

Commentary by Clay T. Whitehead  
December 12, 1974

Widely called the most powerful influence on our national life, television is regulated today under various laws that were written before anyone ever thought of television broadcasting. The laws haven't changed much -- but television has, and so have we -- so the old laws have to make do in dealing with the modern television industry.

Under the anti-trust laws, the government must prove in court that the TV networks have broken the law in an effort to monopolize television programming. Like most non-lawyers, I don't know whether the networks have broken the anti-trust laws. Indeed, anti-trust suits seem inevitably to be long, complicated affairs; and it may well be years before we know how the courts decide these cases.

But the Justice Department suit does highlight a very important issue of concern to all of us: We are all used to discussing television as a social, or political, or educational phenomenon. Too often, we forget that TV is first and foremost a business -- a very big and very profitable business at that. And there is no question that the three network companies dominate the TV business. During prime time, over half of all the homes in the country are watching one of the three networks at any given moment; and over 90% of those TV sets that are turned on are tuned to a network program.

Public television can be an important alternative, but it is limited to one channel in most cities. Cable TV continues to grow slowly, and one day may offer substantially more channels ~~and~~ and more choice. But for the next decade or so, commercial television broadcasting will be our primary source of TV programming.



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\* ~~of a network.~~ Like all executives in large corporations who are answerable for the profits they earn, they respond primarily to the institutional incentives of the business they are in. Significant <sup>improvements</sup> ~~changes~~ in TV programming fare will come only if the Justice Department, the FCC, the Congress, and the concerned public start learning something more about the business that lies behind the tube.

There are ways to get more competition into the business of TV program production and distribution <sup>than what the three networks allow.</sup> By opening up the domination of our ~~existing~~ viewing choices to more competition from more sources as the Justice Department suit tries to do, by allowing other companies, perhaps smaller and more innovative to get some of their programs on network lines across the nation, we <sup>can have</sup> ~~can have~~ more diversity and more choice in what we and our children can see on TV.

The only alternative to more competition in the television industry is more regulation of programming by the FCC -- a decidedly unpalatable alternative whatever your political persuasion. The fact is that the three TV networking companies cannot be both as powerful as they want and as free as they want. To quote Justice Hugo Black from an earlier, pre-television, time, "Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests."

Just as we have open competition for what we read; we also must make open competition a reality for what we see.



Sloan School Convocation on the Management of Social and Technological Change  
October 17, 1975

Remarks by Clay T. Whitehead: Public Sector, Private Sector;  
Can the Politicians Manage Both?

Most of the current discussion of social and technological change focuses on the rapidity of change in recent times as the reason our government, industry, and other institutions are finding it so difficult to deal with the changes we all see around us. I think it is more useful, however, to distinguish between two qualitatively different kinds of change which I shall call "incremental" change and "systemic" change.

Incremental change includes shifts in production processes, factor prices, resources availability, and consumer preferences. It includes new modes of transportation, changes in workforce composition, and variations in the costs of capital, changing tastes in culture and entertainment, and trends toward shorter workweeks and improved working conditions.

Systemic change, on the other hand, is a significant shift in the structural framework of incentives, checks, and balances by which our social, technological, economic, and political system maintains its equilibrium. Some examples of systemic change are: the adoption of widespread income maintenance through programs of the Federal government; extensive Federal regulation of prices, investments, and markets; large shifts in monetary, fiscal, and tax policies; and the use of predominantly national news media. The most important systemic change is probably the trend toward statutory and regulatory intervention by the Federal government in short-term management decisions of private enterprise, as for example in automobile pollution controls, petroleum pricing and supply, and access to television time.

The distinction between incremental and systemic change needs better definition, and there are of course many gray areas of overlap. But for



purposes of analyzing our current problems of governmental leadership and corporate management of social, technological, or economic change, the distinction is both useful and important. Systemic change can occur slowly as the accumulation of more or less coherent incremental adaptations, as for example the English common law evolved over several centuries. But the advent of frequent systemic change that is impressed upon our socioeconomic system rather than evolving from within it is a new phenomenon. For a variety of reasons, the United States appears to be at the vanguard of such change, with few good models abroad or in history from which to draw many directly useful lessons.

If this analysis is approximately correct, then we must learn more about the implications of such change if we aspire to "manage" it rather than have it overcome us. It is the nature of systemic change that the role of government is greatly expanded; for only the Federal government has the power and authority to impose such changes earlier than they would evolve if the free market and other social institutions were left to their own devices. This expansion of governmentally imposed systemic change has numerous consequences.

As a result of the social welfare programs of the 60's, the sizable increase in regulation of business, the aftermath of the Vietnam war, and the lingering "social issue," we have much less resilience in our economic system and in our social fabric; both are stretched tighter now, with less room for accommodation or to allow for bad decisions by government or industry.

Moreover, the imposition of systemic change presents a higher order of complexity than does incremental change, for we must take into account not only the direct consequences of changed policies, but also the reactions of other parts of the socioeconomic system to the change and the incentives for future behavior that also have been changed. Along with this complexity,



particularly with increased detail of governmental intervention in social and economic institutions, goes more areas of interaction between government and industry, between government and the individual, that inevitably produces more frequent conflict. One need only look at bussing, tax litigation, Medicaid, and the energy "crisis" to see some good examples.

It is a fact of life that many of our current public concerns are with matters not traditionally considered part of the public sector. Pension standards, occupational safety and health, equal employment opportunities, and pollution, for example, would have been considered matters for corporate management decision not too many years ago. But they have become national policy issues, and the Federal government has begun dealing with such issues through the corporation. As a consequence, the Federal government is acquiring more and more management control over individual corporations.

So not only have the traditional public sector functions like law enforcement, education, defense, and welfare expanded in the budget and in managerial complexity, but the Federal government is now engaged more and more in the management of the private sector. This blurring of the distinction between the private sector and the public sector is not necessarily all bad, but it creates some real problems that we must attempt to understand, not the least of which is the feasibility of managing both sectors via the political process.

The language of business is efficiency, competition, and capital; but the language of government is equity, power, and wealth. Government is notoriously inefficient; but it is not usually efficiency that society seeks when the government becomes involved. In a sense government is concerned with the inefficient: the investment the private sector won't make; the people business doesn't hire; the safety standards corporations cannot adopt unilaterally and remain competitive. Some of this government involvement is



necessary for the functioning of a healthy society, for equity can be no less important than efficiency, and for all its successes the economically motivated modern corporation cannot be expected to be all things to society.

But there clearly can be too much government involvement in the private sector, and there must be better and worse ways for government to promote social objectives. The Soviet Union, England, and New York City offer examples of the consequences of excessive or unwise governmental involvement in the private sector. Not only does the efficiency of the private sector suffer, but worse, the ability of the socioeconomic system to adapt is reduced, important public services are slighted, and civil liberties are constrained. The difficulty in designing imposed systemic change is in knowing how much and what kinds of government control are appropriate and what the corporation might do differently in society's and its own longer-term best interest.

These questions are more complicated than we once thought them to be. Philanthropy is not a sufficient answer to the modern corporation's social responsibility. And socialism and capitalism are not the sole clear-cut alternatives for our economic system. Instead, we have a poorly understood diffusion of ownership, control, accountability, and responsibility involving both the private and public sectors that seems to be edging toward unresponsiveness and instability.

Why is the public allowing this trend in government to go on? It is hardly unperceived, and yet despite the lack of any good examples of success abroad or at home, despite the generally high standard of living private enterprise has produced, the trend continues toward more and more ambitious public sector management of both the public and the private sector. Such a trend can persist only if the public perceives such control through political processes to be in their best interest. And that is a disturbing thought,



since the American public's confidence in their political leaders and institutions is remarkably low according to most polls. If the public feels they stand to gain from political management of the private sector, then pretty clearly something is wrong with the way our corporations are fulfilling their role (even if it is a substantially changed role that is hard to perceive).

The theory of corporate profit-maximization as an indicator of social benefit via the "invisible hand" is at the root of corporate legitimacy in the free enterprise system. Yet that concept is crumbling at the micro-economic level just as the GNP can no longer be considered an adequate indicator of economic performance at the macroeconomic level. With the multiplication of externalities that accompanies the growing complexity of government-industry relationships, the structural assumptions of the economist underlying the theory of corporate behavior as a basis for social wealth are no longer as appropriate as they once were. Business clearly has a problem, and while it would be presumptuous of me to attempt to be very definitive about its causes, I believe some of the factors can be identified. They are mostly structural and include:

1. The separation of ownership and management, and the rise of the professional managerial class.
2. The preeminence of short-term revenue and profit growth as criteria for executive promotion.
3. Inflated and hyperbolic advertising rhetoric (not unlike the vacuousness of much political rhetoric).
4. Substantial achievement of material well-being for the middle class worker/consumer so that quality of life begins to supercede (at least on the margin) industrial production in the consumer's calculus.



5. Accounting conventions and definitions of profit, investment, cost, and so forth that confuse debate about the role and performance of industry.

6. A paucity of business executives who can contribute knowledgeably and constructively in the public debate over the directions of national policy.

The problems of management at the higher levels of the corporation today are less clearly perceived and more complicated than the problems of management we are used to. Like the changes in government and society and the world economic order, the problems are systemic rather than incremental. How should we be organized? What business should we be in? What pension plans will benefit business in the long run? Should some subsidiaries be spun off before an antitrust suit is invited? Should the firm "lobby" in Washington for protection from competition? Will that backfire in the longer run? How should it deal with the media?

Incremental change can be managed; American industry does a good job of it, and our business schools teach it (or at least the principles of it) tolerably well. But systemic change cannot be "managed," at least not as routinely as an open-loop system, for the process, techniques, and considerations are different than those involved in the incremental decisions we usually think of as management. If we attempt to apply standard management and cost-benefit techniques to systemic change, we run the risk of forgetting the checks and balances in the marketplace and in politics that keep our socioeconomic system robust. The types of decisions involved here for top management are generally lumped into a single course on business policy in the management schools, reflecting how little we know about how to deal rigorously with such issues.



It seems to me that we need a new theory of management including a new theory of corporate incentives to deal with the problems that new kinds of change are presenting. This is not to say that we merely need to learn how to do more sophisticated cost-benefit analyses, nor is it to say that we need ten years of basic research in psychology, economics, and philosophy before we can arrive at some useful changes. Rather, we need to rethink the reasons behind the principles of management previously arrived at and supplement them with new principles more in line with the new structure of business and society. This should include:

1. Indices of managerial performance for pay and esteem.
2. Short-run vs. long-run incentives for managers.
3. Impact of industry structure on corporate incentives.
4. Different accounting conventions for different purposes.
5. Education for top management perspective.
6. Traditions of business morality and leadership.
7. Management of private and public non-profit organizations.

But better principles for corporate management are only part of the answer. We also need a new theory of how government should treat the private sector. Neither economic theory nor political theory today provide the principles of governmental regulation of business and intervention in the management of industry that we need. Neither the conservative ("leave business alone") nor the liberal ("soak the rich corporations") political movements offer any intellectual or practical basis for establishing principles of government for the kind of world we now live in or want to live in for the future. Our political processes are not surfacing very thoughtful nor broadly competent candidates for public office; and we seem embarked upon the continued growth of a degree of political control over the management of the private sector that is so complex that even the most competent and responsible politicians could not exercise effectively.



We need some new kind of political leadership that includes:

1. Recognition that the modern large corporation is neither the exploiter of consumers and workers, nor is it qualitatively the same as small entrepreneurial businesses. It has to be viewed as a new type of socio-economic institution with many facets, purposes, and incentives that can be intelligently shaped.
2. Broader recognition of the role of profits and the effect of our accounting and tax conventions on jobs, production, innovation, and consumer satisfaction.
3. Regulation through responsible changes in structural constraints and incentives, rather than ad hoc meddling in management decisions reflecting incentives government itself once established or sanctioned.
4. New approaches to antitrust that emphasize prospective accommodation and the promotion of competition rather than retrospective prosecution and punitive remedies.
5. Serious attention to the consequences for our civil liberties of increased governmental control of private enterprise.

New principles of management and political leadership will not arise overnight. Given a long enough time, trial and error may produce many of the needed changes, as they have in the past in the United States; but such an approach is not likely to serve us so well into the future, because of the complexity of our institutional relationships and because the suspension of checks and balances may rigidify both government and industry to the point that any change short of the revolutionary becomes infeasible even if we knew what would be desirable. (One need only look at the plight of England to see the possibility.) We should be wise enough to find a surer and less costly way toward the new principles we need.



I suspect that the impetus will have to come from outside business and outside politics, even though many corporate and political leaders recognize the need for such developments. Schools of economics, law, government, and management seem the most likely sources of the needed new ideas if they can overcome the well known disciplinary barriers that exist among and within academic departments. And only in part because we are here at the Sloan School of Management do I suggest that schools of management in particular should take the initiative. Schools of government for the most part are too historically oriented; law schools too procedurally oriented; and economics schools almost exclusively quantitatively oriented. Many of the better management schools, on the other hand, are normatively oriented and encompass at least passable familiarity with the related disciplines of law, economics, and government.

