we already have a television system based upon this concept merely because broadcasters rely upon audience ratings to determine the success, or lack of success, of a particular program. In television, the audience is the product being sold to advertisers. In essence, the ratings do not indicate the programs that people want to watch, but simply show what programs people will watch. In this sense, the audience's desires and needs for programming are not important to the advertisers.

To some extent, the "demand pull" concept does involve specialized programming and not the type of mass appeal programming that the networks presently offer.

You also asked for my view regarding the pay television aspects of cable television. Most of your concerns go to the question of whether cable will compete fairly with over-the-air broadcasting, in view of the affirmative programming requirements placed upon television broadcasters and the danger that cable may "siphon" popular programs from over-the-air broadcasting.

With respect to the first question, there is no reason in law or policy to encumber pay cable operations with affirmative programming requirements, such as news and public affairs programs. There are reasons, having to do with spectrum scarcity and economic concentration, for requiring that federally-licensed television broadcasters make special efforts to serve community needs and interests in informational programming, even though such programming may not be commercially viable. There are no similar justifications for imposing the same requirements upon cable television systems, especially if the policy and regulatory requirements for cable assures that there will not be monopolistic control of the multiplicity of cable channels. Indeed, we should move in the direction of lessening the specific affirmative programming requirements in television broadcasting, rather than transposing such requirements to cable operations, when the effect would be achievement of a parity of inappropriate regulation.

With respect to the question of pay cable attempting to siphon popular programs from broadcast television, I believe that cable can co-exist with advertiser-supported television without significantly reducing the level of "free" programming now available to the viewer. Moreover, cable can expand opportunities for advertisers seeking more special interest audiences to underwrite "free" programs on cable. While there may be some limited siphoning of programs, in the long run, I do not think it will be destructive of broadcast television's viability. In the short run, however, it would not be in the public interest if the limited

amount of siphoning that did occur deprived viewers of programs before they had access to them on cable systems. Therefore, during the early years of cable development, the FCC should have authority to adopt restrictions regarding the type of programming that can be offered for a fee on cable systems. The issues presented by "pay cable" are sufficiently complex that the Congress may wish to state its own views on this matter, for example, in dealing with the substantial public interest questions presented by "pay cable" presentations of sports events. This would give the FCC additional guidance in applying such anti-siphoning restrictions during the early years of cable development.

I believe that cable will not destroy the economic base of television broadcasting, but if this were to happen, special measures may be necessary to preserve a basic level of programming and other communications services for low income people and rural residents. It is too early, however, to recommend in detail the precise nature of such special provisions.

Senator PASTORE. Senator Hartke?

Senator HARTKE. I think the act which Senator Pastore has been so active in, makes it very clear what the aims of public broadcasting are. In our report on the Public Broadcasting Act of 1967, at page 6 of the report we state that although the aims of noncommercial broadcasting shall be directed toward cultural and information programs, it should not be so highly specialized, that it caters only to the most esoteric tastes, particularly in the area of public affairs. Noncommercial broadcasting, the report states, is uniquely fitted for indepth coverage and an analysis that would lead to a better informed public; and I think Senator Pastore put his finger on it.

You have a political sensitive tool here regarding public broadcasting, and I think you are into an operation which I would like to express to you.

I know you are going to deny from the beginning the observation I am going to make. But it seems to me that what has happened here is that you have an inconsistency in the administration's policy concerning three areas of broadcasting. One of them is commercial broadcasting; the second is public broadcasting; and the third is cable television.

It appears also to me that the administration is probably trying to exert pressure against the major network news programs and their so-called liberal bias by bringing pressure not on the newsmen so much directly, but on the newsmen indirectly by asking the major network executives to make major changes in personnel who are now presently providing that news.

In other words, some of the people who are now giving the news might look forward to getting the ax. Not from the administration, but from some of the network people who will be yielding to that pressure because, as I read your speech in Indianapolis—and I want to thank you for coming to the greatest State in the Union to give that speech—as I read that speech, I find in it the overtones of a direct benefit to the networks contrary to what has generally been interpreted.

That is, it provides for the five major stations in the top markets an opportunity for a great extension if they only will cooperate. It appears to me that this is one of the best smokescreens that I have ever seen in the political world and you have delivered it there to cover up this obvious intention of the administration to really get what you want with a seeming approach in another direction.

Now, was it a smokescreen?

Dr. WHITEHEAD. Senator, I think it was more nearly a fire than a smokescreen. If we were attempting to act behind the scenes with ulterior motives, I can only say that, in my judgment, we went about it in a very dumb way.

To the contrary, we are trying to encourage debate on these issues and we were trying to point out to the public and to the broadcasting industry that it is the licensee and the network manager who bears all the responsibility. We were simply saying to them, exercise it however you deem best. To the extent that you are happy with what your news department and you feel that it is working perfectly, then you should leave it alone. To the extent that a station manager believes that the network news that he carries on his station is perfectly balanced, covers an adequate range of issues, covers an ample, wide variety of points of view on those issues, then he has no obligation to go any further.

But where he thinks differently, he should exercise his responsibility. We were not calling for a reduction of criticism of the Nixon administration, or for an airing of only our point of view. Much to the contrary, we are seeking a wider range of view than apparently we can get from three companies in New York City.

Senator HARTKE. In this news field, you have, of course, the Associated Press and UPI, too, that is out there. Have you called for the same type of action on their part?

Dr. WHITEHEAD. No, sir. I have not, because my concern is with how we regulate broadcasting and what processes and policies we adopt for that purpose.

Senator HARTKE. You mean UPI and AP do not have these elitist gossipers, is that correct?

Dr. WHITEHEAD. I did not say that. I am saying they are not directly licensed by the Government; nor are the networks either, as Senator Baker pointed out.

Senator HARTKE. I realize that. You mentioned words like the "rip and read" ethic of journalism and you talk of wire service copy. Yours is an engineering background, is that right?

Dr. WHITEHEAD. Yes.

Senator HARTKE. Have you ever worked in a newsroom at a newspaper, or radio room, or newsroom? Do you understand what really happens there?

Dr. WHITEHEAD. I think I have some feel for it, although I have never worked there.

Senator HARTKE. Have you ever worked in an area of how this all comes together? Do you really believe a person in the small community should go back through and analyze every news broadcast to see whether or not it has elitist gossip—and what is that other word?

Senator PASTORE. Ideological plugola.

Senator HARTKE. Ideological plugola?

Dr. WHITEHEAD. As a practical matter, it will be very difficult for the broadcaster in the small market to be—

Senator HARTKE. But then it is only a question of degree, is it not?

Dr. WHITEHEAD. Yes, and it is a question of what resources he has to obtain a wider range of views. But, most broadcasters have access to newspapers; they have access to the AP and UPI wires; they can subscribe to other newspaper syndication services, they have the mate-

rial that their network sends them down the wire, the daily feed, not intended for the network news show itself. In short, they have ample sources of information.

All I was saying was that when they carry the network news show, or when they carry a network entertainment series, they should be aware generally of what is in there. If, in their judgment, there is not a wide enough range of issues discussed that is important to their community, if there are points of view on those issues that have not received adequate coverage, then they should take some action, either through their own resources to add to the coverage, or in their discussions with their network to implore the network to provide a wider range of views.

We think it is very important that we recognize the purposes of the first amendment, and make sure the American people have available an ample and wide variety of points of view to make up their own mind.

We should resist the temptation, whether through the Government, or through private power, to constrain various points of view.

Senator HARTKE. I have listened to your elitist rhetoric now, but let me come back to your speech. I tried to find the substance of it, and what you are saying and you say something about "this brings me to an important first step."

Now, an important first step is just that—an important first step. You would agree with that, would you not?

Dr. WHITEHEAD. Yes, sir.

Senator HARTKE. It is not nonimportant is it; and it is not a second step?

Dr. WHITEHEAD. That is right; it is not a second step.

Senator HARTKE. Now, you say, also, that, "It has teeth," is that correct?

Do you use those words? I can find it for you.

Dr. WHITEHEAD. I did use those words, yes.

Senator HARTKE. All right. It has teeth. You see, why I look at this as a smokescreen is the second element of the important first step reads:

Second, the broadcaster must show that he has afforded reasonable realistic and practical opportunities for the presentation and discussion of conflicting views on controversial issues.

That is really a first step, is it not, that is really an important first step?

Dr. WHITEHEAD. I think that is an important step.

Senator HARTKE. I did not say, "important step," I said, "first step."

Dr. WHITEHEAD. I was referring to the legislation as a first step in the process of improving our broadcasting policy.

Senator HARTKE. That is right. I am reading from page 6. All I can do is read what you said—I was not in Indianapolis at the time:

* * * lead to an important first step the Administration is taking to increase freedom and responsibility in broadcasting.

Now, it has two items, first, "The way we have done this is to establish two criteria." To establish, right? First step is establish. Now, I am taking you down to a level which is not in your elitist category, and you might have difficulty following this common approach, but having

gone through this, let me read to you something, because you see, I happen to be one who was the author of the fairness doctrine in the legislation.

I wrote it and introduced it in 1959. It was not in the law before that. It was only case law before that. Now, then, let us show you what a great contribution your first step has made to this category.

I read to you, and this is the Communications Act of 1934 as amended, and I am reading from section 315 of the Communications Act.

Senator PASTORE. Equal time?

Senator HARTKE. That is right.

Nothing in the foregoing sentence shall be construed as relieving broadcasters in connection with the presentation of broadcast news interviews, news documentaries, and on-the-spot coverage of news events; from the obligation imposed under this Act to operate in the public interest.

Here are the words—

* * * to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Your words are really a modification of that, but only a very small one. "The Broadcaster must show,"—here it says that the—that he "must show"—same words.

"That he has afforded reasonable," you have added "e-d," to the word "afford." You have it in a different tense. "Afforded reasonable," then you have added the word "realistic." The word "reasonable," as any lawyer knows has a definition under the law. "Realistic" does not necessarily have a definition.

"And practical," those are two additional words. "Opportunities," you have used the plural instead of singular. "For the presentation and discussion." The words in the law, say "for the discussion." You cannot have a discussion without a presentation, so that is redundant.

"On issues of public importance." You say "On conflicting views on controversial issues." Is that really an important first step defining the criteria or is that part of the smoke screen that I am referring to?

Dr. WHITEHEAD. Senator, the language that we actually wrote into our bill was precisely the language in the act, as it is now. As we indicated in earlier discussion, we are adding nothing new to that fairness obligation which I—

Senator HARTKE. Why is it an important first step if you add nothing new except as a smokescreen for something that you are coming to from underneath?

Dr. WHITEHEAD. The important first step, I believe, Senator, is the movement toward a new license renewal bill that—

Senator HARTKE. For 5 years, right?

Dr. WHITEHEAD. For 5 years.

Senator HARTKE. Which would be of great benefit to the networks if they could have a 5-year extension if they can perform in the field of eliminating the Sander Vanocurs and maybe Walter Cronkite, I do not know. He is only the most credible man in the United States, according to recent reports; even more credible than the President, I understand, according to recent reports.

But the point is he should go, maybe. Who else should go?

Dr. WHITEHEAD. Senator, I think you are reading things into our legislation that are not there.

Senator HARTKE. I will tell you quite honestly that as far as your proposals are concerned, you have asked for greater authority, you say, on a local level, while, at the same time, you have put in a special service agency to dominate the public broadcasting, right?

You have a different criteria.

In other words, you want centralized control of public broadcasting, local control of commercial broadcasting, and in between all of this we will come up with a 5-year extension if everybody can stay in line, politically, right?

Dr. WHITEHEAD. I think you misunderstand what we are trying to do.

Senator HARTKE. I think I understand, too well. Thank you. The whole question of telecommunications at international levels, I understand, Mr. Chairman, is still under discussion.

Mr. ZAPPLE. That is in the record.

Senator HARTKE. I would hope we would have time to come back to this at a later date.

Senator PASTORE. We will. At this point I would like to submit questions to which Senators Hart and Hollings have requested your answer, Dr. Whitehead.

(The questions and answers follow:)

QUESTIONS OF SENATOR HART

Senator HART. Dr. Whitehead, my primary concern with your office is with the pressures that are coming on program content, both on the networks and on public television.

There is growing apprehension—and I believe with justification—over the club that seems to be raised to bring the networks and public television into greater harmony with the Administration point of view.

Your December 18 speech, combining as it does the offer to local stations of the carrot of 5-year license renewal together with the stick of "full accountability" if they don't get rid of network bias, is particularly alarming.

Let me ask you:

When an incumbent licensee comes in for renewal, who will be judging whether he has complied with his "fairness obligation?"

Now, since the legislation would forbid the FCC from setting up predetermined standards of performance ("quantification of the public interest," as you call it) what criteria will be used to measure compliance?

In an October 6, 1971 speech, you describe the Fairness Doctrine as "simply more government control masquerading as an expansion of the public's right of free expression."

How do you reconcile that statement with the requirement in your new bill that the broadcaster must adhere to the fairness obligation?

Your bill requires the broadcaster to "turn toward his local audiences." How does the broadcaster determine the needs of the local audience? Since the FCC requirements for public service would be dropped, supposing a local audience wanted only movies, or only sports? Would there be no public service requirement?

Your bill abolishes the requirement for a comparative hearing when a license is challenged. You describe the comparative hearing as "not unlike the medieval trials by battle, and the winner of this trial is not necessarily the person who will best serve the interests of the local community but rather the one who can afford to stay in the heat of battle the longest—the one with the most time, the deepest pocket, and the best lawyer. Certainly, in this day and age, we can devise more rational and equitable procedures especially when, in all cases, a substantial public interest is at stake."

Lacking the public hearing, what assurances do blacks or other minorities have that their effort to break into TV will not be voted down without their having their day in court?

You note that the third change under the new bill would preclude the FCC from "restructuring the broadcasting industry through license renewal hearings." I gather this means you would throw away this tool for preventing further concentration in the media industry?

You recommend that the FCC be prohibited from establishing any performance criteria "respecting the extent, nature or content of broadcast programming."

Does this prohibition apply to the Commission guidelines on over-commercialization? On children's programs?

Does your recommendation covering criteria for license renewal prohibit the FCC from taking into account such issues as discriminatory employment practices?

The U.S. Court of Appeals for the District of Columbia Circuit has ruled that, in resolving competing applications, the Commission should give preference for diversity of ownership and should particularly encourage ownership by racial minorities. Accordingly, most competing applications now include minority participation.

The new bill would apparently cut off this opportunity for minority ownership?

Dr. Whitehead, you have expressed concern over what you describe as the centralization of power in the Public Broadcasting Service. At the same time you urge that the local stations should be the primary decision-makers in matters of programming.

Just recently the Corporation for Public Broadcasting announced that it was planning to assume all responsibility for national television programming and PBS, which is governed by a board with a majority of station representatives, would be responsible only for the operation of the interconnection system. A question which naturally comes to mind is "How do you, Dr. Whitehead, feel about the apparent contradiction between your stated position of concern over the centralization of powers in Washington and the recent CPB action which serves to centralize those powers in an even more concentrated manner?"

"Where is the Administration's long-range financing plan for public broadcasting which was promised many months ago?"

"How do you feel about public affairs or current events programming on public television?"

"What is the role of the local stations with regard to programming decisions for the national service?"

(With regard to last question, I must state my own prejudice that the local stations must have a major role in decisions affecting national programming. The freedom to use or not use nationally distributed programs is not the same as playing an active role in the decisions about which programs will be offered and at what time.)

Answers. The questions you raise fall into two categories. The first pertains to OPT's proposed legislation concerning license renewals, and the second to public broadcasting.

In response to your questions on our license renewal proposal:

The "fairness" obligation is a statutory policy relating to the broadcaster's programming performance, that would continue to be enforced by the FCC under our license renewal bill.

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

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

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

The obligation was initially enforced by reviewing the overall performance of the licensee at renewal time. For example, the FCC's 1960 "Programming Inquiry" report stated that:

"The responsibility usually is of the generic kind and thus, in the absence of unusual circumstances, is not exercised with regard to particular situations but rather in terms of operating policies of stations as viewed over a reasonable period of time. This, in the past, has meant a review, usually in terms of filed complaints, in connection with the applications made each three-year period for renewal of station licenses." 20 RR 1901, 1910.

Under OPT's proposed legislation, however, the Commission's review of program performance would be based upon a number of considerations, such as:

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

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

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

(4) various "content neutral" aspects of the applicant's programming expenditures: equipment and facilities devoted to programming; policies regarding pre-emption of time to present special programs; and the like.

You questioned the apparent inconsistency in my criticizing the FCC's Fairness Doctrine and my support for continued broadcaster adherence to the fairness obligation set out in the Communications Act. This question came up during the course of my appearance before the Subcommittee and was covered in the following way:

Dr. Whitehead. You have to differentiate between the "fairness doctrine," which is the case law that has grown up in the FCC, and the fairness obligation. We certainly are not opposed to the fairness obligation.

Senator Pastore. Suppose you make the distinction?

Dr. Whitehead. The fairness doctrine is a body of cases and interpretations that has evolved as the FCC has tried to deal with various cases brought before it dealing with the broadcaster's general obligation to be fair and objective. It is hard for anyone to be opposed to the idea that the broadcaster should be fair and objective in how he discusses his views, or in who he lets on to discuss various points of view.

This is a very great power that the broadcaster has and he certainly should exercise it in a fair way. However, in the absence of any clear and definitive policy as to what that means, the FCC and the courts together have been interpreting this on a case-by-case basis. As a result there is a confusing welter of precedents, opinions, judgments, and rough guidelines, and I think it is safe to say that the broadcaster and the public at large are very hard pressed to know what the fairness doctrine, as an embodiment of the fairness obligation means and how it is to be interpreted.

Senator Moss. Do you remain opposed to the fairness doctrine criteria?

Dr. Whitehead. I am not opposed and have never been opposed to the fairness obligation that is written under the Act. I am opposed to the chaotic enforcement scheme known as the fairness doctrine, which has grown up to enforce that obligation.

Senator Moss. You are—

Dr. Whitehead. I think in the long run, that case by case enforcement by the FCC ought to be done away with. In the shorter run, I fully support the FCC's attempts to clarify this as to what areas it will be applied.

Senator Moss. You prefer to shift the enforcement, though, to a five-year plan, right?

Dr. Whitehead. It is my feeling that that would be constructive, yes.

Senator Moss. It would be remote in the political situation, would it not? Say the license would not be renewed?

Dr. Whitehead. It would be remote and there would have to be clear exceptions where the issues are particularly significant and time-critical.

Political elections are certainly one case.

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

In further response to your questions, the legislation specifies that in order to obtain renewal, an applicant must be qualified to hold a license under the Communications Act and the FCC's rules and regulations. This would include, for

example, rules pertaining to minority employment practices. The OTP bill would not prohibit the FCC from taking into account these matters. Indeed, this specific provision regarding the applicant's competence under FCC rules and regulations does not throw away any "tool for preventing further concentration in the media industry" or any consideration of such matters as minority participation. It simply requires that any such policies be applied through general rules, rather than through case-by-case adjudication.

The proposed legislation would not make any change whatsoever in the ability of minority groups, or of any community group, to "break into TV," or to have their "day in court." The bill would not change existing substantive law regarding minority participation. With regard to petitions to deny—and this is the means that by far the most community and minority groups use to reach into the renewal process—the OTP bill would make no change whatsoever in existent procedures. FCC records show that, during fiscal year 1972, 68 petitions to deny were filed against the renewal applications of 108 broadcast stations. Most of the petitions were filed by minority and special interest groups in the broadcasters' communities and contained allegations directed toward the licensee's ascertainment efforts, programming for minority groups, and employment practices. Nothing in the proposed legislation would adversely affect the ability of these groups to file such petitions. No hearing would be denied them.

The goal of fostering competition in broadcasting is fundamental to the Communications Act, including minority group participation in ownership, but the present procedures for competing applications are not the most appropriate means of serving this goal. This amounts to nothing more than one applicant vying with another before a government agency for the license privilege. It does not usually result in more minority participation in ownership. There is a need for increased competition among broadcasters and more minority ownership, but this need should be met by government policies that expand broadcast outlets and reduce economic concentration among existing broadcasters.

Your other questions touched on public broadcasting and certain recent developments in the relationship between the Corporation for Public Broadcasting and the Public Broadcasting Service.

At the outset, let me state that I share your "prejudice" in favor of local stations and the weight they should carry in public broadcasting generally. I continue to believe, as I have previously indicated, that decentralization of programming activities should be a cornerstone of the public broadcasting foundation, and that local stations should play a major role in decision-making in matters of programming. The most effective way for them to play this role is not to provide for some limited local station representation in national entities that make program decisions, but to implement the plan of the Public Broadcasting Act, which gives local stations the autonomy and authority for complete control over their program schedules.

Once this and other issues in public broadcasting are resolved it will be appropriate to consider long-range financing.

Finally, public affairs and current events programming is an important component of public television's contribution to the flow of information. Indeed, this type of programming is recognized as part of every broadcaster's responsibilities under the Communications Act of 1934.

While I support public affairs and current events programming done by local educational broadcast stations on public television, I have been concerned about use of appropriated funds to produce and disseminate such programming at the national level, especially with the tendency of program production to become centralized in New York or Washington based production centers. Reliance on federal monies for the maintenance of public affairs programming is inappropriate and potentially dangerous. Robust electronic journalism cannot flourish when federal funds are used to support such programming.

QUESTIONS OF SENATOR HOLLINGS

You indicated in your prepared statement that OTP has several studies either underway or recently completed, which concern cable television. When will the studies be complete and what do you propose to do with the results of these various studies?

What is your present and planned level of staffing and what is the nature of the assistance you receive from other departments and agencies of government?

Answers. The President's Cabinet Committee on cable television has already completed its studies. The results of those studies will provide the foundation for the recommendations on long-range cable policy which the Committee will shortly make to the President.

Our FY-73 authorized ceiling is 65 permanent positions. Our request for FY-74 is for 52 permanent positions, a reduction of 13 positions in line with the President's desire to reduce the size of the Executive Office.

While the usual assistance accorded the Executive Office is received from the departments and agencies, the Department of Commerce, Office of Telecommunications provides particular assistance in several areas; the secretariat for the Interagency Radio Advisory Committee (IRAC); technical and analytical support for OTP's spectrum management responsibilities for the federal government; and technical and economic analyses in support of OTP's policy development responsibilities.

Senator PASTORE. Any further questions? If not, we want to thank you very much, Mr. Whitehead. I look with great anticipation to your speech, the title of which I hope will be "Mea Culpa."

Dr. WHITEHEAD. Thank you, Mr. Chairman.

(Whereupon, at 12:45 p.m., the hearing was adjourned.)

(The following information was referred to on p. 3:)

[From the Washington Post, Tuesday, Dec. 19, 1972]

ADMINISTRATION MOVES TO TIE TV LICENSES TO NEW SHOWS

(By John Carmody)

In a speech sharply critical of the television networks, a Nixon administration spokesman announced yesterday that legislation has been prepared that would make local stations responsible for the objectivity of network news shows.

Dr. Clay T. Whitehead, director of the Office of Telecommunications Policy, said the proposed legislation would amend the TV station license renewal provisions of the Communications Act of 1934.

His comments and some of the legislative proposal were contained in a speech before the Indianapolis, Ind. chapter of Sigma Delta Chi, a professional journalism society.

Whitehead said the legislation would establish two criteria for renewal, which each TV station would have to meet before the Federal Communications Commission would grant a new license.

- "The broadcaster must demonstrate he has been substantially attuned to the needs and interests of the communities he serves . . . irrespective of where the programs were obtained . . . and

- "The broadcaster must show that he has afforded reasonable, realistic, and practical opportunities for the presentation and discussion of conflicting views on controversial issues."

(In Washington, an OTP source said the bill now being discussed at the Office of Management and Budget would also increase the license renewal period from every three to every five years. He also said another proviso, not discussed by Whitehead, would "put the burden" on community groups to prove their complaints against local broadcasters before the FCC would hold a hearing. In the past, lengthy adjudication has sometimes arisen from renewal complaints.

All these points, the source said, were "actually pro-broadcasting" and arose from a meeting between some 30 broadcasters and President Nixon here last June).

But it was the suggestion made by Whitehead yesterday that local broadcasters be responsible for network news content that caused network concern.

"When there are only a few sources of national news on television, as we now have," Whitehead said, "editorial responsibility must be exercised more effectively by local broadcasters and by network management."

"Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable . . . at license renewal time."

Whitehead did not spell out how local stations might assess the content of network coverage in advance or on what basis the FCC might judge stations in violation.

In Washington, the OTP source said the proposed bill was still in the planning stage and that "Whitehead was really starting the debate with today's speech."

Continuing his attack on network news, Whitehead said that "station owners and managers cannot abdicate responsibility for news judgments."

"When a reporter or disc jockey slips in or passes over information in order to line his pocket, that's 'plugola' and management would take quick corrective action."

"But men also stress or suppress information in accordance with their beliefs. Will station licensees or network executives also take action against this ideological 'plugola'?"

" . . . Station licensees have final responsibility for news balance—whether the information comes from their own newsroom or from a distant network. The old refrain that 'we had nothing to do with that report . . . ' is an evasion of responsibility and unacceptable as a defense."

The OTP chief stressed several times that 61 per cent of the average affiliate's schedule is network programming.

Whitehead also said that local broadcasters "can no longer accept network standards of taste, violence, and decency in programming. If the programs or commercials glorify the use of drugs; if the programs are violent or sadistic; if the commercials are false or misleading, or simply intrusive and obnoxious; the station must jump on the networks rather than wince as the Congress and the FCC are forced to do so."

The OTP chief stressed that if a station "can't demonstrate meaningful service to all elements of its community, the license should be taken away by the FCC."

"The standard," Whitehead said, "should be applied with particular force to the large TV stations in our major cities, including the 15 stations owned by the TV networks and the stations that are owned by other large broadcast groups."

"These broadcasters, especially," he said, "have the resources to devote to community development community service and programs that reflect a commitment to excellence." (Each of the three networks has five owned-and-operated affiliates around the nation.)

A spokesman for NBC yesterday said, "The administration's plan as described by Mr. Whitehead seems to be another attempt to drive a wedge between television station and the networks."

"This is regrettable because the ability of our broadcasting system to expand its service to the public depends on continuation of a close and cooperative association of networks and stations, particularly in the area of news and information, without government interference." Spokesmen for ABC and CBS were unavailable.

White House press secretary Ronald L. Ziegler later yesterday declined to comment when asked if Whitehead's hard-hitting speech had been written by presidential speechwriter Patrick Buchanan, who has often been critical of the way radio and TV cover Mr. Nixon.

Ziegler also declined to comment on whether Whitehead's speech was intended as a threat of license revocation.

Whitehead also addressed himself to the current worries in the journalism profession over the First Amendment.

"The First Amendment's guarantee of a free press was not supposed to create a privileged class of men called journalists, who are immune from criticism by government or restraint by publishers and editors," he said.

"To the contrary, the working journalist, if he follows a professional code of ethics, gives up the right to present his personal point of view when he is on the job."

"Who else, but management," Whitehead asked, "can or should correct so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of new analysis?"

Whitehead has taken the lead in administration attacks on broadcasting over the past 14 months. In recent weeks broadcasting industry sources have hinted he may leave for a job in the private sector soon. An MIT graduate and Rand Corp. employee before joining the administration, he is considered an expert in systems engineering and other technical fields.

[From the New York Times, Dec. 19, 1972]

WHITE HOUSE DRAFTS TOUGH RULES ON CONTENTS OF TV-PROGRAMMING

(By Albin Krebs)

The White House has drafted tough new legislation that would hold individual television stations accountable, at the risk of losing their licenses, for the content of all network material they broadcast, including news, entertainment programs and advertisements.

The draft legislation was interpreted by some broadcasting officials here as the Nixon Administration's boldest effort so far to equip the Government with a strong legal means of keeping broadcasters in line economically and ideologically.

The proposed legislation would supplant regulations of the Federal Communications Commission—sometimes loosely enforced—that govern the operations of TV stations and the networks that supply them with more than 60 per cent of their broadcast material.

The existence of the draft legislation, and the intention of the Administration to introduce it in Congress early next year, without substantial change, were revealed yesterday by Clay T. Whitehead, director of the White House Office of Telecommunications Policy.

In a sharply worded speech at a luncheon of the Indianapolis chapter of Sigma Delta Chi, the professional journalism fraternity, Mr. Whitehead, the ranking White House adviser in the field of broadcasting, condemned "ideological plugola" in network news reporting and said local stations would have to bear responsibility for such matter carried over their facilities.

"When there are only a few sources of national news on television, as we now have, editorial responsibility must be exercised more effectively by local broadcasters and by network management," Mr. Whitehead said.

"Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable . . . at licence renewal time.

"Who else but management can or should correct so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis?"

The bite of Mr. Whitehead's remarks led some sources in broadcasting to speculate that the Administration was renewing the controversy begun two years ago with Vice President Agnew's attacks on the networks.

Mr. Whitehead denied at an earlier news conference that the draft legislation was intended as a vindictive assault on the networks, and described it as designed to force broadcasters to take more responsibility for what goes into American homes by television.

PLAIN APOPLECTIC

Tom Chauncey, president of TV station KOOL in Phoenix, Ariz., said, "I'm just plain apoplectic. If Whitehead really means this, we might as well be living in the Soviet Union. This would mean censorship of news and entertainment, the Government telling us what to broadcast and telling the people what they should see or hear.

"Washington wants to put the onus on the individual stations, make us afraid to broadcast what the networks feed us. I'd far rather hear Agnew raising hell at least he's only talking. Whitehead is talking about actually passing oppressive laws."

In his speech, Mr. Whitehead indicated that the proposed legislation was purely in response to broadcasters efforts to lengthen the terms under which they are licensed by the F.C.C. currently, licenses last three years, but broadcasters want the term extended to at least five years.

"It's been easy for broadcasters to give lip service to the uniquely American principle of placing broadcasting power and responsibility at the local level," he said. "But it has also been easy—too easy—for broadcasters to turn around and sell the irresponsibility along with their audiences to a network at the going rate for affiliate compensation.

"The ease of passing the buck to make a buck is reflected in the steady increase in the amount of network programs carried by affiliates between 1960 and 1970 . . . The average affiliate still devotes over 61 per cent of his schedule to network programs."

He accused local stations of exercising little responsibility for the programs and commercials "that come down the network pipe."

"Local responsibility is the keystone of our private enterprise broadcast system operating under the First Amendment protections," Mr. Whitehead said, "but excessive concentration of control over broadcasting is as bad when exercised from New York as when exercised from Washington. When affiliates consistently pass the buck to the networks, they're frustrating the fundamental purposes of the First Amendment's free press provision."

The Administration draft, he said, establishes two criteria the individual station must meet before the F.C.C. grants a license renewal:

"First, the broadcaster must demonstrate he has been substantially attuned to the [viewer's] needs and interests in all his programs, irrespective of whether those programs are created by station, purchased from program suppliers or obtained from a network.

"Second, the broadcaster must show that he has afforded reasonable, realistic and practical opportunities for the preservation and discussion of conflicting views on controversial issues."

"These requirements have teeth," said Mr. Whitehead. He added that the proposed standards "should be applied with particular force to the large TV stations in our major cities, including the 15 stations owned by the TV networks." The F.C.C. allows each network to own five television stations.

The proposed laws would make it incumbent on the local stations to demonstrate continuing responsibility for what gets on TV screens. "They can no longer accept network standards of taste, violence, and decency in programing," Mr. Whitehead said.

There is no area where station management responsibility is more important than news, he went on, adding:

"When a reporter or disk jockey slips in or passes over information in order to line his pocket, that's plugola. And management would take quick corrective action. But men also stress or suppress information in accordance with their beliefs. Will station licensees or network executives also take action against this ideological plugola?"

[From the New York Times, Dec. 20, 1972]

WHITE HOUSE NEWS

The Federal Communications Commission is the agency responsible for regulating radio and TV stations under the law, but the White House is elbowing it aside in a crude effort to call the signals on what can reach the American people.

After an election campaign cease-fire, the White House czar for broadcasting, Clay T. Whitehead, head of the Office of Telecommunications Policy, has returned to the attack. In a speech to a journalism society, he has accused unnamed reporters of something called "ideological plugola" and announced the Administration's intent to sponsor legislation which would in effect permit the White House to discipline broadcasters who strayed from the White House party line. Who is to decide when a journalist is delivering what the White House TV arbiter brands "elitist gossip in the guise of news analysis"?—who, but the head of the Office of Telecommunications Policy, acting for the President himself.

Mr. Whitehead's speech was wrapped inside an Administration plan to make the stations and their owners directly responsible for the network programs they carried and to insure a variety of conflicting views on controversial issues. The requirement of balance, fairness and access already exists within F.C.C. regulations; they are already a factor for assessment when stations come up for license renewal.

But Mr. Whitehead is delivering a different message. He is telling the affiliated stations of the commercial networks to censor major news programs and documentaries that offend the Administration. And he is doing so under the guise of interpreting the First Amendment as it applies to broadcasting news. That is the road to censorship and suppression through abuse of the power to license. It is a road Congress cannot let the Administration travel.

[From the Providence Journal, Dec. 20, 1972]

THREAT TO TELEVISION

A new and ominous threat to the free flow of news comes from Washington where the Nixon administration is drafting legislation, perhaps for submission to Congress early next year, to make local television stations accountable at license renewal time for the balance and taste of all news and entertainment programs they broadcast.

Since television stations can operate only by license from the Federal Communication Commission, the federal government is able to write standards of operation as it pleases. Neither radio nor television is protected by the First Amendment guarantee of freedom of the press as are newspapers which need no licenses to publish.

It has been held generally in the past that accountability ran only to the televised broadcasting of news and programs to serve the public interest. It always has been a goal for all stations to make public all sides of a public issue; regulations insist on equal time for candidates for office under specific circumstances.

But here is Clay T. Whitehead, director of the White House Office of Telecommunications Policy, charging that there is bias in network news reporting. At a convention of professional journalists, Mr. Whitehead sketched the outline of pending legislation which is intended, he said, not to be a vindictive assault on networks but to throw more responsibility on local station executives for what is televised.

The disturbing thing is that Mr. Whitehead has predetermined that there is bias in network news reporting, putting his case like his:

"Where there are only a few sources of national news on television, as we now have, editorial responsibility must be exercised more effectively by local broadcasters and by network management . . . Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks, or who acquiesce by silence, can only be considered willing participants to be held fully accountable . . . at license renewal time."

Mr. Whitehead plainly proposes to throw the task of definition to local judgment; he said, "Who else but management can or should correct so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis?"

Since retention of a broadcast license is essential to the economic survival of a television station, the Whitehead suggestion can be expected to induce the virtual silencing of controversial material. What local operator or manager wants to risk a charge of silent acquiescence in bias when the risk can be avoided by silencing those Mr. Whitehead and his peers in Washington firmly believe are biased?

The new regulation is being reviewed, and it is said that changes may be made before definitive legislation is sent to Congress. But the approach is plain, and the threat is clear. It would appear that while judgments must be made by local executives, the tone of enforcement will be set in Washington. Big Brother is riding again.

[From the Chicago Tribune, Wednesday, Dec. 20, 1972]

IDEOLOGICAL 'PLUGOLA' REARS ITS UGLY HEAD

(By Clarence Petersen)

"I'm against—I repeat, against—media censorship in all form."
Vice President Spiro T. Agnew, Nov. 20, 1969.

The Vice President gave that assurance that week after his unforgettable Des Moines, Ia., speech in which the Vice President characterized network news departments as "a tiny and closed fraternity of privileged men [whose views] do not represent the views of America."

The networks had responded to the Iowa speech—and continued to respond to subsequent assaults—with charges that the Nixon administration, thru the Vice President, was attempting to "intimidate" broadcasters over whose head already hovered the Damoclean sword of federal licensing.

"Nonsense!" said Nixon administration spokesmen and partisans. The Vice President was speaking only for himself and thereby exercising the right of free speech guaranteed to every American.

It may have been nonsense in 1969, but it ceased to be nonsense on Monday when Clay T. Whitehead, director of the White House Office of Telecommunications Policy, revealed that his office has prepared legislation to hold local television stations responsible at license renewal time for the balance and taste of all network news broadcasts.

Station licensees, said Whitehead, "have final responsibility for news balance—whether the information comes out of their own newsroom or from a distant network."

"When there are only a few sources of national news on television, as we now have, editorial responsibility must be exercised more effectively by local broadcasters and by network management," said Whitehead.

"Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable... at license renewal time."

Whitehead said that station owners are quick to act "when a reporter or disk jockey slips in or passes over information in order to line his pocket"—a practice known as "plugola"—"but men also stress or suppress information in accordance with their beliefs," he added. "Will

station licensees or networks take action against ideological plugola?"

The draft legislation, said Whitehead, is currently making the White House rounds. That he discussed it Monday indicates that it will be introduced to Congress early next year without substantial change.

Of course, everything Whitehead said about local station responsibility is true, but local station managers already are held responsible at license renewal time for fairness and balance.

Only now the burden of proof that fairness and balance is properly presented rests with citizens. If citizens do not complain of gross violations, license renewals are virtually automatic.

The White House proposal, said Whitehead, will require stations to "demonstrate" that they have been "substantially attuned to the needs and interests" of their communities and to the show that they have afforded opportunities for the presentation of conflicting views of controversial issues.

It all sounds most reasonable on the surface, but the White House is now wading into the previously sacrosanct area of regulating program content, forcing stations not only to be fair but to prove it to the satisfaction of the Federal Communications Commission. How do you prove fairness to the satisfaction of an administration you have criticized?

The FCC, which is coming to be dominated by Nixon appointees, is apt to have a definition of fairness and balance that reflects the President's view that what is good for America is more good news and less bad news and critical commentary.

And tho he worried on Monday about the relatively few sources of national news on commercial network television, Mr. Whitehead has consistently maintained that public affairs programming on public television is "redundant." Henry Loomis, the Nixon-appointed head of the Corporation for Public Broadcasting was not in office for even a week [previous to which he admittedly never watched public TV] before he began to echo and to enforce that view.

"NBC was first to react to the Whitehead speech, commenting that 'the administration's plan . . . seems to be another attempt to drive a wedge between TV stations and networks. This is regrettable because the ability of our broadcasting system to expand its service to the public depends on continuation of a close and cooperative association of network and station, particularly in the area of news and information, without government interference.'"

The NBC statement obliquely acknowledges the fears of local station managers that was manifest after the early Agnew speeches.

What is more difficult to understand is the renewed assault on network news by the White House. Despite all that "bias" sensed by the administration, the public somehow managed to reelect President Nixon by a landslide. [The McGovern forces were complaining about news coverage then, and administration spokesmen, some of them, professed to be satisfied with TV's news coverage.]

Could it be that that very landslide emboldened the Nixon administration to move against the network news departments—despite its wounded protestations in 1969 that no such attempt was even considered?

[From the New York Times, Dec. 21, 1972]

IN THE NATION

NIXON'S OTHER WAR

(By Tom Wicker)

If there was any doubt that Mr. Nixon would take his landslide victory as a license for a major assault on the First Amendment, it has been removed by the clever proposals put forward by Clay Whitehead for the gutting of broadcast journalism.

Mr. Whitehead, the President's principal aide on what the White House calls "telecommunications," has proposed legislation which offers a substantial economic bonus to television station owners. It would require them to seek renewal of their Federal licenses every five years, instead of three; and it would permit the Federal Communications Commission to listen to competing applicants for a television channel only after the F.C.C. already had taken the channel away from a former licensee. Both provisions would substantially relieve broadcast licensees of the burden of showing that they were providing better service than some challenger might.

With that peculiarly smooth brand of deception which seems to characterize so much of what Richard Nixon touches, a spokesman for Mr. Whitehead explained blandly that in return for this "relaxed approach" individual broadcasters would have to accept "more responsibility" for the network programs they run.

Mr. Whitehead did not trouble himself with such subtlety in his speech to the Sigma Delta Chi journalism fraternity in Indianapolis. "Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks, or who acquiesce by silence," he said, "can only be considered willing participants, to be held fully accountable . . . at license renewal time. Who else but management can or should correct so-called professionals who confuse sensationalism with sense and who dispense élitist gossip in the guise of news analysis?"

Translated from the baloney, this means that when stations apply for renewal of their Federal licenses, the new Nixon bill would require that they demonstrate that they had "balanced" their news broadcasts to the satisfaction of the Administration's appointees on the F.C.C.

Even accepting for the purpose of argument—and it is intellectually painful to do so—the ludicrous proposition that the networks do dispense "élitist gossip" instead of news and "sensationalism" rather than sense, would it follow that the remedy for such villainy should be Government regulation of the content of news broadcasts? Of course not; that would be to set a goat to guard the cabbage patch; nevertheless, no mistake should be made but that that is precisely what this autocratic Administration now is proposing.

It is a clever proposal, moreover, on at least three counts. The first is that station owners who themselves may have little concern for the First Amendment, or news, or public affairs, are offered the carrot along with the stick; as long as they do not care about being censored,

their economic security and freedom from competition will be enhanced.

The second is that the Whitehead proposal probably is more feasible politically and less blatant ideologically than the alternative—which some network lawyers and officials have been fearing, in the wake of the landslide—of an antitrust attack on network news operations. Such an attack, it should be borne in mind, is already under way on network entertainment broadcasts.

Finally, this is a clever proposal because even if Congress sees it for what it is and rejects it the networks and the station owners would be less than sensible if they did not also recognize it as one more manifestation of this Administration's determination to reduce or control the power of television journalism—which may well be, as the maverick F.C.C. Commissioner Nick Johnson put it, "the only national institution remotely capable of serving as a check on abuses of Presidential power." As what Mr. Johnson called "Nixon's war on the networks" continues, they and their station affiliates would be remarkable indeed if they did not to some extent retreat, retrench and take heed of their peril. And that's all Mr. Nixon would like to accomplish, anyway.

It is true, of course, and it is implicit in Mr. Johnson's estimate of them, that the network news services have immense power; since power is always likely to be abused, the networks have been occasional sinners—although many of us may think their sins have been more often of omission than commission. But no local station can cover the war in Vietnam, or the Presidential election, or the Apollo flight, or riots in a dozen cities at once, or any of the myriad national and international stories that the networks can, do and should cover.

It was Mr. Whitehead who substituted gossip and sensationalism for clear evidence, of which there is none, that the networks have intolerably abused their power. And the American people will be the losers if the managers of the local stations that run network news are to be made so nervous that they harass the networks to be less controversial, stop running network news or protect their licenses with Government-approved counterprogramming.

[From the Washington Post, Dec. 21, 1972]

WHITEHEAD: PROPOSAL WON'T LEAD TO CENSORSHIP

"Whitehead said yesterday his bill would free broadcasters from bothersome red tape and paper work. It increases the time span of a station's license from three years to five."

(By Tom Shales)

Administration spokesman Clay T. Whitehead yesterday denied that his proposed new broadcast legislation could lead to government censorship of the news.

Answering a charge by Sen. Vance Hartke (D-Ind.) Whitehead said on a CBS morning news program that "Our intent is 100 per cent to the contrary.... What we want is to have the broadcaster be a very independent man, a leader in his community who exercises responsibility for what he shows to his community."

Whitehead, director of the Office of Telecommunications Policy, announced his proposed legislation in a speech Monday in Indianapolis.

Broadcasters expressed concern over a stipulation that local stations be held accountable for the content of network newscasts they televise and that this be a factor in the renewal of their licenses by the Federal Communications Commission.

Whitehead said yesterday his bill would free broadcasters from bothersome red tape and paper work. It increases the time span of a station's license from three years to five.

In his speech, Whitehead used the phrase "ideological plugola" to describe what he considered partisan opinions broadcast by the networks as news. CBS reporter Nelson Benton pressed him for examples of such "plugola" in the interview.

"I don't want to cite any specifics," Whitehead replied. "This is not a vendetta against any particular individuals or any particular network."

Further broadcasting industry reaction to the speech from ABC network anchorman Howard K. Smith, who on his newscast last night associated what he called Whitehead's "threats" with the jailing of news reporters who refused to reveal confidential news sources.

"I hope it is not so," Smith said, "but it begins to look like a general assault on reporters."

Whitehead's proposals and "the courts' destruction of confidentiality" could lead to a time when "we will live solely by government handout," Smith said.