Wherever the task is undertaken, it will not be easy. There is a great temptation to see the problems through the filter of a specific intellectual discipline. (I am reminded of the philosopher who observed that the economists, lawyers, scientists, and operations researchers reminded him of a small boy with a hammer: It just so happens that everything he encounters needs pounding.) I am a firm believer in being well grounded in an academic discipline, but the task we face in "managing" social and technological change in the complex world of public and private sector institutions and controls we have built requires something broader and more integrative than any single discipline.

In a sense, we must return to the development of the field of political economy. But whatever we call it and wherever we develop it, the new principles of management and political leadership we need must be intellectually sound, pragmatic and action-oriented. They must command our spirit as well as our intellect. They must inspire that which is best, rather than merely checking that which is worst. They must remain true to the freedom and worth of the individual as well as guide the institutions through which we act collectively.



We already know a considerable amount about the building blocks of such new principles, if only we can manage to put them all together to fit our changed circumstance and our new levels of accomplishment. It seems to me we ought to be able to do so, and we ought to give it a try. For it would be sad indeed if historians wrote of the American experience that we faltered in managing our success because we were smart, but not wise.



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*Corporate subsidiary*

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It seems to me that we need a new theory of management including a new theory of corporate incentives to deal with the problems that new kinds of change are presenting. This is not to say that we merely need to learn how to do more sophisticated cost-benefit analyses, nor is it to say that we need ten years of basic research in psychology, economics, and philosophy before we can arrive at some useful changes. Rather, we need to rethink the reasons behind the principles of management previously arrived at and supplement them with new principles more in line with the new structure of business and society. This should include:

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Remarks of

Clay T. Whitehead, Director

Office of Telecommunications Policy  
Executive Office of the President

at the

National Academy of Television Arts and Sciences

Americana Hotel  
New York, New York

January 11, 1973



A few weeks ago in Indianapolis, I delivered a speech which some people misinterpreted and, even worse, quite a few people misunderstood. The speech was about the responsibilities of broadcasting licensees and about the Administration's proposals to change the license renewal process. Most of that speech dealt with the first issue -- the licensee's responsibilities -- and today I want to focus on the second issue, and give you the facts about our license renewal bill.

Our system of broadcasting presents this country with a unique dilemma which goes back to the basic policy embodied in the Communications Act of 1934. Section 309(a) of that Act requires the Federal Communications Commission (FCC) to grant applications for broadcast licenses if "the public interest, convenience, and necessity will be served thereby." This necessarily means that the government will be involved, to some extent, in passing judgment on the heart of the broadcast service -- the broadcaster's programming. But then section 326 of that same Act specifically denies the FCC the "power of censorship" and the power to "interfere with the right of free speech" of the broadcaster.



The implementation of these two statutory goals requires a difficult balancing act. On the one hand, the broadcasting industry must be responsible to the public and it is through the legal processes of the Communications Act that the public has recourse to see that this responsibility is being exercised. On the other hand, the Government can't use the Act to be too active an intermediary between the public and the industry -- even with the best of intentions -- because the net effect would be to make Government agents out of broadcasting licensees, rather than establish them as independent voices and sources of information in our marketplace of ideas.

The place in the federal licensing system where these competing statutory goals are most clearly evident is the license renewal process. The burden of balancing these interests is thrust squarely on the FCC's shoulders by the Communications Act, and the Act contemplates that they will be maintained in a state of equilibrium. But recently instability and uncertainty have developed in the broadcast licensing process. And when something as sensitive as licensing a medium of expression is involved, this instability and uncertainty give rise to the threat of arbitrary and subjective determinations that promote the Government's own view of what programming is good for the public to see and hear. In this unstable environment, the broadcaster will



seek the shelter of whatever safe harbor is available. To ensure that his license is renewed, he will operate his station in a manner that pleases the government, and not one that best serves his local audiences.

To evaluate our proposal for restoring balance and stability to the license renewal process, it's important to know what our bill does do, and what it doesn't do. That is what has been most misunderstood and what I want to clear up for you today.

What our bill does not do is change the broadcaster's present obligations to be responsive to his community and to be even-handed in covering important public issues. These long-standing obligations of the broadcaster constitute the two principal criteria for license renewal in our bill: (1) the broadcaster must be substantially attuned to community needs and interests, and respond to those needs and interests in his programming -- this is known as the ascertainment obligation; and (2) the broadcaster must provide reasonable opportunity for discussion of conflicting views on public issues -- this is known as the fairness obligation. These criteria represent a distillation of what the public interest standard means in the context of license renewals, as stated by the Congress and the FCC.



These obligations bear repetition and emphasis, and serve as ideal criteria for license renewal because they require the broadcaster to turn toward his local audiences. He must serve their needs and see that they are adequately informed on public issues. If the broadcaster can render satisfactory service to his communities, based on these two criteria, then his license should be renewed.

Now for what our bill does do. It improves the license renewal process by making four changes in the present practices: (1) it extends the term of broadcast licenses from three to five years; (2) it eliminates the requirement for a comparative hearing whenever a competing application is filed for the same broadcast service; (3) it prohibits any restructuring of the broadcasting industry through the license renewal process; and (4) it prohibits the FCC from considering its own predetermined program criteria in applying the ascertainment and fairness standards of the bill.

In the interests of clarity, if not scintillating style, I'd like to bore you with the details of these provisions of our renewal bill.



The first change would be to extend broadcast license terms from three to five years. When the Communications Act was passed in 1934, the short three year license term was a reasonable precaution in dealing with a new and untried industry. A five year period, however, seems to be a more reasonable period at this stage in broadcasting history. It would inject more stability into the license renewal 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.

A longer renewal period would also go a long way toward lightening the serious burden that processing applications for renewal places on the FCC's resources and reducing the paperwork backlogs that cause delays in re-licensing stations. For example, as of this week, the trade press reports that 143 television and radio licenses are in limbo awaiting renewal.

Moreover, an extension to five years of the broadcaster's license does not mean he will be put out of the reach of the FCC or that he may ignore his public interest



responsibilities for five years at a time. The bill would not affect the powers of the FCC to deal with complaints raised by the public. The licensee would continue to be answerable to his community at any time during the five year period.

The second change the bill would make in the renewal process would be to eliminate the requirement for a comparative hearing whenever a competing application is filed for the same broadcast service. Presently, when a broadcaster's license comes up for renewal and it is challenged by a competing application, the FCC must set a comparative hearing in which the competing applicant and the performance of the present applicant are evaluated together.

The FCC, under current procedures, is forbidden from exercising its independent judgment as to whether a comparative hearing is even necessary. Without initially assessing the past performance of the incumbent licensee, the FCC must throw him into a comparative hearing, which usually involves substantial expenditures of time, money and manpower. The comparative hearing is 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.

Our license renewal bill would revise these procedures so that a hearing would be required only if the competing applicant has raised a substantial question regarding the present licensee's performance under the criteria set out in the bill. If the FCC determines there is no question, then the license would be renewed. Only if the Commission is unable to conclude that the licensee's performance warrants renewal would a hearing be required.

The third change in the bill would preclude the FCC from restructuring the broadcasting industry through license renewal hearings. Presently, the Commission can implement policy relating to industry structure -- such as a policy restricting the types of companies that can own TV stations -- through the criteria it uses to decide renewal hearings. This means the policy could be applied in a highly subjective and inconsistent manner.



Restructuring of the broadcasting industry in this manner should not be allowed. Rather, if industry-wide policies are to be changed, they should be changed through the general rulemaking procedures of the FCC, with full opportunities provided to the entire broadcast industry and all members of the public to participate in the proceeding.

The fourth and last change our license renewal bill would make in the renewal process would be to forbid the FCC use of predetermined performance criteria for the evaluation of renewal applications.

The Communications Act of 1934 does not anywhere define what constitutes the "public interest, convenience and necessity." And so, the responsibility for doing so has fallen on the FCC and the courts. As a result the "public interest" has come to mean no more than what the FCC and the courts want it to mean.

Presently, an important factor in determining the licensee's public interest performance is the extent to which he has programmed in 14 specific program categories predetermined by the FCC. And the trend is toward more detailed program categories, more program quotas and more percentages.



The Administration's bill is designed to halt this trend toward quantification of the public interest. Confining the FCC's evaluation of the licensee's performance to the bill's ascertainment and fairness criteria makes the local community the touchstone of the concept of public service embodied in the Communications Act. Serving the local community's needs and interests instead of the desires of the Washington bureaucrats would become the broadcaster's number one priority.

\* \* \* \* \*

You will recall my description of the dilemma that the Government faces in regard to the regulation of broadcasting. A lot of criticism that is being levelled at our license renewal bill seems to be coming from those who are unaware of this dilemma or misunderstand the present nature and extent of broadcast regulation.

The critics seem to want it both ways. They say they want to preserve absolutely the broadcaster's First Amendment rights. But they are uncomfortable about leaving such a



powerful medium of expression unchecked by Government supervision. So they also feel that the public should have unrestricted rights to bring Government power to bear on the licensee at renewal time.

There is legitimate room for disagreement about how this balancing process can be best achieved.

But the dilemma will not go away and those who criticize our bill can't have it both ways. Don't you want

limits on government power such as those in our bill?

Or do you prefer the current scheme, with its burgeoning program categories, percentages, and renewals every three years? Do you want the Government to exercise

more control over broadcasting? Or should the Government withdraw completely from broadcasting regulation and tell minority groups they have no recourse against the licensee?

When I say critics of our bill can't have it both ways, I mean they can't answer yes to all of these questions.

There are a number of quite different, and mutually exclusive, approaches to broadcast regulation.



Under one approach, we could expand the present trend of Government control and have the Government take over the broadcaster's responsibility to his local community. Under another approach, the Government could withdraw completely from regulation of broadcasting. This Administration has chosen a third approach, one that would restore equilibrium to the broadcasting system and balance the competing goals of the Communications Act. This approach relies on the exercise of more private responsibility and voluntary action by broadcast licensees who truly dedicate themselves to the communities they are licensed to serve. Which approach will you choose?



For Release 10:00 a.m.  
Monday, December 18, 1972

Remarks of

Clay T. Whitehead, Director

Office of Telecommunications Policy  
Executive Office of the President

at the

Sigma Delta Chi Luncheon  
Indianapolis Chapter

Indiana State Teachers Association Building  
Indianapolis, Indiana

December 18, 1972



In this calm during the holidays, we in Washington are thinking ahead to 1973; among other things, planning our testimony before Congressional committees. For my part, I am particularly concerned about testimony on broadcast license renewal legislation. Broadcasters are making a determined push for some reasonable measure of license renewal security. Right now they are living over a trap door the FCC can spring at the drop of a competing application or other renewal challenge. That is a tough position to be in, and, considering all the fuss about so-called "intimidation," you would think that there wouldn't be much opposition to giving broadcasters a little more insulation from government's hand on that trap door.

But there is opposition. Some tough questions will be asked--even by those who are sympathetic to broadcasters. Questions about minority groups' needs and interests. Questions about violence. Questions about children's programming; about reruns; about commercials; about objectivity in news and public affairs programming--in short, all questions about broadcasters' performance in fulfilling their public trust. These are questions the public is asking. Congress is asking the questions, too; Senatore Pastore on violence; Senator Moss on drug ads; Representative Staggers on news misrepresentations.

Despite this barrage of questioning, the Congress is being urged to grant longer license terms and renewal protection to broadcasters. Before voting it up, down, or around, the Congress will have to judge the broadcasters' record of performance.

And where do we see that performance? It leaps out at you every time you turn on a TV set, and it's definitely not all that it could be. How many times do you see the rich variety, diversity, and creativity of America represented on the TV screen? Where is the evidence of broadcasters doing their best to serve their audiences, rather than serving those audiences up to sell to advertisers? And, most disturbing of all, how do broadcasters demonstrate that they are living up to the obligation--as the FCC puts it-- to "assume and discharge responsibility for planning, selecting, and supervising all matter broadcast by the stations, whether such matter is produced by them or provided by networks or others."

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. But it has also been easy--too easy--for broadcasters to turn around and sell their responsibility 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. It took the FCC's prime time rule to reverse this trend, but even so, the average affiliate still devotes over 61% of his schedule to network programs. This wouldn't be so bad if the stations really exercised some responsibility for the programs and commercials that come down the network pipe. But all that many affiliates do is flip the switch in the control room to "network," throw the "switch" in the mailroom to forward viewer complaints to the network, sit back, and enjoy the fruits of a very profitable business.

Please don't misunderstand me when I stress the need for more local responsibility. I'm not talking about locally-produced programs, important though they are. I'm talking now about licensee responsibility for all programming, including the programs that come from the network.

This kind of local responsibility is the keystone of our private enterprise broadcast system operating under the First Amendment protections. 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 press isn't guaranteed protection because it's guaranteed to be balanced and objective--to the contrary, the Constitution recognizes that balance and objectivity exist only in the eye of the beholder. The press is protected because a free flow of information and giving each "beholder" the opportunity to inform himself, is central to our system of government. In essence, it's the right to learn instead of the right to be taught. The broadcast press has an obligation to serve this free flow of information goal by giving the audience the chance to pick and choose among a wide range of diverse and competing views on public issues.

This may all seem rather philosophical. Cynics may argue that all television, even the news, is entertainment programming. But in this age when television is the most relied upon and, surprisingly, the most credible of our media, we must accept this harsh truth: the First Amendment is meaningless if it does not apply fully to broadcasting. For too long we have been interpreting the First Amendment to fit



the 1934 Communications Act. As many of you know, a little over a year ago I suggested ways to correct this inversion of values. One way is to eliminate the FCC's Fairness Doctrine as a means of enforcing the broadcasters' fairness obligation to provide reasonable opportunity for discussion of contrasting views on public issues.

Virtually everyone agrees that the Fairness Doctrine enforcement is a mess. Detailed and frequent court decisions and FCC supervision of broadcasters' journalistic judgment are unsatisfactory means of achieving the First Amendment goal for a free press. The FCC has shown signs of making improvements in what has become a chaotic scheme of Fairness Doctrine enforcement. These improvements are needed. But the basic Fairness Doctrine approach for all its problems, was, is and for the time being will remain a necessity; albeit an unfortunate necessity. So, while our long range goal should be a broadcast media structure just as free of government intrusion, just as competitive just as diverse as the print media, there are three harsh realities that make it impossible to do away with the Fairness Doctrine in the short run.

First, there is a scarcity of broadcasting outlets. Second, there is a substantial concentration of economic and social power in the networks and their affiliated TV stations. Third, there is a tendency for broadcasters and the networks to be self-indulgent and myopic in viewing the First Amendment as protecting only their rights as speakers. They forget that its primary purpose is to assure a free flow and wide range of information to the public. So we have license renewal requirements and the Fairness Doctrine as added requirements--to make sure that the networks and stations don't ignore the needs of those 200 million people sitting out there dependant on TV.

But this doesn't mean that we can forget about the broader mandates of the First Amendment, as it applies to broadcasting. We ought to begin where we can to change the Communications Act to fit the First Amendment. That has always been and continues to be the aim and intent of this Administration. We've got to make a start and we've got to do it now.

This brings me to an important first step the Administration is taking to increase freedom and responsibility in broadcasting.



OTP has submitted a license renewal bill for clearance through the Executive Branch, so the bill can be introduced in the Congress early next year. Our bill doesn't simply add a couple of years to the license term and guarantee profits as long as broadcasters follow the FCC's rules to the letter. Following rules isn't an exercise of responsibility; it's an abdication of responsibility. The Administration bill requires broadcasters to exercise their responsibility without the convenient crutch of FCC program categories or percentages.

The way we've done this is to establish two criteria the station must meet ~~before~~ the FCC will grant renewal. First, the broadcaster must demonstrate he has been substantially attuned to the needs and interests of the communities he serves. He must also make a good faith effort to respond to those needs and interests in all his programs, irrespective of whether those programs are created by the station, purchased from program suppliers, or obtained from a network. The idea is to have the broadcaster's performance evaluated from the perspective of the people in his community and not the bureaucrat in Washington.

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.

I should add that these requirements have teeth. If a station can't demonstrate meaningful service to all elements of his community, the license should be taken away by the FCC. The standard 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, have the resources to devote to community development, community service, and programs that reflect a commitment to excellence.

The community accountability standard will have special meaning for all network affiliates. They should be held accountable to their local audiences for the 61% of their schedules that are network programs, as well as for the programs they purchase or create for local origination.

For four years, broadcasters have been telling this Administration that, if they had more freedom and stability, they would use it to carry out their responsibilities. We have to believe this, for if broadcasters were simply masking their greed and actually seeking a so-called "license to steal," the country would have to give up on the idea of private enterprise broadcasting. Some are urging just that; but this



Administration remains unshaken in its support of the principles of freedom and responsibility in a private enterprise broadcasting system.

But we are equally unshaken in our belief that broadcasters must do more to exercise the responsibility of private enterprise that is the prerequisite of freedom. Since broadcasters' success in meeting their responsibility will be measured at license renewal time, they must demonstrate it across the board. They 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 stations must jump on the networks rather than wince as the Congress and the FCC are forced to do so.

There is no area where management responsibility is more important than news. The 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?

Just as a newspaper publisher has responsibility for the wire service copy that appears in his newspaper--so television station owners and managers must have full responsibility for what goes out over the public's airwaves--no matter what the origin of the program. There should be no place in broadcasting for the "rip and read" ethic of journalism.

Just as publishers and editors have professional responsibility for the news they print, 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, quote, "We had nothing to do with that report, and could do nothing about it," is an evasion of responsibility and unacceptable as a defense.

Broadcasters and networks took decisive action to insulate their news departments from the sales departments, when charges were made that news coverage was biased by commercial considerations. But insulating station and network news departments from management oversight and supervision has never been responsible and never will be. 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. 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. He takes on a higher responsibility to the institution of a free press, and he cannot be insulated from the management of that institution.

The truly professional journalist recognizes his responsibility to the institution of a free press. He realizes that he has no monopoly on the truth; that a pet view of reality can't be insinuated into the news. Who else but management, however, can assure that the audience is being served by journalists dedicated to the highest professional standards? 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?

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. If they do not provide the checks and balances in the system, who will?

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.

Over a year ago, I concluded a speech to an audience of broadcasters and network officials by stating that:

"There is a world of difference between the professional responsibility of a free press and the legal responsibility of a regulated press. . . . Which will you be--private business or government agent?--a responsible free press or a regulated press? You cannot have it both ways--neither can government nor your critics."

I think that my remarks today leave no doubt that this Administration comes out on the side of a responsible free press.



REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy  
Executive Office of the President

before the

Colorado Broadcasters Association  
1972 Legislative Dinner

Denver, Colorado

February 17, 1972

From all the reports I've seen, last year was not a great financial success for broadcasting, but it was not as bad as some expected when a future without cigarette billings seemed to be a very bleak future indeed. That's the business side; nothing very exciting in 1971, but the economic prospects look good for the coming year. On the government, or regulatory side, broadcasters were beset by threatening developments at the FCC and in the courts: license renewals, fairness and access, cable television, spectrum reallocations, and children's programming among other issues. But serious as these developments are, they are being over-shadowed by a new problem.

The problem I refer to is the regulation of broadcast advertising and the conditions the advertiser finds when he chooses the broadcast media for his messages. Try this list of issues: advertising and the Fairness Doctrine; mandatory access for editorial ads; advertising in children's programs; licensee responsibility as to false and misleading advertising; campaign spending limits on broadcast ads and political advertising in general; ads for certain types of products; and counter advertising. The nature of commercial broadcasting depends heavily on how these and other similar issues are resolved. What is commonly called "free" broadcasting is actually advertiser-supported broadcasting, and the regulatory



framework for broadcast advertising deals with the economic core of our private enterprise broadcast system. Similarly, advertising is now so dependent on broadcasting that the issues faced by the advertising industry have been transformed into broadcast-advertising issues.

Of course, there were ads before there was broadcasting and, of course, many of the ads in the pre-broadcasting days were crude deceptions. Deceptive and misleading advertising is still an important issue, but now the overall issue is much broader than the traditional concerns about questionable advertising. If it were only a case of advertising taste or excessive "puffery," I think most people would take advertising with the proverbial grain of salt that one relied upon in listening to the "medicine men" at country fairs or reading the back pages of comic books and other popular literature. But now broadcasting, especially TV, has raised the advertisement to a popular art form. TV advertising is not only pervasive, it is unavoidable. That special impact that characterizes the television medium provides a natural attraction for the techniques usually associated with advertising. It seems that the TV advertising spot is the most innovative and almost inevitably appealing use of the television medium.

In these circumstances, it seems that advertising itself has become an issue. Some people tend to view it as the means by which an insidious business-advertising complex manipulates the consumer and leads public opinion to goals that are broader than

simply purchasing the products being advertised. Some feel that what is being sold the American people is a consumption-oriented way of life. This becomes a political issue that is a fit subject for government redress--a remedy in addition to the traditional controls on false and misleading advertising.

I think that some of these broader concerns about TV advertising are now motivating the Federal Trade Commission. The FTC filed comments in the FCC's Fairness Doctrine inquiry, proposing that there be compulsory counter advertising for almost all broadcast ads. The FTC's counter advertising proposal would provide an opportunity for any person or group to present views contrary to those raised explicitly and implicitly by product ads. In the Trade Commission's own words, counter advertising "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 FTC's capacity." The Trade Commission wants to shape the Fairness Doctrine into a new tool of advertising regulation and thereby expand the Doctrine's already chaotic enforcement mechanism far beyond what was originally intended and what is now appropriate.

The Trade Commission would have the FCC require responses for four types of ads:

- (1) Those that explicitly raise controversial issues, such as an ad claiming that the Alaska pipeline would be good for caribou;



- (2) Those stressing broad, recurring themes that implicitly raise controversial issues, for example, food ads that could be taken as encouraging poor eating habits;
- (3) Those ads that are supported by scientific premises that are disputed within the scientific community, such as an ad saying that a household cleanser is capable of handling different kinds of cleaning problems; and
- (4) Those ads that are silent about the negative aspects of the products, so that an ad claiming that orange juice is a good source of vitamin C may be countered by a message stating that some people think rose hips are a superior source of that vitamin.

The Trade Commission also suggested that broadcasters should have an affirmative obligation to provide a substantial amount of free air time for anyone wishing to respond to product ads. This goes beyond the requirement in the BEM case that broadcasters must allow persons or groups to purchase time. In a business sense, that is not too intrusive on the broadcasters' operations, and some right to purchase time for the expression of views on issues would serve an important purpose. But a requirement to provide "free" time

in response to paid advertising time would have all the undesirable features of any market in which some people pay and some do not. It is, in any event, misleading to call this free time. There would be a hidden subsidy and the public would end up paying for both advertising and counter advertising messages.

Even if there were no problems with a broad free time requirement, we would be critical of the FTC for suggesting that "Fairness" responses be required for ads involving disputes within the scientific community and ads that are silent as to the negative aspects of products.

We all know that, if an advertiser falsely implied that a scientific claim was well established or failed to disclose a material negative aspect of his product, the FTC could use its own procedures to deal with this type of deceptive advertising. The Trade Commission could even use its new corrective advertising weapon, and require the advertiser to clear up misleading claims in past advertising. This is now being done in the Profile Bread ads.

The FTC, however, doesn't think that these regulatory tools are effective enough or thinks that they are too troublesome to apply. It is disturbing, however, that the agency charged with overseeing the content of advertising in all media has stated that the FCC is better able to achieve the Trade Commission's regulatory goals for the broadcast media. Of course, the Trade Commission would like to bring the FCC into the process and by-pass the difficult job



of making factual determinations concerning advertising deception. The FTC is constrained by all sorts of procedures which safeguard the rights of advertisers accused of deception. It is much easier to subject the suspect advertiser to a verbal stoning in the public square, but is it responsible for a government agency to urge this type of approach? This Administration thinks not.

Perhaps private, self-styled spokesmen for the public interest cannot be faulted for advocating compulsory counter advertising without coming to grips with all the complexities and consequences involved. But a regulatory agency cannot afford the private litigant's luxury of dismissing the enormous practical difficulties of its proposal by simply asserting without support that it would be workable. Nor can an agency ignore or dismiss difficult and sensitive First Amendment problems, the underlying economic structure of the industries it is dealing with, or the detailed balancing of competing public interest considerations.

If you have any doubts as to the workability of the FTC's proposals, listen to some typical examples of the type of "negative aspect" counter ads the FTC had in mind.

"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."

The FTC capped this list of examples--which related to products that alone account for 40 per cent of all TV advertising--by asserting that "the list could go on indefinitely"! Can the FTC be oblivious to the fact that this is precisely the problem with compulsory counter advertising? Without doubt our overriding goal in this area should be to provide consumers with information that will enable them to make intelligent choices among products. But any broadcast advertisement could start an endless round of debate and disputation based on opinions regarding the products being advertised. This isn't the kind of information that is most helpful to consumers. Although it may seem that the Trade Commission's counter advertising proposal serves consumers' interests, the public would be done a disservice if all that counter advertising achieves is a bewildering clutter of personal opinions thrust before consumers every time they turn on their radios and TVs. And who is supposed to protect the public from false and misleading material in the counter-ads?



The advertisers will still have the content of their presentations regulated by the Trade Commission to weed out deception, but who is to guard against the excesses of counter advertising by irresponsible or uninformed groups? When this question was raised, the FTC's Director of Consumer Protection indicated that the agency might have to "monitor" counter-ads, but this may become "ticklish" since a First Amendment problem may be involved. Ticklish indeed! One would have hoped that a Federal agency would have been more sensitive to this problem before proposing a requirement of counter advertising.

It is also disturbing to see that the counter advertising position is not unique to the FTC. Others in government seem to be advocating an end to the broadcast ban on cigarette ads just to bring back anti-smoking spots!

The figures show that per capita cigarette consumption in the U. S. decreased when anti-smoking spots were aired in large numbers and increased in 1971, when there were no cigarette ads and a lower level of anti-smoking spots. Bigger increases are predicted for 1972. The Department of Agriculture has attributed the increased consumption to a decrease in anti-smoking spots. This may indicate that advertisers are better off not using the broadcast media when there is a counter advertising requirement. If the cigarette advertising ban were lifted, the advertisers might well choose not to buy time and, thereby, underwrite the anti-smoking campaign.