"Banners of outrage have unfurled all over New York with great thwoking sounds," said John Chancellor, anchorman for NBC, from his New York office. "I prefer to wait and see how dangerous this is going to get. I think it will be terribly difficult to put the proposal into workable legislative language. It may just die a-borning."

"We've been watching (our affiliates) ever since the first Agnew speech in 1969," Chancellor said. "I haven't seen even so much as a murmur from the affiliates. There is no revolt among the affiliated stations."

CBS anchorman Walter Cronkite could not be reached for comment.

[From the Los Angeles Times, Thursday, Dec. 21, 1972]

PROPOSED NEWS BILL HAS NETWORKS UPSET

(By Jay Sharbutt)

New York—A bill the Nixon Administration has drafted is causing new ulcers along Broadcast Row here because it directly involves the three networks' 589 affiliated television stations.

It could markedly affect whether those affiliates carry network news and entertainment programs when the subject matter is controversial.

It would require all stations at license renewal time to show they offered "reasonable, realistic and practical opportunities for the presentation and discussion of conflicting views on controversial issues."

SPECIFIC RESPONSIBILITY

And it would make individual stations specifically responsible for the balance and taste of a network program they aired. They couldn't offer a defense simply by saying they referred all complaints to the network's headquarters.

"God, is that going to cause a wave," said one stunned network executive who asked that he not be identified.

The ABC, CBS and NBC networks each own and operate five television stations in major U.S. cities. NBC also has 218 affiliated TV stations, CBS 196 and ABC 175, according to network spokesmen.

All must have their broadcast licenses renewed every three years by the Federal Communications Commission, although the proposed administration bill would extend this period to five years.

The measure was outlined in a speech Monday by Clay T. Whitehead, director of the White House Office of Telecommunications Policy. He said it wasn't a vindictive assault on the networks.

But Sig Mickelson, who headed CBS news for seven years, said the draft bill was dangerous in that it appeared to use affiliate stations as a club to hold over the heads of the networks. "And secondly, of course, it seems to be taking the first long step toward direct control of the news," said Mickelson, now a journalism professor at Northwestern University in Evanston, Ill.

Mickelson, head of CBS News from 1954 through 1961, currently is heading a 12-month private study of the relation of the media and the government.

He was asked what effect he felt the proposed legislation would have on network news coverage.

"I think it would have, to use that famous phrase, a 'chilling effect' on news," he said. "It would force such careful consideration of the news that I think it would force news personnel to be excessively conservative."

"In covering the news, you have to take a gamble once in a while. You can't play everything safe. And I think the network news divisions would have to play almost everything safe."

What effect would the measure have on investigative reporting?

"I'm afraid it would make it almost impossible to do investigative reporting," Mickelson said. "Because you can't do investigative reporting without getting into controversy."

[From the Washington Post, Dec. 22, 1972]

DR. WHITEHEAD AND THE FIRST AMENDMENT

The election has come and gone, the cabinet and part of the administration have been reshuffled, but, alas, some things haven't changed. They have only intensified. One of those things is the administration's hostility to free and vigorous journalism particularly as practiced by the television networks. That hostility, evident throughout much of the President's first term, is now to be made operational through legislation currently being prepared for submission early in the next session of Congress. This doleful information was served up in a recent speech

by Dr. Clay Whitehead, director of the White House Office of Telecommunications Policy in Indianapolis the other day.

Dr. Whitehead's speech, which underlines the administration's antipathy toward the free and sometimes adversary interplay between government and the press, deserves a bit of careful analysis because his main message is as deceptively packaged as it is dangerous. The clues to the real meaning of the speech were contained in Dr. Whitehead's sharp exposition of the administration's distaste for the content of network news shows. That distaste—foreshadowed with remarkable accuracy by presidential speech writer Patrick Buchanan last May in an interview with Elizabeth Drew—found its most colorful expression in Dr. Whitehead's suggestion that network news shows contain something called "ideological plugola." He went on to describe "so-called professionals" in the TV news business "who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis." Now come the fancy and deceptive packaging. Dr. Whitehead tells us that our First Amendment freedoms are being eroded by all of this and, therefore, the administration has designed some legislation to protect us.

The administration's remedy is to require local network affiliates to undertake more responsibility for what goes on the air. They will be required at license-renewal time to demonstrate that they were "substantially attuned to the needs and interests of the community" they serve . . . "irrespective of where the programs were obtained" and to show that a reasonable opportunity for the "presentation of conflicting views on controversial issues" has been afforded. All of that might seem unexceptional were it not linked both to Dr. Whitehead's extreme dissatisfaction with the news that networks have been providing and to the warning that "station managers and network officials who fail to act to correct imbalance or consistent bias in the network—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable at license renewal time."

The legislative package will come complete with incentives for docile local affiliates. Along with their new responsibility, they would get a couple of breaks they have long wanted: First, the license period will be extended from three to five years; and second, challenges either by community groups or by a hopeful alternative applicant for the license are to be made more difficult. It is a net horse trade. The local station owners would be given warm and gentle treatment in exchange for the requirement that they scrutinize the network's news offerings for "bias." At the same time, Dr. Whitehead's colorful language gives them a pretty good clue as to what kind of "bias" the government will expect them to have eliminated by license renewal time.

All of this reverberates with the echoes of Mr. Buchanan's conversation with Mrs. Drew on public television last spring. He suggested then that the network news operations had developed "an ideological monopoly" over the information the public is receiving, that the views of "middle America" were underrepresented and that perhaps some kind of antitrust approach to network news might have to be developed. The new legislative package, as described by Dr. Whitehead, parallels Mr. Buchanan's views except that it cleverly substitutes indirect encouragement by the government of pressure by local affiliates on the networks for direct intervention by the

government. The intervention by the local affiliates has been packaged with three powerful inducements: first, the desire to have their licenses renewed by the government, second, the lessening of FCC control over other aspects of their operations and, third, the local affiliates' own general preference for entertainment rather than public affairs and news material from the networks.

The end result, however, is the same and that is governmental pressure to blunt the critical inquisitiveness of the network news organizations—with the threat of governmental reprisals at the end of the line. Under the pretext of eliminating bias and in the guise of protecting our First Amendment rights, the administration is proposing to set the local affiliates, or failing that, itself up as the ultimate arbiter of the truth to which the public to be exposed. It is a move that strikes at the very heart of the First Amendment's notion that a people, in order to retain their freedom, must know as much as possible about what their government is doing for or to them and that any interference in this process by the government, however finely motivated towards the elimination of "bias," opens the way for an intolerable suppression of free speech and expression.

That tension is an essential part of our system with which Presidents from the beginning of the republic have been uncomfortable from time to time, but which they have tolerated because of their regard for the freedom of the people they were elected to govern. They understood that a free press meant a press that was free to inquire, free to develop its own professional standards and free to discipline itself. It is clear that the press does not always live up to the standard which editorial writers sometimes are tempted to ascribe to it. But it is also clear that one man's bias is another man's ultimate truth and that the founding fathers never trusted the government—any American government—to be the arbiter between the two as far as speech is concerned. The essence of press freedom is that professional discipline and consumer pressures constitute the safest corrective devices. The antithesis of press freedom is for those correctives to be supplied by the government.

Those fundamental principles and distinctions seem to have eluded this administration. In its efforts to eliminate the healthy tension between the press and the government—by which truth is more surely pursued than by any other device we have—the administration is endangering not simply the independence of network news organizations, but the fundamental liberties of the citizens of this country as well.

[From the Christian Science Monitor, Dec. 22, 1972]

MR. NIXON V. THE NETWORKS

There is a simple explanation of why the Nixon administration has resumed the offensive against the American television networks, both public and private. Almost nightly, those networks have the audacity to talk back to the man in the White House. They never give him a chance to appear to be all wise.

And there is an equally simple explanation of the choice of weapons by the White House in the new offensive. It is proposing legislation

which would require the individual stations which are licensed by the federal government to police the networks which are not. The individual station is always worried about losing its license. It can be intimidated.

Whether the White House seriously expects to get Congress to pass the legislation is beside the point. It almost certainly will not. And whether the networks need improving is also beside the point here. They could be a lot better than they are (as we have frequently pointed out). The essential fact is that the White House is threatening the three big commercial networks through the individual stations and threatening the public network by withholding of public funds.

What we are talking about here is not the survival of the networks as vehicles for light entertainment, sports and presidential performances. That is not in question. What is in question is the network as the producer of news programs which have a personality and dare to behave as public critics of White House policies. Specifically, we are talking about the evening half-hour news programs which are popularly known by the names of their stars—Walter Cronkite, Eric Sevareid, Howard K. Smith, Harry Reasoner, John Chancellor, and David Brinkley.

These programs are a main source of news and opinion for the American people. Their nightly audiences are enormous. And they do not accept at face value every pronouncement from the White House—as the White House would like.

Whether these programs are biased is a matter of angle of view. Those engaged in them consider themselves to be models of critical objectivity which they sincerely try to be and which we think is largely the case. But what to a newsman seems objective often seems outrageously biased to a devout member of the Nixon White House staff.

The legislation which the White House proposes would convert American television into what the French had during the de Gaulle era—a vehicle for the views of government which would never be questioned or doubted—an official, government-controlled channel for government propaganda.

Before anyone applauds such a purpose and supports the proposed legislation, they should first reflect that de Gaulle type television always benefits the party in office. Are Republicans always going to control the White House?

[From the New York Times, Dec. 23, 1972]

MESSAGE FOR THE MEDIA

The White House message to American broadcasters—commercial, public and educational—is coming through louder and clearer every day. That message is blunt: Stay away from controversial subjects. If you behave yourself, we will renew your license for a longer term. If you get Government funding, we will determine the kind of programs you will air.

Over the past two decades, occasional efforts have been made by White House spokesmen and Federal Communications Commissioners to interfere with the content of television programs, usually when they considered specific shows too critical of some aspect of Govern-

ment policy. Now, for the first time, an Administration is trying to change the independent structure of broadcasting itself by attempting to drive a wedge between commercial and public networks and their affiliated local stations.

The White House broadcasting czar, Clay T. Whitehead, youthful head of the Office of Telecommunications Policy, has proposed changes in licensing practices that circumvent the legislative authority of the F.C.C. The transparent goal of the changes is to hold out a honeypot to the local broadcasters—renewal of licenses for five years instead of three, plus vastly increased immunity against upset by outsiders eager to take over their Government-granted channel—provided they walk a tightrope of accountability to Washington for any network programs they put on the air.

What this means is that the major news, documentary and entertainment programs produced by N.B.C., C.B.S. and A.B.C. would be carefully scrutinized and possibly blacked out if deemed to contain what Mr. Whitehead, in his menacing phrase, calls "ideological plugola." One correspondent who is generally in strong sympathy and stronger favor with the Administration, Howard K. Smith of A.B.C. News, summed it up: "It begins to look like a general assault on reporters" that could lead to a time when "we will live solely by Government handout."

A similar threat is unfolding for public broadcasting stations. Henry Loomis, the new president of the Corporation for Public Broadcasting, has served notice on these stations that their funds will be in jeopardy unless he and his Presidentially-appointed board approve their major programs. These are interconnected by the Public Broadcasting Service, a creative subsidiary made up of representatives of the public and educational stations.

Early next month the C.P.B. and P.B.S. boards will meet to attempt to define programming responsibilities. Since substantially all of P.B.S.'s operating funds come from grants made by Mr. Loomis's agency, he is expected to call the tune. He has already declared that programs of a controversial nature in news and public affairs are not welcome. Unless the many loyal viewers of public broadcasting recognize and protest this Government interference in the programming process, the stations are in danger of being reduced to approved blandness.

In both commercial and public broadcasting, locally originated programs are of great value to communities. But it is impossible for local stations to produce the major national and international news programs vital for an informed public and electorate. These require large, skilled staffs and major investments of time and money. By striking at the networks, the Office of Telecommunications Policy and the Corporation for Public Broadcasting are striking at the heart of news and public affairs programs.

This is the message for the media. Even if Congress does not undercut the F.C.C.'s authority or approve licensing changes, the Administration will have succeeded in warning the networks and stations to avoid programs that do not follow the Government line. The voices of Congress and the public will have to be heard if broadcasting is not to be turned into a counterpart of the domestic United States Information Agency.

[From the Chicago Tribune, Dec. 23, 1972]

'BALANCE' ON TV AND INTIMIDATION

(By Bob Cromie)

Someone [it was Ralph Waldo Emerson, if you insist on knowing] once said: "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines."

The statement should prove useful to the Nixon administration, which at the moment is complaining once more about the lack of balance in the nation's television programming and at the same time is demonstrating its own lack of balance by giving exclusive news stories to the Washington Star-News because it doesn't like the attitude of the Washington Post.

In addition, the Post has been told that its society reporters will not be welcome at White House social events, which is the sort of petty reprisal you might anticipate from, say, the leading merchant in some one-horse town, enraged because the local paper printed something that upset his outsized ego.

NOT ENOUGH REACTION

To date there has been too little reaction, it seems to me, to recent warnings from Clay T. Whitehead, director of the Office of Telecommunications Policy, who may perhaps be described as the President's border collie whose job is to keep the sheep in line.

In a speech delivered Monday in Indianapolis before Sigma Delta Chi, the professional journalism fraternity, Whitehead announced that legislation is being prepared, for the Congress to consider, which would demand that in order to have its license renewed each station must prove that it has done a balanced job of presenting controversial issues.

He added that in the case of network news the local stations' managers have the responsibility of deciding whether such news is fairly presented.

Even a President, I suppose, can be human enough to be irked when something critical is said about him or his policies. But if this annoyance is carried to the extreme to which Whitehead seemingly has been told to carry it—so that perhaps, if a commentator attacks the renewed bombing of Hanoi or suggests that peace might be here by now if this or that had been done, it then may become necessary to bring on someone else to declaim on the beauties of leveling North Viet Nam or to inveigh against Hanoi for not yielding completely to the blandishments of Henry Kissinger.

The result would be a mishmash which only a dullard would find engrossing. Certainly, the President can always get whatever time he wishes [altho I do recall Democratic complaints that they were unable to acquire equal time], and a Presidential speech or so would seem to provide a great deal of balance to whatever errors Whitehead claims he has found. But since Whitehead doesn't seem to have given any definition of what he terms "ideological plugola," does this mean that not only every news broadcast but every entertainment skit must be weighed by the station showing it?

TO BALANCE ENTERTAINMENT?

Some of the accounts of Whitehead's talk said he did include entertainment shows in his warning about what must be watched. In that case, if you have Mort Sahl or the Smothers Brothers, must you balance their material with some right-wing [or at least conservative] material?

Perhaps Whitehead wouldn't mind making a list of right-wing comics—conscious comics, that is—who can be called upon when it becomes necessary to balance one of Dick Smothers' grimaces, or one of Sahl's wry remarks, or even a lyric or so from Joan Baez.

Joel Daly, one of WLS-TV's newsmen, summed up the Whitehead talk with beautiful precision the other evening. After explaining the speech and its implications, Daly concluded with this ominous remark:

"The way things are going I thought I'd better register my concern while I still have the chance."

Do you suppose if you read the First Amendment over the air it will be necessary to give the opposition view?

[From the Editor and Publisher, Dec. 23, 1972]

THAT CHILLING EFFECT

When Clay T. Whitehead, director of the White House Office of Telecommunication Policy, addressed the annual meeting of the American Newspaper Publishers Association last April he warned that there is a strong public demand for the government to require journalistic balance in broadcasting. "As that philosophy spreads," he said "the freedom of your industry is endangered."

He now reports that the White House has drafted new legislation to enforce "local responsibility" and impose editorial standards on television stations. They would be "held fully accountable at license renewal time."

The chilling effect of this on broadcasters will be obvious. In view of Mr. Whitehead's remarks to ANPA, we feel the chill wind blowing on newspapers, also. It is particularly so because this "philosophy" appears to be spreading from his office in the White House, and not from any obvious demand.

We have always felt that broadcasters, like publishers, should be held responsible for everything they "publish." FCC regulations attempt to do that now. But this new legislation would mean that the courts, or some government agency, would attempt to determine exactly what "imbalance" in the news is, "consistent bias," and "elitist gossip in the guise of news analysis."

Who is going to set the standards at any given time in history? The government?

[From the Kalamazoo Gazette, Dec. 24, 1972]

PRIOR TV CENSORSHIP SHOULD BE SCUTTLED

What we hope is a trial balloon that should be shot down immediately is a proposal for federal legislation which would hold local

television station managers accountable for the contents of all programming, including network news and commercials.

The proposal comes from an official of the Nixon administration—Clay T. Whitehead, director of the White House Office of Telecommunications Policy.

His thesis is that station managers “who fail to correct imbalance or consistent bias in the networks—or who acquiesce by silence—can only be considered willing participants” in such bias and imbalance. And Whitehead says they should be held “fully accountable at license renewal time.”

We are disturbed, naturally, at this proposal for prior censorship of another branch of the news media by the implied threat of loss of a broadcast license. For it would be the “government” that presumably under the proposal, would be the determinant of “bias” and “imbalance.” And who would set the standards for this judgment?

But beyond this, the breadth of the proposal is appalling. The commercial basis for television and radio is network programming, and to make local stations responsible for what the networks put on the air would be nigh asking the impossible.

The television stations that serve our area do, in our opinion, an excellent job of meeting their public responsibilities. To ask them to screen in advance all programs from the network and then evaluate them in terms of “bias” and “imbalance” is absurd.

There is a basic question involved: Who should decide what is “bias” or “imbalance” in the news media—the government or the public? We think it should be the public, which has always had the option of turning off a TV set or not reading a newspaper.

Exception is taken by some to some of the programming in television and radio as exceptions are taken by some to some of the content of newspapers and magazines. But, by and large, television and radio, like newspapers and magazines, are responsive to the demands of their audiences and customers. And most of the people do not want the government telling them what they can, or should, see, hear and read.

The Whitehead proposal should be scuttled, by the President himself, if necessary.

[From the Los Angeles Times, Dec. 24, 1972]

INTIMIDATION OF THE NETWORKS

The White House has decided that television isn't as good as it should be and says it is going to do something about it. But hold your cheers. For there is evidence that it may be nothing more than a mask for an effort to intimidate network news and programming.

Clay T. Whitehead, director of the President's Office of Telecommunications Policy, unveiled the plan without unveiling the legislation that Mr. Nixon hopes Congress will adopt. In this circumstance, comment of necessity must be limited to what Whitehead said and the emphasis he chose.

What he offered, in essence, was a mix of new regulations on station license renewal, which didn't seem new at all; a broad-brushed attack on network programming, particularly the news function of the net-

works, and a warning to stations affiliated with networks to bring changes in network program and news operations or risk the loss of their station licenses.

It may be significant that Whitehead aimed most of his shots at the networks and had little to say about those non-network stations that often are the reservoir of the ultimate in warmed-over mediocrity. He was, in effect, beginning his crusade for better television by attacking the areas that at least harbor most of what quality there is in American commercial television.

His attack was the more mischievous because of its imprecision, bordering on smear, as he talked about "so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis," of the "ideological plugola" of those who "stress or suppress information in accordance with their beliefs," of the "bias in the networks," of unacceptable network standards of taste, violence and decency.

No names. No examples. But a threat. Clean it up, whatever it is. Or there will be no license renewal.

Network officials immediately interpreted Whitehead's words as an effort to drive a wedge between the networks and their affiliated stations. Of course it was. Carried to the ultimate application, his proposals could destroy network television by making its programming susceptible to every local attack, and leaving the affiliated stations more vulnerable to arbitrary loss of their licenses.

But in this regard, a contradiction is evident in what Whitehead has proposed. He has not matched his new threat with new rules. And he himself has defended his proposals as the means "to increase freedom and responsibility in broadcasting."

He proposed two criteria to determine license renewal: (1) a demonstration that the station is in tune with the needs and interests of the community it serves and (2) evidence that reasonable, realistic and practical opportunities have been given to present and discuss conflicting views on controversial issues.

So what's new? Station license renewal presently is tied to the so-called "community ascertainment" formula. And the fairness doctrine haunts every discussion of a controversial issue. If there is anything new, it is his suggestion that the station be evaluated "from the perspective of the people of his community and not the bureaucrat in Washington," but when he was questioned about this, he indicated the job would remain in the hands of the Federal Communications Commission.

His package includes two elements that might ease the chaos and confusion in present renewal procedures, however. He supports extending the term of a license from three years to five. And he argues that the burden of proof should rest with those who challenge a license renewal.

When the legislation is unveiled, it will be for Congress to determine the real intent of the White House. No doubt about it, some reform of procedures is desirable. An improvement of program quality would be welcome. But Whitehead's presentation of the President's ideas seems transparent to us, failing to hide an intent to weaken the networks, and particularly, to intimidate the network news and public affairs departments. That is not welcome.

[From the Washington Star, Dec. 24, 1972]

WHITEHEAD AND THE FIGHT OVER TV NEWS

(By Stephen M. Aug)

Is Clay T. Whitehead trying to wipe that editorializing smirk off David Brinkley's face?

Or is Whitehead—President Nixon's principal spokesman on communications—trying to do something more serious than merely eliminate the facial gestures or vocal intonations that, to some television viewers at least, indicate bias in network news reporting?

There are those who see Whitehead's criticism of bias in network news organizations last week as just one more step in a Nixon administration campaign of repression against the news media.

Witness, they say, the rash of jailings of reporters who were under subpoena to produce notes and name news sources; the suit to prevent the New York Times from publishing the Pentagon papers; and now veiled threats by tying license renewals to a call for more "responsibility" by local broadcasters who rely too much on the networks for their news.

Not so, says Whitehead, the 34-year-old director of the Office of Telecommunications Policy. Whitehead holds bachelor's and master's degrees in electrical engineering and a PhD in management from Massachusetts Institute of Technology. He has built his office from a tiny White House cubicle that once dealt solely with the esoteric matter of allocating frequencies among federal agencies into an administration voice on all communications policy—ranging from the structure of a domestic satellite system to cable TV and broadcast license renewal.

In his speech he mixed calls for greater responsibility over the content of news programs with an assertion to broadcasters that the administration wanted to free them from the uncertain feeling they get every three years when their licenses are up for renewal.

Whitehead promised a five-year renewal term, a new law that would make it more difficult for a competing applicant to wrest a license from an existing holder, a prohibition on the Federal Communications Commission practice of making policy decisions through individual license cases (the FCC would have to make policy by broad rule-making proceedings) and a ban on setting fixed percentages for the types of programs broadcasters must show if they are to keep their licenses.

That's quite a present for an industry which has been seeking stability for the past couple of years as license challenges, principally by minority and community groups, have mounted. The proposed legislation, however, would not eliminate the present procedure on petitions to deny license renewal—the practice used most by minority groups seeking to make broadcasters more responsive to community needs.

Under the present law, any competing application for a license at renewal time must be scheduled for a hearing—and these hearings can take years and are very expensive. Hearings are not required, however, on petitions to deny license renewals if the FCC finds that proponents of a denial haven't made at least a preliminary case.

There are those in the broadcast industry who express concern, however, that the proposed legislation would add new requirements to the

FCC's "Fairness Doctrine," which requires broadcasters to air all sides to controversial issues. This legislation would go further by requiring broadcasters to show affirmatively that they have met the fairness standards.

And that, apparently, coupled with the attack on network news as being biased, has broadcasters frightened even more than usual.

Consider, for example, the words of Sol Taishoff, editor of *Broadcasting Magazine*, who is probably closer to the business than if he held a broadcast license: "I think the bill taken by itself is something that broadcasters would relish—independent stations and networks alike. Some might quarrel with it. But when they tie it together with direct threats, then the boys have misgivings—I know I do."

Or Vincent T. Wasilewski, president of the National Association of Broadcasters: "We're pleased that the administration has endorsed the need for stability in the broadcasting industry . . . Be that as it may, Mr. Whitehead's disturbing statements regarding news bias and broadcast management's judgment raise issues that should not be related to license renewal."

And Reuven Frank, president of NBC news: "His invoking the license procedure has to be a threat because the license is the right to do business. No newspaper publisher would understand that . . . you can raise second class mail to confiscatory proportions and that makes life very, very tough . . . but these people can pull the plug."

In his speech, Whitehead said local broadcasters should not "abdicate their responsibility" for program content even when the programs come from one of the three national networks.

"Station managers and network officials who fail to act to correct imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable by the broadcaster's community at license renewal time," he said.

The threat, according to broadcasters, is clear: Network news is biased and therefore you'd better watch out if you want to keep your license.

Just what makes Whitehead believe network news is biased—presumably against the Nixon administration—is a little less clear. In an interview, he said network news must be biased "because so many people feel that it is. When you have got enough people who think it is, then it is."

In saying this, Whitehead touches the same responsive chord in many people that Vice President Agnew touched when he began criticizing the media a couple of years ago. Lloyd Morrisett, president of the John and Mary Markle Foundation, an organization that supports media studies, calls it a "vague apprehension shared by many Americans."

That apprehension, according to Whitehead, is that the direct source of television news is concentrated in few hands—essentially the news department of three organizations.

He compares his concept with economics: When there is too much economic concentration in an industry, the government may use anti-trust laws to break it up or it may place it under regulation.

It's the same with ideas, he says: "If there's too much concentration in a few hands . . . some points of view get heard or favored more than others; or some get distilled out entirely."

Whitehead views the administration plan as lessening government regulation over broadcasters—but at the same time extracting the promise of what it views as greater responsibility by broadcast management. He says:

"How often do you see the government saying 'we should do less.'? Normally there's a complaint about an industry being irresponsible, and this leads to new laws. But we're turning that around. We're saying you've got to remove some government restrictions and rely on private enterprise.

"But if so, we expect a voluntary exercise and acceptance of responsibility. If irresponsibility gives rise to regulation, then a removal has to have a call for the expectation of responsibility," he says.

Whitehead's critics—and there are many—say that's just the old carrot-and-stick approach, and further that Whitehead is trying to drive a wedge between the networks and their affiliates, to destroy the confidence that affiliate stations have in network news.

The balance for which Whitehead appeals, however, need not destroy any such confidence. It is likely his approach could be satisfied by a local station media critic or by a local station spending more resources on news and trying to do some of its own digging rather than relying on a network.

Admittedly, this is impractical if not virtually impossible for a very small station which has access only to a network and a news wire service.

In any case, the Whitehead positions—at least on less regulation for broadcasters and the emphasis on greater local station participation in network affairs—is consistent with other administration stands.

Whitehead himself has urged deregulation of radio broadcasting—and the FCC has begun moving in that area. He urged some time ago a return to local control and less national programming for public television—and President Nixon vetoed a \$155 million authorization for public TV citing the need for "localism."

It is, however, questionable whether the administration can propose or Congress can legislate any system whereby everybody will be pleased with network news—and that includes not only the public at large, but the network affiliates as well.

[From the Los Angeles Times, Dec. 25, 1972]

NEW MEDIA CRITIC MUST HAVE INHERITED AGNEW'S WRITER

(By Ernest B. Furgurson)

WASHINGTON.—At the White House, they explain their latest excursion against the First Amendment in almost patriotic terms: when Clay T. Whitehead speaks for the Administration and hints at bringing the government even more directly into censorship of broadcast news, he is merely seeking to start a good old-fashioned American public debate.

That his carefully phrased remarks, certainly cleared by high political policymakers in the White House, are a clear menace to freedom of the press just ensures that the debate will be healthy and direct. So let it begin.

Whitehead, who is a bright young man out of MIT and the Rand Corp., was chosen originally as director of the White House Office of Telecommunications Policy presumably because he is expert in systems engineering and other such technical disciplines. That no doubt is helpful in one of the important areas of communications controversy these days, cable television.

But what Whitehead increasingly has tried to do is apply federal government systems engineering, with a distinctly Nixon-Republican flair, to the content of news programs. He broke into the open first by deploring the central (for which read "liberal") production of news and public affairs programs on the Public Broadcasting Service, and since then a new chief of the corporation for public broadcasting has been named to put his views into policy.

Now he is after the Big Three private networks that feed news and news analysis into every home.

Whitehead made a speech at Indianapolis calling for legislation to set two standards for television station license renewals from the Federal Communications Commission. Stations would have to show they had been attuned to the needs of their communities, and that they have afforded genuine opportunity for the airing of conflicting views on hot issues.

Standing alone, his suggestions may seem reasonably innocuous, not out of line with existing provisions that stations can be challenged at license renewal time for alleged failure to serve the public. But Whitehead now wants the individual stations also to be held responsible at renewal time for the balance and fairness of the network news programs they broadcast—and if they want to be sure of renewal, they had damn well better put pressure on the networks to shape up.

Even going that far, his proposals might sound acceptable if drifting out of academe, or from some seminar of private broadcasters. What makes them totally unacceptable and deeply threatening is their source—the most censorship prone and politically pugnacious White House since the television era dawned.

This is the outfit engaged in a niggling reprisal against a society reporter of the Washington Post because the Post was, by White House standards, too aggressive in its coverage of the Watergate affair. It is the Administration that turned Vice President Agnew loose on the networks and the press. It is the one whose former attorney general urged that newsmen be held vulnerable to subpoena to disclose their sources—and a subsequent court ruling to that effect has a series of reporters either in or threatened by jail.

Indeed, despite the cold and colorless sound of his credentials, it appears that Whitehead has the Agnew franchise for the time being. The White House declined to respond when asked whether he had inherited the Agnew speechwriter, too, but the stylistic evidence was strong, and it was the language surrounding his legislative proposals that raised hackles in the networks.

He put out unfounded innuendo about "ideological plugola" by newsmen who purportedly stress or suppress facts in line with their own prejudices. He called for management discipline of "so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis."

To which the dedicated television fan may say, well, he's right, the networks are overloaded with guys who give us that old Eastern Establishment "booshwa" as if it were the gospel, and why shouldn't they be called to account for it?

And to which anyone sensitive to his basic freedoms must say in return, fine, let's you out there in televisionland call them to account, and let's insist that the industry police itself. But any American who respects his own judgment and wants to exercise it on the events of the day rather than on propaganda certified by the federal government will be a fool to let the systems engineers, ex-editorial writers or ex-advertising men in the White House get even one finger so much as one millimeter farther into the judging, balancing, approving or disapproving of broadcast news and comment in this country.

[From the Washington Post, Dec. 26, 1972]

"UNTOLD MISCHIEF"

(By Paul A. Porter)

My high school history professor was a Civil War buff and a Confederate partisan. He was the author of a textbook to which he gave my favorite title: "A Short and Unbiased History of the War Between the States Written From a Southern Point of View."

Now comes Dr. Clay T. Whithead, director of the Office of Telecommunications, and proposes that broadcasting licensees be given a five-year license instead of the present three-year tenure if they promise to be "fair" and "unbiased" and eschew such wicked practices as "elitist gossip" masked as news analysis and forswear "ideological plugola"—whatever the hell that means.

The text of the legislative proposal has not yet surfaced and hopefully it will not support many of the ominous inferences which many have drawn from Dr. Whithead's remarks. Obviously, Congress will view any such proposals with skepticism and examine them in depth. Many, many fundamental questions arise.

I do not believe that even the most talented systems and management engineer from M.I.T., which Dr. Whithead undoubtedly is, can run the First Amendment through a computer without creating untold mischief.

[From the Evening Star and Daily News, Dec. 26, 1972]

WHITEHEAD OFF BASE IN ATTACK ON TV INDUSTRY

(By James J. Kilpatrick)

Clay T. Whithead charged onto the playing fields last week with all the sis-boom-bah of a linebacker kept too long on the bench. He had come to replace Vice President Agnew, who has turned demure in recent months, in the administration's great body contact game of badgering the TV networks.

Whitehead is director of the administration's Office of Telecommunication Policy, an agency that two years ago sprang full blown from the Nixonian brow. His background is in electrical engineering, by way of the Massachusetts Institute of Technology, and ordinarily his concerns go to the technical aspects of telephones, radio frequencies, cable television and satellite communications. On Dec. 18, in Indianapolis, he turned to a topic less abstruse but more ephemeral: The general quality, and especially the fairness, of network television.

The administration, he said, has drafted a bill that would provide for five-year (instead of three-year) license renewals. The bill would free TV stations from some of the tedious form-filling required under present regulations of the Federal Communications Commission. That was the good news.

The bad news, from the industry's point of view, is that the administration's bill would set up statutory criteria for license renewal. A broadcaster would have to demonstrate that his operations are "substantially attuned to the needs and interests of the community he serves." He must respond to those needs and interests in "all" his programs, whether locally created or obtained from a network. He also must show that he has afforded "reasonable, realistic and practical opportunities for the presentation and discussion of conflicting views on controversial issues."

"I should add," said Whitehead, "that these requirements have teeth. If a station can't demonstrate meaningful service to all elements of its community, the license should be taken away by the FCC."

The President's man bore down repeatedly on local station responsibility. It no longer will suffice, he warned, for local managers to pass the buck from program content and news judgment to networks in New York. He hurled a couple of Agnewian shafts at TV reporters engaged in "ideological plugola." He denounced professionals "who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis." It was quite a speech.

Yet Whitehead, whose training is in practical matters, laid down a set of impractical demands; and coming from a man so inspired by "responsibility," his broadbrush charges (he refused to name names) were themselves irresponsible.

As a practical matter, network TV programs, fed through local stations, cannot be equated with Associated Press wire copy, printed in local papers. Well before deadline, a newspaper editor has his hands on the available wire copy. He has read it. He can weigh it against other available copy. He can exercise his own professional judgment in terms of the needs and interests of his community.

Obviously, no such flexibility attaches to the national output of network TV. Local managers can—and do—raise Cain with network executives, just as local managing editors jump on the AP; but it is not the same.

Whitehead also failed to acknowledge improvements in the one area of greatest antagonism—TV news and commentary. Much liberal bias remains (it would be interesting to count the conservative books favorably reviewed on NBC). Too many network panels are titled to the left.

But CBS, at least, has created a stable of nine "Spectrum" commentators—three on the left, three in the middle, three on the right—

and an impression is growing that all the networks are trying conscientiously for better balance.

This troublesome problem of bias doesn't reside in "ideological plugola." It is a human problem: Human beings make human judgments. They err and none of Dr. Whitehead's remedies will cure the ill.

The problem is also a technical problem: Channels of telecommunication are limited in number; they have to be allocated, and some federal authority has to exercise that difficult function. If the Nixon administration will yak a little less, perhaps the station managers and the viewers, having won some improvement, will strive for a little more.

[From the Wall Street Journal, Dec. 26, 1972]

POLICING THE 'FAIRNESS' OF TELEVISION

(By Wayne E. Green)

WASHINGTON.—Local television stations, worried about keeping their licenses, shouldn't get too enthused about an offer the Nixon administration made them last week.

At first glance, the terms sound inviting: the administration will push legislation that would add two years to the term of a license. In return, the bill would require local broadcasters to police the fairness of network news shows they air. But closer examination reveals the proposal to be nothing to cheer about.

For one thing, the administration probably can't pull off the deal, which has been outlined by Clay T. Whitehead, director of the White House Office of Telecommunications. The prospect of such legislation already has prompted serious congressional opposition. Also standing in the way are several court decisions, which have viewed the scrutiny of program content as an illegal form of censorship. Moreover, there's growing suspicion that the administration won't really push for passage of the bill—that its real objective is just to frighten the networks into friendlier coverage of President Nixon.

Even if the administration's plan does fly, it will bring local broadcasters a host of new daily operating problems, plus some fresh worries at license-renewal time—the problem of how to demonstrate, for example, that network programs they've aired have been fair, tasteful and in keeping with local community needs.

As Mr. Whitehead described things, the administration plans to propose legislation that would lengthen the term of a station's license to five years from the current three while making it tougher for citizens groups and others to oppose a station at license-renewal time. In return, local stations would have to monitor and somehow challenge "bias" in network news shows and poor taste in network entertainment programs. Failure to do so might cost them their license.

By linking the impending bill with the sensitive question of balanced network news reporting, Mr. Whitehead already has plunged into controversy and perhaps dimmed its chances for passage. Indiana Democratic Sen. Vance Hartke has attacked the administration and called for Senate subcommittee hearings on "government censorship of the press." And Sen. William Proxmire, the Wisconsin Democrat, has said he'll introduce a constitutional amendment specifically extending the free press guarantee to broadcasters.

FCC REACTION

Nor can the administration count on the unqualified support of the Federal Communications Commission, the primary broadcast regulator. That agency has always opposed the idea of policing program content. Besides that, FCC Chairman Dean Burch has never taken kindly to what he considers interference by Mr. Whitehead in FCC matters. None of the Republican members of the commission has commented publicly on the administration plan, but some of them are grumbling privately. One staffer suggests that Mr. Whitehead simply doesn't understand how a local television station operates.

Mr. Whitehead's apparent lack of concern over stirring the controversy has, in turn, raised some questions about the administration's motives in disclosing its legislative plans. He insists the plan is a serious one, aimed at "unraveling the big maze" of broadcast regulation, but a number of communications experts disagree. "I don't think the administration gives a damn about the legislation," says a Washington broadcast attorney. "It just wanted to deliver the networks a message."

Certainly some of Mr. Whitehead's rhetoric in disclosing the legislative plan was reminiscent of Vice President Agnew's frequent attacks on the networks and other members of the press. Mr. Whitehead described some journalists, for instance, as "so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis."

Even if the administration is serious about the legislation, its passage wouldn't be nearly the boon that some local broadcasters might think.

True enough, the longer term would add stability to their licenses, something they desperately want in the face of mounting challenges to those licenses at renewal time. And on the surface, the bill seems to say that a station needn't worry about losing its license as long as it has made a "good faith" effort to respond to the local community's programming needs, and as long as it has aired all sides of controversial issues. (The latter requirement is merely a restatement of the existing FCC fairness doctrine, a test stations already must meet in their daily operations.)

OPERATIONAL NIGHTMARES

But in describing the planned legislation, Mr. Whitehead talked about new obligations that will create operational nightmares for local stations, especially network affiliates that, he says, get about 61% of their programs from the networks. The main obligation: policing the content of all network programs—programs over which they have little control.

In Mr. Whitehead's view, local stations may no longer accept network standards of "taste, violence and decency" in programming. And they must "jump on the networks," he says, if network programs are "violent or sadistic" or if they "glorify the use of drugs." Perhaps more significant, local stations must insist on balanced news programs, Mr. Whitehead said, "whether the information comes from their own newsroom or from a distant network."

Those station managers and network officials who "fail to act to correct imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants," said

Mr. Whitehead, who went on to suggest that such inaction might jeopardize their licenses.

Mr. Whitehead's rationale is high-sounding. He says station managers simply would be exercising the type of journalistic judgment that publishers and editors do. This would be in keeping with the best traditions of a "responsible free press," he suggests, and it would take the editor's function away from Congress and the FCC, where it is now, and put it where it belongs.

But there are enormous practical problems inherent in such a plan. Local newscasters are forced to rely for much of their national and regional news, for example, on stories provided by newswire services, such as Associated Press. Pressured by deadlines, it would be impossible for them to verify the accuracy and fairness of stories reported from hundreds of miles away.

Network news shows present an even bigger problem because many of them are televised "live" and, thus, aren't amenable to pre-broadcast scrutiny by local stations. "A station simply can't verify everything that goes on the air," says one FCC official. "How does it know what Walter Cronkite is going to feed down the wire?"

THE LEGAL QUESTIONS

And despite Mr. Whitehead's free-press phraseology, there is considerable doubt that stations have a legal right, much less an obligation, to exercise such far-reaching control over program content. While Mr. Whitehead talks about increasing the "freedom and responsibility" of broadcasters, courts and legal scholars have viewed that sort of responsibility as nothing more than self-censorship.

One such scholar is Warren Burger, the Nixon-appointed U.S. Chief Justice, who addressed the issue in 1968 as a member of the Federal Appeals Court in Washington. His comments came in a case on appeal from the FCC, which had refused a request by the Anti-Defamation League of B'nai B'rith for hearings on the license-renewal application of radio station KTYM in Inglewood, Calif.

The league had objected to certain anti-Semitic remarks made by a commentator while using air time that had been purchased from the station. The station offered the league free equal time to use in any way it desired, but the league refused. It complained to the FCC that the station had done nothing until the programs were called to its attention and that, even then, it declined to either cancel the programs or control the commentator in any way.

In a majority opinion upholding the FCC, Mr. Burger said stations may not exercise that sort of control or responsibility where program content is at issue. Quoting then FCC Commissioner Lee Loevinger, he said:

"Talk of 'responsibility' of a broadcaster in this connection is simply a euphemism for self-censorship. It is an attempt to shift the onus of action against speech from the commission to the broadcaster, but it seeks the same result—suppression of certain views and arguments.

"Since the imposition of the duty of such 'responsibility' involves commission compulsion to perform the function of selection and exclusion and commissioner supervision of the manner in which that function is performed, the commission still retains the ultimate power to

determine what is and what is not permitted on the air. So this formulation does not advance the argument either constitutionally, ideologically or practically."

Mr. Burger concluded by summarizing what seems to be the basic problem the administration faces if it's inclined to push its new plan: "Attempts to impose such schemes of self-censorship," he said, "have been found as unconstitutional as more direct censorship efforts by government."

The U.S. Supreme Court subsequently refused to review the decision, thus indirectly upholding it.

[From the Christian Science Monitor, Dec. 26, 1972]

"ELITIST"—BATTLE CRY IN FIGHT OF GOVERNMENT VS. TV?

(By Richard L. Strout)

WASHINGTON.—The word "elitist" has become a partisan code word in Washington, sometimes used by politicians to attack intellectual critics. So when it pops up in an administration speech proposing rigorous legislative regulation, Washington pricks up its ears.

There has been too much TV "elitist gossip" in the "guise of news analysis" Clay T. Whitehead, director of the White House Office of Telecommunications Policy, declared in a speech before the Indianapolis chapter of Sigma Delta Chi, the professional journalism fraternity.

To deal with the situation, Mr. Whitehead announced that the administration has ready for Congress strong new legislation that would place greater responsibility on local TV stations who want their licenses renewed. Be impartial, include local service, stop being "elitist"—or else, Mr. Whitehead seemed to say.

Sensing possible trouble for TV, CBS gave unusual prominence to the Whitehead speech, without immediate comment, though another network attacked it.

Broadcasting is regulated by the Federal Communications Commission, which has the power in extreme cases to revoke licenses when the three-year period expires. Some local stations have asked that the three-year license be extended to five years.

Mr. Whitehead, whose delivery as seen on TV was firm and even ominous, attacked what he called "ideological plugola" in news coverage by networks. This, he said, is not merely broadcast bias for pay (payola), but bias in news management: "Men also stress or suppress information in accordance with their beliefs," he charged. "Will station licensees or network executives also take action against this ideological plugola?"

His comments seemed to be a threat against local stations affiliated with a network to use greater discrimination in using material supplied them by networks, and to provide more local coverage of their own.

The adversary relationship between media and White House broke into sharp attacks two years ago when Vice-President Spiro T. Agnew attacked press and TV. It quieted in the election, but the White House feels bitter about TV presentation of the sensitive Watergate affair, which it feels was unjustly linked to the White House staff.

Local stations, Mr. Whitehead said sharply, "can no longer accept network standards of taste, violence, and decency in programming," and no area is more important than in presentation of news.

Few here think that tough legislation would go through a Democratic Congress without protracted scrutiny. However, in a war of nerves, the Whitehead warning is important. The White House is confident that most Americans get most of their news by television.

"If Whitehead really means this, we might as well be living in the Soviet Union," exclaimed one broadcaster, Thomas Chauncey, head of TV station KOOL in Phoenix, Ariz. "This would mean censorship of news and entertainment, the government telling us what to broadcast and telling the people what they should see or hear."

Mr. Whitehead says there is "a steady increase in the amount of network programs carried by affiliates between 1960 and 1970. On the average this amounts to 61 percent," he said. He charged local stations exercise "little responsibility" for programs that "come down the network pipe." Local responsibility "is the keystone of our private-enterprise broadcast system."