Naturally, there would be some who would respond to this public interest crisis by requiring cigarette companies to advertise on radio and TV. Broadcasters wouldn't mind this at all, but if the FTC had its way you would have to require all advertisers to use TV and even the NAB couldn't pull that one off.

This wouldn't be a very constructive approach to advertising's problems, but one is sorely needed. The public expects to see actual and substantial progress made by the advertising industry's belated efforts at self-regulation. Advertising has made significant contributions to our economic well-being and our material worth. But if advertising is to continue to make these contributions it must reassess its role in our society.

We do not want to see advertisers respond to these problems by fleeing the broadcast media either voluntarily or involuntarily. Advertisers might be able to survive without broadcasting, but broadcasting could not survive without advertising. Advertising revenues make possible all of the public service, news, information, and entertainment programs. I do not agree with those who believe that commercial broadcasting is impervious to the adverse economic affects of regulation. You really can kill the goose that lays the golden egg; and it doesn't matter that it's killed by well-intentioned people.



This does not mean that the abuses and excesses of broadcast advertising should not and cannot be prevented. Broadcasters themselves are moving to correct problems in children's advertising and problems with deceptive and offensive ads. The advertising industry itself is following the broadcasters in the essential route of self-regulation. The record of self-regulation has not always been free of problems; and it never will be. Public vigilance is needed too, and the FCC and the Trade Commission have proper roles in seeing to it that that vigilance is maintained effectively.

The FCC has taken an approach that I strongly support. The FCC believes that advertising should be regulated as a business practice by the Trade Commission and this is not the FCC's job. Product ads should not be regulated, TV or not, as expressions of ideological, philosophical or political viewpoints. On the whole the FCC has recognized this and has implemented its regulatory power over broadcast advertising in a reasonable and responsible manner.

In its area of responsibility, the Trade Commission must use its regulatory tools to preclude false and deceptive advertising. The public is entitled to protection from the unethical business practices and from the occasionally misleading hyperbole of advertising agencies. But the FTC's responsibilities should not be expanded to include the responsibility for finding a solution to the philosophical problem that

advertising in general poses for some consumer advocates.

I think the FTC realizes that this would be beyond the scope of its regulatory authority; and it should be kept that way. Government agencies must realize that they cannot solve all of society's problems, that the Fairness Doctrine is not a panacea for fairness, much less all of our ills, and that when they go too far with social engineering they do more damage than good.

This Administration does not believe that advertising is inherently evil. We do not believe that advertiser support of commercial broadcasting is polluting the minds of America. This Administration believes in a strong and free private enterprise system of broadcasting for our country and in effective but responsible government. We intend to work to keep it that way.



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

Remarks of Clay T. Whitehead, Director  
Office of Telecommunications Policy  
Before the  
IEEE Vehicular Technology Group  
Statler-Hilton Hotel  
Washington, D. C.  
December 2, 1970

I am learning rapidly about the needs, the techniques, and the opportunities of mobile communications. I do know that mobile radio is a highly exciting, innovative and significant field -- and, while I don't profess to understand the details, I do have some grasp of the potential and the problems of mobile communications today. We in the communications business are very prolific with ideas, but more and more, we will be called on for wisdom. Wisdom is a collective phenomenon, and, consequently, I regard it as very important that those of us concerned with the dynamic industry of communications understand each other. While my staff and I are building our knowledge of mobile communications, I am anxious that you have a similar familiarity with the newly created Office of Telecommunications Policy in the Executive Office of the President.

At the risk of being a little repetitious, because I regard our mutual understanding so important, I should like to review for you the responsibilities of the Office I head, and talk briefly about some aspects of telecommunications that we see at the White House level.

The recent reorganization approved by the Congress and the executive orders that set up our Office were designed to accomplish three major purposes:

First, the Director of the Office is to be the President's principal adviser on all telecommunications matters.

Second, we are to enable the executive branch to speak with a clearer voice and to be a more responsible partner in policy discussions with industry, with the FCC, the Congress, and the Public.



Third, we are to form new policies and coordinate operations for the Federal Government's own very extensive use of communications.

To achieve these purposes, some of our responsibilities include the following:

We are to evaluate and make recommendations concerning the capability of communications systems to meet national security and emergency preparedness requirements.

We are to review research developments and systems in the communications field within the Federal Government to help realize economies and improve efficiency.

We are to develop, in cooperation with the FCC, a comprehensive plan for improved use of the radio frequency spectrum; and we are the final authority on the use of radio spectrum by the Federal Government user.

Issues of Computers and Communication; Teleprocessing Particularly

We are to coordinate any federal assistance to state and local governments in the communications field.

We are to coordinate executive branch positions among the various departments for presentation to the FCC and to the Congress.

President Nixon, aware of basic issues and the innumerable unanswered questions in communications, recognized the urgent need for effective organization in the Federal Government to help bring about the synthesis of policy essential to our Nation's future. In creating OTP, he upgraded the status of telecommunications in government. Telecommunications is no longer a "poor first cousin" to anyone. It now has its own agency in the executive branch, reporting directly to the President.

The bedrock foundation of our American democracy is that no two of us will see everything exactly alike on any issue. Therefore, in communications, there will be conflicting views and differing interests. But out of an atmosphere of constructive and innovative ideas will come the synthesis of a viable, sensible, and enlightened telecommunications policy.



My Office has the responsibility not to dictate that policy, but to work with people such as yourselves to develop such a policy. If in communications we are going to move forward as a Nation, and we shall, someone must keep his eye on the road ahead. That is our job and we need your help to illuminate the road we are supposed to be watching.

One important aspect of that road is the increasing mobility of our people. This mobility of modern society needs no demonstration here. In case we need a reminder, let me ask, "How long will each of you be away from your office to attend this symposium? How long would such a gathering have taken 50 years ago, 100 years ago? How many times will you be in contact with your office during this trip? How many calls did you and others make to set this symposium up?

It is commonly observed that it is possible to have breakfast in London, lunch in New York, and dinner in San Francisco. And the wag always adds: "Yes, with your luggage in Honolulu." But few people observe that telecommunications has made it possible to retrieve lost luggage quite expeditiously. And even fewer observe the real impact that telecommunications has also made it possible to be all over the world in one morning.

I have no crystal ball to tell just how much more momentum our modern society will generate in the future. It does seem that the human body is being "whipped around" now about as fast as it can tolerate. If a businessman requires 24 hours to restore acumen and judgment after spanning transoceanic time zones, the technology of physical mobility may be approaching a plateau.

But I do know that modern mobility is an inseparable part of industrial efficiency and our way of life. We must be concerned with sustaining it and making it safe. In meeting the needs that require mobility, and at the same time reducing the physical demands and hazards, telecommunications has an essential role to play.

Senator Pastore has spoken of -

". . . the indispensable role of land mobile communications in our public safety service and our industrial and land transportation processes."



But there are problems. The Senator went on to say that:

"The task facing the land mobile industry is not an easy one . . . . Here you are impressed, almost suffocated, in five percent of the spectrum."

"Suffocation" is precisely the exact word. In 1949, 40 Megahertz were provided for 11,600 nongovernment licensees operating 155,000 transmitters. It was recently shown that 293,000 licensees operating 4 million transmitters now operate in the same 40 Megahertz.

Britain's late wartime prime minister, Sir Winston Churchill, had many talents, among them his capacity for absorption of alcoholic beverages. One abstemious lady, reprimanding him, held her hand halfway to the ceiling on the wall, and observed: "You have drunk enough liquor to fill this room up to here." The old man, gazing upward, replied: "So little time, so much to do."

First glance at the land mobile problem leaves one with much the same conclusion, that is, while much has been done, the great excitement is how much more needs to be done. And how much more can be done -- for, unlike Sir Winston, your room has no ceiling -- unless we in government place an artificial ceiling on your potential.

Among the many policy problems under active consideration in my emerging Office, mobile communications is one of the most important. Spectrum allocation for nongovernment use is by statute a function of the FCC. If the government realistically looks at the problem, vigorously investigates alternative options, and encourages land mobile, the results will be fantastic. If the potential of land mobile is imprisoned by spectrum considerations, that potential becomes much like the "Holy Grail" -- always dreamed of, never attained.

But such frustration is hardly helpful, particularly as new services -- radio networks for hospitals, emergency medical services, expanded law enforcement, fire protection, industrial requirements, freight and passenger transportation, traffic control -- all are clamoring for accommodation in mobile communications.

Last August I wrote:

"Much needs to be done to alleviate the scarcity of frequencies for land mobile purposes. I consider this to be one of our most important problems, and I expect to devote considerable



attention to the matter . . . . More flexible and responsive spectrum management -- by both OTP and the FCC -- can do much to alleviate these pressures . . . ."

Many of the problems at the policy level involve the acceleration and diversification pressures on land mobile demand. The equitable allocation of that portion of the spectrum recently made available by FCC Docket 18262 is of current concern.

The quantity of demands on the spectrum is nothing that needs to be predicted. Those demands are already here.

But what will be the type of future demands? Anticipating the diversified paths of future growth for mobile communications is extremely important.

The use of data transmission and storage could bring heretofore unanticipated dimensions to public safety and law enforcement. Pilot programs of this nature are currently under way in at least one city.

In isolated areas there will be mobile applications for remote signaling, information gathering, and control. In industry, the location and status of equipment and people are becoming more and more essential. The use of computers and communications for vehicle location, identification and routing will grow.

Radio communications in the logistics of transportation and supply may need to face changes in techniques, if future requirements are to be met.

Quantity demands, demands for improved quality of service, and these projections of new types of future demands all make it inescapably clear that new techniques and new solutions for mobile communications and control are needed in hardware, in system designs, and in the utilization of the spectrum -- and are needed urgently.

Some options to alleviate congestion are emerging:

Already the nationwide "block allocation" system is being brought under review. It was simple, easy to administer, and relatively inexpensive to operate in the past, and in some parts of



the country it still is an adequate method of spectrum assignment. But in the megopolis toward which our urban society is moving, a system designed to meet isolated, simple requirements will break down.

Together the Joint Telecommunications Advisory Council and Stanford Research Institute have studied the city of Chicago to determine whether or not decentralized frequency management is feasible. The FCC "Chicago experiment" in improved localized spectrum management processes is being directed initially toward the land mobile problem.

A taxi firm, today, wishing to improve its services, obtains "on its own" a frequency allocation. Can we not develop more common user systems for congested land mobile needs? Certainly, strong consideration must be given this, in that it is estimated that land mobile requirements will more than double by 1980.

Can we develop practical and economic mobile trunking techniques? In a congested metropolitan area, is it not possible to route land mobile communications through a centralized borough or area exchange, rather than point to point? A dispersed array mobile radio system with lower power requirements might "honeycomb" a large city. It is believed that 100 to 150 zones in such an arrangement could increase ten times the number of vehicles that could be accommodated on a given channel with a better grade of service. Investigation at higher frequencies in the 3 to 6 Gigahertz band suggests that a fantastic number of units could be served in a given metropolitan area.

More sophisticated equipment, improved spectrum sharing concepts, and geographical diversity will, of course, make possible a more effective and efficient use of the radio spectrum and make possible new services without extravagant demands on the spectrum. From a technical standpoint, the future appears bright. The economics need to be developed and government policies to foster innovative land mobile services need to be set forth.

Land mobile communications has a big role to play in the future of this Nation. It is logical that every automobile, every truck, and perhaps every human being, should have instantaneous communications, when the technology now available becomes economic.



Improved safety, health, law enforcement, national security, even our convenience and entertainment, are a part of your future. I would not leave you with the impression that I regard land mobile communications as a "pie in the sky" solution to all our problems. But I do see tremendous potential.

I congratulate you on past accomplishments and future challenges. My Office will address this future challenge with all the resources at our command. We solicit your cooperation, and look forward to working with you.

Thank you.

REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy  
Executive Office of the President

at the

47th Annual Convention  
National Association of Educational Broadcasters

Miami, Florida  
October 20, 1971



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

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

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

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

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

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



and public affairs, but the Ford Foundation is able to buy over \$8 million worth of this kind of programming on your stations.

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

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

You can program for the Cambridge audience that WGBH used to go after--for the upper-middle class whites who

contribute to your stations when you offer Julia Child's cookbook and Kenneth Clark's "Civilisation." It also has the advantage of keeping you out of the renewal and access conflicts now faced by commercial broadcasters. With a few notable exceptions, maybe the community activists don't think you're meaningful enough in your own communities to warrant involving you in these disputes.

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

Money alone--great bales of it--would solve a lot of the problems. CPB would be able to fund programs on America's civilization and programs on the Adams family instead of the Churchill and Forsythe families. The production centers could be more independent and the other local



stations could devote more energy to programming, ascertainment and community service instead of auctions, fund-raising gimmicks and underwriting grants. More money could even lessen the internal squabbling that seems to occupy so much of your attention.

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

Do you remember that the Carnegie group put its principal stress on a strong, financially independent group of stations as the foundation of a system that was to be the clearest expression of American diversity and excellence; that the emphasis was on pluralism and local format control instead of a fixed-schedule, real-time network, and that this view was reflected in the House, Senate and Conference reports on the '67 Act; that CPB was supposed to increase options and program choices for the stations; and that the Carnegie Commission wanted general operating funds to come from HEW because of the concern that the corporation not grow too big or become too central. As Dr. Killian put it, if stations had to look to the corporation for all their requirements, it would lead "naturally, inevitably,

to unwise, unwarranted and unnecessary centralization of educational broadcasting." The concept of dispersing responsibility was essential to the policy chosen in 1967 for public broadcasting. Senator Pastore said on the floor of the Senate that, "since the fundamental purpose of the bill is to strengthen local noncommercial stations, the powers of the Corporation itself must not impinge on the autonomy of local stations."

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

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



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

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

You are grappling with the policy imposed on a going enterprise in 1967. That policy was not only intended to change the structure of ETV, it was also supposed to avoid the structure of commercial TV and to steer clear of a government-run broadcast system. There are trade-offs in this policy. For example, if you imitate the commercial structure, all we have is a network paid for by the government and it just



invites political scrutiny of the content of that network's programs. We're asking a lot of you when we expect that you implement the policy chosen for public broadcasting. But some of you haven't succumbed to despair yet. Some of you don't want to be a fourth network. Some of you are trying to make the policy work.

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

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

When this happens, it also jeopardizes your ability to serve the educational and instructional needs of your communities. All the glamor is packed into your nighttime schedules and the tendency is to get more public attention



by focusing on the news, public affairs and cultural programs that are aimed for the general audience. But there must be more balance in your service to your communities. In quantitative terms, your schedules are already split equally between instructional and general programming. But in qualitative terms, are you devoting enough of your resources to the learning needs of your in-school and in-home audiences?

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

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

- (1) to keep it from becoming a government-run system;
- (2) to preserve the autonomy of the local stations; and
- (3) to achieve these objectives while assuring a diversity of program sources for the stations to draw on in addition to their own programs.

When you centralize actual responsibility at a single point, it makes you visible politically and those who are



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

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



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

REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy  
Executive Office of the President

to the

Arizona Broadcasters Association

Mountain Shadows Resort Hotel  
Phoenix, Arizona

December 3, 1971



Nearly two months ago I made three proposals for halting the present drift of broadcast regulation by lessening the regulatory controls on commercial radio, abandoning the present method of enforcing fairness, and making various reforms in the renewal process. I said I had no legislation tucked in my back pocket, but would work for legislation if there is broad support for the proposals. Since then, people have been discussing the proposals and checking my pockets.

My back pocket is still empty but the proposals have had the intended effect of moving along the discussion of some of the real issues that confront broadcasting today. We have talked to broadcasters, government officials, public interest advocates and others, and have explained many of the details of the proposals, which were necessarily compressed in my New York City speech. In light of this process, today I'd like to "fine-tune" the Fairness Doctrine and license renewal proposals.

I won't get into the details of radio deregulation because everyone seems enthusiastic to give it a try. An experiment in deregulation will do a lot of its own "fine-tuning." It makes a world of sense to streamline the regulatory controls on radio and rely more upon the self-regulation of a marketplace in which there is a multiplicity of outlets and wide latitude for consumer choice. Hopefully the FCC will select a representative group of radio markets--including some small markets--where assignments and transfers would be granted on a pro forma basis



and licenses would be renewed without a review of program and commercial practices. I predict that such an experiment would prove that broadcasters are responsible and can serve their communities without detailed supervision from Washington.

Let's get into the details of the fairness proposal first. I said the Fairness Doctrine should be abandoned. This prompted a few snide remarks comparing my sensitivity to the public interest with that of Attila the Hun. Most of the comments, however, were quite favorable. Most people understood that I suggested abandoning only the confusing, highly detailed procedures for enforcing the broadcaster's fairness obligation. As long as we have a licensing system, we're going to require that broadcasters adequately cover public issues and do so in a fair and balanced manner. But it's virtually impossible virtually impossible to enforce this obligation on a case-by-case, issue-by-issue basis. It means that the FCC and not the licensee decides what issues exist in a community and how they should be covered. For example, in Dayton, Ohio, the FCC defined the precise terms of a local controversy involving the United Givers Fund so that presenting public service announcements for the UGF now requires the broadcaster to give response time to a group that objects to the way donations to the UGF are allocated to local charities.

When the fairness obligation is enforced by Washington in this detail at the local level, the focus shifts--from the



public's interest in being informed on important issues in an objective manner to the interest of various individuals or groups in gaining access to the airwaves to state their particular points of views. Both interests must be served. To you, broadcasting is a livelihood and a public responsibility, but to the public it's our most important communications medium-- you've made it such by your own success. It's no longer a question of whether you must let individuals get on the air to state their views but how they will be provided this access. If individuals must gain this access through the Fairness Doctrine, which is issue-oriented and not intended to give personal access, it would be an illusory right indeed. Exercise of this right would be dependent on the FCC's ideas about who shall speak and who shall not. The individual would have no rights as such, but you would still be forced to put on, sometimes free, sometimes for pay, those assorted groups and spokesmen that the FCC decides you should.

My proposal would create a self-limiting right of direct personal access not dependent on the Government's discretion. This right would be enforced in a manner that would not intrude on the broadcaster's obligation to inform the public on important issues in a fair and balanced manner. It would be a statutory right of paid access to the 10 to 16 minutes in each television hour which the broadcaster sets aside for sale to advertisers. The right would be enforced through the courts and not by the FCC. Views stated in ads would not have to be balanced in



program time. Advertising time and program time would be two separate forums, and the willingness and ability to pay would determine access to the advertising forum. That's not a shocking concept. No one gets free access to the advertising space even on publicly-owned bus lines, let alone newspapers, magazines, or billboards. And we pay more for a full page color ad in Life magazine than for a small ad in the local paper. There is no reason to treat broadcasting differently. No individual has a direct right to have for free the large audience you have built with your programming.

In the program-time forum, an issue-oriented access mechanism would control. The public's right to be informed on important issues and points of view must be recognized and served in program time. Here the licensee's obligation would be enforced as originally contemplated in the FCC's Editorializing Report of 1949. The totality of the programming that is under the licensee's control (including PSA's) would be reviewed by the Commission at renewal time to determine whether the licensee has met his fairness obligation--that is to provide balanced presentations and an opportunity for partisan voices to be heard on the issues. And during the license period, if the licensee badly fails--or doesn't try--to be balanced and fair, a petition for revocation of the license would be entertained by the FCC.



Let's turn now to license renewals. Ever since the days of the "Blue Book," the FCC has told its licensees what type of programming is in the public interest. In the 1960 Programming Statement, it was refined into 14 program categories, featuring public affairs, news, religious, educational and stationproduced programming of virtually any sort. Informally, the signals go out through the jungle-drum network of regulators, lawyers, and licensees, and you get the message as to what kind of programs the FCC wants from you. With the Cox-Johnson 5:1:5 standard, the Commission has also flirted with minimum percentages for the most favored program types. The flirtation has almost become outright seduction, as the FCC now seems ready to adopt percentage standards for determining "superior" performance when an incumbent's renewal application is challenged.

These are disturbing developments--for the public and the broadcaster. If value judgments on program content are unavoidable in the present context of broadcast regulation--and they may be--they should be made as much as possible by the public served by the station and as little as possible by government bureaucrats. As things stand now, hypocrisy prevails, and lip service is paid to local needs and interests while the Broadcast Bureau's concerns and forms really call the tune.

It is largely our regulatory policy, not the broadcaster, that is hypocritical. The theory is that licensees should be local voices, that they should investigate the needs and interests of the public they serve and reflect them in their programming. Government has created a set of incentives for



you, but when the results aren't what the regulators think are in the public interest, they try to fight the system they have created and tell you and your audiences how much of what kinds of programs are best.

If the public, through the government, doesn't like the programming the broadcasting system produces, they ought to change the incentives rather than encourage the government to make the programming decisions. To provide you with the right incentives, I suggested that we eliminate all government-conceived program categories, percentages, formats and other value judgments on specific program content. Then let the Commission strictly enforce a meaningful ascertainment requirement-- hopefully not in the incredible detail of the Primer--let them judge you by your audience's criteria rather than their own. If this means that New York City stations will have no agricultural programs, and Phoenix stations will have Spanish-language public affairs programs, so be it. And if it means one channel in a large market carries little news while others provide a lot, who are we in Washington to impose our judgment and say no?

Although the FCC will still be second-guessing the licensee in order to give content to this "good faith" standard, we will have shifted the focus and purpose of government supervision to enforcement of the local needs and interests requirement in programming. This alone is an effort worth making.

As part of my renewal proposal, I also suggested that the license period should be lengthened and that the FCC should consider new applicants only when the incumbent's license is not



renewed or is revoked. This was seized upon as evidence of my support for broadcasters' present legislative efforts on renewal policy. But that represents a highly selective view of what I said. I share your concern about the stability of the licensing process, for I think that is a key part of the public interest in broadcasting, but I specifically emphasized that the proposals are closely related and should be evaluated as a package. Let me tell you why.

In evaluating any plan to change renewal procedures, you should be highly skeptical of a change that enhances government review of program content, measured against national standards and percentages. In your current mood you may not be inclined to inspect gift horses very carefully, but you must if you care about your longer range future. I sense that your attitude is one of compliance: "Just tell me what I have to do by way of fairness, access, and programming and I'll do it--I'll even be superior to anyone the FCC wants me to be superior to, just tell me who it is. Let's not rock the boat with Whitehead's unrealistic proposals."

I don't think my proposals are unrealistic. Things have been getting worse for broadcasters and they will continue to do so. The battle lines are being drawn tighter every year between you and dissatisfied elements of your public. If I were a true revolutionary, I would watch this trend and say the worse it gets, the more sense my proposals make. But I do not have this revolutionary vision; I want to start now to stop the trend to make the licensee an agent of the government for programming



purposes. The social and economic forces that are causing this unhealthy trend are not going to go away. You are not seeing a temporary madness in the body politic, you are seeing the times change. There is no easy way out. It's more difficult to be private licensees with public responsibilities than it is to be "gate-keepers" For a government-controlled broadcasting forum of communications. It's harder to be free and to exercise that freedom responsibly. I know you want the latter approach. So do I and I'm convinced the public does too.

These are difficult, but exciting times for broadcasting-- indeed for the whole country and the world. The President is working hard to bring about the kinds of change that will let us build our potential into reality in the years ahead. In foreign policy, the New Economic Policy, government reorganization, we are building for the future. In broadcasting too, we want to work with you to make it the exciting and responsive part of our Nation that it can be.



**\*REMARKS OF**

**Clay T. Whithead, Director**

**Office of Telecommunications Policy  
Executive Office of the President**

**at the**

**International Radio and Television Society  
Newsmaker Luncheon**

**Waldorf-Astoria Hotel  
New York, New York**

**October 6, 1971**

**\*AS DELIVERED**

C C

This is a major speech -- I read the advance billing and felt I had to say that. I was also billed as one of the youngest and most controversial figures in government and communications. Before I've even opened my mouth, Nick Johnson hates me.

Before I read that advance billing, we had planned one of my usual speeches. You know -- a state of the universe message. But after a year of stating and restating the problems, I guess I can't get away with that any more. So this won't be that kind of speech, but I've gotten attached to the format, so I'd like to spend a little time on the state of broadcasting. I don't claim to have the expertise that any of you have in broadcasting; but in the first year of OTP's life, we've been exposed to many of the relationships between government, broadcasting, and the public. Today, I want to focus on those relationships.

I'll probably sound a bit naive to you when I say that some of these relationships don't make sense and should be changed. But why can't they be ~~changed~~ -- especially when they are the cause of many of our problems. The Communications Act isn't sacrosanct. It's a 37-year-old law that was intended to police radio interference -- and it has frozen our thinking about broadcasting ever since. But something more than that is needed in a day when the electronic mass media are becoming the mass media.



There are a number of directions to choose from, and I'm here to propose one -- one that redefines the relationships in the Communications Act's triangle of government, private industry, and the public.

But before I tell you what my proposals are, let me first tell you why I think a change is needed and why you should want one too.

Look at the current state of the broadcasting business. You sell audiences to advertisers. There's nothing immoral about that, but your audience thinks your business is providing them with programs. And the FCC regulates you in much the same way the public sees you. It requires no blinding flash of originality on my part to see that this creates a very basic conflict.

CBS's Programming Vice President says:

"I've got to answer to a corporation that is in this to make money, and at the same time face up to a public responsibility. . ."

His counterparts at the other networks have the same problem. They all have to program what people will watch -- what gets the lowest cost-per-thousand. Sometimes that's what the people want to watch, but more often than not it's the least offensive program.

But you don't care what I think about your programs -- and you shouldn't have to care what any government official thinks about your programs.



But what does the public think? The signs aren't good.

Look at the new season: Twenty-two new prime-time network law and order shows and situation comedies fill in between movies and sports. It's the same old fare. Life's Harris poll is being interpreted to show that there is wide public dissatisfaction with the entertainment you offer.

Kids and teen-agers are developing an immunity to your commercials. Do you doubt that advertisers are questioning the effectiveness of TV as a sales medium?

How long will you be able to deliver our children to food and toy manufacturers? Parents are calling the Pied Piper to task -- there were 80,000 letters to the FCC concerning the ACT petition alone.

Consider the anomaly of Blacks as your most faithful viewers and your most active license challengers.