[From Newsweek, Jan. 1, 1973]

MR. NIXON JAWBONES THE MEDIA

Richard Nixon's Administration has long decried the national media as too liberal and too hostile—in the last four years the White House has sought to trim journalism's sails by Vice Presidential insults and Justice Department injunctions. The one plausible weapon Mr. Nixon did not attempt to develop in his cold war with the media was some sort of additional regulatory authority from Congress. Speaking last week in Indianapolis, however, a second-level White House official named Clay T. Whitehead, 34, director of Mr. Nixon's Office of Telecommunications Policy, disclosed that the Administration will soon submit legislation to Congress giving the government broad, if indirect, new powers to combat what he called the "consistent bias" of programing on the television networks—presumably meaning a liberal bias, and presumably meaning news and documentary programing.

Under the proposed bill, Whitehead said, the nation's 589 network-affiliated stations would be held individually responsible by the Federal Communications Commission for balancing or removing the the "ideological plugola" of the network program they carry, on pain of losing their licenses. "Station managers and network officials who fail to act to correct imbalance or consistent bias in the network, or who acquiesce by silence," Whitehead said, "can only be considered willing participants, to be held fully accountable at license-renewal time."

To network officials along New York's television row, the Whitehead messages struck home as the Administration's most ominous threat yet to broadcasting's traditional but legally fragile liberties and privileges. And many liberal observers seemed to regard it as the White House's most direct assault on First Amendment guarantees since its effort to suppress publication of the Pentagon papers by The New York Times and The Washington Post.

As the network broadcasters—and not a few newspaper editorialists—saw it, the Whitehead bill offered an insidious carrot-and-stick incentive to station owners. Its main lure is that it extends the station's licensing period to five years from the present three—a boon the owners have long lobbied for—and assures licensees of virtually automatic renewal as long as they keep their records clean (they are now subject to challenges from anyone who contends he can run a better station). In addition, licensees would be freed of the present requirement to allocate some percentages of air time to specific interests such as religious and agricultural news—or even public-affairs programing. Instead, they would be asked to demonstrate their general “responsibility”—one major criterion being, in Whitehead's words, the vigilance with which stations pursue “sense” instead of “sensationalism” and eschew “elitist gossip in the guise of news analysis.”

To liberal critics, it seemed clear enough that “elitist gossip” could be interpreted to define any unfavorable comment on Mr. Nixon or his policies, and that the charges of “sensationalism” might be applied to pictures of the Vietnam bombing, a documentary on the ITT case or anything else that the White House considered best left unmentioned. Many affiliates *are* more conservative than the network news teams, and some just might begin blacking out much controversial reporting if it were made worth their while to do so. This sort of concerted affiliate pressure could force the networks to dilute their journalistic independence and enterprise.

Threat: Caution ran so deep in New York last week that the networks offered hardly any public rebuttal to Whitehead's proposal. NBC news to Reuven Frank gave a brief statement to the press the morning after Whitehead's speech (That's quite a threat!) and then fell silent. Two veteran newscasters—Eric Sevareid on CBS and Howard K. Smith on ABC—denounced the Administration bill on the air, but almost all the network brass remained incommunicado. “We don't want to haul off and say, ‘This is the worst thing we've ever heard of,’ when our affiliates might be looking at the part about five-year licenses and saying, ‘Hey, this isn't so bad,’” explained one executive who declined even to be identified by network.

Even as the networks lay low, however, the affiliates began to make their views known—and significant numbers of them known—and significant numbers of them in all sections of the country apparently regarded the Administration's guidelines as redundant, unworkable, outrageous, or all three. “Look, this is an old game,” said Ray Miller, news director of Houston's NBC affiliate, KPRC-TV, “They haven't got any hold on the networks, so they are attempting to get local stations to make a protest. It's nothing but verbal intimidation. Stations have long wanted to have licenses renewed every five years instead of three, to cut down on paper work and make the renewals less haphazard. So [Whitehead] is willing to throw this in with his attempt to curtail any kind of ‘controversial’ news about the Administration.”

Many station managers pointed out that local stations have always been responsible to the FCC for what they put on the air, regardless of where it originates, and there is a constant give-and-take with the networks on questions of programing. But the Administration seemed to be calling for a kind of hour-by-hour monitoring of network news feeds and that was beyond the local stations' resources. “What

Whitehead is talking about is just impractical," said Gregg Chamara, a newscaster at KVOA-TV, the NBC affiliate in Tucson. "We can't afford to cover the news ourselves out of, say, Washington. What he's talking of is precensorship without us having any advance knowledge of what is being sent to us by New York, and that's asinine."

Pounce: Some broadcasters do agree with the thrust of the Administration's proposals but many of these have already acted on their own. WWJ-TV, the NBC-outlet in Detroit, has been following the nightly John Chancellor-David Brinkley newscast with a program called Newswatch, conducted by conservative Wayne State University professor Fred E. Dohrs, who pounces with Buckleynan verve on anything he considers leftist. At KHOW-Radio in Denver, an ABC affiliate, station manager John Lego calls himself "one of those folks who happens to think Mr. Whitehead's philosophy is super." But Lego hasn't carried any network news broadcasts for three years.

As the initial flap died down, some broadcasters began to perceive a certain amount of tarnish on the Whitehead bombshell. The main points of his proposal were contained in a speech he gave in the fall of 1971, and caused no major enthusiasm in Congress at the time; indeed, Sen. John O. Pastore failed to get a five-year license bill out of his Communications subcommittee last year, and his once-strong admiration for Whitehead has cooled in the course of a two-and-a-half-year wait for Whitehead to present legislation. Some broadcasters predicted that the Administration would never get the bill through Congress.

The suspicion grew that the White House was counting on the simple shock effect of the proposal to have the desired chilling effect on the networks. The technique was called "jawboning" when Lyndon Johnson and Mr. Nixon used it to try to get industry and labor to hold the line on prices and wages, and it was supposed to have been discredited as a weapon by the time Mr. Nixon was forced to institute his price and wage controls.

But the networks are a cautious lot: they have enormous amounts of money riding on their delicately balanced relationship with the affiliates, and the Administration may well have concluded that there is life in the old jawbone yet.

[From Time, Jan. 1, 1973]

RESTRAINED "FREEDOM"

The autumnal, post-landslide truce between the Nixon Administration and the TV networks ended abruptly last week with a wintry blast from Indianapolis. Speaking before a local chapter of Sigma Delta Chi, Clay T. Whitehead, director of the White House Office of Telecommunications Policy (OTP), attacked the networks—particularly network news—with a harshness reminiscent of Vice President Agnew's florid denunciations of three years ago. Whitehead derided what he called the "ideological plugola" of TV newsmen who sell their own political views, and tartly dismissed "so-called professionals who confuse sensation with sense and who dispense elitist gossip in the guise of news analysis."

To add bite to these Agnew-like barks, Whitehead revealed that the Administration will submit a bill to Congress that would dump responsibility for alleged network transgressions directly on the nation's nearly 600 network-affiliated local stations. "Station managers and network officials who fail to act to correct imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants," said Whitehead, "to be held fully accountable by the broadcaster's community at license-renewal time."

Conditions. This scarcely veiled threat brought a hail of phone calls to OTP offices in Washington from worried station owners. They quickly learned that the proposed legislation offers them blandishments as well. The bill extends the duration of FCC licenses from three to five years and makes life easier for local stations at license-renewal time. Competing bids for a station's license, for example, would be entertained only after the Federal Communications Commission had revoked or failed to renew it. Out would go the current FCC criteria stipulating the proportion of generally unprofitable news and public-service broadcasting a station must carry to retain its license; they would be replaced by two vaguely worded conditions requiring broadcasters to be "attuned" to community needs and to air "conflicting views on issues of public importance."

In other words, the Whitehead bill seemed designed to bring local station more and safer profits in return for allowing themselves to be used as instruments of restraint against the networks, in accordance with some vague principle of balance, presumably to be defined by the Administration. In theory, no one could be against "fairness" or "responsibility." In fact, it looked like a blatant attempt to use the Government's licensing power to enforce certain political views or standards.

Despite the potential benefits they could receive, many local station executives argued that the policing or censoring of network programs is too high a price to pay. "The strategy seems to be to keep the networks in line by the threat of having hundreds of local station managers do Nixon's lobbying work for him," charged one TV executive in Houston. "If a news documentary blasts Nixon, the station managers will jump on the networks and do the job for the White House. It is simply outrageous."

Other local broadcasters voiced bewilderment over exactly how the Administration expects the monitoring of network shows to work. Networks sometimes arrange advance screenings of controversial entertainment shows for local stations, but that would almost certainly not be feasible for news. As for correcting alleged imbalances, Don Owens, news director of CBS affiliate KSLA in Shreveport, asked: "What sources do we have in Shreveport, Louisiana, to balance the Watergate story by the network?"

Less responsible affiliates, points out a former CBS News president, Fred Friendly, may be happy to sidestep this problem. "Lots of affiliates don't want to carry documentaries," Friendly says. "Some never wanted to carry network news." Friendly speculates that if the Whitehead bill becomes law many stations might cancel network news and use the time slots for their own offerings and more profitable local advertising.

Meanwhile, the networks themselves generally maintained an air of injured silence. Whitehead, feigning surprise at the tempest he had caused, repeatedly insisted to newsmen and TV interviewers that the bill promises "more freedom for the broadcaster." Pressed to supply a specific example of "elitist gossip in the guise of news analysis," Whitehead replied: "I think almost anyone who watches television would have his own pet example of that kind of thing."

When the bill reaches Capitol Hill, however, Congressmen may want to know just whose pets the Administration plans to unleash. Presumably, the networks will be able to join with anti-Administration lawmakers to mount a powerful opposition lobby. But if the Whitehead measure is intended to make the television industry more divided and cautious, it will already have done its job even if it is defeated.

[From the Evening Star and Daily News, Jan. 2, 1973]

REPORTERS AND THE PUBLIC'S RIGHT TO KNOW

(By James J. Kilpatrick)

It is a curious thing: Those of us who spend our lives in communication are finding it tough to communicate effectively with the public, and more especially with judges, on a problem that seems to us vital. It is the problem of the investigative reporter and his confidential sources.

We seem not to have this difficulty with other people's problems. We can translate, for example, the serious danger to our political process that lies in uncontrolled campaign spending. We can marshal support for judicial reform by telling the people of the injustice that results when courts are overburdened. But we cannot get through on the mounting threat that is beginning to imperil a free press—the threat of judicial intimidation of working reporters.

The problem is this: At a certain level of investigative journalism, a reporter is utterly dependent on his ability to assure his sources that their identity will be kept in confidence. Without such assurance, he will not get the story. The sources will not talk.

CBS discovered this, for example, when it started digging into a welfare scandal at Atlanta. Producer Ike Kleinerma lined up a welfare mother who was willing to talk about cheating, provided her voice was disguised and her face was not shown. But when she asked for a guarantee of protection—a guarantee that Kleinerma would never give her name to a grand jury—Kleinerma could not give it. CBS counsel advised against it. The woman then called the whole thing off, and news of significant public interest was lost.

Such examples are legion. Newsmen across the country at considerable personal danger, are undertaking to report on the extent of the traffic in marijuana and narcotic drugs. It is a big story. This is news the people are entitled to have if they are to make wise policy decisions on a major social problem. But the story cannot be reported fully. Subjects who might have cooperated a couple of years ago have clammed up now. They have read the papers, and they know that

investigative reporters are being jailed or hardpressed to reveal their sources. The process is known at law as "the chilling effect."

Spokesmen for the press sought earnestly a year ago to convince the Supreme Court that this condition constitutes a growing danger to press freedom. We failed. A majority of the court simply did not believe us. In an opinion by Justice White, the court dismissed our arguments with a pat and a wave.

Neither have we had much luck with the public at large. Individual newsmen and newspapers may be held in high esteem, but the press as a whole is not regarded. The very concept of freedom of the press—a concept we see as precious—is a concept not wholly understood. The people resent special privilege, and when they hear reporters asking for "shield laws," they react in indignation. If the people have a right to know the news, why don't they have a right to know the source of the news? Well, we say, it can't always work that way. This is true; those of us in the business know it is true; but the argument has left judges unimpressed.

One of our difficulties may be that the press itself is divided in its view of particular cases, and in its view of proposed remedies. I myself happen to oppose the shield laws proposed in Congress. To the extent that these bills propose an absolute privilege, they are certainly unconstitutional: They could result in intolerable violations of the rights of a defendant under the 5th and 6th Amendments. To the extent that the proposed laws are qualified, they leave us no better off, and probably worse off, than the Supreme Court left us in June.

The hardest thing to get over, because it sounds so infernally noble, is that this truly isn't our fight as newsmen. What we are struggling to defend, in this important age of investigative reporting is the public's right to know. That right is in danger; and surely good judges, if they try, will see the danger as clearly as we do.

[From the Washington Post, Jan. 3, 1973]

NIXON ALLY SEEKING POST'S TV LICENSE

JACKSONVILLE, FLA., Jan. 2 (UPI).—A group headed by President Nixon's chief Florida fund raiser announced today it will file a rival application for the operating license of television station WJXT, which is now held by a subsidiary of The Washington Post Co.

George Champion Jr., Florida finance chairman of the Committee to Re-elect the President, said the application would be filed promptly in Washington.

"We are a group of concerned citizens who feel the needs of the community will be better served by a television station which is community-owned," said Champion, president of the newly formed Florida Television Broadcasting Co.

Champion said that Edward Ball, trustee of vast DuPont holdings, would serve as chairman of the board of directors.

Champion said his fund-raising activities and friendship with Mr. Nixon would not enter into the license application.

"I would never tell him (Mr. Nixon) that we are making an application," said Champion. "My friendship would not enter into it."

Post-Newsweek Stations, a subsidiary of The Washington Post Co., publishers of The Washington Post and Newsweek magazine, has held the Channel 4 operating license for the last 20 years without challenge.

The Nixon administration frequently has been at odds with The Washington Post, and recently a Post reporter was removed from a list of reporters regularly allowed to cover White House social functions.

Another group, Trans-Florida TV, Inc., has also filed an application to operate the station. Local insurance executive Fitzhugh Powell, a key Florida worker in the presidential bid by Alabama Gov. George Wallace, heads that group.

[A third group of three local citizens, Edward Baker, Winthrop Bancroft and George Auchter III, also filed an application for the Jacksonville license, it was learned in Washington. This group is represented by Welch and Morgan, a Washington law firm that has specialized in this field.

[In a separate filing, Welch and Morgan also represented an 11-member group seeking to take over the license of the Post-Newsweek station in Miami, WPLG-TV.

[Among the group is Cromwell Anderson Jr., a law partner of former Sen. George Smathers, who in December, 1969, was part of a group that applied for the Miami license. Welch and Morgan represented the Smathers group in that application, which later was withdrawn.]

[From the Miami News, Jan. 5, 1973]

WHITE HOUSE VS. TV

A couple of weeks ago White House TV consultant Clay Whitehead delivered a ham handed warning against biased programming by local TV stations. It seemed clear that by biased, a highly subjective word, Whitehead meant programming that displeased the administration.

It wasn't the sort of warning TV stations were likely to file and forget, given the fact they need a government license to function.

This week, reporters disclosed that certain interests are planning to challenge the licensing of two Florida TV stations. One of the stations is in Jacksonville, the other is Miami's Channel 10, and both are owned by the Washington Post.

The Washington Post, as followers of the capital scene well know, is not President Nixon's favorite journal. The President seemed especially piqued at the Post's determined investigation of the Watergate matter.

No one could say with certainty that the two events—the Whitehead remarks and the licensing challenges in Florida—are related, notwithstanding the obvious position of the Post.

It is true, nevertheless, that certain members of the challenging interests have political ties to the administration. A leader of the Jacksonville challenge, for example, is George Champion Jr., who headed the Nixon campaign fund effort in Florida. In Miami, a number of the applicants have close ties to the President or vice president.

So far, the President's only overt reaction against the Washington Post has been petty. He had his press office bar the newspaper's society writer from White House parties covered by her colleagues.

There is nothing petty about the challenges to the newspapers' TV licenses, whether White House inspired or not. They constitute a great drain of time and resources for two well regarded television operations. WJXT in Jacksonville has been an unusually aggressive news station (which incidentally turned up the Harrold Carswell white supremacy speech) operated successfully by the Post for 20 years.

We have found WPLG in Miami to be at least as faithful to its public commitment as the other major stations, with especially enlightened commentary on local issues.

We hope these stations aren't being victimized by fishing expeditions seeking to capitalize on administration pique against the newspaper that owns them.

[From the Tampa Tribune, Jan. 5, 1973]

PARTICLE OF POLITICAL INTERFERENCE ON TV

The Nixon Administration has a problem in its denials that it has anything to do with its friends seeking to wrest television channel licenses away from its critics.

Even if innocent, the Administration by its own actions has woven a substantial web of circumstantial evidence for the charge. From Vice President Spiro Agnew's attacks on the media it has recently moved to proposing legislation deliberately aimed at toning down network criticism. It would do this by making local stations responsible for the content of network offerings, on pain of being "held fully accountable at license renewal time."

That's why there's a hollow ring to the denial of an Administration link to efforts by two groups friendly to the President to take over Florida TV stations owned by the parent company of the Washington Post, whose criticisms constantly nettle the White House.

First, a firm headed by George Champion Jr., chief Nixon campaign fund-raiser in Florida, and financier Ed Ball applied for the permit now held by Jacksonville's WJXT. Then a group headed by a law partner of former U.S. Senator George Smathers, a close friend of the President, sought the license of WPLG in Miami.

Beyond the fact of the Post's being in disfavor with the White House, WJXT has especially irked the powers that be. It was first to disclose the 1948 pro-segregation speech of Supreme Court nominee G. Harrold Carswell, a sore point with Florida Nixonites. Moreover, it has offended Ball by seeking stronger railroad crossing signal laws (he is head of the Florida East Coast Railroad) and assailing his fence across the Wakulla River blocking boat traffic at his property near Tallahassee.

Ball's explanation of the application is self-indicting: he said WJXT's license should be lifted because it is "frequently pointing out bad things" about the community it serves, without pointing out the good.

That view is specifically reflected in the words of Dr. Clay T. Whitehead, director of the White House Office of Telecommunications

Policy, last month in advocating the proposal for local station accountability of network broadcasts.

The stations, he said, must not "fail to correct imbalance or consistent bias from the networks." He added an attack on what he termed "a tendency for broadcasters and networks to be self-indulgent and myopic in viewing the first amendment as protecting only their rights as speakers. They forget its primary purpose is to assure a free flow and wide range of information to the public."

Even though a case can be made that some commentators display political bias on the airwaves, Dr. Whitehead's analysis defies history. Writings and speeches of the Founding Fathers clearly make two points: They wanted a free press for the specific purpose of serving "to censure the government" and they opposed any restraint other than libel laws, especially in the area of political discussion. Come what may, James Madison particularly argued, when the First Amendment said "Congress shall make no law . . . abridging the freedom . . . of the press," it meant no law, period.

Charles Pinckney, a member of the Constitutional Convention, years later put their attitude succinctly. It would be difficult, he conceded, in preserving the privileges of the press, "to guard against its licentiousness: but it is infinitely better that some instances of this sort should arise, than that a particle of its freedom should be lost."

Television's misfortune is that the small number of channels in the broadcast spectrum makes licensing necessary to prevent electronic interference. That fact, however, should not be a base for a particle of political interference, either by the law Dr. Whitehead advocates or the intervention of politically friendly would-be licensees.

[From the Washington Post, Feb. 7, 1973]

WHITEHEAD: "NO CENSORSHIP"

(By John Carmody)

Dr. Clay T. Whitehead, director of the Office of Telecommunications Policy (OTP) and a frequent critic of network television news, has again sought to assure broadcasters that the White House seeks no censorship of the media.

In a Jan. 26 letter to a National Association of Broadcasters task force, released yesterday, Whitehead elaborated on a Dec. 18 speech in Indianapolis in which he spelled out legislative proposals to modify TV license renewal regulations.

Strong language used by Whitehead at the time to describe network news content caused controversy and some confusion over the proposals among the broadcasters.

In his letter to the NAB group, Whitehead said, "I grant you that the language I used in the Dec. 18 speech (in which he scored network news for "ideological plugola" and "elitist gossip") was strong.

"But," he went on, "those who have twisted an appeal for the voluntary exercise of private responsibility into a call for government censorship—that they can then denounce—have abandoned reasoned debate in favor of polemics."

He stated flatly that "neither OTP nor the White House has any power to effect the grant or denial of any broadcast license. And we have no intent or desire to influence in any way the grants or denials of licenses by the FCC."

The statement was addressed to NAB official Mark Evans, who is also a vice president of Metromedia, Inc. here.

Evans had asked Whitehead on Jan. 4 for "a clarification" of his Indianapolis speech. In that speech, Whitehead had said that "station managers and network officials who fail to act to correct imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants to be held fully accountable by the broadcasters' community at license renewal time."

In his reply, Whitehead said the speech was "intended to remind licensees of their responsibilities to correct faults in the broadcasting system that are not (and should not be) reachable by the regulatory processes of government."

"For network affiliates, exercise of these responsibilities does not mean that the station manager has to monitor each network feed and 'blip' out 'ideological plugola' or 'elitist gossip.' The station management must simply be aware of all the program content on the stations . . .

"Over the license term," Whitehead continued, "the broadcaster should make a conscientious effort to provide reasonable opportunity for discussion of conflicting views on issues and see that he has the opportunity to bring his concerns to the attention of his network."

"The broadcaster," he wrote Evans, "should take the initiative in fostering a healthy give-and-take on important issues because that is the essence of editorial responsibility in informing the public. That does not mean constricting the range of information and views available on television. It does not mean allowing three companies (presumably ABC, CBS and NBC—though they are not named in the letter) to control the flow of national TV news to the public; accountable to no one but themselves."

He said the proposed bill "would add nothing to broadcasters, present obligations to be responsible for all the programming presented or carried by the station, regardless of the source."

An OTP spokesman disclosed yesterday that Whitehead had met with President Nixon for half an hour on Monday. "The President wanted to review the broad OTP programs for the year," the spokesman said.

[From the Boston Globe, Jan. 6, 1973]

TV IN THE GUNSIGHTS

There were those who were in no way alarmed when President Nixon a few months ago vetoed a \$155 million appropriation for the Public Broadcasting Corporation, which helps to finance educational television.

Alarm did begin to germinate when Patrick J. Buchanan, a White House aide, insisted that "the President has the right to untrammelled

communication with the American people," adding what could happen to the commercial radio and television industry if it did not measure up to White House concepts of "untrammeled" communication. "You are going to find something done in the way of antitrust action." The White House said Mr. Buchanan was speaking only for himself.

Thereafter, a House committee disclosed that the Administration has drafted secret plans (still not officially disclosed) that would allow the President to impose national censorship of news at its source and the monitoring of radio and TV newscasts whenever "the national security" requires it.

Now the action begins on several fronts. On educational television, even the conservative William F. Buckley, Jr., a long time supporter of President Nixon but more recently a critic and a supporter of Rep. John M. Ashbrook for President, has learned that his popular "Firing Line" was placed on the "deferred list" last Dec. 8 and is scheduled to be dropped on May 1. Mr. Buckley says "it would be paranoid" for him to believe the decision to cancel his weekly show was politically motivated, "but, yes, the White House would have ingenuity enough to squelch the show."

Other programs scheduled for the axe include "Bill Moyers' Journal" and "Washington Week in Review." Both take a liberal view of news and political developments. Mr. Moyers was press secretary to former President Johnson.

Now, also, comes what can be described only as downright blatancy. This is the request by friends and supporters of the Administration that the FCC cancel the Washington Post's and Newsweek Magazine's license to own and operate two television stations (WJXT-TV in Jacksonville and WPLC-TV in Miami) and give it to them.

The Post and Newsweek, both owned by The Washington Post Company, are numbered with the Administration's severest critics. The groups seeking transfer of the licenses to their ownership and control include former Sen. George Smathers, long-time friend of Mr. Nixon; George Champion Jr., Mr. Nixon's chief fund raiser in Florida last fall; and Edward Ball, another Nixon supporter and principal owner of the Florida East Coast Railway, which was obliged to install signals at several dangerous crossings after WJXT had campaigned for them. Another of WJXT's offenses was its expose of the white supremacy speech by G. Harrold Carswell, whom Mr. Nixon had nominated as a Supreme Court Justice.

One is reminded of the speech by Clay T. Whitehead of the Office of Telecommunications Policy last month to the journalism society, Sigma Delta Chi. In that speech Mr. Whitehead deplored "elitists" in the radio and television industry and disclosed that the Administration is drafting new legislation "to hold local stations accountable at license time for the state and balance" of the news and other network programs they carry.

One hesitates to think it, but maybe it won't be long now. Administration critics are learning a lesson that could be very expensive.

[From Variety, Jan. 10, 1973]

"NIXON" AIR RAIDS IN FLORIDA**ROLE OF FRIENDS VS. P-N OUTLETS**

(By Les Brown)

It appears as though the Nixon Administration is using the same tactic in both its wars—the one in Vietnam and the one at home, with the media. In both cases the assault is by air; in both cases it seems intent on bombing the enemy into submission. Over there it's one kind of air raid, over here another.

Last week a prime domestic enemy, the Washington Post (Post-Newsweek Co.), was suddenly blitzed at two of its tv station properties with four licenses challenges that occurred within days of each other, and the principals of at least two are linked either personally or politically with the President himself. The others might be said to have something of a philosophical connection with the Administration.

Hit were WPLG-TV Miami by one group and WJXT Jacksonville, Fla., by three separate applicants. The Miami group and one of the three filing for the Jacksonville station are represented by the same Washington law firm, Welch & Morgan, which has made something of a specialty of air raids as pertains to broadcast licensing.

The 'Connections'

There have been staunch denials all around, from press secretary Ronald Ziegler at the White House to the individuals in the challenges, of any connection between the President and the actions against the Washington Post aid properties or of any connection between the filings in the two cities. But there are these amazing coincidences:

(1) The two Post-Newsweek stations were the only ones challenged in all of Florida;

(2) The challenges are from dominantly conservative groups which has not been typical of the pattern around the country heretofore, since the overwhelming majority of license attacks come from minority groups and liberal organizations;

(3) One of the stations, WJXT broke the story on Judge Harrold Carswell's white supremacy speech in 1948 which more than anything cost him his appointment to the Supreme Court and was terribly embarrassing to the Nixon Administration;

(4) The White House, only a week or so before the challenges, cut the Post society reporter from its invited list because of the paper's continuing criticism of the Nixon Administration and its devotion to the Watergate story, and also has been feeding exclusives to its afternoon competitor, the Washington Star;

The "Star" Interview

(5) One of those exclusives was the interview with President Nixon, just after his election, granted to the Star's White House reported Jack Horner, which was picked up by papers around the country; Time magazine (Nov. 27) quoted a White House aide as saying, "The whole idea was to screw the Washington Post. The thinking was, 'How can we hurt the Post the most?' One way was the Presidential interview. Another could be hitting the always vulnerable station licenses;

(6) The two stations have been, if anything, exemplary for their courage in news, for taking on the local establishment, for hard-hitting and consequential editorials, for sharp investigative work (the Carswell story, for instance) and for demonstrating that the television press can also be free. That's apparently just the kind of freedom this Administration regards as "bias":

(7) Heading the group in the Miami challenge is Cromwell A. Anderson, a law partner of former Senator George Smathers, who although a Democrat is a friend of Nixon's (and a neighbor who sold him his Key Biscayne property), and who was associated with a previous WPLG challenge. That license strike was made only 65 days after Post-Newsweek acquired the station (previously WLBW-TV), and it was later dropped with the payment of \$65,000 for legal fees. Prominent in the group also are Edward N. Claughton Jr., who had loaned his Coral Gables home to Vice President Spiro Agnew during the Republican convention last year, and Michael Weintraub, another law partner of Smathers who is also involved in banking;

George Champion's Role

(8) Heading one of the organizations challenging WJXT is George Champion Jr., who was Florida finance chairman for the Committee to Reelect the President and a personal friend of Nixon's. Reportedly, a second challenging group headed by Fitzhugh Powell, who was active for George Wallace in the state, had split off from the first and filed separately after a disagreement over the distribution of shares in the new company. The third group, calling itself St. Johns Broadcasting Co. and headed by three businessmen of the area, is the one represented by the Welch & Morgan law firm which is also in on the Miami challenge.

The basic case against both stations is absentee ownership but as a Post-Newsweek spokesman pointed out, that could apply to around 90% of the stations in the country. Some of the license challengers, in private interviews with the press, were quite specific in stating that local ownership was needed to better reflect the community consensus (per the voting patterns).

Ed Ball, millionaire trustee of the DuPont estate in Florida, was quoted by the Associated Press as saying he was a principal in Champion's group challenging WJXT because the station is "frequently pointing out bad things in the community." There are some who might call that a testimonial to a station doing its proper job, rather than grounds for a challenge. Among the "bad things" about the community cited by the station has been a fence across the Wakulla River on Ball's estate, which environmentalists say blocks access to navigable waterways and for which Ball has never been issued a permit. Also there were station reports on dangerous railroad crossings, leading to a law requiring signals at all of them, which included those of Ball's own Florida East Coast Railway.

Powell's Allegations

The petition of the Fitzhugh Powell group specifies that "the station has undertaken to control or impose upon the community its thoughts by slanting the news, suppressing the news, and editorializing the news *even to the extent of doing so in direct opposition of the cast and counted votes by the entire population of the community.* (Em-

phasis added.) Such action creates strife, turmoil and is deliberately designed to destroy the confidence of the electorate and their public officials, and the confidence of the various public officials, local, state and national in each other, including but not limited to various agencies of government of all levels."

Every bit as significant as the links to Nixon is the fact that neither WPLG nor WJXT is one of the do-nothing stations that in previous Administrations were the most vulnerable to license challenge. The shock here is that stations which are journalistically alert, and active, which have dared to take on the local power structure, and which have been standout in exposing corruption and bringing down bad government—where do you find that in broadcasting?—are now in jeopardy for doing so.

In the "get the media" climate of the Administration, the station that does the least today seems safest.

Station Heads Reply

Whether their actions were triggered by suggestions from a vindictive White House or not, the four challenging groups obviously are banking on that antinews climate and on an FCC well-stacked with conservative Nixon appointees for their chances.

The general managers of both stations have said that they will stand on their record. James T. Lynagh, exec veepee at WPLG-TV, said, "It is difficult to conceive how our license could not be renewed without at the same time placing in serious jeopardy the license of virtually every other television station in this country." Robert Schellenberg, v.p. of WJXT, said "by every objective standard that the FCC has considered for television broadcast stations and by specific guide lines recently proposed by the FCC, WJXT's service meets the standards of excellence."

An official of the Post-Newsweek group in Washington said, "We have no intention of knuckling under."

Regardless, the several challenges are going to mean hearings and preparation of a defense, which could cost \$250,000 and for a long time, cut into managements' attention to the businesses of operating a station.

Financial Slant

If the motive of the challenges should be to harass the Washington Post's parent, and to make it pay for its sins towards the Administration in hard cash, it would not have been overlooked that Post-Newsweek went public only a year ago and that the uncertainty of the licenses under challenge and the cost of defense might have their effect in the stock market.

The P-N official said, possibly in light of this, that the challenge would not make a financial impact on the company because "we have the resources and resident attorneys with which to defend ourselves."

Meanwhile, there is irony verging on the absurd that the Nixon Administration, through its Office of Telecommunications Policy, is advocating legislation to protect stations against such challenges as have been waged by friends of the President.

[From the New York Times, Jan. 11, 1973]

WHITEHEAD ASSERTS NIXON'S BILL DOES NOT SEEK TO CURTAIL FREEDOM OF BROADCASTERS

Clay T. Whitehead, the 34-year-old director of the White House Office of Telecommunications Policy, sent shock waves through some segments of the broadcasting industry last month when he condemned "ideological plugola" and "elitist gossip" in network news programs and warned that "station managers and network officials who fail to correct imbalance or consistent bias in the networks or who acquiesce by silence—can only be considered willing participants, to be held fully accountable . . . at license renewal time."

Mr. Whitehead's speech, given before a Sigma Delta Chi journalism luncheon in Indianapolis, also revealed the outline of a Nixon Administration bill that would amend the law now governing broadcasting—legislation that would alter some ground rules under which the Federal Communications Commission now regulates the industry, such as the amount of time that must be devoted to specific program categories.

Although the F.C.C. would continue to be the final arbiter of what constitutes "responsible" TV programing, the basis for its rulings would be "how well a licensee has gone about the business of finding out what his community wants and needs and how actively has he gone about meeting those needs." Under the proposed legislation, local station managers would apply to the F.C.C. for license renewal every five years instead of the more restrictive three years now in force and the procedures under which stations could be challenged would be changed.

The proposed bill and Mr. Whitehead's criticisms have been denounced by some critics as an attempt by the Nixon Administration to guide broadcasters away from dealing with controversial subjects, to drive a wedge between networks and their affiliated local stations and to interfere with the content of television programs critical of government policy.

Much confusion also has arisen over what Mr. Whitehead actually was calling for in his speech and what is specifically contained in the Administration bill.

To seek answers, Mr. Whitehead was invited to participate in a round table discussion of these issues with editors and reporters of The New York Times. Mr. Whitehead, trained as an engineer and management specialist at M.I.T., gave replies that were cool, careful and sometimes witty. His intention throughout was to reassure the industry and the public that the Administration sought more freedom for broadcasting, not less. He declined, however, to give specific examples of what he considered network failings on the ground that it would deflect the discussion away from essentials.

Excerpts from the discussion follows:

Q. Your draft bill, coupled with your Indianapolis speech, has been interpreted in the broadcasting industry and elsewhere as a carrot and a stick. The carrot being the promise of a longer license period—five rather than three years. And the stick being that in exchange broad-

casters would be expected to hold a rein on network news, be accountable strictly for what comes on network news, commercials and entertainment programs. Is this a fair interpretation of your speech and bill?

WHITEHEAD. I've never been quite sure about what the carrot and stick analogy means. It's kind of gotten lost since the days of the mule care, where it was first used.

There is no doubt that we're making two overtures to the broadcasting industry. One is the very straight-forward statement that we believe they should have more insulation from government, they should have more stability in their licenses, broadcasting should be run as a business not as an arm of the government. On the other hand we recognize the many criticisms that have been brought to bear against broadcasting. It's not only news—the totality of broadcast programing.

And we are saying that the industry as a whole—networks and local station managers—has to stand up and say the responsibility that was enforced from Washington will now be enforced voluntarily throughout the system.

Q. Could you be specific in some of the examples that underlie your apparent dissatisfaction with network news?

WHITEHEAD. Now I really don't want to cite specific examples either of violence in programing, misleading advertising or the irresponsible news. Because to do so would be to focus the public debate on specifics and that's not what we're trying to get here. What we're trying to get is a reasonable consideration of this very important and very sensitive policy area.

Q. Does this then leave it up to each local station to decide just what you mean by "elitist gossip"?

WHITEHEAD. That's absolutely correct.

Q. In your speech you said that "the broadcaster has to demonstrate that he is being substantially attuned to the needs and interests of the communities he serves." Does this mean that if it's a conservative community the broadcaster is supposed to have programs that match the prejudices of the community?

WHITEHEAD. The theory of our system as it is today is that we give licenses to people who are responsible leaders of their community. And I don't think that anyone would argue that someone who simply panders to the prejudices of his community is a responsible community leader.

Q. Well, what does "substantially attuned to the needs and interests" mean?

WHITEHEAD. That is the kind of thing that has to be worked out by the F.C.C. It's important to recognize—and I think this has been widely misinterpreted—that this bill does not add any new standards, it does not add any new responsibility. Much to the contrary, it takes away some of the things that the F.C.C. can now do; makes it more difficult for the government to act capriciously; makes it more difficult for people in Washington to apply their own standards to the broadcaster's performance.

Q. Somebody is going to be setting standards. Somebody is going to have to decide whether the broadcaster has demonstrated that "he is substantially attuned to the needs and interests of the communities." Would you have local community boards decide that?

WHITEHEAD. I think that ought to be the responsibility of the local station manager or the station owner, he's the man whom we license and who has the responsibility for doing that.

Q. You spelled out some very broad areas in which the Federal Government can make decisions about whether a local station is living up to its license or not. In the absence of any specific criteria it seems as if what you're doing is giving the Federal Government almost carte blanche to make decisions about a local station's license.

WHITEHEAD. It can appear that way only if you don't understand how the F.C.C. now goes about this business. This bill adds nothing new to the F.C.C.'s authorities. It takes away. It limits the F.C.C.'s opportunities for striking at a licensee or taking away his license. It does so in several ways: it gives [the commissioners] less frequent opportunities to review—every five years instead of every three—and they may consider only two specific criteria, not the whole range of criteria, that they now consider.

Currently it says they may not arbitrarily restructure the broadcast industry through the case-by-case application of license renewal. The F.C.C., for instance, under our bill, would be specifically precluded by law for establishing their own program categories. They now have some 14 categories of programs. The F.C.C. is now considering the application of minimum percentages, so that each television station in the country would be required to have, say, to 4 per cent religious programming, 5 per cent national news programming, 7 per cent local news programming, so much agriculturals, so much sports, etc.

Now if that's the way you want to go, if you think that the programming of the television stations in this industry in this country ought to be determined from Washington, if you want the F.C.C. setting up their own criteria for what's good programming, I suppose you can defend that point of view with some logical persistency. We think it's bad; we think it just invites the Government to wreck the programming; it invites the Government to set increasing arbitrary categories.

Q. But the F.C.C. still will be the final arbiter in the renewal process. What criteria will they use?

WHITEHEAD. We're saying the F.C.C. should be turned from the course they're now on, which is trying to define what is good programming, and they ought to turn to perhaps an equally difficult, but certainly more healthy approach, which is to say "How well has this licensee gone about the business of finding out what his community wants and needs and how actively has he gone about actually meeting those needs?"

Now the question is how do we evaluate that. I would hope that it would be a fairly general test. We've made it very clear that the burden of proof is on the person who would challenge the license.

Q. I was talking with a station manager only about an hour ago and he asked me to ask this question. "If a man is fearful that the network is supplying him with suspect news, what do you expect him to do, drop network news entirely?" Because in the case of live programs, you can't pre-review them.

WHITEHEAD. I expect him to behave like a responsible community leader.

Q. That's pretty general.

WHITEHEAD. Well it is.

Q. Would you expect them to edit individual shows? Cronkite comes over the air, let's say, and they don't like something in the Cronkite show. What do you see them doing?

WHITEHEAD. That's obviously a very extreme measure. Again you're inviting me—remember where I work—to make a public comment as to how the broadcasters should go about editing their news. That's inappropriate.

Q. Can we put it another way? What do you expect to see happen if this legislation is approved? What difference would there be in relations between the local stations and the networks?

WHITEHEAD. What you would hope to see is the networks making some kind of visible effort to more actively involve their affiliates in their programing. To consult with them when they're putting together their various pilots when they're selecting which pilots they're going to carry on for further development, when they're making their final decisions as to programing.

Q. They do that now through affiliates' associations, through the board of governors of the affiliates. It's already being done.

WHITEHEAD. Listen, I'm very aware that that kind of thing goes on. But are we saying here that the process is perfect, that there's no room for improvement?

Q. There's been some fear that this in terms of news might further drive a wedge between the affiliates and networks and make the networks even more timid about reporting very controversial issues and about investigative reporting. Do you think it might have that effect?

WHITEHEAD. Much to the contrary. What we're trying to urge here is a more active involvement between the stations and the networks. They ought to be working more actively, they ought to be meeting more often than at just their affiliate meetings. What's wrong with the local stations evaluating the network news?

Q. The question is whether that evaluation might inhibit network news. Television has been criticized quite a bit for not being aggressive enough in doing investigations, for example, that might embarrass government. And some of that's been attributed to the fear of affiliates . . .

WHITEHEAD. Is government inhibited by criticism? From time to time it is when it gets out of line. Unless you think that there's something about the three television network news operations, they're somehow insulated from the government; they're insulated from their own network management; they're insulated from local stations; there's something about them that gives them some magic ability to be erroneous or at least better than anyone else. If you don't agree with that concept then maybe they do need a little criticism and the only question is where does that criticism come from? And all we're saying is better that those checks and balances come from the broadcasting community itself than from the government.

Q. Can you imagine under this proposal a station approaching renewal time getting a documentary in advance from the network and looking at it—let's say it's very controversial, "The Selling of the Pentagon" or a documentary on the Black Panthers—and deciding, "Let's not take any chances, let's just not put this on the air, we don't

want to make waves and stimulate opposition to our license application."

WHITEHEAD. I can't deny that that kind of thing might not happen. But I don't see that it would get the broadcaster very far in the scheme that we now have or that we're talking about. The test as to making available a wide variety of points of view is not a negative test; it's positive. So no one is talking about getting points of view off the television screen; no responsible person is talking about getting the network news off television.

Q. What points of view do you think are not sufficiently represented now in the area of news?

WHITEHEAD. I think every person has his own evaluation of that.

Q. Can you continue giving us your definition of elitist gossip? Was that directed to one sector of the country?

WHITEHEAD. Elitist gossip has to be defined by the person perceiving it. Every housewife knows what an elitist is and every housewife knows what gossip is. Everyone's going to apply it differently. But most people, I think, recognize that they see that from time to time.

Q. You used the phrase. Don't you think that you ought to define it in terms of what you had in mind when you used it?

WHITEHEAD. I think it would be counterproductive.

If you wish to make my speech—the newsworthy event in that—to be what Whitehead's views are of network news operation, that's one thing. If you want to say that the newsworthy value of the speech is how do we go about regulating a very important medium of mass communication in this country; how do we walk this very delicate line that we have between government regulation and licensing and the freedoms of the First Amendment, that's another thing.

As a result of this latest speech I do have at least temporarily a rather spirited attention being drawn to how the First Amendment applies to broadcasting. And I think that's very healthy. It's long overdue.

You see most of the confusion has come from people who don't realize how intrusive government regulation has become in broadcasting. I would recommend everyone who is seriously interested in this to get a copy of the F.C.C.'s current license renewal form for a television station and look at it. And just ask yourself what would be the reaction if the Nixon Administration proposed asking some of those questions—like what percentage local news do you do? Describe your news staff? How many people? Where do you get your news? Those are the kind of things that we're talking about taking off the application renewal, not putting on.

Q. Do you think government regulation under its present system has had an impact on news coverage?

WHITEHEAD. Unquestionably.

Q. In what way?

WHITEHEAD. Through to some extent politicizing the news process. Because when people can come to the F.C.C. and complain about how news is being handled you very clearly have had an impact.

Let me give one good example. The Vice President gave a speech in Des Moines which cracked the press. I think the criticism of that would have been much less if it weren't for the implication that this Administration could or would use the power of the license over the television network. That criticism takes on a different air either actually or im-

plably when there is a government license. There always is a suspicion that somehow this Administration wants to use the F.C.C.'s procedures as a club over the electronic media.

Q. How would you assess the chances of getting your bill through Congress?

WHITEHEAD. I hope that we get it through the next session.

Q. How involved is the President in the bill?

WHITEHEAD. I think it's a very important item on the Administration agenda. The President is very much aware of the quality of broadcasting and he thinks this is a constructive, responsible approach.

Q. What was the Vice-Presidential input?

WHITEHEAD. Nothing.

Q. Suppose the networks continue with their elitist gossip or whatever it is that you don't like, what would this law do or this proposal do to make them behave differently?

WHITEHEAD. Absolutely nothing. This law provides no vehicle for the White House to use, the Congress to use, or anyone else to use to force local stations to do anything, it takes away.

Q. Can a local station manager give a better picture of what's happening nationally than a network if a local station manager starts to back away from the elitist gossip?

WHITEHEAD. I'm not sure that they should back away from the elitist gossips. The elitists are entitled to their point of view.

Q. If a station had its license revoked after the F.C.C. decided that the local community challengers were correct that the station had not been attuned to the interests of the community, what would a new company have to prove before it could get that license?

WHITEHEAD. It would have to show that it could do a better job. It would be comparative. It would have to promise more in terms of what that community says it wants.

Q. That could become very political.

WHITEHEAD. But it could be very political today. If there's no way of involving the government in granting television station licenses we'd have the opportunity for being very political. The question is what procedures do you want to establish to minimize that input. You're walking this very delicate line between government regulation and the freedoms of the First Amendment.

Q. This would take away a lot of power from the F.C.C., would it not?

WHITEHEAD. It would.