I suppose it looks like I'm just another critic taking cheap shots at TV. But there's another side to the broadcasting business. In my part of Washington, it's no insult to call someone a successful businessman. You have created a successful business out of the air -- people do watch television. Sure your success is measured in billions of dollars, but it's also measured in public service and all those sets in use.

But your success is taking its toll. It's giving you viewership, but not viewer satisfaction -- public visibility but not public support.



You've always had criticism from your audience but it never really mattered -- you never had to satisfy them; you only had to deliver them. Then the Rev. Everett Parker read the Communications Act. You all know the outcome of the WLBT-United Church of Christ case. Once the public discovered its opportunity to participate in the Commission's processes, it became inevitable that the rusty tools of program content control -- license renewal and the Fairness Doctrine -- would be taken from the FCC's hands and used by ~~the~~ public and ~~the~~ courts to make you perform to their idea of the public interest.

Surprise! Nick Johnson is right. The '34 Act is simply being used and enforced. But where is that taking us?

Look at where we're going on license renewals. In city after city, in an atmosphere of bewilderment and apprehension, the broadcaster is being pitted against the people he's supposed to serve. The proxy for the public becomes the patsy who is held responsible for the Vietnam War, pollution, and the turmoil of changing life styles. As the East Coast renewals come up again, you're snickering about ascertainment -- sure it was designed for Salina, Kansas, and not New York City -- but I'll wager you'll all wrap yourself in interview sheets when your applications are filed in March. But that won't make you less vulnerable at renewal time because you can have no assurance that your efforts over the years will count for anything if a competing application is filed. "Substantial



performance" becomes "superior performance" at the drop of a semantic hat and means that the government has finally adopted program percentage minimums. That's the current price of renewal protection.

So while we all talk about localism, we establish national program standards. You go through the motions of discovering local needs, knowing that the real game is to satisfy the national standards set by government bureaucrats. But it's not a game. Right now your programs are being monitored and taped and the results will be judged under the FCC's 1960 Program Statement. Can you be safe in all 14 program categories?

The Fairness Doctrine and other access mechanisms are also getting out of ~~control~~. It is a quagmire of government program control and once we get into it we can only sink deeper. If you can't see where it's leading, just read the Red Lion and BEM cases. The courts are on the way to making the broadcaster a government agent. They are taking away the licensees' First Amendment rights and they are giving the public an abridgeable right of access. In effect, the First Amendment is whatever the FCC decides it is.

However nice they sound in the abstract, the Fairness Doctrine and the new judicially contrived access rights are simply more government control masquerading as an expansion of the public's right of free expression. Only the literary imagination can reflect such developments adequately -- Kafka



sits on the Court of Appeals and Orwell works in the FCC's Office of Opinions and Review. Has anyone pointed out that the Fiftieth Anniversary of the Communications Act is 1984? "Big Brother" himself could not have conceived a more disarming "newspeak" name for a system of government program control than the Fairness Doctrine.

I'm not seriously suggesting that the FCC or the courts want to be "Big Brother" or that 1984 is here,, or that we can't choose a different path from the one we now seem to be on. You are at a crossroads -- now you're probably clutching your "Chicago Teddy Bears" and wondering when Whitehead is going to get to the point. The point is: We need a fundamental revision of the framework of relationships in which you, the government, and the public, interact. The underpinnings of broadcast regulation are being changed -- the old status quo is gone and none of us can restore it. We can continue the chaos and see where we end up. But there has to be a better way.

I have three proposals. They are closely related and I want you to evaluate them as a package that could result in a major revision of the Communications Act. The proposals are: One, eliminate the Fairness Doctrine and replace it with a statutory right of access; two, change the license renewal process to get the government out of programming; and three, recognize commercial radio as a medium that is completely different from TV and begin to de-regulate it.



Here are my proposals for television.

First, I propose that the Fairness Doctrine be abandoned. It should be replaced by an act of Congress that provides for both the rights of individuals to speak, and the need of the public at large to receive adequate coverage of public issues. These are two distinct claims, and they cannot both be served by the same mechanism.

To provide for the individual's right to speak, TV time set aside for sale should be made available on a first-come, first-served basis, at nondiscriminatory rates but there must be no rate regulation. The individual would have a right to speak on any matter, whether it's to sell razor blades or urge an end to the war.

This private right of access should be enforced -- as most private rights are enforced -- through the courts, and not through the FCC. The licensee should not be held responsible for the content of ads, beyond the need to guard against illegal material and deceptive product ads should be controlled at the source, by the Federal Trade Commission.

My second proposal is for license renewals. There should be a longer TV license period, with the license revocable for cause. The FCC would invite or entertain competing applications only when a license is not renewed or is revoked. To assure the right of the public to be informed on public issues, the licensee would be obligated to make the totality of programming that is under his control (including PSA's) responsive to the interests and concerns of the community.



The criterion for renewal would be whether the broadcaster has, over the term of his license, made a good faith effort to ascertain the needs and interests of his community and to meet them in his programming. There would be no place in the renewal process for government-conceived program categories, percentages, formats, or any value judgment on specific program content.

I believe these revisions in the access and renewal processes will add stability to your industry, and avoid the bitter adversary struggle between you and your community groups. They recognize the new concerns of access and fairness in a way that minimizes government content control. But there are just too few TV channels, and there is too much economic concentration in TV, to leave these rights completely to the good intentions of private enterprises.

I'm not say that this will eliminate controversies. But it will defuse and change the nature of the controversies.

My third proposal is for Radio De-Regulation: Most of what I've suggested for TV also should apply to radio. But we can go further with radio. This week I sent a letter to Dean Burch proposing that OTP and the FCC jointly develop an experiment to de-regulate commercial radio operations.



We proposed that one or more large cities be selected as de-regulatory test markets, in which radio assignments and transfers would be pro-forma. Renewals would not be reviewed for programming or commercial practices. And the Fairness Doctrine would be suspended. The experiment should be only a first step. For most purposes, we should ultimately treat radio as we now treat magazines.

These are my proposals. The proposals are just that -- I have no legislation tucked in my back pocket that we are about to introduce. But, I will work for legislation if there is support for these proposals. In short, my message on all these proposals is that we've tried government program control and bureaucratic standards of fairness and found that they don't work. In fact, they can't work. Let's give you and the public a chance to exercise more freedom in a more sensible framework and see what that can do.

There is one further aspect of freedom I would like to discuss. Some people suggest that this Administration is trying to use the great power of government licensing and regulation to intimidate the press. Some even claim to see a malicious conspiracy designed to achieve that end. They must ascribe to us a great deal of maliciousness, indeed -- and a great deal of stupidity -- in the attempt to reconcile their theory to the facts. It is not this Administration that is pushing legal and regulatory



controls on television, in order to gain an active role in determining content. It is not this Administration that is urging an extension of the Fairness Doctrine into the details of television news -- or into the print media.

There is a world of difference between the professional responsibility of a free press and the legal responsibility of a regulated press. This is the same difference between the theme of my proposals today and the current drift of broadcasting regulation. Which will you be -- private business or government agent? -- a responsible free press or a regulated press? You cannot have it both ways -- neither can government nor your critics.

**\*REMARKS OF**

**Clay T. Whithead, Director**

**Office of Telecommunications Policy  
Executive Office of the President**

**at the**

**International Radio and Television Society  
Newsmaker Luncheon**

**Waldorf-Astoria Hotel  
New York, New York**

**October 6, 1971**

**\*AS DELIVERED**



Refile in  
speeches of  
Whithead

Oct. 6/17

This is a major speech -- I read the advance billing and felt I had to say that. I was also billed as one of the youngest and most controversial figures in government and communications. Before I've even opened my mouth, Nick Johnson hates me.

Before I read that advance billing, we had planned one of my usual speeches. You know -- a state of the universe message. But after a year of stating and restating the problems, I guess I can't get away with that any more. So this won't be that kind of speech, but I've gotten attached to the format, so I'd like to spend a little time on the state of broadcasting. I don't claim to have the expertise that any of you have in broadcasting; but in the first year of OTP's life, we've been exposed to many of the relationships between government, broadcasting, and the public. Today, I want to focus on those relationships.

I'll probably sound a bit naive to you when I say that some of these relationships don't make sense and should be changed. But why can't they be changed? -- especially when they are the cause of many of our problems. The Communications Act isn't sacrosanct. It's a 37-year-old law that was intended to police radio interference -- and it has frozen our thinking about broadcasting ever since. But something more than that is needed in a day when the electronic mass media are becoming the mass media.

But what does the public think? The signs aren't good.

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*Mr Whitehead file*

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

Before the  
Subcommittee on Treasury, Post Office  
and General Government  
The Honorable Tom Steed, Chairman  
Appropriations Committee  
U.S. House of Representatives

MAY 13, 1971



WITNESS LIST

OFFICE OF TELECOMMUNICATIONS POLICY

Before the

Subcommittee on Treasury, Post Office and General Government  
The Honorable Tom Steed, Chairman  
Appropriations Committee  
U.S. House of Representatives

May 13, 1971

1. Clay T. Whitehead, Director
2. George F. Mansur, Deputy Director
3. Wilfrid Dean, Jr., Assistant Director
4. Walter R. Hinchman, Assistant Director
5. Charles C. Joyce, Jr., Assistant Director
6. Antonin Scalia, General Counsel

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you to review the budget estimates of the Office of Telecommunications Policy.

We are requesting total appropriations of \$2,702,000. An appropriation of \$1,702,000 is requested for salaries and associated expenses; this will enable us to grow at a uniform rate over the fiscal year to a level of 65 full-time positions. An appropriation of \$1,000,000 is requested for necessary studies that can be carried out more economically by contract or require highly specialized expertise rather than by in-house staff. Our budget estimates for Fiscal Year 1972 are based on the requirements foreseen at the time the Office of Telecommunications Policy was established, as modified by our first few months of actual operation.

You have before you our budget estimates for Fiscal Year 1972. Since the Office of Telecommunications Policy is new to this Committee--since, in fact, we are rather new to everyone--I think it would be useful in this presentation to discuss briefly what the Office is and what it does.

Essentially, it is our responsibility to develop overall communications policy. First, the Director of the Office is the President's principal adviser on electronic communications policy. Second, the Office enables the Executive Branch to speak with a clearer voice on communications matters and to be a more responsible partner in policy discussions with Congress, the FCC, the industry, and the public. Third, the Office formulates new policies and coordinates operations for the Federal Government's own very extensive use of electronic communications.

## I. HISTORY OF OTP

Electronic communications at this point in our history can no longer be considered a novelty. The first commercial telephone service in this country was initiated almost a century ago, the first commercial radio broadcasting a half-century ago. Congressional regulation of the field began as early as 1866, and the Federal Communications Commission has been in existence since 1934. Until 1970, however, there was no agency within the Executive Branch responsible for establishing executive policies in the communications field or for coordinating the communications activities of the Federal Government itself.

Over recent years, the need for such an agency became increasingly apparent. Communications has rapidly become such an important part of the national economy and of the Federal Government's own operations that it requires continuing and coordinated attention on the part of the Executive Branch. During the last twenty years, the communications industry's contribution to national income increased by over 500 percent. That growth is almost double that of the economy as a whole during the same period and even more in excess of the rate for such important areas such as transportation and trade.



(Chart #1) Communications is, moreover, an industry which requires a constantly increasing share of our national capital investment--\$10 billion of new investment in 1970, compared with approximately \$6 billion for transportation and \$3 billion for mining. (Chart #2)

Such figures demonstrate the economic importance of the industry. They do not suggest its social importance. Communications is no longer just a technology; it is no longer just a service; it is a social force of the first magnitude, affecting what our children learn, how our political processes operate, where our business and industry locate, what our people know and perhaps what they believe in. There is virtually no area of our life which it does not touch.

It is, moreover, a force which is constantly changing, and in changing, it creates a series of new and important policy problems and issues. This era of change is not coming to an end; it seems to be barely beginning. A graphic representation of the dates that principal communications innovations first entered into commercial use will show most of them crowded into the last 25 years. (Chart #3) The rate of innovation is accelerating. It was only in 1956, for example, that we were first able to make transatlantic telephone calls by submarine cable; prior to that, the calls were subject to the poor quality and unreliability of shortwave radio transmission. Yet less than 10 years later, we were making transatlantic calls by satellite.

Presidents Truman and Eisenhower conducted studies of this accelerating trend and the need for improved executive organization. President Kennedy ordered a limited reorganization for emergency communications in 1963. President Johnson established a task force on communications policy that proposed, as one of its major recommendations, the establishment of a new entity within the Executive Branch--"a long-range planning, policy-formulating and coordinating, and mission-support capability which can serve to integrate the various roles in which the Executive Branch is presently engaged." When the present Administration took office, it initiated extensive discussions on this subject among representatives of Government and industry, and carefully examined the merits of alternative reorganization forms. Last year President Nixon submitted, and the Congress approved, Reorganization Plan No. 1 of 1970, establishing the Office of Telecommunications Policy. The functions of the Office were further specified in Executive Order 11556.

## II. FUNCTIONS

The specific responsibilities assigned to OTP are set forth in the Reorganization Plan and the Executive Order, copies of which I submit for the record and will be happy to distribute if you wish. You already have our budget estimates before you which go into our specific programs in some detail. For the balance of this presentation I would like to give you some examples of the



matters which currently occupy our attention in the three major subject areas with which we deal.

A. Government Communications:

We are responsible for establishing policies and procedures for the management of the Federal Government's own communications systems. Federal communications systems serve a variety of purposes, ranging from telephone service communication between fire prevention personnel in national forests to command and control of our strategic missile systems. It has been estimated that the Government's investment in communications equipment is almost \$50 billion. The annual expenditure for these systems is somewhere between \$5 and \$10 billion; the imprecision of this estimate is testimony to the absence, prior to OTP, of any agency which could focus upon overall Government expenditures.

Some of the major policy issues with which we are presently concerned in the field of government communications are the following:

(1) National Warning and Alert Systems:

It is imperative that the nation have a warning system, available for use in the event of attack or natural disaster, in which the public can have absolute confidence. The recent failure of the Emergency Broadcast System (EBS) has shaken that confidence, and has raised serious questions about our ability to respond to major emergencies. This Office is now in the process of subjecting both EBS and our National Warning System to an intensive review to assure their reliability and responsiveness to varying needs.

(2) Oversight of Federal Communications Expenditures:

As the expenditures of the Federal Government for communications--including research and development in the field--have grown to their current level, it has become both increasingly important and increasingly difficult to avoid duplication and waste. An example is the relationship between AUTOVON and FTS: The Federal Telecommunications System (FTS) is a voice and data communications system, managed by the General Services Administration and used by all Federal Government agencies. In addition, the Department of Defense maintains a separate voice communications network (AUTOVON) and a separate data communications network (AUTODIN). Interconnection between FTS and AUTODIN has been achieved, but at the present time the Department of Defense voice system has no access to, and is not accessible from, the voice communications systems serving the rest of the Government. This situation is not only inconvenient but perhaps very costly. This Office, working with the General Services Administration, the Department of Defense and the Office of Management and Budget has undertaken to determine what improvements and economies can be achieved.



(3) Spectrum Allocation Procedures:

Approximately half of the radio frequency spectrum is now allocated to the Federal Government and used by the various agencies of the Federal Government. I am responsible for the appropriate allocation of this Federal Government use of the spectrum, and in carrying out that responsibility, I rely heavily upon the advice and assistance of the Interdepartment Radio Advisory Committee composed of representatives of 17 Federal agencies that make extensive use of the spectrum. The spectrum is a limited--and therefore valuable--resource. Highly complex and very difficult decisions must be made about who will be allowed to use what frequencies, for what purposes, where. As the demands on the spectrum for various public and private uses multiply, new methods of spectrum planning and management will be required. OTP is exploring such methods jointly with the FCC which allocates the spectrum to non-Federal users.

B. Private Domestic Communications:

The United States has the largest communications industry in the world. Our per capita expenditure on communications services of all kinds exceeds the total per capita income of many nations. Almost 5% of our gross national product is devoted to electronic communications. Except for health services and education, it is the most rapidly growing sector of our economy. OTP is responsible for clarifying the significant policy issues concerning electronic communications and for formulating and presenting the Administration's positions in this field to the Congress, the FCC, and the public. Some of the current and important issues are the following:

(1) Specialized Carriers:

Advances in electronic technology have created the need for, and made possible, many new kinds of communications services in addition to the familiar telephone and telegram services. Having quantities of data and methods of doing business at the disposal of small companies may equalize the competitive advantage held by larger corporations. Microwave relay and satellite systems can carry enormous amounts of information, including television signals, computer data, and facsimile; new low-cost information machines make these large quantities of data and information widely available. Such new systems present the nation with the policy question whether the common-carrier monopoly historically held by telephone companies should be extended to some or all of these new fields; whether new common or quasi-common carriers should be allowed to enter this field; or whether competition should be allowed. If competition is to be allowed, we must decide what pricing limitations should be imposed upon the protected-monopoly common carriers.



(2) Mobile Communications Services:

Ours is a mobile society. As a result, our communications systems must become mobile as well. This is already a reality in the area of broadcast communications--the car radio, the pocket radio, and the TV set small enough to take to the beach. There are increasing demands for similar flexibility in our person-to-person communications--personal paging devices, such as many doctors now have, radio-dispatched vehicles for the small businessman, and pocket or car telephones for everyone. Mobility, however, stretches the capability of the wire; most of these new services must utilize the radio frequency spectrum. A pressing issue at the present time is how space is to be found for mobile person-to-person communications on an already crowded radio frequency spectrum.

Even more importantly for the long run we must develop a sound technological and institutional framework that will permit a substantial growth in mobile communications not possible under current arrangements.

(3) The Fairness Doctrine:

In exercising its responsibility to insure that broadcasting meets the "public interest, convenience and necessity," the FCC has over the years developed the "Fairness Doctrine." This refers to what is becoming an increasingly detailed and confusing set of rules and decisions, intended to assure that broadcasters present fairly both sides of controversial issues of public importance and provide opportunity for response to personal attack. There is concern that what was originally intended to spur public debate and increase public awareness has now come to have the opposite effect, since the risk of violating the Fairness Doctrine can be reduced by minimizing discussions of public issues. The time has come for an overall reassessment of the doctrine and its effects--including its application to the political field and the threat of governmental content control.

(4) Protection of Private Rights in the Computer Culture:

Computers make it possible to accumulate data banks which contain vast quantities of data with considerable proprietary value and information concerning millions of our citizens. Electronic communications make this information readily accessible to people in remote locations. The way in which it is assembled, used, and distributed may profoundly affect lives, careers, and incomes. On occasion, the assembled information may be inaccurate. Should the individual have some right to learn about this and correct it? What restrictions should be imposed upon the communications of such accumulated information to other persons? What procedural and privacy safeguards should be required?



(5) Cable TV and Over-The-Air Broadcasting:

One of the new technologies, coaxial cable, permits the distribution of television signals by wire--and a much larger number of signals than over-the-air broadcasting. Cable seems to have the technological potential of providing a new diversity, flexibility, and quality in television programming. There may be some danger, however, that it could destroy our present system of over-the-air television without providing a satisfactory substitute. At the present time, some cable systems are permitted to import "distant signals" from broadcast stations many miles away without making any payment for the use of such material, either to the broadcasters or to the copyright owners from whom the broadcasters have purchased performance rights. There is general agreement that this is wrong, but no consensus as to how the payment should be required. The FCC has required cable systems above a certain size to originate programs. Some feel that the desirable policy would be the direct opposite of this--that origination of programming by the cable system owner should be positively forbidden so that an anti-competitive common control of program production and telecast distribution will not develop. Cities, counties, and states in addition to the FCC have all imposed upon the new medium varying, often confusing, degrees of regulation which may conflict now or in the future. These and many other problems pertaining to cable do not fit existing regulatory molds and almost certainly will require new legislation.

(6) Domestic Satellites:

American technology launched the first commercial communications satellite for international use in 1965. Six years have passed, and even though American private industry has been willing and able, the American public still does not have the benefit of even a satellite system for national communications. The problem has not been money or technology, but simply governmental delay and indecision concerning how domestic systems should be authorized. Should there be one company granted monopoly rights from the outset, or should the field be open, at least initially, to all entrants? Should telephone common carriers be permitted to enter the field? Should Comsat? What special requirements should be imposed, or special privileges granted, to assure service to Alaska and Hawaii?

C. International Communications:

International communications traffic has historically grown at an annual rate of about 15%. Americans now spend more than \$530 million a year for this purpose and are expected to be spending more than \$5 billion by 1980. International communications are not only important for the conduct of overseas business; in the open world which we seek, they heavily affect the way



in which nations view one another. It is now possible to call London from New York City by simply dialing the number. Last week, a world championship boxing match taking place in Monte Carlo was watched by United States sports enthusiasts on network television. In an era when so many new technologies seem only to facilitate war, creative development of the new technologies of communications is a great chance for peace. Such development requires the resolution of many policy issues, on which OTP will be developing proposals and working closely with the Congress and the FCC.

(1) Structure of the Industry:

At present this country's international private communications are handled by several companies--most of the telephone traffic by AT&T, and most of the data traffic by ITT World Communications, RCA Global Communications and Western Union International. By decision of the FCC, AT&T divides its telephone traffic originating in this country between submarine cables and satellite circuits leased from the Communication Satellite Corporation (Comsat). Comsat is a private corporation authorized by Federal statute whose Board includes Presidentially appointed directors and representatives of other U. S. carriers that buy service from Comsat. The complexity and conflicting incentives built into this industry structure may increase the cost to the public of overseas messages; they certainly place the United States at a severe disadvantage in negotiating with other countries, each of which is usually represented by a single entity. There have been questions raised about this structure for many years; with the tenfold increase in traffic projected by 1980, the Congress and others have been calling for a review of existing legislation and the development of new policy.

(2) The Balance between Satellites and Underseas Cables:

No landing of an undersea communications cable may be made within the United States nor may any communications satellite be placed into service without governmental approval, determined by the FCC. Because of our regulatory structure, if insufficient or excessive capacity is authorized, or if an unreliable or technologically outmoded system is authorized, the private and public consequences are serious. There are at times sharp disputes concerning projected capacity, as well as the relative merits of cables and satellites. These disputes are routinely resolved, in one way or another, in the context of a particular cable or satellite application, but they arise from a failure to address fundamental questions of long-range planning on which the views of industry and several governmental agencies must be sought and coordinated.

(3) International Negotiations:

International communication requires international agreement. Two-way systems need governmental approval at both ends--for cable landings or



satellite earth stations, for rate structures, for connection into the national communications networks. Even one-way broadcasting requires international agreement, since interfering spectrum uses must be avoided. The first permanent forum for such international arrangements was the International Telegraph Union, established in 1865. Its successor is the International Telecommunications Union, established by the Madrid Conference of 1932 and recast into its present form by the Atlantic City Conference of 1947. This organization holds Plenipotentiary Conferences at approximately 5-year intervals, and sponsors much more frequent Administrative Conferences to negotiate changes in the International Radio Regulations and the International Telephone and Telegraph Regulations. In addition to ITU proceedings there are frequent special negotiations with one or more foreign nations--such as those now in progress here in Washington among the members of the International Telecommunications Satellite Consortium (INTELSAT). Such negotiations can have significant commercial, social, and political consequences for the United States. OTP is responsible for providing communications policy guidance for these negotiations to the Department of State.

In all of the areas I have discussed above--and in particular the private domestic and international fields--it is not my intention to create the impression that OTP is the final policy maker. Communications policy in this country is ultimately made by the Congress. It is interpreted and applied by the FCC in the exercise of its regulatory responsibilities. As in other fields, however, the Executive Branch has an important role to play--by making known to Congress, the FCC, and the public its considered views on communications policy matters and their relationship to the broad scope of national concerns; by proposing legislation to the Congress where necessary; by providing a forum for the opinions of the public and industry; and by stimulating national discussion on issues of national consequence. In the field of management of the Government's own communications systems my Office does exercise considerable authority though even there we feel strongly that our approach, insofar as possible, should be to coordinate rather than to control insofar as possible. In the field of non-Government communications, on the other hand, we are merely a partner in the policy-making process, dealing in behalf of the Executive Branch with the Congress, the public, the industry and the FCC. (Chart #4)

### III. ACCOMPLISHMENTS OF THE OFFICE

The most important thing we have done in our first six months is, frankly, to organize the office and form the nucleus of a staff capable of dealing with the kinds of policy problems I have just discussed. I am sure you are aware that the job of building a new agency and establishing its relationship with other Government agencies is enormously time consuming. When OTP was originally



established, it was contemplated that it would have a staff of 65 people. The present budget request would enable us to continue our orderly growth in the coming year until we have reached that original minimal level. I may add parenthetically that we do not anticipate ever growing much beyond that level. The Office was intentionally structured in such a way as to avoid the building of a new bureaucracy. Consequently it was located within the Executive Office of the President; technical support is provided by staff units in various Government departments. In particular, the Department of Commerce has the mission of supplying OTP with broad technical support and with administrative support in the frequency management process. I am pleased to report that we are now beginning to function effectively in the role that the President and the Congress set for us.

While in the process of building our organization, we have felt it important to press forward on a number of substantive issues. Some of these are still underway, but I might mention two completed projects of some importance. First was the establishment of an aeronautical satellite policy for the United States. It had been apparent for several years that the rapid increase in aircraft traffic on international routes and the limited capability of existing communications systems would soon require the use of satellite communications for aeronautical navigation over the Atlantic and Pacific Basins. There had nevertheless been extended delay in making the necessary arrangements, because of disagreement on technical matters among Federal agencies and within the private sector, and because of the absence of any single forum in which the Federal decision could ultimately be made. The National Aeronautics and Space Administration and the Federal Aviation Administration were about to proceed with overlapping and incompatible programs which could have wasted a substantial amount of money. One of the first accomplishments of our office was the establishment of a Government policy for aeronautical satellite communications, arrived at after consultation with representatives of various Federal agencies, private airlines and foreign governments. It sets a time frame for development of the system, establishes the outlines of Government-industry cooperation, and such guidelines for international cooperation. This policy was announced last January. Since that time OTP has been following through to see that it is promptly implemented. This is an example of the type of policy which OTP will be developing--not policy in the abstract, but a specific definition of management relationships to hasten the conversion of new technology to benefit the public and to conserve public funds.