Q. And do you not see your role, the role of the Office of Telecommunications Policy, partially to drain off some of that power from the regulatory agency for the direct voice of the President?

WHITEHEAD. No. Not at all. We would have no role in regulating television. Our only role would be the policy under which television is regulated by the F.C.C.

Q. It's a pretty big point, though, making policy?

WHITEHEAD. Of course it is. Remember, we have to ask the Congress to pass this law. We can't decree it.

Q. You said you'd amend the Communications Act of 1934 to fit the First Amendment. Would the chief amendment to that be removing the fairness doctrine from the Communications Act?

WHITEHEAD. That's obviously one of a long string of things that would probably have to be done. It would be nice to give a layout of the

blueprint; say "All right country, here's how to do it." The area is too sensitive, too controversial, too important, too complex for that. I may have some ideas about how I think things ought to end up, come 1984, but I don't think this is the time to lay them out in some grand design.

Q. Is that the year you're shooting for?

WHITEHEAD. It's a good year to keep in mind.

[From the Washington Post, Jan. 12, 1973]

A QUESTION OF CONTROL

(By Anthony Astrachan)

NEW YORK.—Clay T. Whitehead insisted yesterday that the Nixon administration did not intend to increase government control of television and radio but to reduce government intervention in broadcasting.

The director of the White House Office of Telecommunications Policy declined to elaborate on his recent warning in Indianapolis that the government might make the renewal of a station's broadcasting license depend on the extent to which it corrected "ideological plugola" and "elitist gossip in the guise of news analysis" on network programs.

Whitehead, instead, spelled out in detail the four points of the administration's proposal to modify the Communications Act of 1934. He spoke before a sometimes hostile audience of several hundred at a lunch of the National Academy of Television Arts and Sciences.

The OTP head said the administration proposes that:

Broadcast license terms be extended from three to five years.

Comparative hearings by the FCC be eliminated whenever a competing application is filed for the same broadcast service at renewal time.

The FCC be banned from "restructuring the broadcasting industry" through the license renewal process.

"Predetermined performance criteria" not be used by the FCC for the evaluation of renewal applications.

Whitehead referred only at the beginning of his address to the Indianapolis speech which, he said, "some people misinterpreted and, even worse, quite a few people misunderstood." OTP officials have claimed that there was never any intent to turn the network news bias criticisms into a legislative proposal. Rather, OTP officials claim that the proposals spelled out yesterday were "pro-broadcasting"—a view shared by many in the industry.

Nevertheless, yesterday's lunch audience was often unfriendly to the OTP director during the question and answer period following his address.

David Davis, a director for the academy, said Whitehead's Indianapolis speech recalled the Alien and Sedition Act of 1798, which set fine and jail sentences for putting the government into "disrepute."

Broadcaster Sonny Fox said Whitehead's claim that every housewife knows what an elitist is and what gossip is sounded like "something out of Kafka as told to Laugh-In."

The audience broke into laughter when Whitehead said his policy emphasized local responsibility for a local station meeting its community's needs because "this country has never tolerated excessive concentrations of power . . . in Washington. It doesn't tolerate them in private industry."

Whitehead said his legislation would make the FCC concentrate on just two criteria: the degree to which a station is attuned to community needs and interests, and its provisions of conflicting views of public issues.

But he did not specify how the FCC would judge the way a station meets community needs. In answer to a question, he said the administration did not want to set up a federal standard. He left it up to community leaders, network executives—a significant inclusion—and local station officials to define this "ascertainment criterion."

Whitehead said that if his proposal did not pass Congress, the administration would settle for naming new FCC members who also believed in reducing government intervention in broadcasting.

He also said that he thought federal courts would move away from past decisions that ran counter to the thrust of his proposals.

This was in response to a question that quoted a 1968 decision by Chief Justice Warren Burger, then a judge of the Circuit Court of Appeals in Washington.

Burger said that neither the FCC nor stations could control program content beyond the provisions of the law, and added, "talk of 'responsibility' of a broadcaster in this connection is simply a euphemism of self-censorship. It is an attempt to shift the onus of action against speech from the commission to the broadcaster, but it seeks the same result—suppression of certain views and arguments..."

Whitehead, referring in his prepared remarks to the proposed legislation, said lengthening of the license renewal period to five years would "inject more stability into the process and allow the broadcaster more time to determine the needs and interests of his local community and plan long-range programs of community service."

He said the change would also reduce the "serious" administrative burden faced by the FCC under the present three-year rule. The commission now has a backlog of 143 TV and radio licenses awaiting renewal, Whitehead said.

[The New York Times, Jan. 14, 1973]

KEEP YOUR EYE ON THAT BALL

(By John J. O'Connor)

The Nixon Administration is concerned about television. That much is clear. Patrick Buchanan, Presidential assistant, has candidly described the basis for that concern: "In terms of power over the American people, you can't compare newspapers to those pictures on television. They can make or break a politician. It's all over if you get chopped up on the networks. You never recover. The newspapers can beat the hell out of you and you've got no problem."

Buchanan, of course, may be overestimating the power of television, but his comments provide crucial insight into White House thinking on the subject. The rest, however, the specific content of Administration strategy, is far from clear.

Several weeks ago Clay T. Whitehead, director of the White House's Office of Telecommunications Policy, delivered a speech that combined disclosure of a proposal for new license-renewal procedures, long sought by the broadcasting industry, with an Agnewesque attack on general TV content, most notably the "ideological plugola" and "elitist gossip" that the Administration discerns in network news.

The charges contained no specific illustrations. But the speech received, and deserved, wide coverage in the print and electronic press, and Whitehead has subsequently been explaining, or repeating, his views in numerous interviews.

What, precisely, are the intentions of Whitehead and the Nixon Administration? After all the interviews, any answers are still forced to deal in speculations.

The proposed bill would extend the terms of broadcast licenses for stations to five years, from three at present. It would also change license-renewal standards, in effect giving license holders more protection against certain types of challengers. This delighted station owners.

Significantly, however, the bill would also retain the Fairness Doctrine, which has been strongly opposed by many broadcasters and, in theory at least, by Whitehead himself. The retention would be for the "short run," but in broadcasting history the short run frequently extends into a long haul.

That part, together with the speech's implied threats to the independence of TV content, made many broadcasters nervous. They insist that the speech only clouded the merits of the proposed bill, and that the bill should have been disclosed separately. Whitehead, though, emphasizes that the provocative coupling was intentional.

In defense of his position, Whitehead argues that his goal is less, not more, Government regulation of television. The proposed bill "prohibits the [Federal Communications Commission] from adopting any predetermined performance standards such as program categories, percentages, or formats. . . ." In a draft of a proposed letter to the Speaker of the House, Whitehead's office explains:

"In taking this approach, the legislation would establish the local community as the point of reference for evaluating a broadcaster's performance. In effect, it would place the responsibility and incentive for superior performance in the hands of the local licensee and the public he undertook to serve."

In a recorded interview and informal comments with editors and reporters of this newspaper, Whitehead conceded that the FCC would remain the final arbiter in license renewals but that there could be some problem in applying specific criteria for renewal. On the matter of evaluation, he said, "I would hope that it would be a fairly general test. We've made it clear that the burden of proof is on the person who would challenge the license." At another point, there was this exchange:

Questioner: "This would take away a lot of power from the FCC, would it not?"

Whitehead: "It would."

On the White House's view of the FCC, there was this comment: "We're saying the FCC should be turned from the course they're now on, which is trying to define what is good programing and that they ought to turn to perhaps an equally difficult, but certainly more healthy approach, which is to say 'how well has this licensee gone about the business of finding out what his community wants and needs and how actively has he gone about actually meeting those needs?'"

All of which only prompts more questions. Does the FCC really try to define what is good programing? It can apply "quota" yardsticks to general areas of programing such as religion, local news and national news. But these are used specifically to determine quantity, and were adopted precisely because some broadcasters would be quite content to run nothing but old movies.

Some professional watchdogs of the industry charge that Whitehead's new bill is excessive in presuming "good conduct" on the part of stations. They contend that the bill includes no real requirement for the discussion of public issues and that the broadcasters would be getting virtual *carte blanche* to do anything they want.

If the power of the FCC is being diminished, what about the power of the Office of Telecommunications Policy? Mr. Whitehead explains that "before OTP was set up . . . everyone assumed that the President appointed the head of the FCC, that that man spoke the Administration point of view. There is a built-in conflict there, because the FCC is supposed to be independent of the President . . . that man does not work for the President, he works for Congress."

Is, then, the FCC being made more independent by being less powerful? Is the Congress being manipulated into letting still more of its jurisdiction drift toward the Executive Office? Is it necessary, or desirable, for the President to have direct "input" into communications policy?

The questions go on, each possible answer contradicted by another possible answer as long as Whitehead refuses to substitute specifics for generalities. While he talks about more and better service to the local communities, the official stresses that "this law provides no vehicle for the White House to use, the Congress to use, or anyone else to use, to force local stations to do anything."

During the interview here, Whitehead did make passing sardonic references to the year 1984. Readers of the George Orwell novel might recall the definition of "doublethink": . . . the power of holding two contradictory beliefs in one's mind simultaneously, and accepting both of them. . . . This process has to be conscious, or it would not be carried out with sufficient precision. But it also has to be unconscious, or it would bring with it a feeling of falsity and hence of guilt."

There are, obviously, other possible explanations for Whitehead's insistent vagueness. Like most television critics, he says that he favors more diverse programming. He personally admits to a special fondness for ballet and country bluegrass music, two items noticeably denied television abundance.

On the three national networks, however, that type of complete diversity would appear virtually impossible, if only for reasons of economics and time/space limitations. But there is a potential future vehicle, and that is called cable television. The OTP is currently drawing up recommendations for the growth of cable.

In the overall current debate, however, it should be remembered that it was Whitehead, not the FCC, who, recently suggested that a station might shut off Walter Cronkite occasionally if he became too "biased." Beyond all the testimonials to freedom and less regulation, that First Amendment issue provides the bouncing ball to watch most closely.

[From the St. Louis Post-Dispatch, Jan. 14, 1973]

NIXON'S FRIENDS HARASS NEWSPAPER

(By Richard Dudman)

WASHINGTON, Jan. 13.—Washington loves a good fight, but critics say the Nixon Administration's war against the Washington Post has taken an ugly turn.

Two lucrative Florida television licenses held by the Post-Newsweek Stations, Florida, Inc., a wholly owned subsidiary of The Washington Post Co., have been challenged by important officials and fund-raisers of President Richard M. Nixon's re-election campaign.

Mr. Nixon has had a feud with the Washington Post for almost two decades. As Vice President in the 1950s, he canceled his subscription because he said he did not want his daughters, Julie and Tricia, to see the unfriendly cartoons by Herbert Block. Herblock always used to show Mr. Nixon's face wearing a 5 o'clock shadow.

In recent months, stung by the Washington Post's strong opposition to the Vietnam War and its aggressive investigative reporting of the Watergate scandal, Administration officials have begun a concerted offensive.

Attacks have ranged from silly to blistering. At the silly end was an abrupt decision to prohibit the Washington Post's reporter, Mrs. Dorothy McCardle, from regular coverage of White House social functions.

Coverage now is supposed to be on a pool basis, with all newspapers eligible for occasional places in the pool. But Mrs. McCardle has been barred from five out of five functions.

The episode took a hilarious turn last weekend when the White House press office rounded up reporters who had never covered social news to fill out the pool of 13 for a White House congressional reception. When one of the 13 did not show up, Mrs. McCardle asked to take her place, but the answer still was no.

Just before the Nov. 7 election, President Nixon gave one of his rare private interviews. He gave it to Garnett Horner, the White House reporter for the Washington Post's rival, the Washington Star-News.

A few days later, in another interview with Horner, presidential adviser John D. Ehrlichman disclosed specifics about Administration fiscal plans for the next four years. Both articles attracted wide attention as major scoops.

Time magazine afterward quoted an unidentified White House aide as confirming the suspicion that the double favor had been granted as a blow against the Post.

"The whole idea was to screw the Washington Post," the aid was quoted as saying. "The thinking was, 'How can we hurt the Post the

most?" They seem to relish the frontal attacks. The answer is to get people thinking, 'I wonder what's in the Star-News today?'"

Benjamin Bradlee, Post executive editor, said that a Star-News reporter told a Post reporter that the White House had promised more scoops to come.

"Just come around with a breadbasket every day and we're going to fill it up," a White House aide is said to have told the Star-News reporter.

When the reporter asked whether other correspondents should be assigned to the White House in addition to Horner, the aide is said to have replied, "There's no need for that. He's good enough."

That was a week in which Bradlee was assailed by name five times in five days by Administration spokesmen—twice by Republican National Chairman Senator Robert J. Dole of Kansas; once by presidential press secretary Ronald L. Ziegler; once by Clark MacGregor, counsel to the President for congressional relations, and once by Charles W. Colson, then special counsel to the President.

Colson's contribution, in a speech in Maine, was to call Bradlee the "self-appointed leader of a tiny fringe of arrogant elitists."

Senator Charles H. Percy (Rep.), Illinois, whose own rather mild criticisms of Nixon policies have caused a certain coolness between him and the White House, said this week that Mr. Nixon would have been too smart to decide on the attacks against the Washington Post.

When he was informed that the newspaper's circulation had risen in recent months, Percy said: "I'm not surprised. If I were the publisher of a newspaper I could not imagine a better friend than whoever made that decision."

Challenges to television licenses are more serious. They strike directly at a corporation's money-making capacity.

One of the Post-Newsweek stations was attacked earlier. A challenge was filed in 1970 against WPLG-TV, Channel 10, Miami, shortly after Vice President Spiro Agnew had assailed the company as a media monopolist.

The challengers included Cromwell A. Anderson, a law partner of former Senator George A. Smathers (Dem.), Florida. Anderson had helped Mr. Nixon buy his Florida real estate and had introduced him to C. G. (Bebe) Rebozo, who had become one of the President's closest friends. Another member of the group was W. Sloane McCrea, a former business partner of Rebozo.

Four new competing applications against Post-Newsweek stations were filed this year, just before the Federal Communications Commission's deadline of Jan. 2.

One of the applications sought to take over ownership of the same Miami station, WPLG-TV. The three others were all against WJXT-TV, Channel 4, in Jacksonville.

Of 34 commercial channels in Florida, the two Washington Post stations were the only ones to be challenged this year. Against all the 701 licensed commercial television stations in the country, there have been only 11 other competing license applications in the last four years.

In the Miami challenge this year, the principals include Anderson again; Michael Weintraub, another partner of Smathers, and Edward N. Claughton Jr., who lent his Coral Gables, Fla., home to Vice President Agnew during the 1972 Republican convention.

In Jacksonville, one of the challengers is George Champion Jr., Florida finance chairman in Mr. Nixon's 1972 reelection campaign. Another Jacksonville group is headed by Fitzhugh K. Powell, north-eastern Florida co-ordinator for the 1972 presidential campaign of Gov. George C. Wallace of Alabama.

Speculation about the relationship of the Nixon Administration to the applications was heightened last week with the disclosure that Glenn J. Sedam Jr., general counsel of the Committee for the Re-election of the President and now deputy general counsel of the 1973 presidential inaugural committee, was involved.

Sedam met in Jacksonville last Dec. 26 with Powell, Champion and other local businessmen and assisted them in preparing to challenge WJXT-TV's license. Sedam has said that Powell reached him through a mutual acquaintance and asked him if he would represent the group before the FCC. Sedam said he referred the group to his old law firm, Steptoe and Johnson, in Washington, and later at that firm's request went to the meeting in Jacksonville for preliminary discussions.

Denials have come from Stedam, the White House and the challengers that these Administration connections had anything to do with the filing of applications.

The Champion and Powell groups are said to have split at the Dec. 26 meeting over division of stock and the amount of legal fees to be paid to the law firm, said to be \$250,000 if the case went to the Supreme Court.

Before the applications were filed, Powell filed a petition with the FCC to deny WJXT's three-year relicensing. He charged that the station "consistently and flagrantly, for the past three or more years, has editorialized and slanted its news coverage."

The petition said that the station "has deliberately broadcast and editorialized upon sensitive social questions that are prone to cause strife and turmoil in the community" and "deliberately and with intended malice assaults the personal character and reputation of various persons in the community."

It was a WJXT television reporter in 1970 who first exposed the 1948 segregationist speech of G. Harrold Carswell that led to his rejection by the Senate after Mr. Nixon had nominated him to the Supreme Court.

One of Champion's associates, Edward W. Ball, trustee of the estate of Alfred DuPont, has special reasons to oppose the WJXT license renewal. He controls the Florida East Coast Railway and has been a particular target of the station in an expose of inadequate railroad crossing signals. The station's campaign led to enactment of a state law requiring adequate signals at all crossings in Florida.

The station has also reported a controversy over a fence across the Wakulla River on Ball's estate near Tallahassee. Conservationists say that it bars public access to a navigable river in violation of the law.

Robert W. Scheilenberg, general manager of WJXT, and James T. Lynch, general manager at WPLG, have expressed confidence that their stations' performance records would persuade the FCC to renew their licenses.

An applicable court decision holds that superior performance of a licensee should be considered "a plus of major significance" in considering a challenge to its license.

If the two Florida stations are, indeed, superior in performance, it appears that they should, under the law, have priority of consideration over any challenger.

This was the basis for a statement issued by Lynagh and for concern with which other licensees throughout the country will be watching the Florida cases. He said:

"Based upon information as to the operations of many other stations available to us, it is difficult to conceive how our license could not be renewed without at the same time placing in serious jeopardy the license of virtually every other TV station in this country."

[From the Los Angeles Times, Jan. 14, 1973]

GOVERNMENT VS. TV: THE GLOVES ARE OFF

(By Thomas Collins)

During a recent flight south, an American banker who has lived for many years in Brazil commented that a government-controlled press actually was not a bad thing. "There are things the public is better off not knowing about," he said.

He seemed like an ordinary, intelligent American, but you had to wonder whether he understood what he was saying or whether he had simply lost sight of first principles after so many years outside the country.

Brazil, of course, has very little press freedom. Accordingly to a recent report by the Inter American Press Assn., quite a few countries in South America have liberated their citizens from that luxury. In the section dealing with the United States, the report describes this country's situation as "embattled."

The banker actually had much in common with officials of the Nixon Administration; the climate here is indeed embattled because of such mental processes. The latest evidence of this was a recent speech by Clay T. Whitehead, who is to President Nixon in broadcast policy what Henry Kissinger is in foreign policy.

In his speech, Whitehead attacked network news programs and warned that local stations would be held "fully accountable" for them at license-renewal time.

He also revealed plans for an Administration bill that contained a little sweet along with the bitter for the broadcasters, in the hopes that it would get them to go along with the government.

What it comes down to is a shallow attempt by the Administration to take away freedom in the name of freedom. TV station owners are being told to follow the government's line in attacking network news programs for some unsubstantiated acts of bias—or else. The "or else" means that if they don't their licenses to operate may be lifted.

That's a significant escalation in the Administration's war with the networks. Up till now, the license threat has been veiled and unspoken, even though it has been uppermost in broadcasters' minds. But there is no longer any question that compliance is linked with the livelihood of the station.

The fact is that the government is already in violation of the spirit of the First Amendment in trying to influence the content of television news. It has posed as a "critic of the media in general and chided them for being oversensitive to such criticism.

It has also succeeded in achieving considerable acceptance, through repetition, of the notion that network news and several of the nation's better newspapers are slanted against the Administration and therefore against the country.

With the Whitehead speech, the gloves are off. The Administration has served notice that it will attempt to solve its problem by legislating, through the back door, in an area it is expressly forbidden by the First Amendment to enter. The Nixon bill would, in effect, abridge free speech and a free press even though it is couched in language designed to conceal its intent.

In the past the Administration has been thwarted in its attempts to whip the networks into line—to "decentralize" the key sources of national and international news. Stations carrying network programs have simply shrugged that they have no choice in the matter.

Short of ringing the CBS broadcast center with bayoneted troops, the Administration has done the next best thing: It is economically encircling the networks' outlets.

And it is offering several inducements: Certain unwritten but explicit requirements by the Federal Communications Commission will be dropped in the name of "freedom"; the period of license renewal will be extended from three years to five; and it will be made difficult if not impossible for anyone to successfully challenge an owner's license. In other words, the government's offer amounts to economic security.

It is a tempting offer that raises two key questions: Will the stations buy it? And will Congress—many of whose members own interests in television stations—pass it?

If they do, in practical terms it will mean that when you turn on your television set, the programs and newcasts you watch will have received the government's stamp of approval. Otherwise they would not be shown.

What you would be missing is more of what you already have been deprived of. Since the Nixon attack on broadcasting began, you've been seeing fewer news documentaries that are remotely critical of the government. After all the flak about CBS' "The Selling of the Pentagon," the networks seldom touch them.

You heard no thorough airing of the issues in the last election on any of the networks (CBS, which ran 11 specials on the 1968 election campaign, did not run any in 1972, according to press critic Ben Bagdikian, writing in the *Columbia Journalism Review*). And there were only perfunctory attempts to define the differences between Mr. Nixon and Sen. George McGovern.

What seems to be lost sight of these days is that the First Amendment does not mean just CBS and Walter Cronkite and the publishers of the *New York Times* and *Washington Post*. It is not important what an individual opinion about them might be. The First Amendment means *everybody*. Unfortunately, not everybody is concerned about its safety.

Elie Abel, dean of Columbia University's journalism school, said recently that the public is monumentally indifferent to what has been going on between the Administration and the First Amendment, and in a sense he is correct. But there is evidence that with the continued arrest of newsmen, the general public is becoming concerned. If it is not as alarmed as it should be, it is largely the media's fault for not reporting the story properly.

Mr. Nixon's assault on the media is an ongoing story that is just as significant to the country as the war in Vietnam. The outcome, in fact, may mean much more to the country than the war. We can save face or lose face in Vietnam and still survive, but we cannot survive as a democracy without the First Amendment.

Because of the press' caution in opposing the Administration and giving the story its rightful prominence, the public is badly informed as to what is at stake. It is content to see the issue in Administration terms of displeasure with the newspapers and a handful of so-called liberal newscasters.

In allowing this to happen, most of the media have shirked one of their fundamental responsibilities to the public; they have failed to alert it to massive threat to one of its basic rights. They are acting as if only *their* rights were being abridged and not everyone's, and they are reticent to focus attention on the fact that if they go, we all go.

And they are very much in disarray. There is little sense of a common threat among publishers and broadcasters despite the events of the past few years—the exercise of prior restraint, the jailing of reporters, the intrusion by the executive branch in both public and commercial television.

"There is a tendency in the media," says Abel, "not to get too worked up about the infringement of other people's rights," and he went on to point out that the networks were silent when public broadcasting was attacked and that many newspapers kept quiet when CBS was under fire for "The Selling of the Pentagon."

The press is in disarray for a number of reasons: It is intimidated in the face of an attack by the highest authority in the land; it fears economic reprisal; and it is unwilling to grasp the true breadth and purpose of the attack. So the Administration can continue taking specific steps to insure that events get reported its way.

If it is permitted to go unchecked by the media or by Congress, and if the public continue to misunderstand the true issue involved, the future is not difficult to predict.

At present, we are in what might be called Phase I of the Administration's assault on free speech. It is merely complaining about what it does *not* like that comes over the tube.

It has not yet told broadcasters what it *wants* to see in programs. Is that for Phase II?

[From the Newsweek magazine, Jan. 15, 1972]

NIXON AND THE MEDIA

Journalists and politicians have many things in common, but these days their most notable shared characteristic seems to be suspicion. To hear some members of the Nixon Administration tell it, the national news media are conspiring to flood the country with "elitist gossip"

and liberal "plugola"—all for the purpose of sabotaging Richard Nixon. And if some members of the press are to be believed, jackbooted Nixonian brownshirts are likely to trample free speech into extinction any day now. On both sides, the reasoning and the rhetoric sometimes overstep the bounds of reality. But behind the bitterly drawn lines, it is clear that Mr. Nixon and the media have embarked on a struggle that is, in many ways, without precedent in the history of the United States.

The government and the press have always been adversaries. "It's a congenital battle," says 86-year-old Arthur Krock, the retired New York Times Washington bureau chief. "They were born to fight each other just like some warring tribes in Africa." Now, however, new fronts and new weapons are opening up everywhere. Television networks complain of increasing harassment from Washington, and local stations fear for their very licenses if they transmit too much of what the White House regards as "liberal bias." On public television, Presidential satraps are pruning away the nationwide news programming that once promised to help make PTV a "fourth network." In the print press, the White House is sniping at the likes of The Washington Post and The New York Times, and a huge scheduled increase in postal rates threatens the existence of many magazines.

Perhaps most important, the reporter's basic right—the freedom of the press guaranteed by the First Amendment to the Constitution—has suddenly become an occupational hazard. In recent months, four reporters have been thrown into jail for refusing to hand over confidential information to courts or grand juries. Many other journalists are threatened with a similar fate—or think they are—for indulging in the kind of investigative reporting that embarrasses politicians, among others. The legal battle has only just begun, but momentous new precedents are almost sure to be set, starting with the trial that began in Los Angeles last week of Daniel Ellsberg and Anthony Russo for their part in the biggest media bombshell of recent years: the Pentagon papers.

VERY SPECIAL ENEMIES

Many of these conflicts might have occurred under any Administration at this stage of American history, given the fact that both journalism and government are continually expanding their scope. What makes the current struggle so intense is the special nature of the adversaries—on one side an aloof, suspicious, conservative President, and on the other a basically liberal corps of newsmen in the national press, some of whom are increasingly given to "advocacy journalism."

Each side views the issues with passion. The Nixon Administration has criticized the press in striking strong terms, most notably the alliterative blasts of Vice President Spiro Agnew. The press is replying in kind. "The climate Nixon is creating is 'open season' on journalism," declares Fred Friendly, a former president of CBS News and now a television expert for the Columbia University School of Journalism and the Ford Foundation. "This is a plot—yes, a plot against free speech. Nixon really doesn't believe in a free and open society." Critic Nat Hentoff charges: "This country has never had an Administration so bent on restricting the availability of information to the public and the press. Without being paranoid or hysterical, I

think the First Amendment is under systematic attack." Even ABC's Howard K. Smith, whose moderation has made him a favorite with the President, worried on the air recently that government pressure on journalism is beginning to "look like a general assault on reporters."

Whether or not he is leading a general assault, Richard M. Nixon has an undeniable antipathy for the press, stretching back to his first days on the national scene. Soon after his arrival in Congress, his hot-blooded pursuit of Alger Hiss was sharply criticized by the press—led by *The Washington Post*. That episode still rankled when, in 1962, Mr. Nixon conducted his famous "last press conference" after losing the California gubernatorial race. "For sixteen years, even since the Hiss case," he told the assembled reporters, "you've had a lot of fun—a lot of fun." Mr. Nixon promised to end their fun ("You won't have Dick Nixon to kick around any more"). Even after his triumphant return in 1968, the wounds still showed, "I have less . . . supporters in the press than any President," he complained in an interview with Howard K. Smith in 1971. "Other Administrations," says NBC's John Chancellor, "have had a love-hate relationship with the press. The Nixon Administration has a hate-hate relationship."

The roots of suspicion are not purely political. Mr. Nixon has shown himself to be an almost reclusive sort of President, eager to make his decisions in private and to avoid the hurly-burly of defending them in open press conferences. The last Presidential news conference was held on last Oct. 5, and the most recent public statement that Mr. Nixon delivered in person was made more than six weeks ago. During the entire period of resumed U.S. bombing of Hanoi and Haiphong, the President chose to offer not a single word of public explanation. He is even notoriously unavailable to high-ranking members of his own Administration: his last full-scale Cabinet meeting was held two months ago.

A HOUSE ORGAN

In addition, the businesslike, managerial style he has set for his Administration leaves little room for give-and-take with the media. The emphasis is on efficiency, not communication—one top newspaper editor senses that Mr. Nixon regards the press much as a major corporation executive views the company house organ: it should be docile, uncontroversial and wholeheartedly on the company's side.

Partly for this reason, friendly relations with the press have never been exactly helpful to the careers of Administration officials. It is not entirely coincidental, some Washington observers believe, that three agency heads who got on uncommonly well (by Administration standards) with the press corps—Commerce Secretary Peter Peterson, HUD Secretary George Romney and CIA director Richard Helms—have recently lost their jobs. And at lower levels of government, particularly in the military, the White House attitude toward reporters often prompts officials to back away from press contacts even more than usual. "It's been made clear to us," says a U.S. officer in Saigon, "that big mouths will mean little careers."

Given this predominant distrust, Mr. Nixon decided at the very start of his term to circumvent the media wherever possible by going directly to the people. During his first two years in office, the White

House dispatched a barrage of 700,000 letters, cards and telegrams from the President to his fellow citizens. But mostly he relied on television. The reason is that when a Presidential speech runs on TV, says Presidential assistant John Ehrlichman, "it is very difficult for one's meaning to be distorted." The faith in TV ran deep during the early days of the Administration. "If I got together with [conservative commentators] Bill Buckley and Jack Kirkpatrick and began showing Viet Cong atrocities on TV for a week, we could turn things right around," Patrick Buchanan, Mr. Nixon's most conservative speechwriter, once remarked. Asked whether it is really that easy to change public opinion, Buchanan replied: "Yes. Drip by drip by drip. It wears them down."

The Administration's modest profile contributed to a honeymoon with the press during Mr. Nixon's first months in office. The closest thing to a precise date for the end of that honeymoon is Nov. 3, 1969. That evening, Mr. Nixon made a televised speech in which he declared his determination to hold the line in Vietnam and seek a negotiated settlement. Many analysts had expected the President to disengage from Vietnam more dramatically, and when he failed to do so, the TV commentators who came on after the speech expressed surprise—and, as Nixon supporters interpreted it, disapproval.

With that, the White House made a deliberate decision to strike back at the networks; Spiro Agnew was unleashed forthwith. In an earlier speech, he had lambasted the "effete corps of impudent snobs" who were sniping at the President. Now, in an address written by Buchanan and delivered in Des Moines, the Vice President was even more directly targeted on the media. Agnew complained about network correspondents who engaged in "instant analysis" and, "by the expressions on their faces, the tone of their questions and the sarcasm of their responses, made clear their disapproval." The tilt of a commentator's eyebrows had become a political issue, and the broadcasting industry has not been the same since.

As the 1972 campaign opened, the President's advisers were surprised to see the press focusing heavily on the vagaries of George McGovern. Thus, partly at the urging of aides Kenneth Clawson and John Scali, Mr. Nixon declared a moratorium on his feud with the press. The decision paid off; for once, the Nixonians were relatively happy with the coverage they received. But there was at least one glaring exception. The subject was the Watergate affair, and the chief offender, in the Administration's view, was *The Washington Post*.

In an explosive series of stories late in the campaign, the *Post* dug deeply into the Watergate scandal, purportedly linking the political espionage to White House aides Dwight Chapin and H. R. (Bob) Haldeman. Since then, the Administration has been revenging itself on the *Post*, often in petty fashion. Top Republicans, including the President himself, have given exclusive stories to the *Post's* rival, *The Washington Star-News*. ("We would like to see the *Star* build itself up," says one White House aide, tongue in cheek.) *Post* reporters have found it harder than usual to talk to some officials, and an inoffensive society reporter has even been blackballed from covering social functions at the Nixon White House.

Last week, the *Post* ran into another problem that represented either additional White House pressure or an unusual coincidence. In Jack-

sonville, Fla., three groups abruptly filed petitions with the Federal Communications Commission challenging the license renewal of television station WJXT—which (like *NEWSWEEK*) is owned by The Washington Post Company. (A challenge was also filed against the license of the Post-owned WPLG in Miami.) Local reporters were quick to note that WJXT had helped to block the Supreme Court nomination of G. Harrold Carswell by uncovering the judge's endorsement of segregation in 1948—and that one of the challenging groups was headed by George Champion Jr., who was finance chairman of President Nixon's campaign in Florida last year. Both Champion and Ronald Ziegler denied that the White House had encouraged the challenge. But it seemed clear, at least to the challengers, that the Post's disfavor at the White House appeared to leave the company vulnerable.

As for the television networks, the Administration is particularly nettled at CBS, whose campaign coverage of the Watergate case and the controversial Soviet-American wheat deal, claims one White House staffer, "had to be politically motivated." The White House is relatively happy with ABC and relatively unhappy with NBC, especially its tart commentator, David Brinkley. But in general, the Nixonians would like to see local stations—most of which are more is relatively happy with ABC and relatively unhappy with NBC, conservative than the networks—do more to offset the "bias" that comes from New York. And three weeks ago, the Administration took its longest step yet in that direction.

Speaking in Indianapolis, Clay Whitehead, 34, director of the White House Office of Telecommunications Policy, unveiled a carrot-and-stick plan aimed at bringing the 589 network-affiliated stations to heel. He said the Administration would submit legislation to Congress holding station managers clearly responsible for the bias or, as Whitehead put it, "ideological plugola" that allegedly lurks in network programing. If they fail to take heed, they could lose their licenses. In return, the bill would extend the license-renewal interval from three years to five and make it considerably harder for other parties to challenge the license.

"NOT A REPRESSIVE BILL"

In the course of some missionary work (one day last week he carried his message to two newspapers and a public-TV station in New York), Whitehead stoutly accentuated the positive. "It's a bill giving more freedom to the broadcasting industry and less opportunity to the government to use legal licensing powers to implement what it thinks broadcasting ought to do," he insisted. Local stations' responsibility for balanced programing, he pointed out, already exists in current law. "It's patently not," he said, "a repressive bill."

But more than a few station owners were in fact alarmed by the Whitehead proposal; some to the point that they refused to discuss it. "I think of our investment and I think what would happen to it if we lost our license," moaned one executive, declining to comment further. "That speech was an interesting example of intimidation," said a network chief. "I'd say you'd have a tough time getting local stations to clear an instant documentary on the renewed bombing of

North Vietnam right now. Not that I know of any such documentary currently in the works," he added, "but if there were, this would be a major deterrent to getting it aired." Fred Friendly was even more outraged by the Whitehead proposal. "Why," he asked, "can't the local stations see that after the networks they're next? With all this talk about Whitehead offering a carrot-and-stick proposition, people seem to forget that the carrot-stick gimmick was designed for jackasses."

So far, the Whitehead bill is only proposed legislation, and many Capitol Hill observers are skeptical of its chances of a quick passage through Congress. The most immediate threat to what newsmen regard as their rights comes, in fact, not directly from the Administration, but from the courts, which over the past eighteen months have been groping toward news definitions of the "freedom of the press" guaranteed by the First Amendment. But even in this essentially legal struggle, some journalists see the Administration's hand.

It was the Justice Department, for example, that tried to suppress publication of the Pentagon papers. In June 1971, for the first time in American history, two newspapers of general circulation, The New York Times and the Washington Post, were prevented by court order from printing specific articles. Eventually, the Supreme Court voted, 6 to 3, to overturn this "prior restraint," and the publication of the Pentagon papers was resumed. But many questions were left unanswered.

THE FLOW OF INFORMATION

In deciding the case, the Supreme Court ruled that the requirements of national defense were not strong enough to override the principle of freedom of the press. But the ruling suggested that, in a different situation, the government might be able to exercise prior restraint on that basis. And the offshoot of that case, the trial of Daniel Ellsberg and Anthony Russo for leaking the documents, poses still other issues that could reshape the constitutional relationship between the media and the government. "The core of the case," Russo said last week, "is the way in which a conviction would compound the restriction of information flowing to the public."

For one thing, the trial is the government's first attempt to imprison someone for "leaking" information to the press. If Ellsberg and Russo are convicted, other press sources would presumably clam up. For another, the government is claiming, in effect, that it *owned* the information in the Pentagon papers. If this view is upheld, the Administration could prosecute the publishers of any material in its files without regard to the question of national defense—by simply relying on the laws against theft.

The other major judicial conflict between the government and the press stems from the Supreme Court's decision last year in the "Caldwell case" (involving New York Times reporter Earl Caldwell, who had refused to appear before a California grand jury to discuss his interviews with Black Panthers). The Court ruled, 5 to 4 (with all four Nixon appointees on the majority side), that journalists had no First Amendment right to refuse to appear before grand juries or to withhold confidential sources and information. That decision upset a delicate balance between the reporter's First Amendment protection and the state's legitimate need for information in criminal cases. Pros-

ecutors rarely used to subpoena reporters, and journalists rarely refused legitimate requests for information. "What you had was a kind of healthy uncertainty," Stanford University law professor Anthony Amsterdam, one of Caldwell's defense attorneys, said last week. "There was a relationship between press and government of mutual respect and mutual fear. Now every snot-nosed young assistant district attorney in charge of a grand jury feels he has nothing to worry about. He goes ahead and subpoenas a reporter without deciding on the desirability of doing so."

In the past year, more than a dozen reporters across the country have been jailed or threatened with jail for refusing to reveal confidential sources or off-the-record information. William Farr, a 38-year-old reporter, has been in a Los Angeles jail for more than 40 days. In 1970, as a reporter for The Los Angeles Herald-Examiner, Farr obtained, apparently from an attorney in the grisly Sharon Tate murder case, a transcript of out-of-court testimony to the effect that the Manson "family" had planned to kill other celebrities, including Frank Sinatra and Elizabeth Taylor. Farr's story violated a "gag rule" imposed by the judge in the case, who ordered the reporter to reveal the source of his information. Farr has stood fast. "The principle," he says, "is that I gave my word and I intend to keep it."

"WOULD YOU GO TO JAIL?"

Relatively few reporters have suffered from the crackdown, but then relatively few reporters engage in serious investigative work. Those who do say some of their sources are already drying up. Recently, Sacramento Bee reporter John Berthelsen got a tip about some legislative hanky-panky and called a lobbyist to confirm the story. The lobbyist asked nervously: "If I answer that question, would you go to jail to protect me?" Radio newsman Jim Mitchell of KFWB in Los Angeles was subpoenaed last month for his unbroadcast material on a bail bond scandal. Later, a county employee called him to volunteer information on another story. But when Mitchell called the source back after a six-hour interval, he found that someone had tipped the man off to the Caldwell decision. "As far as I'm concerned," barked the county employee, "I haven't even spoken to you." To be on the safe side, some reporters—including Jack Nelson of The Los Angeles Times—have taken to destroying their records once a story is finished.

The loser in all this, concerned newsmen argue, is not the press but the public. Sentiment is growing in many quarters for new legislation. About twenty states have "shield laws"—some of them recently enacted or expanded—to protect reporters who claim confidentiality, and the trend has drawn support from conservatives as well as liberals. Gov. Ronald Reagan signed an amendment that beefed up California's shield law recently. A free press, he declared, is "one of this country's major strengths. And the right to protect his source of information is fundamental to a newsman in meeting his full responsibilities to the public he serves."

In Washington, two dozen bills are currently before Congress for a Federal shield law. Some of them would give the press "unqualified privilege," a blanket exemption from forced testimony such as that which covers most doctor-patient and husband-wife relationships. Other proposals take a middle road. A bill offered last month by Sen. Lowell Weicker of Connecticut would provide two types of protection: (1) "absolute" immunity from forced disclosure before grand juries, legislative committees or government agencies and (2) limited immunity before open courts trying major criminal cases. In the latter instance, reporters would have to give information about such crimes as murder, rape, airline hijacking or serious espionage—the sort of cases in which most reporters would testify voluntarily anyway. Support for some kind of shield law seems to be growing in Washington, despite opposition from both President Nixon and hard-line civil libertarians, who would prefer to rest their case on the First Amendment alone. But at this point, it is unclear what kind of law—if any—will emerge from Congress.

POLICING THE BEAT

Inspired in large part by recent criticism, the news media are making greater efforts to police their own performance. Some television stations have hired conservative commentators to counter whatever liberal bias the networks might transmit. In recent years, many newspapers have established "op-ed" pages to make room for a broadened range of opinion, and some of them are even giving greater prominence to corrections of their own errors. In a still more ambitious step, The Twentieth Century Fund announced plans late last year for a "national press council" of fifteen members, nine of them newsmen. The council will investigate, among other things, complaints about inaccuracies and unfairness in the national media. Although some journalists doubted whether the council could be effective, others welcomed the concept. "If there are going to be any good results from the attacks on the press," says Robert Manning, editor of *The Atlantic*, "perhaps they will be in cutting away a lot of the news media's self-satisfaction and providing some self-scrutiny."

THE BRITISH EXAMPLE

For all its complaints, the American press is still freer than almost any other. Britain, the font of so many American liberties, offers much less independence to the press. Libel laws and the rules governing coverage of trials are far tougher than in the U.S. There is no journalist's privilege not to identify news sources during court cases or police investigations. The British Government has much more authority to restrict the flow of information. Currently, under the provisions of the powerful Official Secrets Act, Scotland Yard is investigating a minor trade magazine, the *Railway Gazette*, which published an advance copy of a plan for service reductions and job layoffs on the nationalized British rails. The case has caused a furor in Britain,

but in the U.S., the Gazette's story would have been no more than a routine scoop on the workings of government.

It is also healthy to bear in mind that U.S. Presidents have always scrapped with the press—including even Thomas Jefferson, the newsman's patron saint. John F. Kennedy who had much more affinity for journalists than Mr. Nixon, once canceled all 22 White House subscriptions to the now-defunct New York Herald-Tribune in a fit of pique—or cold calculation. Harry Truman, who brawled lustily with the press when his policies or his daughter Margaret's musical career demanded it, may have summed up the peculiar relationship best: "Whenever the press quits abusing me, I know I'm in the wrong pew."

As a matter of fact, in the current controversy between President Nixon and the media, it is often the national press that is in the wrong pew, as far as many Americans are concerned. The majority of citizens seems to agree with the President, not the liberal press, on such issues as busing. The major newspapers, newsmagazines and networks generally have been more agitated over Watergate and the renewed bombing of North Vietnam than most of their readers and viewers appear to be. And in the heartland, many local TV stations and smaller newspapers are still relatively unconcerned about the Administration's attacks on the major media—although a tide of concern is beginning to rise. "Too many editors think the pressure from the government won't touch them," complains Lewis Harris, assistant managing editor of The Dallas Times Herald. "They think it's not going to hurt us, that it's just those good old 'red-tinted' newspapers up East. But in the end it's gonna be us, too."

A CLIMATE OF OPINION

Few of the President's opponents would argue that the Administration is engaged in a deeply malicious plot against all of the media. Many of them do argue, however, that the White House pressure on the press is quite premeditated. "I'm certainly not saying that they all sit around a table and plan some grand strategy to hit the media on all fronts," says CBS White House correspondent Dan Rather, himself one of the Administration's least favorite commentators. "But I am convinced that in a broad, general way, the people around Nixon have come to know that it's OK to attack the media. I think people like Haldeman, Ehrlichman, Buchanan et al. did set out to create this climate, knowing that just creating it would be enough to make the press pause."

The press and all the media have undoubtedly taken pause—and that alone may not be wholly unhealthy. The key question is whether the strains between Mr. Nixon and the press may not be moving to a point where, as a result of force or intimidation or simply Presidential reclusiveness, journalists are prevented from doing their job as well as they might. There work is flawed—anyone, any President, can point to error and unfairness. But a free press is the best way anyone has discovered to inform a democratic people. And to tamper with the media is to tamper dangerously with that most imperfect, most perfect, political system yet devised.

[From the Washington Post, Jan. 21, 1973]

AN ERA OF TIMIDITY ON TV?

How many times have you seen on-the-spot reports of the fighting in Vietnam in the last two years, or how many specials dealing with the issues of this crucial conflict have you watched?

(By Alan M. Kriegsman)

Whither television in the next four years? Unless there is a drastic change in the atmosphere already generated by the Nixon administration in its first four years, we appear to be headed for an era of timidity, fecklessness and bland program content, on both commercial and public TV.

The key current exhibits are the now celebrated speech by Office of Telecommunications Policy (OTP) director Clay T. Whitehead last month censuring network newscasts for "ideological plugola," and the ongoing battle between the Corporation for Public Broadcasting (CPB) and the Public Broadcasting System (PBS) for control of public television programming.

The clear implication of the Whitehead speech despite later assurances to the contrary was that the government, and in particular, the executive branch, would be keeping close watch on network affiliates for evidence of said "plugola." And the equally clear implication of the CPB bid to wrest control from PBS is that the White House, through its appointees on the CPB board (including new president Henry Loomis), is a better judge of the country's informational needs than PBS, whose board consists mostly of local public TV station managers.

These are the most conspicuous traces of the trend in recent months, but they are scarcely isolated. To gauge their importance, they must be seen against the cumulative record of the past several years—a background which includes the Agnew attacks on the media starting in 1969, federal subpoenas of CBS files on the Black Panthers in 1970, the Caldwell contempt citation that same year and the jailing of other reporters since, the Pentagon Papers flap, the government antitrust suit against the networks, executive criticism of the Watergate case coverage, the gradual abandonment of the presidential press conference, and other items too numerous to cite.

If you don't think any of this has had any serious effect on television, just ask yourself how many times you've seen on-the-spot reports of the fighting in Vietnam in the last two years, or how many specials dealing with the issues of this crucial conflict you've watched, or how many films of the recent bombings, or how many discussions—involving, say, the secretary of state—of the negotiations you've noticed on the tube.

In his most recent press conference, Whitehead protested that his speech had been misinterpreted, and that the legislation he had pro-

posed was anything but repressive. True, there is nothing in the wording of the bill itself about "plugola" or "elitist gossip in the guise of news analysis," or any of the other vague but ominous phrases in the Indianapolis address. But does it take actual legislation to get the point across in the right quarters? Maybe just a word to the wise is sufficient. The next week the papers carried a story about New York's WNBC-TV, announcing that it was dropping four of its Sunday public affairs programs and replacing them with a magazine-format series. Coincidence? Perhaps. But the move could hardly be more emblematic of the growing climate of caution. "Why stick your neck out" may become the industry motto, wherever the principle isn't already in force.

On the other hand, some of the network rebuttals involving the sacrosanct "freedom of the press" have tended to sound a bit ingenious. How "free" can the press be when the primary outlet for national news in the broadcast industry consists of three giant corporate combines, with all the attendant merchantile, social and political pressures this implies? The networks have been with us so long we sometimes forget that they aren't a fact of nature but man-made structures, motivated first and last, if not always, by profit. True, the network newsmen, for the most part, are topnotch and responsible professionals who do a conscientious and occasionally brilliant job. But the very limitation of their number is a barrier to a full and free flow of ideas as the representation of blacks or women among network anchor people shows all by itself.

The real question, then, is how does one compensate for restrictions and possible abuses of network journalism—by multiplying the outlets and increasing the alternative sources of information, or by White House intimidation?

The legislation proposed by Whitehead would actually tend to reduce alternatives, by making it harder for rival groups to challenge existing TV licensees, and by extending the life of the licenses from the present 3 to a proposed 5 years.

One obvious alternative to network programing is public television. Indeed that was part of the rationale for Federal support, originally, and the conviction that an independent, noncommercial public system could fill in some of the gaps applied across the board to news and public affairs as well as other areas. It's particularly interesting, therefore, to note that while Whitehead thinks commercial broadcasters are now entitled to greater license stability, the administration is headed in the opposite direction when it comes to public TV.

The White House has made it perfectly clear, on more than one occasion, that it does not feel that public television—as now constituted—is ready for long-range funding (the rough equivalent of extended license terms for commercial broadcasters). Indeed, it has done everything in its power to scuttle congressional initiatives toward this goal, including use of the veto. However, precisely because public television attempts to be more innovative and experimental than its commercial counterpart, its need for fiscal security over a period of years is all the greater. Intelligent, imaginative, creative programing requires planning and forethought—it's as simple as that. Yet we even hear talk of tightening the current budgetary noose, in a situation that has already resulted in severe cutbacks in adventurous PBS production.

Time and again, too, the White House has told us—and Whitehead has recently reaffirmed—that television ought to be more responsive to local interests and needs. Yet the legislation Whitehead suggested would further insulate entrenched broadcasters against the challenge of local citizenry. And when Hartford Gunn, president of PBS, comes up with a novel, carefully considered plan to put both funds and programming control more directly and in the hands of local stations, he is virtually ignored. Instead, CPB, with its Nixon-packed lineup, proposes to strip authority from the locals almost entirely, and dole out money and programs according to its own highly “centralized” lights.

In the face of all these developments, what other conclusion can we come to than that, when it comes to communications, the present administration speaks with a forked tongue. It makes high-sounding pronouncements about fairness and balance, and pays lip service to the themes of diversity and local autonomy. Meanwhile, it goes about shutting off channels of meaningful variety or creative independence, draws the reins of command ever closer to the seat of executive power, and raises a budgetary fist as a warning to those who may not get the message. I’m not sure who’ll be the gainers if this drift continues, but it’s certain who’ll be the losers—the viewing public, as usual.

[From the Washington Post, Feb. 6, 1973]

AN AUDIENCE OF VIGILANTES?

(By Joseph Kraft)

“The issue is what kind of society we want to shape through television.”

The Nixon administration has launched a phony attack on the television networks, and the networks have responded with a bogus defense. Uninstructed people, as a result, have the impression that freedom and liberty are under serious fire in this country.

In fact, the issue is what kind of society we want to shape through television. It is a question of whether we want a self-indulgent society with anarchic tendencies, or a society of tighter common bonds including a touch of elitist culture.

The starting point for all this is that the administration feels that the networks, and especially CBS, are hostile to Mr. Nixon. Presidential advisers have been trying to put the networks on the defensive for years.

The latest effort comes from Clay Whitehead, the Director of the White House Office of Telecommunications Policy. In a speech on December 18, Mr. Whitehead called on local station owners to monitor the networks for “ideological plugola” and “elitist gossip” in the evening news shows. The networks shot back with the usual charge that the White House was threatening the First Amendment guarantees of a free press.

A moment’s reflection disposes of both the attack and the defense. The bias of the networks, if it exists, had as its most important recent political outcome that Mr. Nixon received 60 per cent of the vote and carried all but one state in the last election. Freedom of expression,

far from being in jeopardy, is remarkable for the far-out examples that keep cropping up in the press, television, films, dress and everyday behavior.

But just because the fight isn't about what the protagonists say it's about doesn't mean that the fight isn't serious. In fact, the fight is important in the way that television is important.

Television is a negligible influence in determining opinion on particular issues or candidates. It is important as a social force, shaping life in the almost unconscious way that the automobile has shaped life over the past half-century. Much as the automobile yielded on unforeseen pattern of life now known as suburbia as its end product, so television will probably produce patterns of life not yet visible. But already some of the social impact of television is evident.

The self-indulgent instinct, for one thing, is powerfully advanced by TV. The best and fanciest of the world's goods are projected into every home. Those who don't have are stimulated in the strongest way to go out and get theirs by acts of self-assertion.

Cynicism about authority is strongly promoted. Important world figures, traditionally magnified by remoteness, appear on the screen in the living room and are casually discussed as familiars. Mere children, exposed to rampant selling techniques, develop a precocious sophistication about being taken in.

Commitment, and indeed attention, are eroded by television. Viewers are spared the task of buying a book or going to see a concert. They can switch from channel to channel. It says a great deal that the current expression for alienation is a TV metaphor—"turned off."

Another social consequence of television is the widening of protest beyond politics and economics to a cultural dimension. Since TV markets a prevailing ethos, those who would promote change feel first obliged to fight the ethos. Thus black leaders feel required to come on as militants, not the polite, smiling Negroes who normally appear on TV dramas. Woman's libbers affect the Cult of Ugliness to offset the chic, smiling ladies of the TV screens.

In these conditions, the decentralization of TV power advocated by the White House seems to me the very opposite of wisdom. Giving more weight to the local community is establishing over television a kind of vigilante authority by regional and ethnic groups, full of their own self-importance and with little respect for national values.

The networks have national sensitivities at least dimly in mind. Their evening news shows bespeak a high professional quality. Thus the case for Walter Cronkite and John Chancellor and Harry Reasoner is not the First Amendment. It is that, in a divisive time, they express values that make it easier for us to live with ourselves.

MATERIAL FURNISHED THE COMMITTEE BY THE OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT—OFFICE OF TELECOMMUNICATIONS POLICY

INTERNATIONAL COMMUNICATIONS OBJECTIVES AND POLICY—INTERNATIONAL COMMUNICATIONS BACKGROUND

The United States international communications industry consists of the international facilities and operations of the American Telephone and Telegraph Company (AT&T); the Communications Satellite Corporation (Comsat); three major "record" carriers (ITT Worldcom, RCA Globcom, and Western Union International); and several other carriers serving limited geographic areas and particular consumer needs.

AT&T, in cooperation with foreign entities, provides end-to-end switched telephone service between U.S. customers and their counterparts in other countries. AT&T builds and operates its own transoceanic cable transmission facilities, shares in the ownership and operation of U.S. satellite earth stations, and leases satellite circuits from Comsat.

Comsat is a private corporation chartered by the Congress in 1962 to develop a commercial communication satellite system capable of serving international transmission needs. Comsat is, by FCC order, a wholesaler of satellite transmission capacity, serving only as a "carrier's carrier" for AT&T and the record carriers. It is the designated U.S. partner in, and the contractual manager of, INTELSAT, which is an international consortium of communications entities owning and operating the only international commercial satellite communications system.

The three principal record carriers (ITT, RCA, WUI), in conjunction with Western Union (domestic), AT&T, and foreign communications carriers, provide end-to-end telegraph, telex, data, and alternate voice-data services to all foreign locations. The record carriers in effect "own" circuits in transoceanic cables in partnership with AT&T and foreign entities, and lease satellite circuits from Comsat.

This industry structure has worked relatively well over the years in providing service to consumers, in spite of its complexity, encouraging technological innovation, and serving U.S. interests in relation to foreign governments.

Rapidly evolving communications technologies over and under the oceans of the world are proving to be essential tools for building the emerging global structure of peace. By significantly improving man's ability to communicate instantaneously over great distances, international radio services, submarine cables, and communications satellites are essential factors in the evolution of an increasingly interdependent world community.

The global communications network also has become an economic necessity. Reliable, versatile, low-cost communications promote growth in all areas of international trade and commerce. Expanding investment in international communication facilities attests to the increasing significance of communications in the growth of the world economy.

Radio systems, submarine cables, and satellites are combined to provide all the nations of the world with a reliable and economic international communications systems. Since overseas radio-telephone services were inaugurated in 1927, new technologies and a variety of services have succeeded in answering increasing user demands while the costs of these services have decreased dramatically. In 1927, placing a call across the Atlantic often involved long delays, and when the connections were made, meteorological conditions frequently disrupted the conversation. Today, an international call can be directly dialed across land masses and oceans with high reliability and quality via computer-selected satellite or cable circuits.

Projections of future international communications testify to the continuation of rapid growth. Today, there are more than 290 million telephones in the world, and 18 million or more are being added annually. Within this decade, new

satellites and submarine cables will multiply the existing capabilities of international communications systems fivefold or more, involving an investment of perhaps a billion dollars or more.

Because international communication circuits have foreign as well as domestic terminals, decisions to establish new facilities cannot be arrived at unilaterally. Commercial and governmental negotiations with foreign partners must be entered into and mutually satisfactory arrangements concluded in order to expand facilities and services. Communications entities in virtually every other country are owned and operated by the national government. These entities are aware of and responsive to government interests and are immediately assisted in their international negotiations by the foreign policy activities of their governments. This complete integration of foreign commercial and governmental interests trends to place U.S. commercial entities at some disadvantage in negotiations with foreign entities.

Until recently, communications agreements between foreign communications administrations and private U.S. entities were negotiated on a bilateral basis. Increasingly, however, these agreements are entered into on a multilateral basis. There is no impropriety in such concerted action, and we must expect foreign governments to make whatever legitimate arrangements they feel best further their own interests. At the same time, it is vital that U.S. entities be able to participate with foreign entities in a way that protects not only their private commercial interests, but also the interests of the American people. The U.S. Government has an important role in this regard in cooperating with U.S. carriers and negotiating with the foreign entities and their governments.

The current structure of the U.S. international communications industry has evolved within the framework of various statutory and regulatory policies. Those policies and that structure have provided an environment in which the United States has taken the lead in communications technology. And the application of that technology has resulted in a variety of communications services unsurpassed in quality and availability. Other nations entering this field are developing increasingly competitive communications technology and services. In order to assure its continued leadership, the United States must facilitate the expansion of its communications industry and international communications facilities.

In spite of our leadership role, problems have been evident to those who examined the international communications industry regulation and structure in the past. There have been Presidential and other studies, beginning as early as 1950 with the Stewart Report. In 1959, Congressional inquiries examined potential means of restructuring the international industry, but no action resulted. In 1962, the Communications Satellite Act was passed to provide a place for satellite technology in the industry and regulatory structure. In 1965-66, an interagency task force recommended changes. In 1968, the Rostow Task Force proposed major restructuring, including putting all U.S. overseas transmission under consolidated ownership, but no implementation followed. Cable and satellites are the dominant, although not exclusive, modes for international communications transmission. Under current U.S. regulatory practices, authorized common carriers are limited to facilities investments and ownership in one or the other of these two transmission modes. Customer services and rates are determined in part by these arbitrary restraints on international transmission facilities ownership and the concomitant regulatory control of traffic distribution. This is compounded by the current regulatory practice of allowing carriers to earn profits only on the facilities they own.

The rapid technological advances, the growth of communication traffic, and the expansion of communication facilities that lie ahead are clearly consistent with U.S. interests and long-range goals and must be supported and encouraged. Our response to this challenge, however, cannot be as *ad hoc* as has been the case in the past. Changes in regulation and industry structure may become necessary in the future, as has been suggested in the past. This can be achieved constructively and responsibly, however, only if we have a clear recognition of our objectives and the policy framework within which the United States Government and the communications industry are to interact and participate in the world of international communications.

OBJECTIVES AND POLICY

United States activities involving international communications for the 1970's should reflect the following objectives:

Foster the continued development of reliable, low-cost, widespread international communications services, taking full advantage of new technology and conserving use of the limited electromagnetic spectrum.

Ensure that participation by the United States in international commercial communications will be through the private sector.

Limit United States Government ownership of communications facilities to those instances in which the required services cannot be obtained satisfactorily or at reasonable cost from the private sector.

Promote constructive relationships between the United States international communications industry and foreign entities.

Secure fair international trade opportunities for United States technology and products to enhance our competitive position in the world communications market and obtain the benefits of our technological leadership.

Ensure effective participation in the continued development of the INTELSAT global communications satellite system, as well as appropriate national, specialized, or other satellite systems.

Facilitate the availability of communication links among all nations of the world.

In furthering these objectives, the policy proposals described below are intended to serve as guidelines for future Government oversight of the United States international communications industry. Broadly stated, our policy should be to create conditions that will allow sample competition among United States international communications entities, reduce the need for detailed regulatory intervention in industry decisionmaking, simplify relationships with foreign entities, and promote U.S. national interests. Our specific proposals are as follows:

1. There should be no forced merger of international record carriers or of international transmission facilities.

2. Federal regulation of carriers owning international transmission facilities should encourage efficient utilization of both cable and satellite technology without heavily detailed intrusion into the investment and operating decisions of the carriers.

3. International communications services other than public telephone service (e.g., record and specialized services) should be provided on a competitive basis with only such regulatory oversight as is necessary to protect from potentially anti-competitive practices.

4. The Communications Satellite Act of 1962 should be reviewed to determine what changes are needed to reflect the permanent INTELSAT agreements, the maturity of Comsat as a commercial common carrier, and the emergence of new satellite systems.

5. There should be a thorough review of the existing authority and procedures of the Executive Branch for exercising its responsibility for cable landing licenses and satellite approvals, in order to permit international common carriers to do the advance planning and make necessary commitments with their foreign partners with some assurance of Federal agreement and to reduce friction in governmental relations with foreign nations on these matters.

This is a policy that should be applied prospectively and implemented in carefully considered steps over a period of time. The Executive Branch is preparing now to begin detailed discussions on each aspect of the policy recommendations with the FCC and the industry, with a view toward recommending whatever legislative or other actions may be appropriate or necessary in the future.

NOVEMBER 24, 1971.

HON. CLAY T. WHITEHEAD,
*Director, Office of Telecommunications Policy,
Executive Office of the President
Washington, D.C.*

DEAR MR. WHITEHEAD: This is in response to your October 29, 1971 request for our opinion concerning Comsat's right to exclusive ownership and operation of a new communications satellite system designed to improve international air traffic control.

In an October 15, 1971, letter to your General Counsel, we outlined several legal arguments to support the position of your Office that neither the Communications Satellite Act of 1962 nor the various INTELSAT agreements entitled Comsat to exclusive ownership and operation of the proposed system. Because of the limited time then available and because we were not apprised of Comsat's competing arguments, however, we were reluctant to conclude that those arguments conclusively permitted the new system to be adopted independently of Comsat.

Although we have still not been given Comsat's legal position, we feel after further reflection and research that the arguments in our earlier letter are sufficiently meritorious to preclude substantial legal doubts as to the soundness of the proposed system.

Sincerely,

LEON ULMAN,
*Deputy Assistant Attorney General,
Office of Legal Counsel.*

OCTOBER 15, 1971.

HON. ANTONIN SCALIA,
*General Counsel,
Office of Telecommunications Policy,
Executive Office of the President,
Washington, D.C.*

DEAR MR. SCALIA: This is in response to your October 1, 1971, request for our views as to whether any entity other than the Communications Satellite Corporation (Comsat) can lawfully own and operate a new communications satellite system designed to improve international air traffic control. An Administration policy apparently calls for the new system to be developed and owned by the private sector. In addition to air traffic control the new system may serve other functions such as maritime navigation services and services to permit passengers on aircraft and ships to place and receive telephone calls in transit.

Your letter mentions that the Communications Satellite Act of 1962 and various agreements entered into by the United States as a participant in the International Telecommunications Satellite Consortium (INTELSAT) have been cited as forbidding control of the proposed system by any entity other than Comsat.

Since we have not been informed of the legal arguments upon which it is asserted that Comsat has been given a monopoly to operate all new satellite communications systems, including the proposed one, we are hesitant to conclude that that position is wholly untenable. In the limited time available we have developed significant arguments against the position. These are set forth in the sections which follow.

I. COMMUNICATIONS SATELLITE ACT OF 1962

Title III of the Communications Satellite Act of 1962, 47 U.S.C. §§ 701-44 (1970), establishes Comsat as a single entity to own and operate the communications system envisioned by the Act. Two provisions of the Act clearly indicate that Congress foresaw the eventual creation of additional satellite systems at some future time, but no express provision vests Comsat with the authority to own and control these new systems. Indeed, the Act and its legislative history infer that the creation of another entity is not precluded by the Act.

The savings provision in the preamble to the Act sets forth the policy of Congress regarding the establishment of additional systems:

It is not the policy of Congress by this chapter . . . to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest. 47 U.S.C. § 701(d) (1970).

In the operative provisions, section 201(a) (6) expressly recognizes that other systems were contemplated for it declares that the government may utilize other systems under conditions parallel to the savings provisions of the above-quoted section. Section 201(a) (6) states:

the President shall . . . take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes *except where a separate communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest.* 47 U.S.C. § 721(a) (6) (1970) (emphasis added).

Presumably, if the new system, as a factual matter, can be justified as in the national interest or required to meet unique governmental needs the 1962 Act expressly permits it.

Section 305(a) grants to Comsat the authority to "(1) plan, initiate, construct, own, manage, and operate . . . a commercial communications satellite system. . . ." 47 U.S.C. § 735(a) (1) (1970). As first introduced, this section referred to systems. (H.R. 11040) This was changed to the singular by the Senate. This deliberate action and the Act's consistent use of the term system in lieu of systems is, in our opinion, an indication that the Act only intended that Comsat be given control over the single system then contemplated. Since the Act did foresee the eventual creation of additional systems but did not vest their control solely in Comsat, the subsequent creation of new controlling entities cannot be said to have been precluded by the Act.

Although we have not had the time to read all of the extensive legislative history of this Act, we believe that the record sufficiently reinforces this conclusion. It is true that the legislative history is replete with statements to the effect that the Act creates a private monopoly. These statements, however, clearly reflect the *de facto*, not the *de jure* consequences of the Act. For example, in House hearings FCC Chairman Minnow stated the universal assumption concerning why a monopoly was being created:

[I]t is generally accepted that for the foreseeable future only one commercial space communications system will be *technically and economically feasible*. Hearings Before the House Committee on Interstate and Foreign Commerce on H.R. 10115, 87th Cong., 2d Sess., pt 2, at 400 (1962).

Although recognizing that at the time other systems were not technically or economically feasible, there is clear evidence of legislative intent that complementary or competing systems be legally permissible. Congressman Harris, the floor manager of the bill, stated the intent of section 102(d) (47 U.S.C. § 701(d), *supra*), as understood by members of the House Committee in Interstate and Foreign Commerce which reported the bill:

[I]t was agreed that it was not the intent of the Congress by this Act to preclude the creation of an additional communications system or systems . . . 108 Cong. Rec. 7523 (May 2, 1962)¹

More significant, perhaps, are the remarks of Senator Church concerning his successful amendment of section 201(a) (6). As originally introduced this provision allowed government use of another satellite system only if a unique government interest so required. Section 102(d) on the other hand stated in addition

¹The complete statement of Congressman Harris came on an amendment to section 102(d) which he described as follows:

Mr. HARRIS. Mr. Chairman, this is an amendment suggested by our distinguished Speaker of the House with whom I conferred on this legislation concerning two or three matters that we thought would strengthen it. I have not had an opportunity to discuss it with the committee, but paragraph (d) in the committee bill is a provision that was included at the outset and had to do with reserving the right to the Government to provide an additional system should it be determined in the public interest. But as the Clerk read a moment ago, it is approached in a negative way. In other words, as originally proposed, I assume at the council level in the administration, or somewhere along the line, I am not sure just where, this was a provision in various proposals and the committee did not disturb it. But it was agreed that it was not the intent of the Congress by this act to preclude the creation of an additional communication satellite system or systems, and so forth. I thought the suggestion made by our distinguished Speaker was very good, that we should take a positive rather than a negative approach.

The amendment, therefore, is that Congress reserve to itself the right to provide an additional communications satellite system if required to meet unique governmental needs or if otherwise required in the national interest.

to this reason, the Congressional intent to allow additional systems if the national interest so required. Sentaor Church's amendment was clearly intended to make the sections uniform. In explaining the need for his amendment, Senator Church made the following significant statement concerning the purposes and policies of these sections:

Mr. CHURCH, Mr. President, the purpose of this amendment is to make the operative language of the bill itself conform with one of its most important declared purposes. Under the declaration of policy and purpose of the bill, section 102(d) reads:

(d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this Act nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.

The wisdom of the last clause "or if otherwise required in the national interest" is perfectly apparent. We cannot now foretell the corporate instrumentality established by this act will serve the needs of our people. If it should develop that the rates charged are too high, or the service too limited, so that the system is failing to extend to the American people the maximum benefits of the new technology, or if the Government's use of the system for Voice of America broadcasts to certain other parts of the world proves to be excessively expensive for our taxpayers, then certainly this enabling legislation should not preclude the establishment of alternative systems, *whether under private or public management*. And just as certainly is that gateway meant to be kept open, just in case we should ever have to use it, by the language to be found in the bill's declaration of policy and purpose to which I have referred. 108 Cong. Rec. at 16362 (August 13, 1962)

So far as we have been able to determine there were no dissents to this analysis.

One argument that Comsat may be able to assert in its favor is a section 102(d) implication that only systems which are required to meet "unique governmental needs" or required in the "national interest" can be owned and operated by other organizations. Since we understand from your memorandum that the air traffic control system can be justified factually as in the national interest, this section should not be a bar to the new system in any event.

Even if the new system were not required in the national interest, however, several arguments can be made to the effect that section 102(d) was not intended to be exhaustive but merely illustrative of reasons why a new, non-Comsat system is possible. For example, if the two savings provisions were intended to be exhaustive, Congress would be likely to use the word "solely" to clarify the scope of exceptions. In addition the legislative history which we have already cited, particularly Senator Church's statement, indicates that other independent systems are possible for the broadest of reasons.

A third argument in this regard is a rule of statutory construction holding that statutes be construed as furthering public policy rather than derogating from it. 2 J. Sutherland, *Statutes and Statutory Construction* § 5901 (1943). In this connection, section 102(c) states that activities of Comsat "shall be consistent with the Federal antitrust laws." 47 U.S.C. § 701(c) (1970). The legislative history also indicates that antitrust policies were not overridden by this Act. Since the Congress has repeatedly, in this statute and elsewhere, indicated a public policy against monopoly situations, we believe that Comsat has a heavy burden to prove that section 102(d) *implies* an intent to preclude the establishment of an independent air traffic control system.

II. INTELSAT AGREEMENTS

As we understand it, Comsat has been designated as the United States operating entity for the International Telecommunication Satellite Consortium, INTELSAT. Since 1964, this organization has been governed by the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System, 15 U.S.T. 1705, T.I.A.S. No. 5646 (August 20, 1964).

In examining this and subsequent executive agreements, we have not discovered any express provision that would grant Comsat an exclusive monopoly over the proposed air traffic control system. Although we do not have the advantage of the extensive legislative history that was available regarding the 1962 Act, other extrinsic evidence reinforces the conclusion that Comsat was not intended to have a monopoly by the terms of the Interim Agreement.

The Interim Agreement was signed at the initiative of the United States, two years after the 1962 Act. It is clear that INTELSAT is the outgrowth of the Act's directive to the President to "insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system." 47 U.S.C. § 721(a) (5) (1970). The INTELSAT provisions mesh completely with those of the earlier Act. For example, the preamble states the desire to establish "a single global commercial communications satellite system." 1 U.S.T. at 1706. The use of the singular is, significantly, the same as in the 1962 Act.

In such circumstances, a rule of statutory construction requires statutes *in pari materia* be construed together.² This permits the reasonable assumption that the intentions of both the Act and the Agreements are the same. Since we have concluded that the Act does not preclude additional systems, the Agreement should not preclude them either.

Another rule of statutory construction requires that the practical interpretation of persons working pursuant to the terms of a particular provision be given consideration. In this connection it is significant that to date INTELSAT has never provided navigation or public communication services to ships or aircraft.

As noted, the Interim Agreement went into effect in 1964. A permanent agreement to supersede that Agreement was approved by INTELSAT members on May 21, 1971, and has been signed by the United States. It will probably have the requisite number of signatures by early 1972. This permanent agreement, together with statements by the United States interpreting INTELSAT as not encompassing the air traffic control system can serve to indicate the intended construction of the executive agreements.

Article III(a) of the new Agreement states that the prime objective of the organization is in "international public telecommunications services." Other provisions of this Article permit INTELSTAT to include domestic public telecommunications and specialized communications only if they do not impair the ability of INTELSAT to achieve its prime objective. Thus, the Agreement clearly indicates that no monopoly on telecommunications systems was intended, at least in these other areas.

Even if we assume that INTELSAT does have a monopoly for "international public telecommunications services," an assumption not warranted by express provisions of the Agreement, there arises a factual question of whether the air traffic control system constitutes such a service. Article 1(k) indicates that the proposed system is not such a service:

"Public telecommunications services" means fixed or mobile telecommunications services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the INTELSAT space segment for further transmission to the public, and leased circuits for any of these purposes; *but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designed, in whole or in part, to aviation or maritime radio navigation.*" (Emphasis added).

The clear impact of this provision is two-fold: (1) the New Agreement expressly excludes an air traffic control system and (2) the Interim Agreement, as interpreted in this provision did not cover the proposed system.

In conclusion, our research indicates that substantial arguments can be made for the proposition that neither the 1962 Act nor the INTELSAT Agreements were intended to grant Comsat a completely monopoly over all future telecommunications satellite systems. We would caution that this dispute will likely arise at a later time when the Federal Communications Commission will be required to make a separate legal inquiry in connection with any licensing proceedings for the new system. By that time, Comsat and any other interested organization presumably will have developed complete legal arguments in support of a contrary conclusion.

Sincerely,

WILLIAM H. REHNQUIST,
Assistant Attorney General,
Office of Legal Council.

² See 2 J. Sutherland, *Statutes and Statutory Construction* §§ 5201-11 (1843).

OFFICE OF TELECOMMUNICATIONS POLICY STUDIES AND RESEARCH CONTRACTS AT FEB. 16, 1973

Year contract let	Purpose	Total amount
1970		
Sachs/Freeman Associates Inc.....	To identify the information and associated analytical techniques to solve certain electronic-communication compatibility problems.	\$88,941
Stanford Research Institute.....	To define an initial Government spectrum measurement/monitoring program which is capable of spot checking and confirming Federal Government usage by each of the several radio services throughout the radio spectrum.	102,755
HRB-Singer.....	To expand the data base and to continue development of the data processing capabilities of the Office for Frequency Management. In addition, provide for technical assistance, simplification of procedures and improvements in the operation of the system.	286,326
General Electric.....	To provide the technical foundation for coordinating spectrum utilization of communication satellites in geostationary orbit. Develop economic considerations for the above.	126,227
NASA.....	Measure transmission loss occurrence for realistic configurations of an earth station and several terrestrial radio relay stations, emphasizing off-great-circle configurations of antenna beams, and beam elevation angles typical of each stations in a domestic system. Develop the capability to extrapolate the results to other locations, time and frequencies by determining the relative influences of the different mechanisms, such as precipitation scatter, their governing relationships and their correlations with available meteorological parameters.	500,000
FISCAL YEAR 1970		
National Academy of Sciences.....	To continue to provide guidance to the Director of Telecommunications Policy in formulating a methodology for determining the economic and social value of the electromagnetic spectrum in such a way that these values may be incorporated into the spectrum management process.	86,800
FISCAL YEAR 1971		
Versar, Inc.....	To investigate the feasibility of developing EMC measures which could be easily obtained from electronic/communication equipment and applied to solving spectrum management problems.	29,000
Quantum Science Corp.....	To assist in identifying possible national policy issues in the general area of data communications and related computer systems, and to provide realistic projections for the future of data communications through 1975.	39,100
FISCAL YEAR 1972		
Georgia Institute of Technology....	Analysis of the file utilization, the data involved, and the hardware/software configuration(s) which are or will be available.	101,051
Resource Management Corp.....	To provide estimates of average investment and operating costs of existing cable systems.	24,488
Ross Telecommunications Engineering Corp.....	Perform engineering analyses to determine radio frequency interference constraints on the number of domestic satellite earth stations.	29,867
Stanford Research Institute.....	To estimate which of the domestic satellite applicants would establish satellite communication facilities were the FCC to grant authorizations before December 1972 to all of the current applicants.	27,000
Becker & Hayes.....	To catalog, classify and process OTP's data bases on the estimate of 3,750 documents.	14,255
Malarkey, Taylor & Associates.....	Investigated the feasibility of alternative pilot projects to demonstrate uses of broadband communications networks.	68,200
National Economics Research Association.....	To assist OTP in the determination of the costs of providing programming of CATV systems.	69,000
Stanford Research Institute.....	To study the optimal mix of international telecommunications facilities.	28,326
Computer Sciences Corp.....	To assist in the development of a computerized telecommunications management information system in order that OTP may benefit from the cost savings and resource allocation efficiencies inherent in advanced automatic data processing techniques.	7,800
System Application Inc.....	To perform analyses and studies in the area of land mobile radio communications.	84,311
Guatney & Jones.....	To provide detailed information regarding alternative methods by which the President may activate, authenticate, confirm and terminate the Emergency Broadcast System.	38,800
Systems Application Inc.....	To develop quantitative information on the outputs and costs of various functions which underlie the provision of end-use services by the existing communications common carrier.	84,877
Peat, Marwick, Mitchell & Co.....	To study possible modifications to the Uniform System of Accounts for Class A and Class B Telephone companies to better serve the information needs of the existing regulatory process.	108,050

OFFICE OF TELECOMMUNICATIONS POLICY STUDIES AND RESEARCH CONTRACTS AT FEB. 16, 1973—Continued

Year contract let	Purpose	Total amount
Dittberner Associates.....	To identify and qualify the economic impacts of alternative policies for interconnection of customer-owned equipment, including privately operated systems, to the common carrier network, for a range of alternative interconnection.	\$95,000
Jack Faucett Associates.....	To study multi-part tariffs in pricing selected common carrier services.....	28,845
General Electric.....	To develop the analytic models defining the trade-offs between communications, computation and storage in teleprocessing systems; to develop the analytic models necessary to examine the economies of scale in large-scale teleprocessing systems when all factors in addition to pure computation power are considered.	121,750
Clendenon & Brown.....	Survey potential utility of closed circuit television with 2-way voice by Federal departments and agencies.	5,000
Mitre Corp.....	To determine the potential effectiveness of modern communications facilities and services for improving operations of Government, and to survey the Executive Office of the President, as representative, to recommend changes and improvements for enhancing operations.	99,326
Teleconsult Inc.....	To survey existing institutional arrangements affecting United States-Latin American telecommunications and to assist in developing recommendations for improving such relations.	32,231
Arthur D. Little, Inc.....	To purchase a comprehensive study describing the telecommunications industry in 35 countries and integrating a broad cross section of telecommunications data relating to the complex relationships among technology, markets, economic development and regulatory policy.	20,000
FISCAL YEAR 1973		
Law Enforcement Assistance Administration.....	To support the Los Angeles Command Control Communications project to assist in the development of an innovative command and control system.	15,000
Courtest Associates.....	Provide the necessary personnel, services facilities and materials for the Conference on Communications Policy Research (Nov. 17-18, 1972).	13,695
University of Denver.....	To identify, describe and analyze alternative technological systems for delivering broadband communications services to rural areas together with estimates of their costs as a function of selected service levels.	51,700
International Data Systems Corp.....	Tutorial report on controlled access in teleprocessing systems. Special attention will be given to the present and potential access problems, to formulate the management, legislative and regulatory options available to complement technical solutions to the problem, and evaluate those options.	2,475
Dr. Donald J. O'Hara.....	Study economic efficiency of the use of the radio spectrum with principal reference to 2700-2900 MHz bands.	2,498
Dr. Marshall Jamison.....	Prepare a detailed cost study and report setting forth and evaluating the significant cost elements of a typical direct broadcast satellite (DBS) system.	14,800
Transcom, Inc.....	Analyze economic aspects of the mix of telecommunications facilities in the Pacific Basin.	2,500

RESOLUTION ADOPTED BY EXECUTIVE BOARD OF COMMUNICATIONS WORKERS OF AMERICA

BROADCASTING—OR "NARROWCASTING"?

The language of George Orwell's "1984" was "Newspeak," by which truth became falsehood and freedom became slavery.

Recent activities of the Executive Office of the President has indicated that the Nixon Administration has made an Orwellian policy decision to continue its attacks on the First Amendment to the Constitution, by attempting to bring the free press under White House control. If the Administration succeeds, it will make broadcasting into "narrowcasting."

The key issue in the "Pentagon Papers" case was that for a 2-week period, the First Amendment was in a state of suspension by a court edict, which was rolled back by a 1-vote margin in the Supreme Court. Regardless of the merits of the Vietnam war, the press should have been free of government interference in the publication of the papers, since genuine national security was not involved.

In November 1969, Vice President Agnew opened the administration attack on the free press, by his criticism of the broadcasting industry. Since that time, he and others speaking for the President have increased the drum-fire of hostility toward broadcasters and other news media.

Late in 1972, the Administration succeeded in its attempt to subjugate the Corporation for Public Broadcasting, which had been established by the Congress in 1967 as an independent entity. The Administration has all but eliminated effective public affairs programing on the public broadcasting network. Its efforts

included the "divide and conquer" strategy, which pits the local public stations against the Corporation on fund allocation, program content and other important matters.

In December 1972, Dr. Clay T. Whitehead, Director of the White House Office of Telecommunications Policy, unveiled the latest assault on the free press. In the guise of helping broadcasters by increasing the licence period from 3 to 5 years, the White House is also intending to make broadcasters hesitant to present network news and programming by exercising more "local responsibility."

Dr. Whitehead's December 18 speech is replete with high-sounding phrases about ways in which broadcasters can "offer the rich variety, diversity and creativity of America" on television, and how "the truly professional journalist recognizes his responsibility to the institution of a free press."

In connection with a discussion of the "Fairness Doctrine," Dr. Whitehead stated: "For too long we have been interpreting the First Amendment to fit the 1934 Communications Act," calling that interpretation an "inversion of values."

Dr. Whitehead has proposed that Congress enact his bill, which would have as sweeteners the 5-year license renewal and more stringent requirements for citizens groups to challenge license renewals. The dangerous part of the Whitehead proposal is that government takes unto itself power to determine whether the individual station has been programming to meet vague and undefined government standards. The Communications Act, in its 38 years, never has given government the power to intervene in program content. The Whitehead bill would have that practical effect.

The Executive Board of the Communications Workers of America, recognizing the fragile nature of our First Amendment freedoms, hereby condemns the Whitehead proposal and urges the Congress to take no action thereon.



Thursday 2/15/73

2/

HEARING
2/20/73
11:00 a.m.

9:00

We have invited all the Assistant Directors to Mr. Whitehead's hearing before Sen. Pastore on Tuesday, Feb. 20, at 11:00 in Room 5115 of the New SOB.

Recommended they get there about 10:30.

March 14, 1973

Mr. Everett H. Erlick
Senior Vice President and General Counsel
American Broadcasting Companies, Inc.
1330 Avenue of the Americas
New York, New York 10019

Dear Ev:

We have corrected and sent back to the Senate Subcommittee on Communications the transcript of Tom Whitehead's testimony before Senator Pastore on February 20. I found the reference to violence in children's programming which you brought to my attention.

You were right. Tom did imply that there was a present trend toward more violence in children's programming. The corrected transcript, however, makes clear that this is not a current trend.

Best regards.

Sincerely,

/s/

Henry Goldberg
Acting General Counsel

cc: DO Records
DO Chron
Mr. Whitehead
Eva
GC Subject
GC Chron
Goldberg Chron

WASHINGTON, D. C. 20580

For further information, Call: David H. Buswell (202) 962-7144

FOR RELEASE After 2:00 P.M., Thursday, January 6, 1972

COMMISSION SUPPORTS COUNTER-ADVERTISING FOR CERTAIN TYPES OF PRODUCT COMMERCIALS

The Federal Trade Commission announced today, in a statement submitted to the Federal Communications Commission, that it supports the concept of "counter-advertising", i.e., the right of access to the broadcast media for the purpose of expressing views and positions on controversial issues that are raised by commercial advertising.

The statement was submitted in response to the F.C.C.'s Notice of Inquiry concerning the Fairness Doctrine, particularly in response to Part III of the Inquiry, entitled "Access to the Broadcast Media as a result of Carriage of Product Commercials".

Counter-Advertising, in the F.T.C.'s view, would be an appropriate means of overcoming some of the shortcomings of the FTC's regulatory tools, and a suitable approach to some of the present failings of advertising which are now beyond the F.T.C.'s capacity. The Commission noted that certain identifiable kinds of advertising are particularly susceptible to, and particularly appropriate for, recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Identifiable categories, along with examples of each, are as follows:

- . *Advertising asserting claims of product performance or characteristics that explicitly raise controversial issues of current public importance.* — Claims that products contribute to solving ecological problems, or that the advertiser is making special efforts to improve the environment generally.
- . *Advertising stressing broad recurrent themes, affecting the purchase decision in a manner that implicitly raises controversial issues of current public importance.* — Food ads which may be viewed as encouraging poor nutritional habits, or detergent ads which may be viewed as contributing to water pollution.
- . *Advertising claims that rest upon or rely upon scientific premises which are currently subject to controversy within the scientific community.* — Test-supported claims based on the opinions of some scientists but not others whose opposing views are based on different theories, different tests or studies, or doubts as to the validity of the tests used to support the opinions involved in the ad claims.
- . *Advertising that is silent about negative aspects of the advertised product.* — Ad claims that a particular drug product cures various ailments when competing products with equivalent efficacy are available at substantially lower prices.

Stating that it is not essential that counter-advertising be presented in the 30 or 60 second spot format so frequently utilized for commercials, the FTC suggested that "licensees might make available on a regular basis five minute blocks of prime time for counter-advertisements directed at broad general issues raised by all advertising involving certain products, as a way of fulfilling this aspect of their public service responsibilities."

The Commission said it defers to the FCC concerning the precise methods of implementation, but urged that "the following points be embodied in any final plan:

1. Adoption of rules that incorporate the guidelines expressed above, permitting effective access to the broadcast media for counter-advertisements. These rules should impose upon licensees an affirmative obligation to promote effective use of this expanded right of access.

2. Open availability of one hundred percent of commercial time for anyone willing to pay the specified rates, regardless of whether the party seeking to buy the time wishes to advertise or 'counter' advertise. Given the great importance of product information, product sellers should not possess monopolistic control by licensees over the dissemination of such information, and licensees should not be permitted to discriminate against counter-advertisers willing to pay, solely on account of the content of their ideas.

3. Provision by licensees of a substantial amount of time, at no charge, for persons and groups that wish to respond to advertising like that described above but lack the funds to purchase available time slots. In light of the above discussion, it seems manifest that licensees should not limit access, for discussions of issues raised by product commercials, to those capable of meeting a price determined by the profitability of presenting one side of the issues involved. Providing such free access would greatly enhance the probability that advertising, a process largely made possible by licensees themselves, would fully and fairly contribute to a healthy American marketplace."

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

The Handling of Public Issues Under)
the Fairness Doctrine and the Public)
Interest Standards of the Communica-) Docket No. 19260
tions Act.)

Part III: Access to the Broadcast Media
as a Result of Carriage of
Product Commercials

STATEMENT OF THE FEDERAL TRADE COMMISSION

A. Introduction

The Federal Trade Commission submits this statement to the Federal Communications Commission as an expression of its views with regard to Part III of the FCC's Notice of Inquiry concerning the Fairness Doctrine, i.e., that part of the inquiry entitled "Access to the Broadcast Media as a Result of Carriage of Product Commercials".

As an agency with substantial responsibility for and experience with the regulation of advertising practices and the development and enforcement of official policy respecting the impact of advertising upon the economy, the Federal Trade Commission believes that it has information and views that are relevant to this proceeding, specifically with regard to the economic nature and market impact of broadcast advertising and with regard

to appropriate governmental responses to these aspects of advertising. The following comments express the Commission's support for the developing concept of "counter-advertising", or the right of access, in certain defined circumstances, to the broadcast media for the purpose of expressing views and positions on issues that are raised by such advertising. Although the Commission recognizes the potential complications and various difficult problems with regard to implementation and possible ultimate effects, the Commission is of the view that some form of access for counter-advertising would be in the public interest.

None of the comments contained in this statement should be construed to indicate the Commission's views or position with regard to any issue involved in any adjudicative matter. Indeed, this presentation is based on policy considerations, and avoids specific examples of the general points conveyed in order to prevent any possible prejudgment of cases before the Commission in an adjudicatory posture.

B. Magnitude of the Problem

While much has been said in submissions by other parties concerning the social and cultural impact of

BS
broadcast advertising upon the national character, relatively little attention has been paid to the economic role of advertising and its proper place as a pro-competitive and pro-consumer force in a free enterprise economy. It is, however, from this latter perspective that the Federal Trade Commission approaches the question of determining a responsible, effective governmental posture vis-a-vis broadcast advertising. While others have sought additional or different access rights premised upon a social or cultural view of advertising, such considerations are beyond the scope of this statement.

It would be difficult to overstate the significance of the advertising mechanism in the modern free enterprise economy. To a society that values highly individual choice, the maximization of consumer welfare, and technological progress, fair and effective advertising must be of critical importance. The technique of advertising permits producers to speak directly to purchasers concerning these major

economic decisions. This opportunity enables the consuming public to be sufficiently informed of the range of available options to be in a position, without external aid, to define and protect their own interests through marketplace decision-making. Advertising further provides sellers both a vehicle and an incentive for the introduction of new products and new product improvements.

It is beyond dispute that for a host of consumer goods, broadcast advertising plays a predominant role in the marketing process. In 1970, advertising expenditures in this country totaled almost \$7 billion, or approximately \$115.00 per family in the United States. \$3.6 billion of this sum, or about \$60.00 per household, was devoted to broadcast advertising. The vast bulk of all broadcast advertising--\$3.2 billion, or \$52.00 per family--was television advertising.

Broadcast advertising is dominated by a relatively few major companies. In 1970, fewer than 100 firms accounted for 75% of all broadcast advertising expenditures. Ten firms were responsible for over 22% of all broadcast advertising expenditures, and the comparable figure for television advertising is

even higher. The top ten television advertisers spent almost one-quarter of the money spent for television advertising; the top five alone accounted for over 15%. Moreover, more than half of all TV broadcast advertising expenditures were accounted for by five product categories --food, toiletries, automotive products, drugs, and soaps and detergents--and the figure would have been even higher had cigarette advertising been included. Significantly, sales presentations for these products often raise issues, directly or implicitly, that relate to some of the nation's most serious social problems--drug abuse, pollution, nutrition and highway safety.

Much of advertising is truthful, relevant, tasteful and - taken as a whole - a valuable and constructive element in this nation's free competitive economy. On the other hand, it is widely asserted that advertising is capable of being utilized to exploit and mislead consumers, to destroy honest competitors, to raise barriers to entry and establish market power, and that there is a need for government intrusion to prevent such abuses.

It is plain that television is particularly effective in developing brand loyalties and building market

shares. The careful combination of visual and sound effects, special camera techniques, the creation of overall moods, and massive repetition can result in a major impact upon the views and habits of millions of consumers. Thus, television has done more for advertising than simply providing animation to the radio voice; it has added a new dimension to the marketing process."

Finally, advertising today is largely a one-way street. Its usual technique is to provide only one carefully selected and presented

* Television is now "an intimate part of most people's lives and is a major factor in affecting their attitudes, in bringing them information, and in setting their life styles." While House Conference Report on Food, Nutrition and Health, p. 2. See Banzhaf v. F.C.C., 405 F.2d 1082 (D.C. Cir. 1968), cert. denied, 396 U.S. 842 (1969):

"Written messages are not communicated unless they are read, and reading requires an affirmative act. Broadcast messages, in contrast, are 'in the air' It is difficult to calculate the subliminal impact of this pervasive propaganda, which may be heard even if not listened to, but it may reasonably be thought greater than the impact of the written word." 405 F.2d at 1100-01.

See also Capital Broadcasting Co. v. Mitchell, Civ. Action No. 3495-70 (D.C. Cir., Oct. 14, 1971), upholding the constitutionality of the Congressional ban on broadcast advertising of cigarettes.

aspect out of a multitude of relevant product characteristics. Advertising may well be the only important form of public discussion where there presently exists no concomitant public debate. At times, this may produce deception and distortion where the self-interest of sellers in disclosure does not coincide with the consumer's interest in information.

All of these elements of the modern-day advertising mechanism combine to endow broadcast advertising with an enormous power to affect consumer welfare.

C. The Role of the Federal Trade Commission in Advertising Regulation

As a matter of first priority, the FTC is committed to a program designed to remedy the dissemination of false advertising. Ads that are false or misleading clearly possess the potential of conveying misinformation, distorting resource allocations, and causing competitive injury. The FTC is empowered to proceed against such advertising and constantly strives to do so, primarily by means of administrative litigation, seeking various remedies that will vitiate the effects of the challenged deception.

It is important, however, to recognize two limitations upon litigation as a tool in the regulation of

deceptive advertising. First, litigation is generally a lengthy and very costly device for the resolution of conflicts and in many instances cannot be successfully concluded until the damage has been done. Further, the Commission's resources are far too small to permit a formal challenge to every case of deception coming to its attention, and we may select priorities that result in our neglect of some important instances of advertising abuse. Second, the litigation process may be a relatively unsatisfactory mechanism for determination of the truth or accuracy of certain kinds of advertising claims. As suggested below, some advertising is based on "controversial" factual claims and opinions, and litigation may fail to resolve the controversies involved.

but a
counter spot
can?

The FTC has recently undertaken to utilize a supplementary tool for the encouragement of truth-in-advertising. This technique is the systematic use of information-gathering and public-reporting authority under Section 6 of the FTC Act, in the form of a program of submission, by all advertisers in selected major industries, of substantiation for advertising claims, for evaluation and use by the general public. While this program alleviates some of the shortcomings of litigation, it is nevertheless subject to two major

limitations. First, this particular program can deal effectively with only those claims that purport or appear to be "objectively verifiable", i.e., claims which, if set forth carefully, must be based on and supported by laboratory tests, clinical studies, or other fully "adequate" substantiating data. Second, this program also is limited by the extent of available resources. Even if the program succeeds in its expressed goal of seeking and then screening substantiating data with respect to a different product line each month, it will not reach most of the broadcasting advertising that appears each broadcast season.

In addition to being truthful, it would be desirable for advertising to be "complete" in the sense that it makes available all essential pieces of information concerning the advertised product, i.e., all of the information which consumers need in order to make rational choices among competing brands of desired products. Where the advertising for a particular product fails to disclose the existence of a health or safety hazard involved in the use of the product, or where it fails to provide some other "material" informational element in a circumstance in which such nondisclosure results in a misleading impression concerning the advertised

product, the FTC is empowered to require clear and conspicuous disclosure of the relevant warning or other information, through litigation and/or rulemaking procedures. Moreover, failure to disclose performance or quality data in a manner that would facilitate comparison of the value of all competing brands is also within the power of the FTC to correct, at least in those circumstances in which the nondisclosure denies to consumers the kind of information which is found essential to the proper use of the advertised product.

The FTC's efforts to foster "completeness" by means of such disclosures is subject to two impediments. First, required disclosures must compete for consumer attention with the advertiser's own theme and message. Given the limitations of short commercials, it is usually impossible to require inclusion of the entire range of material information which consumers need and should have for intelligent shopping.* Second,

* The average 30 second spot contains only one major selling point. Yet the consumer may wish to make his or her choice with regard to many products on the basis of a potential multitude of relevant characteristics. See Testimony of Thomas C. Dillon, Hearings on Modern Advertising Practices Before the Federal Trade Commission, October 22, 1971, p. 322, 343. (All citations from the Hearings on Modern Advertising Practices are from the uncorrected transcript, and may be supplemented or contradicted by other testimony appearing elsewhere in the transcript.)

the FTC's efforts are necessarily aimed at imposing disclosure requirements upon advertisers who may believe their self-interest is hindered by the dissemination of the information in question. In such cases, one cannot expect the disclosures to be presented as clearly or effectively as would be the case of presentations by advocates who believe in the information and want it to be used by viewers and consumers.

*whose self
interest goes
the other
way*

D. The Role of Counter-Advertising

The Commission believes that counter-advertising would be an appropriate means of overcoming some of the shortcomings of the FTC's tools, and a suitable approach to some of the failings of advertising which are now beyond the FTC's capacity. While counter-advertising is not the only conceivable technique, regulatory or otherwise, for ameliorating these problems, it may be the least intrusive, avoiding as it does the creation of additional governmental agencies or further direct inhibitions on what advertisers can say. Counter-advertising would be fully consistent with, and should effectively complement, the enforcement policies and regulatory approaches of the FTC, to foster an overall scheme of regulation

and policy which would deal comprehensively with many important aspects of advertising, to insure with greater certainty that advertising serves the public interest.

? Any attempt to implement a general right of access to respond to product commercials must allow licensees a substantial degree of discretion in deciding which commercials warrant or require access for a response. Certainly, it is implicit in the foregoing discussion that not all product commercials raise the kinds of issues or involve the kinds of problems which make counter-ads an appropriate or useful regulatory device. It is equally clear, however, that the licensee's discretion should be exercised on the basis of general rules and guidelines which should, inter alia, specify the general categories of commercials which require recognition of access rights.

The FTC believes that certain identifiable kinds of advertising are particularly susceptible to, and particularly appropriate for, recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Such an opportunity has not been afforded sufficiently by means of broadcast news or other parts of programming,

and it is unlikely that it will or can be so afforded by such means at any time in the future. Hence, it is believed that challenge and debate through counter-advertising would be in the public interest with respect to the following categories of advertising:

1. Advertising asserting claims of product performance or characteristics that explicitly raise controversial issues of current public importance.

Many advertisers have responded to the public's growing concern with environmental decay by claiming that their products contribute to the solution of ecological problems, or that their companies are making special efforts to improve the environment generally. Similar efforts appear with respect to the public's concern with nutrition, automobile safety, and a host of other controversial issues of current public importance. While other approaches could, of course, be devised, the most effective means of assuring full public awareness of opposing points of view with regard to such issues, and to assure that opposing views have a significant chance to persuade the public, is counter-advertising, subjecting such issues to "free and robust debate" in the marketplace of ideas.

The FCC has apparently already recognized the existence of Fairness Doctrine obligations with regard

↑
but groups like FOE
want to do it through
counter-spots

to this category of advertising.* Hence, there is no need for further discussion at this point.

2. Advertising stressing broad recurrent themes, affecting the purchase decision in a manner that implicitly raises controversial issues of current public importance.

Advertising for some product categories implicitly raises issues of current importance and controversy, such as food ads which may be viewed as encouraging poor nutritional habits,** or detergent ads which may be viewed as contributing to water pollution. Similarly, some central themes associated by advertising with

* See In re Complaint of Wilderness Society, Friends of the Earth, et al. (Esso), 31 F.C.C. 2d 729 (September 23, 1971); see also Letter to National Broadcasting Co., et al. (Chevron), 29 F.C.C. 2d 807, p. 7, n. 6 (May 12, 1971).

** The White House Conference Report on Food, Nutrition and Health, page 179: "The gaps in our public knowledge, along with actual misinformation, carried by some media are contributing seriously to the problem of hunger and malnutrition in the United States." The Conference Report noted that some commercial messages in food advertising which purport to be educational are in fact counter-educational: "No other area of the national health probably is as abused by deception or misinformation as nutrition." The report urged that action be taken to require corrective information to the public concerning any prior deceptive advertising. "This action is necessary to counteract the tremendous counter-education of our children by false and misleading advertising of the nutritional value of foods, particularly on television."

* various product categories convey general viewpoints and contribute to general attitudes which some persons or groups may consider to be contributing factors to social and economic problems of our times. For example, ads that encourage reliance upon drugs for the resolution of personal problems may be considered by some groups to be a contributing cause of the problem of drug misuse. Counter-advertising would be an appropriate means of providing the public with access to full discussion of all of the issues raised by the above types of advertising, thus shedding light upon the perceived effects of advertising upon societal problems.*

3. Advertising claims that rest upon or rely upon scientific premises which are currently subject to controversy within the scientific community.

Some products are advertised as being beneficial for the prevention or cure of various common problems,

* Support for the application of Fairness Doctrine rights to this general category of advertising can be found in Friends of the Earth v. FCC, Dkt. 24,566 (D.C. Cir., Aug. 16, 1971): "Commercials which continue to insinuate that the human personality finds greater fulfillment in the large car with the quick getaway do, it seems to us, ventilate a point of view which not only has become controversial but involves an issue of public importance. When there is undisputed evidence, as there is here, that the hazards to health implicit in air pollution are enlarged and aggravated by such products, then the parallel with cigarette advertising is exact and the relevance of Banzhaf incapable."

or as being useful for particular purposes because of special properties with regard to performance, safety and efficacy. For example, a drug may be advertised as effective in curing or preventing various problems and ailments. A food may be advertised as being of value to various aspects of nutritional health or diet. A detergent or household cleanser may be advertised as capable of handling difficult kinds of cleaning problems.

Such claims may be based on the opinions of some members of the scientific community, often with tests or studies to support the opinions. The problem with such claims is that the opinions on which they are based are often disputed by other members of the scientific community, whose opposing views are based on different theories, different tests or studies, or doubts as to the validity of the tests and studies used to support the opinions involved in the ad claims.

If an advertiser makes such a claim in a manner that implies that the claim is well-established and beyond dispute, when in fact the claim is currently subject to scientific controversy, the advertiser probably would be guilty of deceptive advertising, and the FTC is empowered to take formal action to eliminate the deception.

However, counter-advertising could be a more effective means of dealing with such cases. For example, formal government action against such claims might, on occasion, unfortunately create the misimpression of official preference for one side of the controversy involved in the advertising. Counter-advertising would permit continued dissemination of such claims while subjecting them to debate and vigorous refutation, providing the general public with both sides of the story on the applicable issues. Such debate and discussion would be a useful supplement to a continued FTC concern with other forms of abuse of advertising in this general category.

4. Advertising that is silent about negative aspects of the advertised product.

We have noted some shortcomings of the FTC's efforts to foster "completeness" by imposing disclosure requirements. In these and other circumstances, the FTC believes that counter-advertising would be a more effective means of exposing the public to the negative aspects of advertised products. This is especially true for situations in which there is an open question as to the existence or significance of particular negative aspects.

only two sides?

For example, in response to advertising for small automobiles, emphasizing the factor of low cost and economy, the public could be informed of the views of some people that such cars are considerably less safe than larger cars. On the other hand, ads for big cars, emphasizing the factors of safety and comfort, could be answered by counter-ads concerning the greater pollution arguably generated by such cars. In response to advertising for some foods, emphasizing various nutritional values and benefits, the public might be informed of the views of some people that consumption of some other food may be a superior source of the same nutritional values and benefits. In response to advertising for whole life insurance, emphasizing the factor of being a sound "investment," the public could be informed of the views of some people that whole life insurance is an unwise expenditure. In response to advertising for some drug products, emphasizing efficacy in curing various ailments, the public could be informed of the views of some people that competing drug products with equivalent efficacy are available in the market at substantially lower prices.

*that's
the problem*

This list of examples could go on indefinitely, for the existence of undisclosed negative aspects, or

"trade-offs" of one sort or another, is inherent in all commercial products and thus in all advertising. Rather than forcing all advertisers to disclose all such aspects in all of their own ads, it is more efficient and more effective to provide for such disclosures, to the maximum extent possible, through counter-advertising.

E. Implementation of These Proposals

While adoption of these suggestions may impose additional economic and social costs, the extent of such costs will largely depend on the mode of implementation. The FTC does not possess the expertise to speak definitely on this point, but it would appear that adoption of a variety of procedures and limitations could minimize the costs involved in these proposals, to a point where the countervailing public benefit far exceeds any loss.

For example, the Commission recognizes that it may be desirable to impose strict limits upon access rights within each category. In addition to limitations on the frequency and duration of replies in each category, it might be appropriate to prohibit replies to particular ads (as opposed to all advertising for certain product categories), at least for some types of advertising

problems. For example, with respect to the problems and issues raised by general ad themes, it might be appropriate to require replies to apply to all advertising involving the theme or product in question, rather than being aimed at one particular ad or one particular brand. Such a limitation, however, would be inappropriate with regard to some other categories, such as "public issue" ads, that explicitly raise controversial issues of current public importance in connection with the marketing of particular brands.

FOE + others don't think so
Further, it is not essential that counter-advertising be presented in the 30 or 60 second spot format so frequently utilized for commercial advertisements. In fact, that procedure might unacceptably increase either the cost of commercial advertising, thereby possibly raising barriers to entry into some consumer goods industries, or the percentage of broadcast time devoted to disconnected spots, thereby increasing the proportion of broadcast time devoted to selling and decreasing the proportion devoted to programming and entertainment. While there is reason to doubt that regular news or public service programs can effectively serve the counter-advertising function, short spots are not necessarily the only alternative.

For instance, licensees might make available on a regular basis five minute blocks of prime time for counter-advertisements directed at broad general issues raised by all advertising involving certain products, as a way of fulfilling this aspect of their public service responsibilities.

Beyond these general considerations, it is only appropriate that the Federal Trade Commission defer to the Federal Communications Commission on questions that relate to the more precise mechanics of implementing the concept of counter-advertising. That these proposals are workable does, however, seem clear both from a review of prior FCC experience with application of the Fairness Doctrine to cigarette ads and from the submissions in this proceeding by those versed in the mechanics of implementing access rules. We do, however, urge that the following points be embodied in any final plan:

1. Adoption of rules that incorporate the guidelines expressed above, permitting effective access to the broadcast media for counter-advertisements. These rules should impose upon licensees an affirmative obligation to promote effective use of this expanded right of access.

2. Open availability of one hundred percent of commercial time for anyone willing to pay the specified rates, regardless of whether the party seeking to buy the time wishes to advertise or "counter" advertise. Given the great importance of product information, product sellers should not possess monopolistic control by licensees over the dissemination of such information, and licensees should not be permitted to discriminate against counter-advertisers willing to pay, solely on account of the content of their ideas.

BEV
-
OTP

3. Provision by licensees of a substantial amount of time, at no charge, for persons and groups that wish to respond to advertising like that described above but lack the funds to purchase available time slots. In light of the above discussion, it seems manifest that licensees should not limit access, for discussions of issues raised by product commercials, to those capable of meeting a price determined by the profitability of presenting one side of the issues involved. Providing such free access would greatly enhance the probability that advertising, a process largely made possible by licensees themselves, would fully and fairly contribute to a healthy American marketplace.

OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

January 22, 1972

MEMORANDUM FOR JAMES B. LOKEN

FROM: Antonin Scalia

Yuri

SUBJECT: FTC Fairness Doctrine Filing

As part of its broad inquiry into the Fairness Doctrine, the Federal Communications Commission (FCC) requested views on the applicability of the Doctrine to product advertisements. The Federal Trade Commission (FTC) took the unusual step of filing in another agency's proceeding to propose a concept of "counter-advertising," which would provide a right of broadcast access for the presentation of views contrary to those raised explicitly and implicitly by product ads.

As stated fully in the attached FTC comments, the right of access would apply against all commercials--somewhat artificially categorized as follows for purposes of the FTC's suggested rules:

- (1) Ad claims that explicitly raise controversial issues (e.g., an oil company ad asserting the Alaska pipeline will not harm the environment);
- (2) Ads stressing broad, recurring themes in a manner that implicitly raise such issues (e.g., "food ads which may be viewed as encouraging poor nutritional habits");
- (3) Ad claims that are supported by scientific premises that are subject to controversy within the "scientific community" (e.g., "a detergent or household cleanser may be advertised as capable of handling different kinds of cleaning problems"); and
- (4) Ads that are silent about the negative aspects of the products (e.g., "in response to advertising for some foods, emphasizing various nutritional values and benefits, the public might be informed of the views of some people that consumption of some other food may be a superior source of the same nutritional values and benefits").

The FTC suggests that this right of access be implemented by FCC rules placing an affirmative obligation on broadcast licensees to promote effective use of counter-ads, to provide a right to purchase time for any advertising or counter-ad purpose, and to require "a substantial amount" of free time "for persons and groups that wish to respond" to ads.

By way of background, since 1961 the FTC and the FCC have had a formal liaison agreement dividing agency responsibility for guarding against deceptive broadcast advertising. The FCC requires that, as part of a licensee's responsibility for the content of all material aired over his station, the broadcaster exercise reasonable diligence in preventing the broadcast of deceptive ads. If the ad in question is of local origin, the FCC will take action against the licensee without invoking FTC processes. If the ad is of national origin, the FCC will defer to the FTC's jurisdiction, and in most cases the FTC's sanctions will be imposed on the advertiser and the advertising agency, but not on the broadcaster.

These procedures have not been used to deal with either institutional or product ads that explicitly or implicitly raise controversial issues. Under the Fairness Doctrine, as it has been developed by the FCC and the courts since the early cigarette advertising rulings, broadcasters must provide reasonable opportunity for the presentation of contrasting views when one side of a "controversial issue of public importance" is treated in an ad. In this respect, the FTC's proposal would not change existing practices--although it gives them additional respectability at a time when Dean Burch may be trying to withdraw from them. (Moreover, it may be going further than the present practice in implying that the broadcaster cannot himself meet his fairness obligations in his programming, but must affirmatively seek out advocates for contrasting viewpoints and provide them with air time.)

It is with respect to the two remaining categories of ads (i.e., those involving controversies within the scientific community and those that are silent as to negative aspects) that the FTC goes over the edge. Although acknowledging that any advertiser who falsely implies that a scientific claim is well-established would probably be guilty of deceptive advertising and hence reachable by ordinary FTC procedures, the FTC asserts that counter-ads are a "more effective" means of dealing with the problem. Likewise with respect to the advertiser's failure to disclose "negative aspects" of his product: It is "more efficient and more effective" to have the FCC deal with these deceptions through compulsory counter-advertising. In effect, the FTC is saying that the FCC, through

its oversight of broadcast content, is better able to achieve the regulatory goals that the FTC was established to serve. No doubt. The FCC holds the very existence of the broadcaster in its hands, and can achieve compliance with its wishes by the mere raising of an eyebrow. The FTC, on the other hand, is constrained by all sorts of inconvenient procedural "safeguards" when it seeks to take action against the deceptive practices declared unlawful. (The Justice Department has the same problem--and seeks the same solution: Do it through the FCC.)

What is most upsetting about the FTC filing, however, is not its understandable abdication of the difficult responsibility to make factual determinations concerning deception. Rather, it is what I would describe as the dilettantish nature and irresponsible flavor of its specific proposals, in the best Ralph Nader-Tracy Westen tradition. To appreciate this, you must read the Statement itself. Although acknowledging that the FCC "does not possess the expertise to speak definitively on this point," the Statement concludes, in less than three pages and with no hard substantiation of the point, that the proposals "are workable"--as though this were a minor detail. But the true spirit of utter obliviousness to practicality can best be derived from page 18, where, after listing five examples of situations in which counter-ads could be required to point up "negative aspects" of advertised products--examples related to products which alone account for about 40% of all TV advertising--the Statement confidently asserts that "the list of examples could go on indefinitely." It apparently did not occur to the FTC that that is precisely the problem. The same devil-may-care attitude was displayed by Mr. Pitofsky (FTC Director of Consumer Protection) in his response to press inquiry concerning who would establish the validity of the counter-ads, which might of course be produced by irresponsible and uninformed groups (Quis custodiet custodes?): As though this were a novel problem not completely thought through, he replied that the FTC "might" have to monitor them to be sure they did not involve false or deceptive statements--although this could become "ticklish," since there might be a First Amendment problem involved. Indeed.

It is possible that the FTC's proposals would devastate the broadcasting and advertising industries--without even having the welcome effect of reducing the number of TV ads, but on the contrary increasing them by some indeterminate factor. In my view, however, the real damage that has been done by the filing consists not in the creation of any substantial possibility that the proposals will be adopted--for they have been put forward before by various groups, and the FCC is

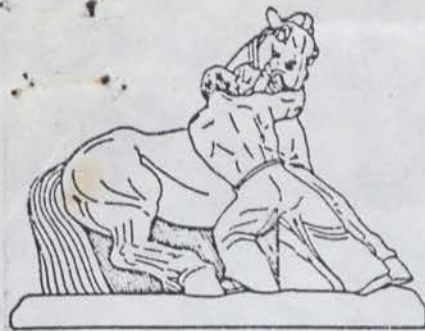
not receptive to them. The damage rather consists of the association of this Administration ("the Republican FTC") with a scheme that is viewed as not merely harmful, but downright irresponsible, by broadcasters and major advertisers. Even if there is virtually no possibility that the proposals will be adopted, it is embarrassing to the President to be indirectly associated with them, and we should make as much of an effort as possible to disclaim any connection.

As to the most appropriate means of achieving this: Neither an OTP filing in the Fairness Doctrine docket, nor a formal letter from Tom to Dean Burch seems appropriate. Both of these devices serve to give added stature to the FTC proposals. Moreover, using such procedures for a matter of this substantive triviality will diminish their effectiveness on future occasions. Unless we are willing to tell the FCC what it should do, I do not think we should debase the filing or formal-letter procedures by using them merely to criticize one possible alternative.

One feasible approach might be a letter from Tom to Miles Kirkpatrick, expressing the Administration's concern about the effects of the FTC proposal, and asking the Commission to reconsider its position. It is unlikely that this would achieve any reconsideration, but it would certainly separate us from the FTC in the clearest possible fashion. Another approach might be a planted question at Tom's appearance before the Ervin Committee on February 2. That would certainly achieve visibility, but the subject matter is really not of the same cloth as the broad First Amendment problems the Committee is considering. Finally, there is the possibility of Tom's making a detailed criticism of the FTC proposal in a major speech. He has a speech scheduled for the middle of next month which would be an appropriate occasion.

As soon as you have had a chance to digest this memorandum, I would like to discuss the various alternatives with you. Please give me a call when you are ready.

Attachment



FEDERAL
TRADE
COMMISSION

^{Hutchings}
news

WASHINGTON, D. C. 20580

For further information, Call: David H. Buswell (202) 962-7144

FOR RELEASE After 2:00 P.M., Thursday, January 6, 1972

COMMISSION SUPPORTS COUNTER-ADVERTISING
FOR CERTAIN TYPES OF PRODUCT COMMERCIALS

The Federal Trade Commission announced today, in a statement submitted to the Federal Communications Commission, that it supports the concept of "counter-advertising", i.e., the right of access to the broadcast media for the purpose of expressing views and positions on controversial issues that are raised by commercial advertising.

The statement was submitted in response to the F.C.C.'s Notice of Inquiry concerning the Fairness Doctrine, particularly in response to Part III of the Inquiry, entitled "Access to the Broadcast Media as a result of Carriage of Product Commercials".

Counter-Advertising, in the F.T.C.'s view, would be an appropriate means of overcoming some of the shortcomings of the FTC's regulatory tools, and a suitable approach to some of the present failings of advertising which are now beyond the F.T.C.'s capacity. The Commission noted that certain identifiable kinds of advertising are particularly susceptible to, and particularly appropriate for, recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Identifiable categories, along with examples of each, are as follows:

- *Advertising asserting claims of product performance or characteristics that explicitly raise controversial issues of current public importance.* — Claims that products contribute to solving ecological problems, or that the advertiser is making special efforts to improve the environment generally.
- *Advertising stressing broad recurrent themes, affecting the purchase decision in a manner that implicitly raises controversial issues of current public importance.* — Food ads which may be viewed as encouraging poor nutritional habits, or detergent ads which may be viewed as contributing to water pollution.
- *Advertising claims that rest upon or rely upon scientific premises which are currently subject to controversy within the scientific community.* — Test-supported claims based on the opinions of some scientists but not others whose opposing views are based on different theories, different tests or studies, or doubts as to the validity of the tests used to support the opinions involved in the ad claims.
- *Advertising that is silent about negative aspects of the advertised product.* — Ad claims that a particular drug product cures various ailments when competing products with equivalent efficacy are available at substantially lower prices.

Stating that it is not essential that counter-advertising be presented in the 30 or 60 second spot format so frequently utilized for commercials, the FTC suggested that "licensees might make available on a regular basis five minute blocks of prime time for counter-advertisements directed at broad general issues raised by all advertising involving certain products, as a way of fulfilling this aspect of their public service responsibilities."

The Commission said it defers to the FCC concerning the precise methods of implementation, but urged that "the following points be embodied in any final plan:

1. Adoption of rules that incorporate the guidelines expressed above, permitting effective access to the broadcast media for counter-advertisements. These rules should impose upon licensees an affirmative obligation to promote effective use of this expanded right of access.

2. Open availability of one hundred percent of commercial time for anyone willing to pay the specified rates, regardless of whether the party seeking to buy the time wishes to advertise or 'counter' advertise. Given the great importance of product information, product sellers should not possess monopolistic control by licensees over the dissemination of such information, and licensees should not be permitted to discriminate against counter-advertisers willing to pay, solely on account of the content of their ideas.

3. Provision by licensees of a substantial amount of time, at no charge, for persons and groups that wish to respond to advertising like that described above but lack the funds to purchase available time slots. In light of the above discussion, it seems manifest that licensees should not limit access, for discussions of issues raised by product commercials, to those capable of meeting a price determined by the profitability of presenting one side of the issues involved. Providing such free access would greatly enhance the probability that advertising, a process largely made possible by licensees themselves, would fully and fairly contribute to a healthy American marketplace."

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

The Handling of Public Issues Under)
the Fairness Doctrine and the Public)
Interest Standards of the Communica-) Docket No. 19260
tions Act.)

Part III: Access to the Broadcast Media
as a Result of Carriage of
Product Commercials

STATEMENT OF THE FEDERAL TRADE COMMISSION

A. Introduction

The Federal Trade Commission submits this statement to the Federal Communications Commission as an expression of its views with regard to Part III of the FCC's Notice of Inquiry concerning the Fairness Doctrine, i.e., that part of the inquiry entitled "Access to the Broadcast Media as a Result of Carriage of Product Commercials".

As an agency with substantial responsibility for and experience with the regulation of advertising practices and the development and enforcement of official policy respecting the impact of advertising upon the economy, the Federal Trade Commission believes that it has information and views that are relevant to this proceeding, specifically with regard to the economic nature and market impact of broadcast advertising and with regard

to appropriate governmental responses to these aspects of advertising. The following comments express the Commission's support for the developing concept of "counter-advertising", or the right of access, in certain defined circumstances, to the broadcast media for the purpose of expressing views and positions on issues that are raised by such advertising. Although the Commission recognizes the potential complications and various difficult problems with regard to implementation and possible ultimate effects, the Commission is of the view that some form of access for counter-advertising would be in the public interest.

None of the comments contained in this statement should be construed to indicate the Commission's views or position with regard to any issue involved in any adjudicative matter. Indeed, this presentation is based on policy considerations, and avoids specific examples of the general points conveyed in order to prevent any possible prejudgment of cases before the Commission in an adjudicatory posture.

B. Magnitude of the Problem

While much has been said in submissions by other parties concerning the social and cultural impact of

broadcast advertising upon the national character, relatively little attention has been paid to the economic role of advertising and its proper place as a pro-competitive and pro-consumer force in a free enterprise economy. It is, however, from this latter perspective that the Federal Trade Commission approaches the question of determining a responsible, effective governmental posture vis-a-vis broadcast advertising. While others have sought additional or different access rights premised upon a social or cultural view of advertising, such considerations are beyond the scope of this statement.

It would be difficult to overstate the significance of the advertising mechanism in the modern free enterprise economy. To a society that values highly individual choice, the maximization of consumer welfare, and technological progress, fair and effective advertising must be of critical importance. The technique of advertising permits producers to speak directly to purchasers concerning these major

economic decisions. This opportunity enables the consuming public to be sufficiently informed of the range of available options to be in a position, without external aid, to define and protect their own interests through marketplace decision-making. Advertising further provides sellers both a vehicle and an incentive for the introduction of new products and new product improvements.

It is beyond dispute that for a host of consumer goods, broadcast advertising plays a predominant role in the marketing process. In 1970, advertising expenditures in this country totaled almost \$7 billion, or approximately \$115.00 per family in the United States. \$3.6 billion of this sum, or about \$60.00 per household, was devoted to broadcast advertising. The vast bulk of all broadcast advertising--\$3.2 billion, or \$52.00 per family--was television advertising.

Broadcast advertising is dominated by a relatively few major companies. In 1970, fewer than 100 firms accounted for 75% of all broadcast advertising expenditures. Ten firms were responsible for over 22% of all broadcast advertising expenditures, and the comparable figure for television advertising is

even higher. The top ten television advertisers spent almost one-quarter of the money spent for television advertising; the top five alone accounted for over 15%. Moreover, more than half of all TV broadcast advertising expenditures were accounted for by five product categories --food, toiletries, automotive products, drugs, and soaps and detergents--and the figure would have been even higher had cigarette advertising been included. Significantly, sales presentations for these products often raise issues, directly or implicitly, that relate to some of the nation's most serious social problems--drug abuse, pollution, nutrition and highway safety.

Much of advertising is truthful, relevant, tasteful and - taken as a whole - a valuable and constructive element in this nation's free competitive economy. On the other hand, it is widely asserted that advertising is capable of being utilized to exploit and mislead consumers, to destroy honest competitors, to raise barriers to entry and establish market power, and that there is a need for government intrusion to prevent such abuses.

It is plain that television is particularly effective in developing brand loyalties and building market

shares. The careful combination of visual and sound effects, special camera techniques, the creation of overall moods, and massive repetition can result in a major impact upon the views and habits of millions of consumers. Thus, television has done more for advertising than simply providing animation to the radio voice; it has added a new dimension to the marketing process."

Finally, advertising today is largely a one-way street. Its usual technique is to provide only one carefully selected and presented

* Television is now "an intimate part of most people's lives and is a major factor in affecting their attitudes, in bringing them information, and in setting their life styles." White House Conference Report on Food, Nutrition and Health, p. 2. See Banzhaf v. F.C.C., 405 F.2d 1082 (D.C. Cir. 1968), cert. denied, 396 U.S. 842 (1969):

"Written messages are not communicated unless they are read, and reading requires an affirmative act. Broadcast messages, in contrast, are 'in the air' It is difficult to calculate the subliminal impact of this pervasive propaganda, which may be heard even if not listened to, but it may reasonably be thought greater than the impact of the written word." 405 F.2d at 1100-01.

See also Capital Broadcasting Co. v. Mitchell, Civ. Action No. 3495-70 (D.C. Cir., Oct. 14, 1971), upholding the constitutionality of the Congressional ban on broadcast advertising of cigarettes.

aspect out of a multitude of relevant product characteristics. Advertising may well be the only important form of public discussion where there presently exists no concomitant public debate. At times, this may produce deception and distortion where the self-interest of sellers in disclosure does not coincide with the consumer's interest in information.

All of these elements of the modern-day advertising mechanism combine to endow broadcast advertising with an enormous power to affect consumer welfare.

C. The Role of the Federal Trade Commission in Advertising Regulation

As a matter of first priority, the FTC is committed to a program designed to remedy the dissemination of false advertising. Ads that are false or misleading clearly possess the potential of conveying misinformation, distorting resource allocations, and causing competitive injury. The FTC is empowered to proceed against such advertising and constantly strives to do so, primarily by means of administrative litigation, seeking various remedies that will vitiate the effects of the challenged deception.

It is important, however, to recognize two limitations upon litigation as a tool in the regulation of

deceptive advertising. First, litigation is generally a lengthy and very costly device for the resolution of conflicts and in many instances cannot be successfully concluded until the damage has been done. Further, the Commission's resources are far too small to permit a formal challenge to every case of deception coming to its attention, and we may select priorities that result in our neglect of some important instances of advertising abuse. Second, the litigation process may be a relatively unsatisfactory mechanism for determination of the truth or accuracy of certain kinds of advertising claims. As suggested below, some advertising is based on "controversial" factual claims and opinions, and litigation may fail to resolve the controversies involved.

The FTC has recently undertaken to utilize a supplementary tool for the encouragement of truth-in-advertising. This technique is the systematic use of information-gathering and public-reporting authority under Section 6 of the FTC Act, in the form of a program of submission, by all advertisers in selected major industries, of substantiation for advertising claims, for evaluation and use by the general public. While this program alleviates some of the shortcomings of litigation, it is nevertheless subject to two major

limitations. First, this particular program can deal effectively with only those claims that purport or appear to be "objectively verifiable", i.e., claims which, if set forth carefully, must be based on and supported by laboratory tests, clinical studies, or other fully "adequate" substantiating data. Second, this program also is limited by the extent of available resources. Even if the program succeeds in its expressed goal of seeking and then screening substantiating data with respect to a different product line each month, it will not reach most of the broadcasting advertising that appears each broadcast season.

In addition to being truthful, it would be desirable for advertising to be "complete" in the sense that it makes available all essential pieces of information concerning the advertised product, i.e., all of the information which consumers need in order to make rational choices among competing brands of desired products. Where the advertising for a particular product fails to disclose the existence of a health or safety hazard involved in the use of the product, or where it fails to provide some other "material" informational element in a circumstance in which such nondisclosure results in a misleading impression concerning the advertised

*Patently
Abused*

product, the FTC is empowered to require clear and conspicuous disclosure of the relevant warning or other information, through litigation and/or rulemaking procedures.. Moreover, failure to disclose performance or quality data in a manner that would facilitate comparison of the value of all competing brands is also within the power of the FTC to correct, at least in those circumstances in which the nondisclosure denies to consumers the kind of information which is found essential to the proper use of the advertised product.

The FTC's efforts to foster "completeness" by means of such disclosures is subject to two impediments. First, required disclosures must compete for consumer attention with the advertiser's own theme and message. Given the limitations of short commercials, it is usually impossible to require inclusion of the entire range of material information which consumers need and should have for intelligent shopping.* Second,

* The average 30 second spot contains only one major selling point. Yet the consumer may wish to make his or her choice with regard to many products on the basis of a potential multitude of relevant characteristics. See Testimony of Thomas C. Dillon, Hearings on Modern Advertising Practices Before the Federal Trade Commission, October 22, 1971, p. 322, 343. (All citations from the Hearings on Modern Advertising Practices are from the uncorrected transcript, and may be supplemented or contradicted by other testimony appearing elsewhere in the transcript.)

the FTC's efforts are necessarily aimed at imposing disclosure requirements upon advertisers who may believe their self-interest is hindered by the dissemination of the information in question. In such cases, one cannot expect the disclosures to be presented as clearly or effectively as would be the case of presentations by advocates who believe in the information and want it to be used by viewers and consumers.

D. The Role of Counter-Advertising

The Commission believes that counter-advertising would be an appropriate means of overcoming some of the shortcomings of the FTC's tools, and a suitable approach to some of the failings of advertising which are now beyond the FTC's capacity. While counter-advertising is not the only conceivable technique, regulatory or otherwise, for ameliorating these problems, it may be the least intrusive, avoiding as it does the creation of additional governmental agencies or further direct inhibitions on what advertisers can say. Counter-advertising would be fully consistent with, and should effectively complement, the enforcement policies and regulatory approaches of the FTC, to foster an overall scheme of regulation

and policy which would deal comprehensively with many important aspects of advertising, to insure with greater certainty that advertising serves the public interest.

Any attempt to implement a general right of access to respond to product commercials must allow licensees a substantial degree of discretion in deciding which commercials warrant or require access for a response. Certainly, it is implicit in the foregoing discussion that not all product commercials raise the kinds of issues or involve the kinds of problems which make counter-ads an appropriate or useful regulatory device. It is equally clear, however, that the licensee's discretion should be exercised on the basis of general rules and guidelines which should, inter alia, specify the general categories of commercials which require recognition of access rights.

The FTC believes that certain identifiable kinds of advertising are particularly susceptible to, and particularly appropriate for, recognition and allowance of counter-advertising, because of characteristics that warrant some opportunity for challenge and debate. Such an opportunity has not been afforded sufficiently by means of broadcast news or other parts of programming,

and it is unlikely that it will or can be so afforded by such means at any time in the future. Hence, it is believed that challenge and debate through counter-advertising would be in the public interest with respect to the following categories of advertising:

1. Advertising asserting claims of product performance or characteristics that explicitly raise controversial issues of current public importance.

Many advertisers have responded to the public's growing concern with environmental decay by claiming that their products contribute to the solution of ecological problems, or that their companies are making special efforts to improve the environment generally. Similar efforts appear with respect to the public's concern with nutrition, automobile safety, and a host of other controversial issues of current public importance. While other approaches could, of course, be devised, the most effective means of assuring full public awareness of opposing points of view with regard to such issues, and to assure that opposing views have a significant chance to persuade the public, is counter-advertising, subjecting such issues to "free and robust debate" in the marketplace of ideas.

The FCC has apparently already recognized the existence of Fairness Doctrine obligations with regard

to this category of advertising.* Hence, there is no need for further discussion at this point.

2. Advertising stressing broad recurrent themes, affecting the purchase decision in a manner that implicitly raises controversial issues of current public importance.

Advertising for some product categories implicitly raises issues of current importance and controversy, such as food ads which may be viewed as encouraging poor nutritional habits,** or detergent ads which may be viewed as contributing to water pollution. Similarly, some central themes associated by advertising with

* See In re Complaint of Wilderness Society, Friends of the Earth, et al. (Esso), 31 F.C.C. 2d 729 (September 23, 1971); see also Letter to National Broadcasting Co., et al. (Chevron), 29 F.C.C. 2d 807, p. 7, n. 6 (May 12, 1971).

** The White House Conference Report on Food, Nutrition and Health, page 179: "The gaps in our public knowledge, along with actual misinformation, carried by some media are contributing seriously to the problem of hunger and malnutrition in the United States." The Conference Report noted that some commercial messages in food advertising which purport to be educational are in fact counter-educational: "No other area of the national health probably is as abused by deception or misinformation as nutrition." The report urged that action be taken to require corrective information to the public concerning any prior deceptive advertising. "This action is necessary to counteract the tremendous counter-education of our children by false and misleading advertising of the nutritional value of foods, particularly on television."

various product categories convey general viewpoints and contribute to general attitudes which some persons or groups may consider to be contributing factors to social and economic problems of our times. For example, ads that encourage reliance upon drugs for the resolution of personal problems may be considered by some groups to be a contributing cause of the problem of drug misuse. Counter-advertising would be an appropriate means of providing the public with access to full discussion of all of the issues raised by the above types of advertising, thus shedding light upon the perceived effects of advertising upon societal problems.*

3. Advertising claims that rest upon or rely upon scientific premises which are currently subject to controversy within the scientific community.

Some products are advertised as being beneficial for the prevention or cure of various common problems,

* Support for the application of Fairness Doctrine rights to this general category of advertising can be found in Friends of the Earth v. FCC, Dkt. 24,566 (D.C. Cir., Aug. 16, 1971): "Commercials which continue to insinuate that the human personality finds greater fulfillment in the large car with the quick getaway do, it seems to us, ventilate a point of view which not only has become controversial but involves an issue of public importance. When there is undisputed evidence, as there is here, that the hazards to health implicit in air pollution are enlarged and aggravated by such products, then the parallel with cigarette advertising is exact and the relevance of Banzhaf incapable."

or as being useful for particular purposes because of special properties with regard to performance, safety and efficacy. For example, a drug may be advertised as effective in curing or preventing various problems and ailments. A food may be advertised as being of value to various aspects of nutritional health or diet. A detergent or household cleanser may be advertised as capable of handling difficult kinds of cleaning problems.

Such claims may be based on the opinions of some members of the scientific community, often with tests or studies to support the opinions. The problem with such claims is that the opinions on which they are based are often disputed by other members of the scientific community, whose opposing views are based on different theories, different tests or studies, or doubts as to the validity of the tests and studies used to support the opinions involved in the ad claims.

If an advertiser makes such a claim in a manner that implies that the claim is well-established and beyond dispute, when in fact the claim is currently subject to scientific controversy, the advertiser probably would be guilty of deceptive advertising, and the FTC is empowered to take formal action to eliminate the deception.

However, counter-advertising could be a more effective means of dealing with such cases. For example, formal government action against such claims might, on occasion, unfortunately create the misimpression of official preference for one side of the controversy involved in the advertising. Counter-advertising would permit continued dissemination of such claims while subjecting them to debate and vigorous refutation, providing the general public with both sides of the story on the applicable issues. Such debate and discussion would be a useful supplement to a continued FTC concern with other forms of abuse of advertising in this general category.

4. Advertising that is silent about negative aspects of the advertised product.

We have noted some shortcomings of the FTC's efforts to foster "completeness" by imposing disclosure requirements. In these and other circumstances, the FTC believes that counter-advertising would be a more effective means of exposing the public to the negative aspects of advertised products. This is especially true for situations in which there is an open question as to the existence or significance of particular negative aspects.

For example, in response to advertising for small automobiles, emphasizing the factor of low cost and economy, the public could be informed of the views of some people that such cars are considerably less safe than larger cars. On the other hand, ads for big cars, emphasizing the factors of safety and comfort, could be answered by counter-ads concerning the greater pollution arguably generated by such cars. In response to advertising for some foods, emphasizing various nutritional values and benefits, the public might be informed of the views of some people that consumption of some other food may be a superior source of the same nutritional values and benefits. In response to advertising for whole life insurance, emphasizing the factor of being a sound "investment," the public could be informed of the views of some people that whole life insurance is an unwise expenditure. In response to advertising for some drug products, emphasizing efficacy in curing various ailments, the public could be informed of the views of some people that competing drug products with equivalent efficacy are available in the market at substantially lower prices.

This list of examples could go on indefinitely, for the existence of undisclosed negative aspects, or

Beautiful!
Does that
support anything
about its
quality, you
know?

"trade-offs" of one sort or another, is inherent in all commercial products and thus in all advertising. Rather than forcing all advertisers to disclose all such aspects in all of their own ads, it is more efficient and more effective to provide for such disclosures, to the maximum extent possible, through counter-advertising.

including free time

E. Implementation of These Proposals

While adoption of these suggestions may impose additional economic and social costs, the extent of such costs will largely depend on the mode of implementation. The FTC does not possess the expertise to speak definitely on this point, but it would appear that adoption of a variety of procedures and limitations could minimize the costs involved in these proposals, to a point where the countervailing public benefit far exceeds any loss.

For example, the Commission recognizes that it may be desirable to impose strict limits upon access rights within each category. In addition to limitations on the frequency and duration of replies in each category, it might be appropriate to prohibit replies to particular ads (as opposed to all advertising for certain product categories), at least for some types of advertising

problems. For example, with respect to the problems and issues raised by general ad themes, it might be appropriate to require replies to apply to all advertising involving the theme or product in question, rather than being aimed at one particular ad or one particular brand. Such a limitation, however, would be inappropriate with regard to some other categories, such as "public issue" ads, that explicitly raise controversial issues of current public importance in connection with the marketing of particular brands.

Further, it is not essential that counter-advertising be presented in the 30 or 60 second spot format so frequently utilized for commercial advertisements. In fact, that procedure might unacceptably increase either the cost of commercial advertising, thereby possibly raising barriers to entry into some consumer goods industries, or the percentage of broadcast time devoted to disconnected spots, thereby increasing the proportion of broadcast time devoted to selling and decreasing the proportion devoted to programming and entertainment. While there is reason to doubt that regular news or public service programs can effectively serve the counter-advertising function, short spots are not necessarily the only alternative.

For instance, licensees might make available on a regular basis five minute blocks of prime time for counter-advertisements directed at broad general issues raised by all advertising involving certain products, as a way of fulfilling this aspect of their public service responsibilities.

Beyond these general considerations, it is only appropriate that the Federal Trade Commission defer to the Federal Communications Commission on questions that relate to the more precise mechanics of implementing the concept of counter-advertising. That these proposals are workable does, however, seem clear both from a review of prior FCC experience with application of the Fairness Doctrine to cigarette ads and from the submissions in this proceeding by those versed in the mechanics of implementing access rules. We do, however, urge that the following points be embodied in any final plan:

1. Adoption of rules that incorporate the guidelines expressed above, permitting effective access to the broadcast media for counter-advertisements. These rules should impose upon licensees an affirmative obligation to promote effective use of this expanded right of access.

2. Open availability of one hundred percent of commercial time for anyone willing to pay the specified rates, regardless of whether the party seeking to buy the time wishes to advertise or "counter" advertise. Given the great importance of product information, product sellers should not possess monopolistic control by licensees over the dissemination of such information, and licensees should not be permitted to discriminate against counter-advertisers willing to pay, solely on account of the content of their ideas.

3. Provision by licensees of a substantial amount of time, at no charge, for persons and groups that wish to respond to advertising like that described above but lack the funds to purchase available time slots. In light of the above discussion, it seems manifest that licensees should not limit access, for discussions of issues raised by product commercials, to those capable of meeting a price determined by the profitability of presenting one side of the issues involved. Providing such free access would greatly enhance the probability that advertising, a process largely made possible by licensees themselves, would fully and fairly contribute to a healthy American marketplace.

January 18, 1972

MEMORANDUM FOR MR. PETER FLANIGAN

Senator Sam J. Ervin, Jr., Chairman of the Senate Subcommittee on Constitutional Rights has invited me to testify before his Subcommittee on Wednesday morning, February 2, 1972. Senator Ervin has asked me for my views on "the Administration's policy toward the public broadcasting system" and the potential of cable television and its possible impact on first amendment considerations

As I am sure you will remember, Senator Ervin began his hearings on the broadcast and printed press and their relationship to the first amendment last October. During the first set of hearings, which received considerable public attention, the following testified: Dean Burch and Nicholas Johnson, Frank Stanton and Walter Cronkite, Julian Goodman and David Brinkley, Fred Friendly, Congressman Ogden Reid, a representative of the New York Times, two working journalists from Nebraska, broadcasting representatives from North Carolina, and various professors who discussed both the history of the first amendment and the Fairness Doctrine as it now relates to the broadcasting industry. Senator Ervin has asked several members of the White House staff to testify including Herb Klein, Fred Malek, and Chuck Colson. All have declined invoking executive privilege. RNC Chairman, Dole, was asked and declined. Attorney General, John Mitchell, declined but suggested the Committee hear from Assistant Attorney General, William Rehnquist. Ervin turned him down as not being sufficiently authoritative.

I have discussed this request with Clark MacGregor's office. They find no objection and feel it would be difficult to turn them down because it's not possible for me to invoke executive privilege. I have been assured by Senator Hruska's staff that both Senator Ervin and Senator Hruska do not expect, and will not ask, me to answer questions concerning the several instances regarding this Administration and freedom of the press. If we accept Senator Ervin's invitation, it will be necessary for us to sort out within the White House our position on the Fairness Doctrine, but I think that this is important and now would be a good time.

Clay T. Whitehead

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Whitehead 2 ✓
Lamb 2

I am pleased to be able to appear before you today, to discuss some aspects of those values embodied in the First Amendment which I consider ^{it} the overriding concern of my Office to protect. I will address my remarks specifically to the First Amendment implications of the two most significant innovations in our mass communications system during the past decade.

The first of these is cable television, or CATV. Coaxial cable is a technology which enables large numbers of electronic signals--television signals included--to be carried into the home on a single copper line. There is in theory no limitation on the number of signals which can be ~~be~~ carried if the line is thick enough; cost limitations now set the practical limit at approximately 40 television signals.

In doing so, I believe the point that
As I am sure you immediately grasp, cable has the revolutionary effect of converting television from a medium of scarcity into a medium of abundance. Forty channels are much beyond present and immediately anticipated demands for ^{programming which} television space. Moreover, cable provides certain capacities which are not now available within our mass communications system. One is the capacity to finance programming by direct charges to the viewer, instead of ⁱⁿ directly, through advertisers who sell their products to the viewer. This has several

viewer
effects: First, it enables the viewer to have much more immediate control over the types of programming that are offered. Second, it enables the intensity of viewer approval to be reflected in a marketplace which now responds only to the numbers of viewers who approve. Thus, under our present mass communications system the program which is the greatest success is that which can induce the largest number of people to watch--even though all of them may be only moderately interested. Cable, on the other hand will enable a relatively small number of viewers who have an extraordinarily strong desire for a certain type of program to register that desire in the marketplace and obtain that programming by paying a price commensurate with the small number of purchasers. It is an unfortunate fact that under our present system, a network program which is watched by 15 million viewers is a financial disaster. With cable, an audience as small as 3 million might be able to purchase the kind of programming it wants.

The second new capacity which cable provides for our mass communications system is a limited ability for viewers to interact with the program source. That is to say, messages indicating yes-or-no answers, or approval or disapproval can be transmitted from the home receiver to the disseminating station. The potentials of such a capacity for our democratic processes. By a sudden leap of technology, the town meeting

should be apparent.

if not frightening

once again becomes feasible, even in our major urban neighborhoods. School boards, Parent-Teachers Associations and labor unions acquire the capacity to obtain a much more accurate estimate of the views of all their constituents.

There are, of course, many other benefits which cable may provide--accounting and library ^{services} for the home, remote medical diagnosis, universal access to computers, instant print-out of the morning newspaper. Having mentioned these, I will leave them aside in my further discussion because I wish to focus upon the First Amendment implications of cable in the mass communication field.

All of the above paints a picture of immense technological revolution. But it means more than that. It is of interest to this Committee because it implies an ^{re-examination} ~~an overturning~~ of the basic premises upon which we have sought to regulate electronic communications within the confines of the First Amendment. In earlier sessions of these hearings, you have heard three principal justifications for government intrusion into the programming of broadcast communications: First, the fact of Government licensing, justified by the need to prevent interference among broadcast signals. But with cable, there is nothing broadcast over-the-air, no possibility of ^{interference} ~~interference~~, and hence no need for Federal licensing. Second, "the ^{public's} ~~Government's~~ ownership of the air waves" which the broadcaster uses. But the cablecaster uses only his own copper to carry.

his signals. Third, the relatively low physical limitation upon the number of channels which can broadcast in any single community--meaning that oligopoly control over the electronic mass media is in effect conferred by Federal license. But the number of feasible cable channels far exceeds the anticipated demand for use.

921
What I am suggesting is that modern technology has now confronted our society with the embarrassing question, whether the reasons it has given in the past forty-odd years for denying to the broadcast media the same First Amendment freedom enjoyed by the print media are really reasons--or only rationalizations. Why is it that we now require--as we *in effect* do--that radio and television broadcasters present a certain proportion of public affairs programming, a ^{some} ~~certain~~ proportion of agricultural programming, a ^{some} ~~certain~~ proportion of religious programming? Why is it that we require them to be "fair" in the presentation of controversial issues? Is it really because we have had the necessity for such requirements foisted upon us by the unavoidable need to determine who is the most responsible licensee? Is that really the reason? Or is it rather that we have, as a society, made the determination that such requirements are good and therefore should be imposed by the Government whenever it has a pretext to do so? And if it is the latter, is this remotely in accord with the principle of the First Amendment, which (within the limitation

of law, against obscenity, ^{libel} ~~liable~~ and criminal incitement) forbids the Government from determining what it is "good" and "not good" to say?

This stark question is, I say, inescapably posed by cable technology. For the manner in which we choose to regulate cablecasters will place us clearly and squarely on one or the other side of this issue. Perhaps the First Amendment was ill conceived; or perhaps it was designed ~~for~~ ^{for} a simpler society in which the power of mass media over the nation was not as immense as it is today; or perhaps the First Amendment was sound and means the same thing now as it did then. ^{The answer to how} ~~However~~ we as a nation feel on these points, ~~the answer~~ is now being framed as we begin to establish the structure within which CATV will grow.

Because the President realizes that such fundamental issues are involved, he has determined that the desirable regulatory structure for the new technology should not be left exclusively to the ordinary regulatory processes of the administrative agencies. It is a matter which deserves the closest and most conscientious consideration of the executive and legislative branches. For this reason, the President established last ^{June} August a Cabinet level Committee to examine the entire question and to present to him various options for his consideration. Not surprisingly, considering the magnitude and importance of the subject, the work of the

Committee is not yet completed. I assure you, however, that First Amendment concerns such as those I have been discussing are prominent in our deliberations--as I hope they will be prominent in yours, when the Congress ultimately resolves this issue.

(1)

I now wish to turn to what I consider the second major innovation in our mass communications system during the past decade--the establishment of a government-supported system of public broadcasting. There are several ways in which this development bears closely upon the First Amendment. I have always considered that the right of free speech has an implicit ^rcorrelative--similar to the "establishment" restriction added to the free-exercise-of-religion clause of the First Amendment. That is to say, just as free exercise of religion cannot be fully achieved when there is a state church, ~~clause~~, so also the benefits of free speech cannot be achieved when the Government establishes its own extensive mass communications system. It is perhaps as well that an "establishment" provision was not ~~Added~~ to the free-speech clause as it was to the free-exercise-of-religion clause, because it is difficult in the area of free speech to be as categorical. There is no need whatever for the Government to establish a church; but there is some requirement for the Government to convey to its citizens information about what it is doing and seeking to do. Nevertheless, surely the spirit of an establishment clause resides in the free speech portion of the First Amendment, ~~and so that as to~~ ^{as} ~~it would~~ preclude such massive Government involvement, ^{as} establishment of a Federal network. It is for this reason that, when Federal support of public broadcasting was determined upon, a structure was established that would insulate the system as far as possible from Government interference.

The concern went, however, even further than this. Not only was there an intent to prevent the establishment of a Federal broadcasting system, but there was also a desire to avoid the creation of a large, centralized independently-run broadcasting system financed by Federal funds--that is, the "Federal establishment" of a particular network. The Public Broadcasting Act of 1967, like the Carnegie Commission Report which gave it birth, envisioned a system founded upon the "bedrock of localism," ~~the~~ purpose of the national organization being to serve the needs of the individual local units. Thus it was that the national instrumentality created by the Act--the Corporation for Public Broadcasting--was specifically excluded from producing any programs or owning any interconnection (or network) facilities.

Public broadcasting has in general been a success. The First Amendment concerns that I have been discussing are, however, so important that we think it necessary to examine the practical operation of the system closely in light of the first 5 years' experience under it. Such examination displaces ^{ys} a strong tendency--understandable but nonetheless regrettable--towards a centralization of practical power and authority ~~over~~ all the programming developed and distributed ^{using} by public funds. Although the Corporation for Public Broadcasting owns no interconnection facilities, it funds ^{almost} entirely another organization which does so. Although it produces no programs itself, the vast majority of the funds which it receives are disbursed--

(3)

not in unqualified grants to the local stations, for such programming use as they see fit--but ⁱⁿ grants to a relatively few "production centers" for such programs as the Corporation itself deems desirable--which are then distributed over the Corporation's wholly funded network.

I do not say the programming that has resulted is bad. Much of it is very good; some is an imitation, or even an exact duplicate, of programs and personalities seen on commercial television; there is probably less of an emphasis on the instructional and educational than many would like. But, good or bad, the point, for purposes of this Committee's inquiry, is that there are signs of the development of a Government-funded "Fourth Network," the basic content of whose programming is decided upon centrally. I think this development is regrettable and dangerous. It was doubtless caused to some extent by the desire to make more efficient use of the very limited ^{public broadcasting} funds which were initially available--but it has never been pretended that the First Amendment, or the entire Constitution for that matter, makes for efficiency. ^{Towards}

There is yet another reason why a move ^{Towards} of less centralization of public broadcasting is desirable. And this reason also has something to do with the First Amendment, in that it concerns the broader values of which the First Amendment is merely one illustration. Those broader values may be loosely described by the word "diversity." The First Amendment is not an isolated phenomenon within our social framework, but rather one facet

of a more general concern which runs throughout. Another manifestation of the same fundamental principle within the Constitution itself is the very structure of the Nation which it established--not a monolithic whole, but a federation of separate states, each with the ability to adopt divergent laws governing the vast majority of its citizens' daily activities. This same ideal of variety and diversity has been apparent in some of the most enduring legislation enacted under the Federal Constitution. [The Sherman Anti-Trust Act, for example, was not merely a determination that monopoly is economically harmful, but also an affirmation of the social value of diverse, separately owned small business.]

*communications
regulation*

So also, the Communications Act of 1934. Unlike the centralized broadcasting systems of other nations, such as France and England, the heart of the American system was to be the local station, serving the needs and interests of its local community--and managed, not according to the uniform dictates of a central bureaucracy, but according to the diverse judgments of separate individuals and companies. The pull of uniformity is often difficult to resist, and the ideal of diversity has not always been achieved.

But in 1967, when Congress enacted the Public Broadcasting Act, it did not abandon the ideal and discard the "noble experiment" of a broadcasting system based upon the local stations and ordained towards diversity. That would indeed have been a contradictory course, for the whole purpose of public broadcasting,

as seen by all its adherents, was to increase diversity, by enabling programming for minority tastes too small to be served by the mass-oriented commercial systems. To use Government funds for the establishment of a "national network" similar to the BBC would have been the precise antithesis of this goal.

have this opportunity

I am pleased to ~~be able~~ to appear before you today, to discuss some aspects of ~~these issues embodied in~~ the First Amendment which ~~I consider~~ ^{is} it an important concern of my Office to protect. I wish to address my remarks ~~specifically~~ ^{specifically} to the First Amendment implications of the two most significant innovations in our mass communications system during the past decade.

The first of these is cable television. Coaxial cable ~~is~~ ^{and related technologies} ~~technology which~~ ^g enables large numbers of electronic signals-- television signals included--to be carried ^{directly} into the home ~~one~~ ^{by wire rather than being broadcast over the air.} ~~single line.~~ There is ~~in theory~~ ^{particular} no limitation on the number of signals which can be ~~carried~~ ^{provided; ~~g~~ ~~although~~ ~~some~~} ~~cost limitations now set the practical limit at approximately 40 television channels.~~

systems now being constructed typically ~~provide~~ have the capacity to carry about 40 television channels.

The Coaxial cable's original use was ~~for~~ ^{for this technology} "CATV", or Community

40? Antenna Television. As its name implies, that involved no more than the use of cable to carry broadcast signals ~~picked up by~~ ^{into} a high master antenna ^{to} homes in areas where reception was difficult. In recent years, however, use of the technology has progressed far beyond that.

May Cable systems now use microwave ^{relay systems to import television} ~~to input distant~~ signals from ~~far~~ ^{for distant cities} beyond their normal viewing areas. ^{Some} Many of them originate ~~their~~ ^{of their own, and make unused channels available} programming and donate a lease use of their ~~empty~~ channels to private individuals, organizations, schools, and municipal ~~services~~ ^{agencies.}

Looking ^{To} cable technology has the potential to bring into the home communications
services ~~in the future, there are many other services which cable~~
~~other than television — for example,~~
~~may regularly provide such as accounting and library services,~~
~~for the home, remote medical diagnoses, access to computers,~~
~~and even instantaneous print outs of the morning newspaper.~~
^{perhaps} ~~facsimile reproduction of news and other printed material.~~

But I wish to focus upon the immediate consequences of cable,
and in particular its impact upon mass communications.

I do not have to belabor the point that the provision of 25 to
40 television channels where once there were only four or ^{five} ~~even ten~~
drastically alters the character of the medium. It converts ~~from~~
a medium of scarcity into a medium of abundance. ^{insert 1} ~~As this Committee~~
~~is aware from earlier testimony, one of the most severe problems~~
~~which must be faced by present-day broadcasters is the problem of~~
~~allocating limited broadcasting time among the many groups and~~
~~individuals who demand access.~~ ^{my well solve} ~~Cable can change that, by making the content of~~
~~television, like that of newspapers, indefinitely expandable.~~ ^{capacity}

Of course the new medium also brings its own problems, several of which
~~are immediately related to First Amendment concerns.~~

~~Some~~ economic realities make it very unlikely that any particular
community will have more than a single cable system, unless some
structural preventive or regulatory prohibition is established,

we may find a single individual or corporation sitting astride ~~the~~ ^{of the}
^{major} ~~only~~ means of mass communication in ^{many} ~~his~~ areas.

once again becomes feasible, even in our major urban neighborhoods. School boards, Parent-Teachers Associations and labor unions acquire the capacity to obtain a much more accurate estimate of the views of all their constituents.

There are, of course, many other benefits which cable may provide--accounting and library ^{services} for the home, remote medical diagnosis, universal access to computers, instant print-out of the morning newspaper. Having mentioned these, I will leave them aside in my further discussion because I wish to focus upon the First Amendment implications of cable in the mass communication field.

(A) [All of the above paints a picture of immense technological revolution. But it means more than that. It is of interest to this Committee because it implies an overturning of the basic premises upon which we have sought to regulate electronic communications within the confines of the First Amendment.]

Q In earlier sessions of these hearings, ^{this committee has} you have heard three principal justifications for government intrusion into the programming of broadcast communications: ^{The first is} ~~First~~, the fact of Government licensing, justified by the need to prevent interference ^{between} ~~among~~ broadcast signals. But with cable, there is nothing broadcast over ^{the} ~~the~~ air, no possibility of interference, and hence no ^{unavoidable} need for Federal licensing. ^{The} ~~is~~ ^{is} ~~Second~~ "the public's ^{Government's} ownership of the air waves" which the broadcaster uses. But ^{does not use the air waves.} ~~the cablecaster uses only his own copper to carry~~

The ~~is~~ ^{physical} ~~physical~~ ^{he} ~~Third~~ ^{Third} the ~~relatively low physical~~ ^{he} limitation upon the number of channels which can broadcast in any ~~area~~ ^{area} ~~community~~ ^{there is} -- meaning that ^{there is} oligopoly control over the electronic mass media, ~~in~~ in effect conferred by Federal license. But the number of feasible cable channels far exceeds the anticipated demand for use ^{insert 2}

In other words, cable television is now confronting
~~What I am suggesting is that modern technology has now~~

~~confronted~~ our society with the embarrassing question: *Are* ~~whether~~ ^{we have} the reasons ~~it has~~ given in the past forty-odd years for denying to the broadcast media the same First Amendment freedom enjoyed by the print media ~~are~~ really reasons--or only rationalizations. Why is it that we now require ~~as we in effect~~ ^{each} that radio and television ~~broadcasters~~ ^{stations} present ~~a certain~~ ^{certain types of} ~~proportion of public affairs programming, a certain proportion of agricultural programming, a certain proportion of religious programming?~~ ^{insert 3} ~~Why is it that we require them to be "fair" in~~

~~the presentation of controversial issues? Is it really because~~
~~the imposition of such requirements is inevitable if we are to determine~~
~~we have had the necessity for such requirements for ever upon~~
~~is it really inevitable that we have had the necessity for such requirements for ever upon~~
~~us by the unavoidable need to determine who is the most~~
~~qualified person for license?~~
~~responsible licensee? Is that really the reason?~~ Or is it rather that we have, as a society, made the determination that such requirements are good and therefore should be imposed by the Government whenever it has a pretext to do so? And if it is the latter, is this remotely in accord with the principle of the First Amendment, which (within the limitation

deception,

of laws against obscenity, ~~libel~~ ^{libel} (and criminal incitement) forbids the Government from determining what it is "good" and "not good" to say?

This stark question is, ~~I say~~, inescapably posed by cable technology. ~~But~~ the manner in which we choose to regulate cable ~~systems~~ ^{systems technology & the content of cable programming} will place us ~~clearly and~~ squarely on one or the other side of this issue. Perhaps the First Amendment was ill conceived ^{or} perhaps it was designed for ~~by~~ a simpler society in which the power of mass media ~~over the nation~~ was not as immense as it is today ^{or} perhaps the First Amendment ^{remains} ~~was~~ sound and means the same thing now as it did then. ^{The answer to how} However we as a nation feel on these points ^{will be} the answer ~~is now being~~ framed as we ~~begin to~~ establish the structure within which ^{cable television} ~~CATV~~ will grow.

Because the President realizes that such fundamental issues are involved, he has determined that the desirable regulatory structure for the new technology ~~should not be~~ left exclusively to the ordinary regulatory processes of the administrative agencies. It is a matter which deserves the closest and most conscientious consideration of the ^{public & the} executive and legislative branches ^{of government.} For this reason, ~~the~~ ^{he} President established last ^{June} ~~August~~ a Cabinet level Committee to examine the entire question and to ^{develop} ~~present to him~~ various options for his consideration. Not surprisingly, ^{in view of} ~~considering~~ the magnitude and importance of the subject, the work of the

Committee is not yet completed. I assure you, however, that First Amendment concerns such as those I have been discussing are prominent in our deliberations--as I hope they will be prominent in yours ⁹ when the Congress ultimately ~~resolves~~ *considers* this issue.

INSERT 1

As this Subcommittee is aware from earlier testimony, one of the most severe problems which must be faced by broadcasters today is the allocation of limited broadcasting time^{or} allocation among various types of programming, and allocation among the many groups and individuals who demand time for their point of view. Cable, if it becomes widespread, may well change that by making the capacity of television, like that of the print media, indefinitely expandable, subject only to the economics of supply and demand.

INSERT ^A~~B~~

The second aspect of this new technology which bears on the First Amendment is, to my mind, the more profound and fundamental, because it forces ~~us~~ us to question not only where we are going in the future, but also where we have been in the past. That aspect consists of this: the basic premises which we have used to reconcile broadcasting regulations/ with the First Admendment do not apply to cable.

INSERT 2

And there are various ways of ^{per}disseminating any monopoly control
over what is programmed on cable channels.

INSERT 3

^{Why}
~~What~~ is it that our courts repeatedly intervene to decide, or require the FCC to decide, what issues are controversial, how many sides of those controversies exist, and what "balance" should be required in their presentation? Is it really because the detailed governmental imposition of such requirements is made unavoidable by oligopoly control of media content or ^{by} ~~because~~ of the need to decide who is a responsible licensee?

FEB 11 1972

Heaney
2/2/72

Mr. Richard W. Jencks
Vice President, Washington
Columbia Broadcasting System, Inc.
2020 M Street, N.W.
Washington, D.C. 20036

Dear Dick:

Thank you for your letter of February 4 and for the comments about my remarks to the Ervin Subcommittee. I appreciate your taking the time to let me know your reaction to the Administration's position.

With best regards.

Sincerely,

signed
TOM

Clay T. Whitehead

cc:
DO Chron
DO Records
Whitehead (2)
LKS Subject
LKS Chron
Mansur

LKSmith:jam 2/9/72

CBS

Columbia Broadcasting System, Inc.
2020 M Street, N.W.
Washington, D.C. 20036
(202) 296-1234

Richard W. Jencks
Vice President, Washington

Dear Tom:

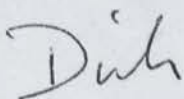
Please let me express to you my strong approbation of the stand you took last Wednesday before the Ervin Subcommittee with respect to the subject of counter advertising.

I do not think it is generally realized how destructive that proposal would be to the continuance of advertiser-supported broadcast media in this country -- a consideration which is itself a First Amendment issue - as well as the implicit defects of the scheme itself, some of which you pointed out in your testimony.

In any event, particularly in view of the exposure given to Chairman Kirkpatrick's views, we are deeply appreciative that you chose to speak out on this subject with such directness.

With best personal regards.

Sincerely,



Mr. Clay T. Whitehead
Director
Office of Telecommunications Policy
Executive Office of the President
1800 G Street N. W.
Washington, D. C. 20504

February 4, 1972

Testimony
2/2/72

FEB 29 1972

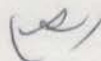
Honorable Sam J. Ervin, Jr.
Chairman
Subcommittee on Constitutional Rights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Ervin:

As you have requested, I have enclosed my corrected version of the portions of the official transcript which covers my appearance before your Subcommittee on Constitutional Rights. Also enclosed are my responses to the written questions submitted by Senator Bruska.

I appreciate the privilege of appearing before your Subcommittee and hope to have been useful in your consideration of the important questions regarding freedom of the press which you and your Subcommittee have so ably explored.

Sincerely,



Clay T. Whitehead

Enclosures

cc: DO Records
DO Chron
Mr. Whitehead - 2 ✓
Dr. Mansur
Mr. Goldberg
GC Subj
GC Chron

AScalia/HGoldberg:hmy - 2-28-72

Responses of Clay T. Whitehead to Questions
Raised by Senator Roman L. Hruska Regarding
First Amendment Implications of Public
Broadcasting and Cable Television

Question #1 - The goals to be achieved for public broadcasting were initially derived from early educational radio and television services which developed in response to the educational needs of local communities and the instructional programs of state and local educational entities. The Carnegie Commission on Educational Television built on these educational broadcasting goals and created the concept of public broadcasting, which was intended to include more than classroom instructional services and other strictly educational broadcast services for use outside of the classroom. The intent was to have the Corporation fund programming in a wide variety of fields, including drama, culture, and art. The Congress followed this intent in the Public Broadcasting Act of 1967, although there was some uneasiness expressed about the Corporation's funding of entertainment programming.

In its programming operations, CPB has provided entertainment, "cultural uplift," public affairs and other types of programming. These do tend to appeal to a cultural and economic elite. I think, however, that there is no doubt that the more emphasis CPB gives to instructional services, adult education broadcasts, and programming for the learning needs of children, the more CPB is appealing to a broader, more diverse audience. Both types of programming are desirable; it is a question of emphasis. We believe that CPB should work more closely with the local educational stations to see where the balance should be struck between both types of program services to achieve the greatest benefit to the public.

Questions #2 and #3 - Foundations, in general, and the Ford Foundation, in particular, have contributed much of the financial support for the development of public broadcasting. No single private or public entity has contributed as much as the Ford Foundation--nearly \$200,000,000 in all. Obviously, when any entity--including the Government--spends large sums of money upon an enterprise it looks to see that the enterprise is developing along the lines that it desires. There is nothing wrong about this; indeed, it would be irresponsible for any private or public donor to dispense money willy-nilly, without regard to success in achieving the desired goals.

On the other hand, it is certainly legitimate to question whether it is appropriate for a social institution as important as public broadcasting to be substantially directed along the lines desired by any single entity that is not accountable to the public. The Ford Foundation, for example, is well known to be particularly interested in public affairs programming. Naturally, this interest underlies the Foundation's funding decisions and affects the balance among various types of programs that are made available to the public.

The inappropriateness of dominant influence by a single private source--however benevolent that source may be--is one of the reasons the Administration believes that public financing for public broadcasting should be established on a sound, fiscally responsible and stable basis.

Question #4 - In 1967, when the Congress enacted the Public Broadcasting Act, a question was raised as to how the Congress could maintain responsibility for CPB's use of Federal funds. The matter was resolved by including a provision in the Act allowing for an audit of CPB by the General Accounting Office. To my knowledge, Congress has not used that provision.

Question #5 - The President's Cabinet committee on broadband cable television was formed in June 1971, and has spent a considerable amount of time analyzing the fundamental and difficult policy matters which it must resolve in order to make its recommendations to the President. There has been steady progress in the committee's work, and there is nothing "holding up" its recommendations except the complexity of the task.

Question #6 - The Cabinet committee has considered a number of different approaches for cable development which will enhance opportunities for free expression. While it would be inappropriate for me to discuss the details of the committee's current deliberations, I can highlight some of the First Amendment objectives that public policy should set for cable television. One of the most important objectives is to facilitate access to cable channels for both program production and program reception. Another objective is to guard against the dangers posed by the fact that, in most instances, provision of cable transmission services will be a natural monopoly. Furthermore, as cable develops over-the-air broadcasting must be allowed to continue to provide essential public services that will contribute to the total diversity of programming and program sources.

There are various ways to achieve these First Amendment objectives for broadband cable development. There could be broadcast-type regulation for cable, with use of the Fairness Doctrine, paid access requirements, program "anti-siphoning" rules, etc. A strict common carrier approach could also be chosen, which would require complete separation of program supply and distribution functions. Another approach may be to require vertical disintegration of the program production and program distribution functions, in order to avoid excessive concentration of control over access to cable channels. Other approaches and variations on the above are also possible.

Whatever the approach ultimately chosen, the Cabinet committee will be guided by the fundamental goal of fostering the opportunities for free expression which broadband cable promises for the future.

Question #7 - OTP has not advised the Federal Communications Commission on the First Amendment implications of the FCC's new rules regarding access channels, cable program content, and other cable services not related to the retransmission of television broadcast signals. The Administration's views on these aspects of cable television will be based on the Cabinet committee report. As I noted earlier, free speech considerations are prominent in the committee's deliberations.

While we take no position at this time regarding those aspects of the FCC's proposed rules not related to retransmission of broadcast signals, we nevertheless support prompt implementation of the entire package, with broad industry support. We think this is essential to enable the development of this promising new technology to proceed.

The framework and national policy for cable regulation is a matter of crucial importance to our society, and it requires the most careful congressional consideration as a matter of mass media structure. The FCC rules will serve to permit cable growth while that deliberation is proceeding and yet not foreclose the opportunity for congressional review and readjustment of the long-run policy. Indeed we would not urge final implementation of the FCC's new cable rules if we thought that this would have the effect of foreclosing any practical evaluation of a broad, long-range policy for broadband cable technology. We believe, however, that implementation of the rules will not have this effect, and that the FCC rules could serve as a transitional approach to the ultimate public policy treatment of cable technology.

CTW-71-EO-57

Eyes only
CPB

Thursday 10/28/71

10:30

We have called Mr. Ehrlichman's office to ask whether Mr. Ehrlichman has any reaction to our memo to him dated Oct. 18 . They will call us.

DRAFT

AScalia:hmy - 10-26-71

and protect the license
interests of the
conscientious broadcaster

"FOR EYES ONLY"

MEMORANDUM FOR: Mr. Haldeman
Mr. Ehrlichman
Mr. Flanigan
Mr. Colson

that the obligation be enforced instead
through ^{refuse} ~~an overall~~ ^{at license renewal}
time, and through creation of

on a case-by-case basis

In a speech delivered several weeks ago, I made three related proposals concerning the regulation of broadcasting: (1) That we experiment with a plan for deregulation of radio broadcasting. (2) That the FCC's procedures for the renewal of TV licenses be altered so as to lengthen the license term, and eliminate detailed Federal prescription of program content. (3) That the FCC's current procedures for enforcing the obligation of fairness, (the so-called "Fairness Doctrine") be abandoned and replaced with a statutory right of ~~paid access~~ ^{to purchase advertising time on a first-come, first-served basis.}

I made these proposals because I have become convinced that some fundamental initiatives are necessary to prevent the accelerating drift towards treatment of broadcasting as an arm of the Government, rather than a segment of the free and privately run communications media. I made it clear in the speech that the Administration has no present plans for legislation to implement the last two proposals, but indicated that I would press for such legislation if the reaction was favorable. In general, it has been. I propose, therefore, to develop and refine these proposals in the future.

Since any significant initiative with respect to broadcasting regulation has immediate political ramifications, I think it is important that you ^{are aware of} understand what I am proposing and appreciate its consistency with our political strategy. The last proposal, in particular, requires further explanation. Accordingly, I am attaching as Tab A a description of the devices presently used to assure fairness in political broadcasts. Tab B describes the effect of the Fairness Doctrine proposals upon Republican political broadcasting. Tab C is a detailed description of the past use of net utility of the Fairness Doctrine in promoting Republican interests. Tab D contains several suggestions on the use of my proposals during the forthcoming campaign.

Clay T. Whitehead

Provide air time for

relating to

"FOR EYES ONLY"

MEMORANDUM FOR: Mr. Haldeman
Mr. Ehrlichman
Mr. Flanigan
Mr. Colson

In a speech delivered several weeks ago, I made three related proposals concerning the regulation of broadcasting: (1) That we experiment with a plan for deregulation of radio broadcasting. (2) That the FCC's procedures for the renewal of TV licenses be altered so as to lengthen the license term and eliminate detailed Federal prescription of program content. (3) That the FCC's current procedures for enforcing the obligation of fairness (the so-called "Fairness Doctrine") be abandoned and replaced with a statutory right of paid access.

I made these proposals because I have become convinced that some fundamental initiatives are necessary to prevent the accelerating drift towards treatment of broadcasting as an arm of the Government, rather than a segment of the free and privately run communications media. I made it clear in the speech that the Administration has no present plans for legislation to implement the last two proposals, but indicated that I would press for such legislation if the reaction was favorable. In general, it has been. I propose, therefore, to develop and refine these proposals in the future.

Since any significant initiative with respect to broadcasting regulation has immediate political ramifications, I think it is important that you understand what I am proposing and appreciate its consistency with our political strategy. The last proposal, in particular, requires further explanation. Accordingly, I am attaching as Tab A a description of the devices presently used to assure fairness in political broadcasts. Tab B describes the effect of the Fairness Doctrine proposals upon Republican political broadcasting. Tab C is a detailed description of the past use of net utility of the Fairness Doctrine in promoting Republican interests. Tab D contains several suggestions on the use of my proposals during the forthcoming campaign.

Clay T. Whitehead

CURRENT FAIRNESS PROVISIONS
APPLICABLE TO POLITICAL PRESENTATIONS

Access to the broadcast media for political presentations is governed by four major regulatory provisions:

(1) Section 315 of the Communications Act--The so-called equal time provision, which applies only to broadcast appearances of candidates themselves during election campaigns, requires all opposing candidates to be afforded equal time for personal appearances. There is no obligation to give free time if the first candidate paid for his time.

(2) Editorial endorsement rule--Under FCC rules, when a station editorially endorses or opposes a candidate, the opponents of the endorsed candidate, or the opposed candidate, are entitled to respond, personally or through spokesmen.

(3) The "Zapple" or "quasi-equal opportunities" doctrine--This doctrine, developed in FCC rulings, extends the provisions of Section 315 to persons other than the candidates themselves, and to periods of time beyond actual election campaigns. It has two parts: (a) It provides "equal time" during campaigns for appearances of supporters and spokesmen of opposing candidates. (As with Section 315, there is no obligation to give free time to the opposing spokesman if the first spokesman paid for his time.) (b) It provides time to opposing party spokesmen outside of election campaigns when a political party has been provided time without the broadcaster's having specified the issues to be covered.

(4) The Fairness Doctrine--The FCC's general, uncodified Fairness Doctrine applies in all instances of political broadcasts dealing with controversial issues, which are not covered by Section 315, the editorial endorsement rule and the "Zapple" doctrine. Positions taken by the President and party spokesmen must be "balanced" by appearances of spokesmen for contrasting viewpoints, often opposing party spokesmen. Paid time must be balanced in paid or free time. That is, if a Republican spokesman makes a paid appearance, a Democratic spokesman can request free time to respond.

TAB B

DRAFT
ASealia:hmy - 10-26-71

EFFECT ON REPUBLICAN INTERESTS

In proposing abandonment of the Fairness Doctrine, I am not suggesting elimination of the general obligation of broadcasters to cover public issues in a fair and balanced manner. I am suggesting that this obligation no longer be enforced on a case-by-case, issue-by-issue manner, but rather that the licensee's performance in this regard be judged on an overall basis when his license comes up for renewal. I am also suggesting that the present power of individuals to demand time for response on a case-by-case basis be replaced with a general right to purchase time on a ~~first-~~
non-discriminatory
~~come, first-served~~ basis.

This modification of current practice cannot fail to benefit Republican interests at every political level. The benefit will be particularly pronounced at the national level, where there has been little success in using current FCC procedures to limit Democratic responses to Presidential appearances, and to air Republican viewpoints. As described in detail in Tab B to this Memorandum, the FCC has not upheld our Fairness Doctrine complaints against the networks. (The one case in which the Republican National Committee was successful involved not the Fairness Doctrine, but the political party aspect of the "Zapple" doctrine.) Left-of-center Democrats, on the other hand, have used the Fairness Doctrine successfully in both the Commission and the courts. This discrepancy is not accidental, but arises from the fact that the Fairness Doctrine inevitably operates to the benefit of extreme views. It is rare that the traditional, main-stream view on a particular issue has received no coverage whatever in the sum total of TV programming; but the extreme, far-out view on that issue might receive no coverage unless compelled

by the Fairness Doctrine. This practice insures extreme views much more attention on the air waves than they are given in the society at large. It is, in general, much more favorable to conservative interests to impose upon the broadcaster only the requirement that he demonstrate an attempt to present contrasting viewpoints on an overall basis, without enforcing the obligation on an issue-by-issue basis.

More specifically, my proposals will benefit Republican interests in the following ways:

(1) Unrestricted right of paid access to TV air time favors Republican candidates and segments of the business community that support Republican candidates. FCC figures on political spending in the 1970 campaigns show the following:

	<u>REPUBLICANS</u>	<u>DEMOCRATS</u>
Total Broadcast Spending	\$16.5M	\$14.2M
Senate Candidates	_____	_____
House Candidates	\$ 2.1M	\$ 1.8M
Gubernatorial Candidates	\$ 5.5M	\$ 3.7M
Total Non-network TV Time	613 Hours	469 Hours
Total Network TV Time	85 Minutes	50 Minutes

Under my proposal, not only would the right to purchase time be assured, but the licensees would no longer have to "balance" viewpoints expressed in such paid time by providing free time to spokesmen for contrasting viewpoints. That is, paid time would be exempt from the obligation of overall fairness, so that Republicans

would not have to "subsidize" air time for viewpoints favored by their opponents.

(2) TV networks will still provide ample coverage to the President's speeches, statements, interviews, news conferences, etc., since it is their journalistic obligations and not the Fairness Doctrine that serves as the impetus for this. Eliminating the issue-by-issue enforcement of the Fairness Doctrine could lead to more time for the President, since each appearance would not require provision of time for contrasting viewpoints. This additional leeway would also help at the local station level, where the licensees are generally more sympathetic to Republican philosophy.

(3) The real damage done to Republican interests by the networks is not correctable under the Fairness Doctrine. FCC decisions preclude a finding against any network for failure to cover the Administration point of view, unless it can be shown that the Administration was denied a reasonable opportunity to present its position on a particular issue. Network news coverage almost always furnishes this minimum. As Edith Efrom's "News Twisters" shows, network news Coverage does us the most damage not in the statements of persons covered in the news, but in the "editorial" and "commentary" remarks of network reporters. This subtle and not-so-subtle news slanting is not reachable under the Fairness Doctrine. The FCC will take action only when there is extrinsic evidence of gross misconduct--i.e., evidence other than the mere content of the program itself. The only example

which comes to mind is a staged news event.

(4) Our proposals for changes in broadcast regulation have received widespread support from virtually all segments of the broadcasting industry, including the networks. They have earned substantial amounts of good will for the Administration at a time when we were beginning to feel a backlash because of "anti-broadcast" actions taken by a Republican FCC.

I believe that the Administration can capitalize on this good will, and can use its continued support of these proposals, to induce independently-owned network affiliates to pressure the networks into more objective news coverage. This inducement might even be applied effectively upon the networks themselves.

POLITICAL USES OF THE FAIRNESS DOCTRINE

Prior to the 1964 campaign, the FCC rejected RNC's request for "equal time" for Senator Goldwater to respond to a Presidential radio-TV address. It acknowledged, in principle, that the Fairness Doctrine applied to the address, but said that Senator Goldwater's "contrasting" views had been covered adequately in network news and interview shows. In August 1970, the Democratic National Committee and Senators Hughes, McGovern, Hatfield, Goodell, Cranston, Bayh, Church, Eagleton, Gravel, Harris, Hart, Kennedy, Metcalf and Nelson, made good on the principle established by RNC and obtained free network time to "respond" to five Presidential addresses dealing with Vietnam. In order to restore the "balance" of coverage on the Vietnam issue, the FCC dictated the format of the response and required the networks to give uninterrupted blocks of time to DNC, since the President stated his views in uninterrupted segments.

In the same series of cases, DNC also obtained a declaratory ruling in which the FCC departed from its position that station time need not be sold to particular groups. The FCC held that the "public interest" required licensees to sell time to political parties so that they could solicit contributions. Subsequent court decisions broadened this "right" to include purchases of time for reasons other than fund solicitations.

While the Democrats eventually achieved all of their objectives in the August, 1970 cases, we fared very poorly and ultimately lost what it first appeared we had gained. The FCC rejected the complaint against NBC of Senators Dole, Goldwater, Hansen, Gurney, Fannin,

Curtis, Griffin, Smith, Allott, Domnick, and Thurmond. The Senators had requested free time to respond to a 30-minute sponsored program which featured Senators in favor of the "Amendment to End the War." The Commission held that NBC's refusal was reasonable because the network had provided adequate time to the Administration viewpoint on the war.

RNC seemed to do better than the 11 Republican Senators and got the FCC to require CBS to provide time for response to Larry O'Brien's July 7, 1970, program on behalf of DNC. CBS had given DNC this time as part of its "Loyal Opposition" series so that the Democrats could respond to the President's Vietnam speeches. No restrictions, however, had been placed on DNC's use of the time, and O'Brien used it to make a partisan attack on the President and the Republican Party in general. It was in these circumstances that the FCC expanded the "Zapple" doctrine and required "equal" time for one party to respond to another party which had been given time with no restrictions as to the issues to be covered. While this case was useful to us, the principle it established will be almost worthless in the future, since no network will again make the mistake of providing a political party with Fairness Doctrine time without specifying the issues to be covered. RNC learned this in the latest series of cases, which the FCC decided last August.

In one of these cases, RNC requested that ABC provide time for response to time given to DNC on April 22, 1971, in which six Democrats responded to the President. The FCC rejected RNC's

claim, holding that ABC had selected the issues that were discussed and that therefore the general Fairness Doctrine, not the August, 1970 addition to the "Zapple" doctrine, applied. Under the Fairness Doctrine, the FCC found that, on an "overall basis," the "sum total" of ABC's programs on the issues discussed by the DNC spokesmen was balanced and RNC was not entitled to time.

The plus in the August, 1971 series of cases was that the FCC also refused DNC's request for network time to respond to three Presidential appearances (i.e., a March 22 ABC interview, the March 15 interview on NBC's "Today" show and the April 7 speech) under the political party aspect of the "Zapple" doctrine. The FCC refused to apply the "Zapple" doctrine to Presidential appearances and presentations of other public officials. It also held that Fairness Doctrine had no application, since the networks had adequately covered views contrasting from those of the President. The August, 1970 grant of time to DNC was distinguished on the ground that there the President's appearances dealt with only the Vietnam war, while the 1971 appearances ranged over a variety of issues. DNC has appealed this ruling and the court case has not been decided; generally, however, the D.C. Court of Appeals has been unsympathetic to the FCC on its Fairness Doctrine rulings and has usually been willing to go much further than the Commission.

To sum up: At the national level, the Republican Party has never benefited from application of the Fairness Doctrine, and has suffered from its application on several occasions. The single Republican victory involved an entirely separate role, the "Zapple"

doctrine. There is no doubt that the Fairness Doctrine is generally detrimental to the party in power.

"FOR EYES ONLY"

MEMORANDUM FOR

Mr. Chuck Colson
Mr. John Ehrlichman
Mr. Peter Flanigan
Mr. H. R. Haldeman
Mr. Herb Klein
Mr. Ronald Ziegler

In a speech delivered last month, I made three related proposals concerning the regulation of broadcasting:

- (1) That the FCC experiment with a plan for deregulation of radio broadcasting;
- (2) That the FCC's procedures for the renewal of TV licenses be altered so as to lengthen the license term, eliminate Federal prescription of program content and give the responsible broadcaster some reasonable assurance that his license will be renewed when faced with a challenge; and
- (3) That the FCC's current procedures for enforcing the obligation of fairness on a case-by-case basis (the so-called "Fairness Doctrine") be abandoned and be enforced, instead, through an overall review of performance at license renewal time, and through creation of a statutory right to purchase advertising time on a nondiscriminatory basis.

I made these proposals because I have become convinced that some fundamental initiatives are necessary to prevent the accelerating drift towards treatment of broadcasting as an arm of the Government, rather than a segment of the free and privately run communications media. I made it clear in the speech that the Administration has no present plans for legislation to implement the last two proposals--none is needed for the first--but indicated that I would press for such legislation if the reaction was favorable. In general, it has been. I propose, therefore, to develop and refine these proposals in the future.

Since any significant initiative with respect to broadcasting regulation has immediate political ramifications, I think it is important that you understand what I am proposing and appreciate its relationship to our political strategy, especially in light of a recent court decision which, in effect, would entitle Democratic Party spokesmen air time to respond to broadcast appearances of the President and his spokesmen.

Accordingly, I am attaching as Tab A a description of the devices presently used to achieve balance in political broadcasts. Tab B describes the effect of OTP's Fairness Doctrine proposals upon Republican political broadcasting. Tab C is a detailed description of the past use and net utility of the Fairness Doctrine in promoting Republican interests. Tab D contains several suggestions on the use of the OTP proposals during the coming year.

Clay T. Whitehead

CURRENT FAIRNESS PROVISIONS
APPLICABLE TO POLITICAL PRESENTATIONS

Access to the broadcast media for political presentations is governed by four major regulatory provisions:

(1) Section 315 of the Communications Act--The so-called "equal time" provision, which applies only to broadcast appearances of candidates themselves during election campaigns, requires all opposing candidates to be afforded equal time for personal appearances. There is no obligation to give free time if the first candidate paid for his time.

(2) Editorial endorsement rule--Under FCC rules, when a station editorially endorses (or opposes) a candidate, the opponent of the endorsed candidate (or the opposed candidate) is entitled to respond, personally or through spokesmen.

(3) The "Zapple" or "quasi-equal opportunities" doctrine--This doctrine, developed in FCC rulings, extends the provisions of Section 315 to persons other than the candidates themselves. It provides "equal time" during campaigns for appearances of supporters and spokesmen of opposing candidates. (As with Section 315, there is no obligation to give free time to the opposing spokesmen if the first spokesman paid for his time.)

(4) The Fairness Doctrine--The FCC's general, uncodified Fairness Doctrine applies to all broadcasts dealing with controversial issues--including political broadcasts which are not covered by the above three provisions. Positions taken by the President and party spokesmen must be "balanced" by appearances of spokesmen for contrasting viewpoints, often opposing party spokesmen. Paid time must be balanced in paid or free time. That is, if a Republican spokesman makes a paid appearance, a Democratic spokesman can request free time to respond.

EFFECT ON REPUBLICAN INTERESTS

Abandonment of the Fairness Doctrine would not eliminate the general obligation of broadcasters to cover public issues in a fair and balanced manner. OTP suggested that this obligation no longer be enforced in a case-by-case, issue-by-issue manner, but rather that the licensee's efforts to be fair and balanced be judged at renewal time on the "totality" of his service during the preceeding license period. OTP also suggested that the present power of individuals to demand time for response on a case-by-case basis be replaced with a general right to purchase advertising time on a nondiscriminatory basis.

OTP proposed this new policy because enforcement of broadcasters' "fairness" obligation has gotten completely out of hand in recent years. Essentially, the FCC itself has lost control of the enforcement procedures, which are now dictated by the D.C. Court of Appeals in response to appeals taken by activist political and social groups.

no #

~~The OTP proposals are not only sound public policy, they benefit Republican interests both politically and philosophically. The Fairness Doctrine has been used most successfully by the Democratic left. It inevitably favors those with extreme and populist views. Without the Fairness Doctrine, the traditional, main-stream view on a particular issue would still receive substantial coverage in the sum total of TV programming; but the far-out position on that issue might not. The Fairness Doctrine assures that extreme views receive not merely equitable coverage, but in fact this process is well on the way to destroying the basic premise of our free broadcasting system--which is to place primary responsibility and broad discretion in the hands of the individual broadcaster.*/ It has already led to rulings by the Court of Appeals which require broadcasters to provide free time to groups opposing the sale of advertised products, and free time to Democrats wishing to respond to nonpartisan appearances of the President and his spokesmen. By eliminating case-by-case enforcement of the fairness obligation, the OTP proposals will deter further erosion of broadcaster discretion, and diminish day-to-day government involvement in the content of the broadcast programs.~~

*/ Based as it is upon principles of individual freedom and dispersion of government power, this premise has had the continuing support of the Republican Party. For example, the National Committee opposed Senate Joint Resolution 209, introduced by Senator Fullbright, (which would have required all broadcast stations to provide a "reasonable amount of public service time" four times yearly to Senators and Representatives) on the ground that it would destroy the "free press" discretion of broadcast licensees. Senator Dole also stated that the Resolution "would be a step toward removing the discretion and trust the American system has placed in free, commercial broadcasting."

The OTP proposals are not only sound public policy, but they benefit conservative philosophy in general and Republican interests in particular. The Fairness Doctrine has been used most successfully by the new left. It inevitably favors those with extreme and populist views. Without the Fairness Doctrine, the traditional main-stream view on a particular issue would still receive substantial coverage in the sum total of TV programs; but the far-out position might not. The Fairness Doctrine assures that extreme views receive not merely equitable coverage but in fact much more attention on the airwaves than they are given in the society at large. It is therefore beneficial to conservatives and moderates to impose upon the broadcaster only the requirement that he demonstrate good faith efforts to present contrasting viewpoints on an overall basis.

The OTP proposals will particularly benefit Republican interests in the following ways:

(1) The courts and the FCC have recently held that broadcasters must, under the Fairness Doctrine, provide free time for refutation of controversial positions presented in paid advertising. These positions are generally put forward in "institutional" ads which make such points as the need for more oil, the care which companies exercise in guarding against pollution, the need for new highways, or even the desirability of the automobile. As matters now stand, all such ads give environmental groups the right to demand free time for reply. Furthermore, the courts have held that ordinary product advertising can raise controversial issues indirectly (e.g., ad for high octane gasoline raises pollution issue), which also calls for free response time from groups with contrasting views.

Under the OTP proposal, advertising time would be entirely insulated from the fairness obligation. In order to give protection for the "otherside" of such issues, advertising time would have to be sold to all who desire it. This requirement, however, has already been effectively imposed by a recent court decision, and will in any event not be as useful to liberal activist groups as the existing enforcement mechanism requiring a free rebuttal. In short, the OTP proposal will enable the private sector to present its views and its products to the public without simultaneously subsidizing rebuttals from opponents. This will further Republican political positions on most points.

(2) While the OTP proposals alone will not undo the recent court decision that the obligation of fairness requires Democratic response time to addresses by the President and his spokesmen, it will at least avoid enforcement of this obligation on a tit-for-tat, case-by-case basis. Such enforcement, which could require time for Democrats each time the President or an Administration official appears, would predictably cause the networks to reduce substantially their coverage of the Administration. Under the

OTP proposal, on the other hand, it will suffice if the broadcaster affords opposition spokesmen, on an overall basis, as much time as Republicans--including Republicans speaking in their official capacity as members of the Administration. The greater leeway and room for broadcaster discretion would minimize the adverse effect of the new decision.

(3) The OTP proposals for changes in broadcast regulation have received widespread support from virtually all segments of the broadcasting industry, including the networks. They have earned substantial amounts of good will for the Administration at a time when we were beginning to feel industry backlash because of "anti-broadcast" actions taken by a Republican FCC. The Administration and the RNC can capitalize on this good will, and can use its continued support of these proposals, to encourage both more contributions and more objective news coverage from broadcasters.

(4) As unfortunate as recent court decisions in the field have been, they may get even worse unless the vehicle which brings them forth--the present case-by-case method of enforcing fairness--is eliminated. It is obvious that court decisions in this field are consistently contrary to Republican interests, and it is therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees, operating under the generalized supervision of the Commission. The OTP proposal achieves this.

The foregoing benefits can be achieved without the loss of any genuinely effective weapon. First, it is almost impossible to use the Fairness Doctrine to compel any network coverage of the Administration point of view. In order to do so, we would have to prove that the Administration was denied a reasonable opportunity to present its position on a particular issue; but network news almost always furnishes this required minimum. Second, for all its weaknesses in methodology, Edith Efron's "News Twisters" book gives clear indication that network coverage does its greatest damage to our interests in the "commentary" remarks of network reporters, and not in the statements of persons covered in the news. This subtle and not-so-subtle news slanting is not reachable under the Fairness Doctrine. The FCC will take action only when there is extrinsic evidence of gross misconduct--i.e., evidence other than the mere content of the program itself. Such evidence (e.g., proof that a news event was "staged") almost never exists.

PRIOR POLITICAL USE OF THE FAIRNESS DOCTRINE

Prior to the 1964 campaign, the FCC rejected the Republican National Committee's request that Senator Goldwater be given "equal time" to respond to a Presidential radio-TV address. It acknowledged, in principle, that the Fairness Doctrine applied to the address, but said that Senator Goldwater's "contrasting" views had been covered adequately in network news and interview shows. In August 1970, the Democratic National Committee and Senators Hughes, McGovern, Hatfield, Goodell, Cranston, Bayh, Church, Eagleton, Gravel, Harris, Hart, Kennedy, Metcalf and Nelson, made good on the principle established by RNC and obtained free network time to "respond" to five Presidential addresses dealing with Vietnam. In order to restore the "balance" of coverage on the Vietnam issue, the FCC dictated the format of the response and required the networks to give uninterrupted blocks of time to DNC, since the President had stated his views in uninterrupted segments.

In the same series of cases, DNC also obtained a declaratory ruling in which the FCC departed from its previous position that station time need not be sold to particular groups. The FCC held that the "public interest" required licensees to sell time to political parties so that they could solicit contributions. Subsequent court decisions have broadened this "right" to include purchases of time for reasons other than fund solicitations.

While the Democrats eventually achieved all of their objectives in the August 1970 cases, we fared very poorly and ultimately lost what it first appeared we had gained. The FCC rejected the complaint against NBC of Senators Dole, Goldwater, Hansen, Gurney, Fannin, Curtis, Griffin, Smith, Allott, Domnick, and Thurmond. The Senators had requested free time to respond to a 30-minute sponsored program which featured Senators in favor of the "Amendment to End the War." The Commission held that NBC's refusal was reasonable because the network had provided adequate time to the Administration viewpoint on the war.

RNC seemed to do better than the 11 Republican Senators when it got the FCC to require CBS to provide time for response to Larry O'Brien's July 7, 1970, program on behalf of DNC. CBS had given DNC this time as part of its "Loyal Opposition" series, so that the Democrats could respond to the President's Vietnam speeches; the network had placed no restrictions on DNC's use of the time, and O'Brien used it to make a partisan attack on the President and the Republican Party in general. In response to the protests of RNC, the FCC established a principle which would have expanded the "Zapple" doctrine and required "equal" time for one party to respond to another party which had been given "response" time with no specification of the issues to be covered. On November 15, 1971, the D.C. Court of Appeals struck down this FCC expansion of the "Zapple" doctrine because it gives the President's party double exposure on the issues. In the future, Democrats

will be able to obtain free time, to respond to Presidential speeches and press conferences, as well as similar appearances by Administration spokesmen. The Court also implied that the networks could not limit in any manner the issues to be covered in this "response" time by the opposition spokesmen.

This latest court decision will also make virtually worthless the small Fairness Doctrine gain RNC achieved in a series of "political broadcast" cases which the FCC decided last August. In this series of cases, the FCC refused DNC's request for network time to respond to three Presidential appearances under the "Zapple" doctrine. It declined to extend that doctrine to Presidential appearances and presentations of other public officials. It also held that the Fairness Doctrine had been satisfied, since the networks had adequately covered views contrasting with those of the President. The August 1970 grant of time to DNC was distinguished on the ground that there the President's appearances dealt only with the Vietnam war, while the 1971 appearances ranged over a variety of issues. DNC has appealed this ruling and the court case has not yet been decided. However, if the D.C. Court of Appeals decision in the RNC case is followed, reversal of these favorable FCC rulings is certain.

To sum up: At the national level, the Republican Party has not benefited from application of the Fairness Doctrine, and has suffered from its application on several occasions. There is no doubt that the Fairness Doctrine is generally detrimental to the part in power and to the party with the money.

POLITICAL USE OF NEW PROPOSALS

(1) The most effective deterrent to slanted news coverage has proven to be public criticism. Criticism by political officials in power is blunted, and perhaps rendered counter-productive, by allegations that it is an attempt to intimidate the government-regulated media. These allegations can be shown to be groundless if the Administration itself--while asserting its right to criticize news bias--actively urges less government regulation and control, especially over program content. The attacks of the Vice President and Bob Dole can be more direct and effective than ever, and other Administration officials might even get away with softer criticism on specific issues.

(2) The broadcaster good will arising from Administration support of these proposals will hopefully, in and of itself, get us more favorable treatment in the '72 campaign, as well as more money.

(3) We can make clear that the price of greater broadcaster freedom is greater broadcaster responsibility. In exchange for active Administration efforts to implement the OTP proposals, we might get local stations to exercise more supervision and control over the balance and fairness of their public affairs coverage--and in particular the network shows they carry. We might urge the network affiliates to establish a "Committee on Network News Balance." This would put both heat and the public eye on the network news organizations in a way that pressure on the network corporate headquarters never can. At best it might lead to some local control over what the networks offer. At the very least, it would destroy the solid front which the industry now presents against any and all criticism of broadcast journalism.

(4) We might use the same argument--that greater freedom requires greater responsibility--with the networks themselves. Network management has increasingly treated their news and public affairs staff as a privileged class, subject to virtually no owner control. This unaccountability is the source of many of our difficulties. We can make it clear to the networks that if they want Administration support for the OTP proposals, they must assume corporate responsibilities for the fairness of their news departments.

(5) We can use support of the proposals to exact concessions from broadcasters in other areas--for example, to obtain their support for the Administration position on long-range cable TV development.

(6) The proposals are not likely to be enacted into law before the next election. Until they are, we should encourage Fairness Doctrine complaints--to embarrass the networks when their news coverage is biased, to keep Democratic spokesmen "honest," and to demonstrate the unworkability of the present system.

93D CONGRESS
1ST SESSION

S. J. RES. 60

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 1973

Mr. BAKER introduced the following joint resolution; which was read twice and referred to the Committee on Commerce

JOINT RESOLUTION

To direct the Federal Communications Commission to study and revise its rules consistent with the realities of modern-day broadcasting, and the special problems of the small market radio broadcaster.

Whereas pursuant to the Communications Act of 1934, as amended, the Congress of the United States created the Federal Communications Commission for the purpose of regulating radio communications in the public interest; and Whereas the Commission is specifically required to encourage the larger and more effective use of radio in the public interest; and

Whereas technological advances in recent years have greatly increased the efficiency and reliability of the radio equipment available today, thus permitting the more efficient use of radio; and

Whereas there are vast differences in the resources available to the various broadcast licensees of the Commission from small market radio stations to large market television stations; and

Whereas a significant proportion of the Nation's small market radio stations operate at a loss; and

Whereas the Commission has imposed the same reporting requirements on all its broadcast licensees across the board, such as lengthy license renewal forms, detailed ascertainment surveys, and the complicated requirements of the fairness doctrine; and

Whereas many of the rules and policies by which the Commission has regulated broadcasters are outdated, unnecessary, and may no longer be in the public interest; and

Whereas the Federal Communications Commission recently has initiated a re-regulation program and constituted an agency task force to bring about improved regulation of the broadcast industry: Now, therefore, be it

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That the Federal Communications Commission be directed
- 4 to study and revise its rules and regulations, consistent with
- 5 the public interest, to reflect the realities of modern-day
- 6 broadcasting; that it give special attention to the unique
- 7 problems of small market broadcasters; that it consider the
- 8 feasibility of adopting a short-form renewal application for
- 9 radio; that it determine whether fairness doctrine obliga-
- 10 tions can be simplified and clarified; that it review the re-

1 quirements of ascertaining community needs with a view to-
2 ward relieving unnecessary burdens; and, that it direct its
3 full effort and energies to relieve all broadcasters of technical,
4 legal, and administrative burdens which are unrelated to
5 or out of proportion to the individual broadcaster's pursuit
6 of the public interest and his role as a public trustee, and
7 thereby enable them to devote more time and resources to
8 the public interest; and that it move forward with a pilot
9 project to achieve these objectives.

JOINT RESOLUTION

To direct the Federal Communications Commission to study and revise its rules consistent with the realities of modern-day broadcasting, and the special problems of the small market radio broadcaster.

By Mr. BAKER

FEBRUARY 8, 1973

Read twice and referred to the Committee on
Commerce

STATEMENT BY
CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the
Subcommittee on Constitutional Rights
The Honorable Sam J. Ervin, Chairman
Committee on the Judiciary
United States Senate

February 2, 1972

I am pleased to have this opportunity to appear before you today, to discuss some aspects of the First Amendment which it is an important concern of my Office to protect. I wish to address my remarks specifically to the First Amendment implications of the two most significant innovations in our mass communications system during the past decade.

The first of these is cable television. Coaxial cable and related technologies enable large numbers of electronic signals--television signals included--to be carried directly into the home by wire rather than being broadcast over the air. There is no particular limitation on the number of signals which can be provided; systems now being constructed typically have the capacity to carry about 20 television channels, and can be readily expanded to 40.

The original use for this technology was "CATV," or Community Antenna Television. As its name implies, that involved no more than the use of cable to carry broadcast signals picked up by a high master antenna into homes in areas where reception was difficult. In recent years, however, use of the technology has progressed far beyond that. Many cable systems now use microwave relay systems to import television signals from far distant cities. Some originate programming of their own, and make unused channels available to private individuals, organizations, schools, and municipal agencies. Looking into the future, cable technology has the potential to bring into the home communications services other than television--for example, accounting and library services,

remote medical diagnoses, access to computers, and perhaps even instantaneous facsimile reproduction of news and other printed material. But I wish to focus upon the immediate consequences of cable, and in particular its impact upon mass communications.

I do not have to belabor the point that the provision of 20 to 40 television channels where once there were only four or five drastically alters the character of the medium. It converts a medium of scarcity into a medium of abundance. As this Subcommittee is aware from earlier testimony, one of the most severe problems which must be faced by broadcasters today is the allocation of limited broadcasting time--allocation among various types of programming, and allocation among the many groups and individuals who demand time for their point of view. Cable, if it becomes widespread, may well change that by making the capacity of television, like that of the print media, indefinitely expandable, subject only to the economics of supply and demand.

Of course the new medium also brings its own problems, several of which are immediately related to First Amendment concerns. Economic realities make it very unlikely that any particular community will have more than a single cable system. Unless some structural safeguard or regulatory prohibition is established, we may find a single individual or corporation sitting astride the major means of mass communication in many areas.

The second aspect of this new technology which bears on the First Amendment is, to my mind, the more profound and fundamental, because it forces us to question not only where we are going in the future, but also where we have been in the past. That aspect consists of this: the basic premises which we have used to reconcile broadcasting regulation with the First Amendment do not apply to cable.

In earlier sessions of these hearings, this Subcommittee has heard three principal justifications for Government intrusion into the programming of broadcast communications: The first is the fact of Government licensing, justified by the need to prevent interference between broadcast signals. But with cable, there is nothing broadcast over the air, no possibility of interference, and hence no unavoidable need for Federal licensing. The second is "the public's ownership of the air waves" which the broadcaster uses. But cable does not use the air waves. The third is the physical limitation upon the number of channels which can be broadcast in any area-- meaning that there is oligopoly control over the electronic mass media, in effect conferred by Federal license. But the number of feasible cable channels far exceeds the anticipated demand for use, and there are various ways of dispersing any monopoly control over what is programmed on cable channels.

In other words, cable television is now confronting our society with the embarrassing question: Are the reasons we have given in the past forty-odd years for denying to the

broadcast media the same First Amendment freedom enjoyed by the print media really reasons--or only rationalizations. Why is it that we now require (as we in effect do) that each radio and television station present certain types of programming--news, religion, minority interest, agriculture, public affairs? Why is it that our courts repeatedly intervene to decide, or require the FCC to decide, what issues are controversial, how many sides of those controversies exist, and what "balance" should be required in their presentation? Is it really because the detailed governmental imposition of such requirements is made unavoidable by oligopoly control of media content or by the need to decide who is a responsible licensee? Or is it rather that we have, as a society, made the determination that such requirements are good and therefore should be imposed by the Government whenever it has a pretext to do so? And if it is the latter, is this remotely in accord with the principle of the First Amendment, which (within the limitation of laws against obscenity, libel, deception, and criminal incitement) forbids the Government from determining what it is "good" and "not good" to say?

This stark question is inescapably posed by cable technology. The manner in which we choose to regulate cable systems and the content of cable programming will place us squarely on one or the other side of this issue. Perhaps the First Amendment was ill conceived. Or perhaps it was designed for a simpler society in which the power of mass media was not as immense as it is today. Or perhaps the

First Amendment remains sound and means the same thing now as it did then. The answer to how we as a nation feel on these points will be framed as we establish the structure within which cable television will grow.

Because the President realizes that such fundamental issues are involved, he has determined that the desirable regulatory structure for the new technology deserves the closest and most conscientious consideration of the public and the executive and legislative branches of Government. For this reason, he established last June a Cabinet-level committee to examine the entire question and to develop various options for his consideration. Not surprisingly, in view of the magnitude and importance of the subject, the work of the committee is not yet completed. I assure you, however, that First Amendment concerns such as those I have been discussing are prominent in our deliberations--as I hope they will be prominent in yours when the Congress ultimately considers this issue.

I now wish to turn to what I consider the second major innovation in our mass communications system during the past decade--the establishment of a Corporation for Public Broadcasting, supported by Federal funds. The ideals sought by this are best expressed in the following enterprise excerpt from the Report of the Carnegie Commission on Educational Television.

"If we were to sum up our proposal with all the brevity at our command, we would say that what we recommend is freedom. We seek freedom from the constraints, however necessary in their context, of commercial television. We seek for educational television freedom from the pressures of inadequate funds. We seek for the artist, the technician, the journalist, the scholar, and the public servant freedom to create, freedom to innovate, freedom to be heard in this most far-reaching medium. We seek for the citizen freedom to view, to see programs that the present system, by its incompleteness, denies him."

In addition to this promise, public television also holds some dangers, as was well recognized when it was established. I think most Americans would agree that it would be dangerous for the Government itself to get into the business of running a broadcasting network. One might almost say that the free-speech clause of the First Amendment has an implicit "non-establishment" provision similar to the express "nonestablishment" restriction in the free-exercise-of-religion clause. Just as free exercise of religion is rendered more difficult when there is a state church, so also the full fruits of free speech cannot be harvested when the Government establishes its own mass communications network. Obvious considerations such as these caused Federal support of public broadcasting to be fashioned in such a way as to insulate the system as far as possible from Government interference.

The concern went, however, even further than this. Not only was there an intent to prevent the establishment of a Federal broadcasting system, but there was also a desire to avoid the creation of a large, centralized broadcasting system financed by Federal funds--that is, the Federal "establishment"

of a particular network. The Public Broadcasting Act of 1967, like the Carnegie Commission Report which gave it birth, envisioned a system founded upon the "bedrock of localism," the purpose of the national organization being to serve the needs of the individual local units. Thus it was that the national instrumentality created by the Act--the Corporation for Public Broadcasting--was specifically excluded from producing any programs or owning any interconnection (or network) facilities.

Noncommercial radio has been with us for over 50 years and noncommercial television for 20. They have made an important contribution to the broader use of communications technology for the benefit of all. The new Corporation for Public Broadcasting has, for the most part, made a good start in expanding the quantity and quality of programming available to local non-commercial broadcasting stations. There remain important questions about the most desirable allocation of the Corporation's funds among educational, instructional, artistic, entertainment, and public affairs programming. But most importantly, from the First Amendment standpoint, there remains a question as to how successful the Corporation has been in avoiding the pitfalls of centralization and thereby of Government "establishment." Now that we have a few years' experience under this new system, we see a strong tendency--understandable but nonetheless regrettable--towards a centralization of practical power and authority over all the programming developed and distributed with

Federal funds. Although the Corporation for Public Broadcasting owns no interconnection facilities, which the Act forbids, it funds entirely another organization which does so. Although it produces no programs itself, which the Act forbids, the vast majority of the funds it receives are disbursed in grants to a relatively few "production centers" for such programs as the Corporation itself deems desirable--which are then distributed over the Corporation's wholly funded network. We have in fact witnessed the development of precisely that which the Congress sought to avoid--a "Fourth Network" patterned after the BBC.

There is, moreover, an increasing tendency on the part of the Corporation to concentrate on precisely those areas of programming in which the objection to "establishment" is strongest, and in which the danger of provoking control through the political process is most clear. No citizen who feels strongly about one or another side of a matter of current public controversy enjoys watching the other side presented; but he enjoys it a good deal less when it is presented at his expense. His outrage--quite properly--is expressed to, and then through, his elected representatives who have voted his money for that purpose. And the result is an unfortunate, but nonetheless inevitable, politicization and distortion of an enterprise which should be above faction and controversy.

Many argue that centralization is necessary to achieve efficiency, but I think it is demonstrable that it does not make for efficiency in the attainment of the objectives for

which public broadcasting was established. For those objectives are variety and diversity--almost inherently antithetical to unified control. To choose for public broadcasting the goal of becoming the "Fourth Network" is to choose for it the means which have brought success to the first three--notably, showmanship and appeal to mass tastes. This is not to say that there should be no nationally produced programming for public television. Some types of programming not offered on commercial television require special talent, unique facilities, or extensive funds that can only be provided at the national level; it is the proper role of the Corporation to coordinate and help fund such programming. But both for reasons of efficiency and for the policy reasons I have discussed above, the focus of the system must remain upon the local stations, and its object must be to meet their needs and desires.

The First Amendment is not an isolated phenomenon within our social framework, but rather one facet of a more general concern which runs throughout. For want of a more descriptive term we might describe it as an openness to diversity. Another manifestation of the same fundamental principle within the Constitution itself is the very structure of the Nation which it established--not a monolithic whole, but a federation of separate states, each with the ability to adopt divergent laws governing the vast majority of its citizens' daily activities. This same ideal of variety and diversity has been apparent in some of the most enduring legislation enacted under the Federal

Constitution. Among the most notable was the Communications Act of 1934. Unlike the centralized broadcasting systems of other nations, such as France and England, the heart of the American system was to be the local station, serving the needs and interests of its local community--and managed, not according to the uniform dictates of a central bureaucracy, but according to the diverse judgments of separate individuals and companies.

In 1967, when Congress enacted the Public Broadcasting Act, it did not abandon the ideal and discard the noble experiment of a broadcasting system based upon the local stations and ordained towards diversity. That would indeed have been a contradictory course, for the whole purpose of public broadcasting was to increase, rather than diminish, variety. It is the hope and objective of this Administration to recall us to the original purposes of the Act. I think it no exaggeration to say that in doing so we are following the spirit of the Constitution itself.

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

January 31, 1972

DIRECTOR

MEMORANDUM FOR

Mr. Colson
Mr. Ehrlichman
Mr. Flanigan
Mr. Haldeman

As you know, I am scheduled to appear before the Ervin subcommittee Wednesday, February 2. I have been asked to testify on the First Amendment implications of cable television and public broadcasting.

However, earlier sessions of the hearings have dealt extensively with the Fairness Doctrine and the more general question of access to the broadcast media, and it is probable that there will be questions on these issues. At a minimum, I must discuss the policy considerations surrounding those issues, and there is no graceful way to avoid commenting on my own proposals made last fall. It would be much better to make an affirmative statement of the Administration's position than to waffle. Our image of evasiveness in these highly visible hearings has already given credence to charges of underhanded media intimidation.

I propose, therefore, if there is no objection, to reply to questions with a statement of the Administration's position as shown at Tab A. This is a fairly general and low-key, but positive, position that does not commit us to any specific legislative or regulatory action. It does not give us a basis for opposing CPB's involvement in public affairs and for opposing the FTC "counter-advertising" proposals which are derived from the Fairness Doctrine.

After much public and private discussion and reaction, I am more convinced than ever that the more detailed OTP proposals in this area are not only good policy, consistent with our philosophy, but also are good positions politically. We should not press them actively this year, but I do believe we should continue to affirm them in broad form. Properly used, they can insulate the Administration from a lot of

criticism, encourage local broadcaster assistance on the network news problem, and provide a "high-road" cover for our efforts to focus more attention on press objectivity. Because these matters are so important, I think you should understand better what we have proposed and its relationship to our political strategy. I therefore attach at Tab B a series of short memoranda on the proposals, their background, and their political use.

I would appreciate a reaction to Tab A by Tuesday and to Tab B when you have had a chance to review it.



Clay T. Whitehead

Attachments

cc: Mr. MacGregor





SUBSTANCE OF PROPOSED POSITION

Fairness Doctrine

The broadcaster obviously has an obligation of fairness in the presentation of controversial issues. The problem is how Government, with its licensing responsibility, should enforce this obligation of fairness without excessive intervention in the private enterprise system of broadcasting and without damage to the open exchange of ideas so central to our concept of democracy and freedom.

The Administration believes that the current enforcement procedures embodied in the so-called "Fairness Doctrine" in the early 1960's, have proven unworkable and excessively vague and confusing. Although the FCC's rules may have been sound enough in principle, their function has been distorted by the courts, which have repeatedly used the Fairness Doctrine to accommodate the demands of individuals and groups for access to the broadcasting media--a purpose for which it was never intended or designed.

Since the obligation of fairness arises from the license process, it should be enforced in that context. We should move towards a return to the FCC's pre-1960 procedures, whereby the Commission would inquire at the end of a licensee's term whether he has, on an overall basis, been fair and responsible; during the license term, only flagrant abuses would justify intervention by the Government to require that a particular position be presented. It is our hope that the FCC's own inquiry into the Fairness Doctrine problems will cause such necessary changes to be made by the Commission itself.

Access

Our private enterprise broadcasting system, with its dual emphasis on license freedom and licensee responsibility, has as its foundation the licensee's discretion in programming. However, now that television has become so pervasive and important in the commercial and political life of our country, there is growing pressure for a mechanism whereby individuals or groups who do not own a station can be assured the ability to express their point of view. The Administration recognizes the

desirability of such a mechanism. We believe, however, that this should be based on the right of individuals or groups to buy time on a non-discriminatory basis, rather than on the judicially-derived extensions of the Fairness Doctrine that are now being used to impose special interest messages on the viewing public without requiring those who use the time to pay for it.



B

CURRENT FAIRNESS PROVISIONS
APPLICABLE TO POLITICAL PRESENTATIONS

Access to the broadcast media for political presentations is governed by four major regulatory provisions:

(1) Section 315 of the Communications Act--The so-called "equal time" provision, which applies only to broadcast appearances of candidates themselves during election campaigns, requires all opposing candidates to be afforded equal time for personal appearances. There is no obligation to give free time if the first candidate paid for his time.

(2) Editorial endorsement rule--Under FCC rules, when a station editorially endorses (or opposes) a candidate, the opponent of the endorsed candidate (or the opposed candidate) is entitled to respond, personally or through spokesmen.

(3) The "Zapple" or "quasi-equal opportunities" doctrine--This doctrine, developed in FCC rulings, extends the provisions of Section 315 to persons other than the candidates themselves. It provides "equal time" during campaigns for appearances of supporters and spokesmen of opposing candidates. (As with Section 315, there is no obligation to give free time to the opposing spokesmen if the first spokesman paid for his time.)

(4) The Fairness Doctrine--The FCC's general, uncodified Fairness Doctrine applies to all broadcasts dealing with controversial issues--including political broadcasts which are not covered by the above three provisions. Positions taken by the President and party spokesmen must be "balanced" by appearances of spokesmen for contrasting viewpoints, often opposing party spokesmen. Paid time must be balanced in paid or free time. That is, if a Republican spokesman makes a paid appearance, a Democratic spokesman can request free time to respond.

PRIOR POLITICAL USE OF THE FAIRNESS DOCTRINE

Prior to the 1964 campaign, the FCC rejected the Republican National Committee's request that Senator Goldwater be given "equal time" to respond to a Presidential radio-TV address. It acknowledged, in principle, that the Fairness Doctrine applied to the address, but said that Senator Goldwater's "contrasting" views had been covered adequately in network news and interview shows. In August 1970, the Democratic National Committee and Senators Hughes, McGovern, Hatfield, Goodell, Cranston, Bayh, Church, Eagleton, Gravel, Harris, Hart, Kennedy, Metcalf and Nelson, made good on the principle established by RNC and obtained free network time to "respond" to five Presidential addresses dealing with Vietnam. In order to restore the "balance" of coverage on the Vietnam issue, the FCC dictated the format of the response and required the networks to give uninterrupted blocks of time to DNC, since the President had stated his views in uninterrupted segments.

In the same series of cases, DNC also obtained a declaratory ruling in which the FCC departed from its previous position that station time need not be sold to particular groups. The FCC held that the "public interest" required licensees to sell time to political parties so that they could solicit contributions. Subsequent court decisions have broadened this "right" to include purchases of time for reasons other than fund solicitations.

While the Democrats eventually achieved all of their objectives in the August 1970 cases, we fared very poorly and ultimately lost what it first appeared we had gained. The FCC rejected the complaint against NBC of Senators Dole, Goldwater, Hansen, Gurney, Fannin, Curtis, Griffin, Smith, Allott, Dominick, and Thurmond. The Senators had requested free time to respond to a 30-minute sponsored program which featured Senators in favor of the "Amendment to End the War." The Commission held that NBC's refusal was reasonable because the network had provided adequate time to the Administration viewpoint on the war.

RNC seemed to do better than the 11 Republican Senators when it got the FCC to require CBS to provide time for response to Larry O'Brien's July 7, 1970, program on behalf of DNC. CBS had given DNC this time as part of its "Loyal Opposition" series, so that the Democrats could respond to the President's Vietnam speeches; the network had placed no restrictions on DNC's use of the time, and O'Brien used it to make a partisan attack on the President and the Republican Party in general. In response to the protests of RNC, the FCC established a principle which would have expanded the "Zapple" doctrine and required "equal" time for one party to respond to another party which had been given "response" time with no specification of the issues to be covered. On November 15, 1971, the D.C. Court of Appeals struck down this FCC expansion of the "Zapple" doctrine because it gives the President's

party double exposure on the issues. In the future, Democrats will be able to obtain free time, to respond to Presidential speeches and press conferences, as well as similar appearances by Administration spokesmen. The court also implied that the networks could not limit in any manner the issues to be covered in this "response" time by the opposition spokesmen.

This latest court decision will also make virtually worthless the small Fairness Doctrine gain RNC achieved in a series of "political broadcast" cases which the FCC decided last August. In this series of cases, the FCC refused DNC's request for network time to respond to three Presidential appearances under the "Zapple" doctrine. It declined to extend that doctrine to Presidential appearances and presentations of other public officials. It also held that the Fairness Doctrine had been satisfied, since the networks had adequately covered views contrasting with those of the President. The August 1970 grant of time to DNC was distinguished on the ground that there the President's appearances dealt only with the Vietnam war, while the 1971 appearances ranged over a variety of issues. DNC has appealed this ruling and the court case has not yet been decided. However, if the D.C. Court of Appeals decision in the RNC case is followed, reversal of these favorable FCC rulings is certain.

To sum up: At the national level, the Republican Party has not benefited from application of the Fairness Doctrine, and has suffered from its application on several occasions. The small benefit derived from the FCC's compromise approach in August of 1970, trading off the "Loyal Opposition" series for response time to the President's five Vietnam broadcast statements, has been wiped out by subsequent court decisions. There is no doubt that the Fairness Doctrine is generally detrimental to the party in power and to the party with the money.

POLITICAL USE OF NEW PROPOSALS

(1) The most effective deterrent to slanted news coverage has proven to be public awareness and criticism. Criticism by political officials in power is blunted, and perhaps rendered counter-productive, by allegations that it is an attempt to intimidate the government-regulated media. These allegations can be shown to be groundless if the Administration itself--while asserting its right to criticize news bias--actively urges less government regulation and control, especially over program content. The attacks of the Vice President and Bob Dole can be more direct and effective than ever, and other Administration officials might even get away with softer criticism on specific issues. We are on the side of private enterprise, free and robust press, and responsible journalism--not a bad posture.

(2) Broadcaster good will arising from Administration support of these proposals will hopefully, in and of itself, get us more favorable treatment in the '72 campaign, as well as more money.

(3) We can make clear that the price of greater broadcaster freedom is greater broadcaster responsibility. In exchange for active Administration efforts to implement the OTP proposals, we should get local stations to exercise more supervision and control over the balance of their public affairs coverage. We might urge the network affiliates to establish a "Committee on Network News Balance." This would put both heat and the public eye on the network news organizations in a way that pressure on the network corporate headquarters never can. At best it might lead to some local control over what the networks offer. At the very least, it would destroy the solid front which the industry now presents against any and all criticism of broadcast journalism. But we must realize that the broadcasters need evidence of Administration support for their problems if they are going to help us.

(4) We might use the same argument--that greater freedom requires greater responsibility--with the networks themselves. Network management has increasingly treated their news and public affairs staff as a privileged class, subject to virtually no owner control. This lack of accountability is the source of many of our difficulties. We can make it clear to the networks that if they want Administration support for the OTP proposals, they must assume corporate responsibility for the fairness of their news departments.

(5) We can use our support of the proposals to get broadcaster support in other areas--for example, the Administration position on long-range cable TV development.

(6) The changes OTP proposes cannot be enacted into law this year. Until they are, we should encourage private Fairness Doctrine complaints--to embarrass the networks when their news coverage is biased, to keep Democratic spokesmen "honest," and to demonstrate the unworkability of the present system.

EFFECT ON REPUBLICAN INTERESTS

OTP proposed its new policies because enforcement of broadcasters' "fairness" obligation has gotten completely out of hand in recent years. Essentially, the FCC itself has lost control of the enforcement procedures, which are now dictated by the D.C. Court of Appeals in response to appeals taken by activist political and social groups. This process is well on the way to destroying the basic premise of our free broadcasting system--which is establishment of primary responsibility and broad discretion in the hands of the individual broadcaster.*/ It has already led to rulings by the Court of Appeals which require broadcasters to provide free time to groups opposing the sale of advertised products, and free time to Democrats wishing to respond to nonpartisan appearances of the President and his spokesmen. By eliminating case-by-case enforcement of the fairness obligation, the OTP proposals will deter further erosion of broadcaster discretion, and diminish day-to-day government involvement in the content of the broadcast programs (which inevitably works with a liberal bent).

The OTP proposals are not only sound public policy, but they benefit our political philosophy and Republican interests. The Fairness Doctrine has been used most successfully by the New Left and related groups. It inevitably favors those with extreme and populist views. Without the Fairness Doctrine, the traditional main-stream view on a particular issue would still receive substantial coverage in the sum total of TV programs; but the far-out position might not. The Fairness Doctrine assures that extreme views receive not merely equitable coverage, but in fact much more attention on the airwaves than they are given in the society at large. It is therefore beneficial to conservatives and moderates to impose upon the broadcaster only the requirement that he demonstrate good faith efforts to present contrasting viewpoints on an overall basis.

The OTP proposals will particularly benefit Republican interests in the following ways:

(1) The courts and the FCC have recently held that broadcasters must, under the Fairness Doctrine, provide free time

*/ Based as it is upon principles of individual freedom and dispersion of government power, this premise has had the continuing support of the Republican Party. For example, the National Committee opposed Senate Joint Resolution 209, introduced by Senator Fulbright, (which would have required all broadcast stations to provide a "reasonable amount of public service time" four times yearly to Senators and Representatives) on the ground that it would destroy the "free press" discretion of broadcast licensees. Senator Dole also stated that the Resolution "would be a step toward removing the discretion and trust the American system has placed in free, commercial broadcasting."

for refutation of controversial positions presented in paid advertising. These positions are generally put forward in "institutional" ads which make such points as the need for more oil, the care which companies exercise in guarding against pollution, the need for new highways, or even the desirability of the automobile. As matters now stand, all such ads give environmental groups the right to demand free time for reply. Furthermore, the courts have held that ordinary product advertising can raise controversial issues indirectly (e.g., ad for high octane gasoline raises pollution issue), which also calls for free response time from groups with contrasting views. The recent FTC proposals to the FCC for "counter-advertising" show what can happen when this approach to "fairness" is accepted.

Under the OTP proposal, advertising time would be entirely insulated from the fairness obligation. In order to give protection for the "other side" of such issues, advertising time would have to be sold to all who desire it. This requirement, however, has already been effectively imposed by a recent court decision, and will in any event not be as useful to activist groups as the existing enforcement mechanism requiring a free rebuttal. In short, the OTP proposal will enable the private sector to present its views and its products to the public without simultaneously subsidizing rebuttals from opponents. This will further Republican political positions on most points.

(2) While the OTP proposals alone will not undo the recent court decision that the obligation of fairness requires Democratic response time to addresses by the President and his spokesmen, it will at least avoid enforcement of this obligation on a tit-for-tat, case-by-case basis. Such enforcement, which could require time for Democrats each time the President or an Administration official appears, would predictably cause the networks to reduce substantially their coverage of the Administration. Under the OTP proposal, on the other hand, it will suffice if the broadcaster affords opposition spokesmen, on an overall basis, as much time as Republicans--including Republicans speaking in their official capacity as members of the Administration. The greater leeway and room for broadcaster discretion would minimize the adverse effect of the new court decision.

(3) The OTP proposals for changes in broadcast regulation have received widespread support from virtually all segments of the broadcasting industry, including the networks. They have earned substantial amounts of good will for the Administration at a time when we were beginning to feel industry backlash because of "anti-broadcast" actions taken by a Republican

FCC. The Administration and the RNC can capitalize on this good will, and can use their continued support of these proposals, to encourage both more contributions and more objective news coverage from broadcasters.

(4) As unfortunate as recent court decisions in the field have been, they may get even worse unless the vehicle which brings them forth--the present case-by-case method of enforcing fairness--is eliminated. It is obvious that court decisions in this field are consistently contrary to Republican interests, and it is therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees. It is unlikely that the courts will allow this sort of legislation. The OTP proposal achieves this.

The foregoing benefits can be achieved without the loss of any genuinely effective weapon. First, it is almost impossible for us to use the Fairness Doctrine to compel any network coverage of the Administration point of view. In order to do so, we would have to prove that the Administration was denied a reasonable opportunity to present its position on a particular issue; but network news almost always furnishes this required minimum. Second, for all its weaknesses in methodology, Edith Efron's "News Twisters" book gives clear indication that network coverage does its greatest damage to our interests in the "commentary" remarks of network reporters, and not in the statements of persons covered in the news. This subtle and not-so-subtle news slanting is not reachable under the Fairness Doctrine. The FCC will take action only when there is extrinsic evidence of gross misconduct--i.e., evidence other than the mere content of the program itself. Such evidence (e.g., proof that a news event was "staged") almost never exists.