The second major project which has been substantially completed is coordination of United States preparation for the World Administrative Radio Conference on Space to be held in Geneva next month. The process of establishing detailed United States positions is a lengthy one, requiring consultation with industry, Federal agencies ranging from HEW to DOD and, of course, the Department of State. The decisions reached in these international negotiations will be submitted to the Senate for ratification as a treaty; they



will affect the growth and development of space communications over the next decade. Our major positions have at this point been established. The briefings of the Chairman to our delegation have been commenced, and we look forward to a successful session in Geneva.

I should also make mention of three policy proposals which will be announced in the near future. One is legislation for the long-term financing of the Corporation for Public Broadcasting and for the support of educational broadcasting in general. The second is an Executive Branch policy statement concerning the planning of satellite and cable facilities for transatlantic communications. And the third is an updating and amplification of the Executive Branch policy on domestic satellites which was originally announced before formation of this Office, a year ago January.

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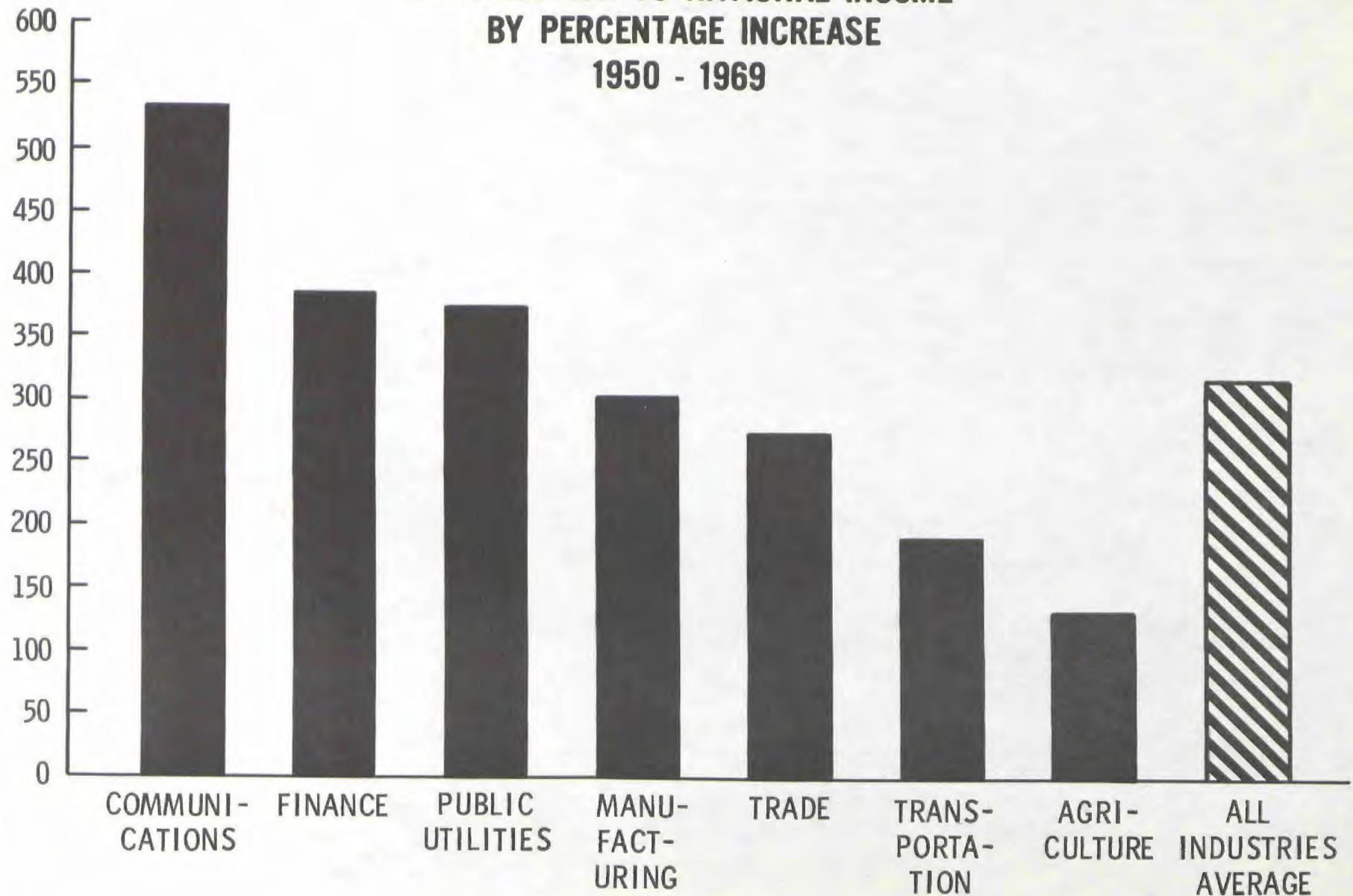
I have thought it most important, at this first formal appearance before this Committee, to give you this overview of what the Office of Telecommunications Policy is and what it does. Needless to say, I have not made mention of everything we are engaged in, nor have I gone into much detail. I hope, nevertheless, it was enough to give you the general sense of what this Office is meant to do. I will now be happy to reply to any questions you may have concerning the Office and its budget proposal.



# GROWTH RATES

## CONTRIBUTION TO NATIONAL INCOME BY PERCENTAGE INCREASE 1950 - 1969

CHART 1

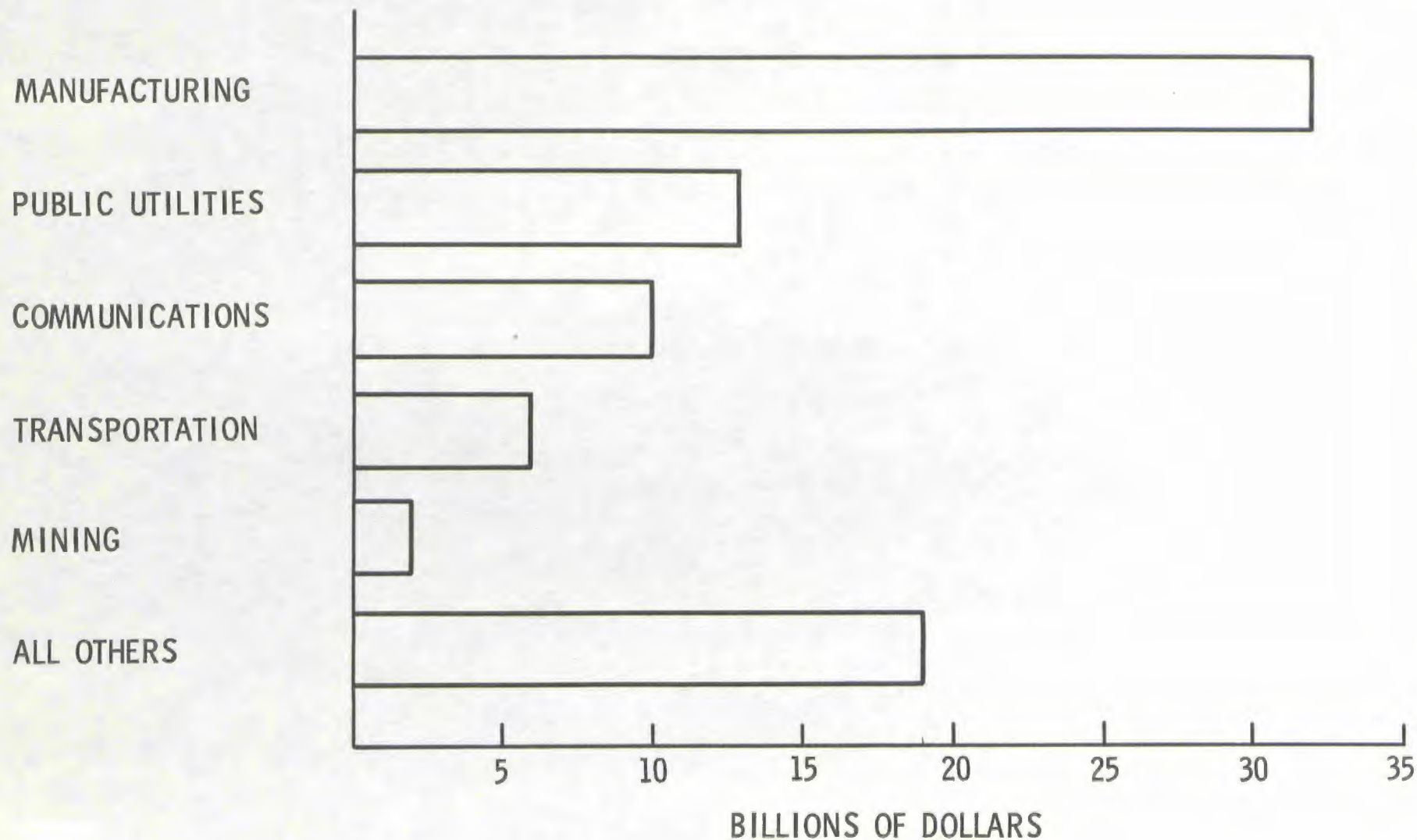




# NEW CAPITAL INVESTMENT IN PLANT AND EQUIPMENT

CHART 2

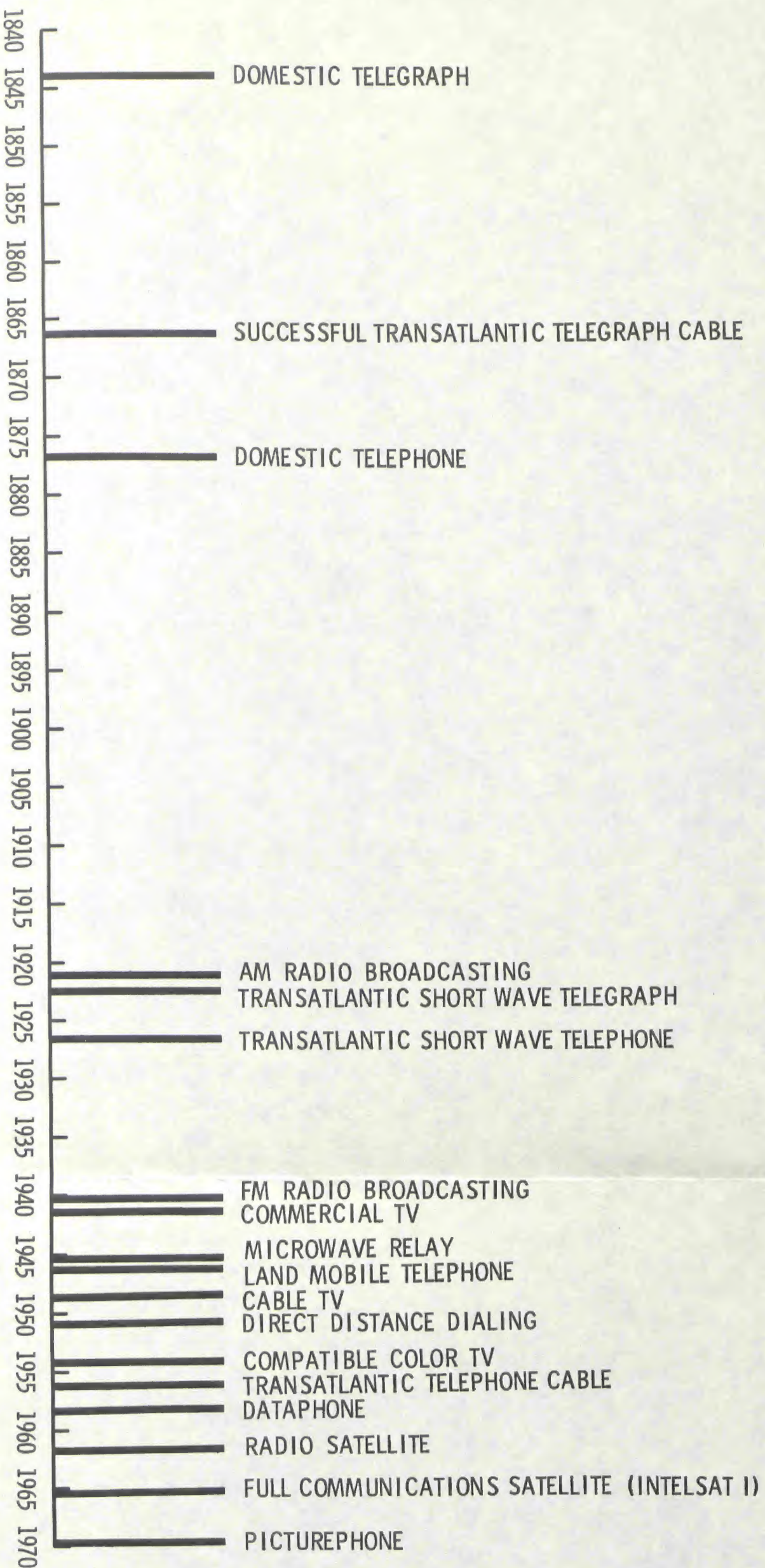
1970





# DEVELOPMENTS IN ELECTRONIC COMMUNICATIONS

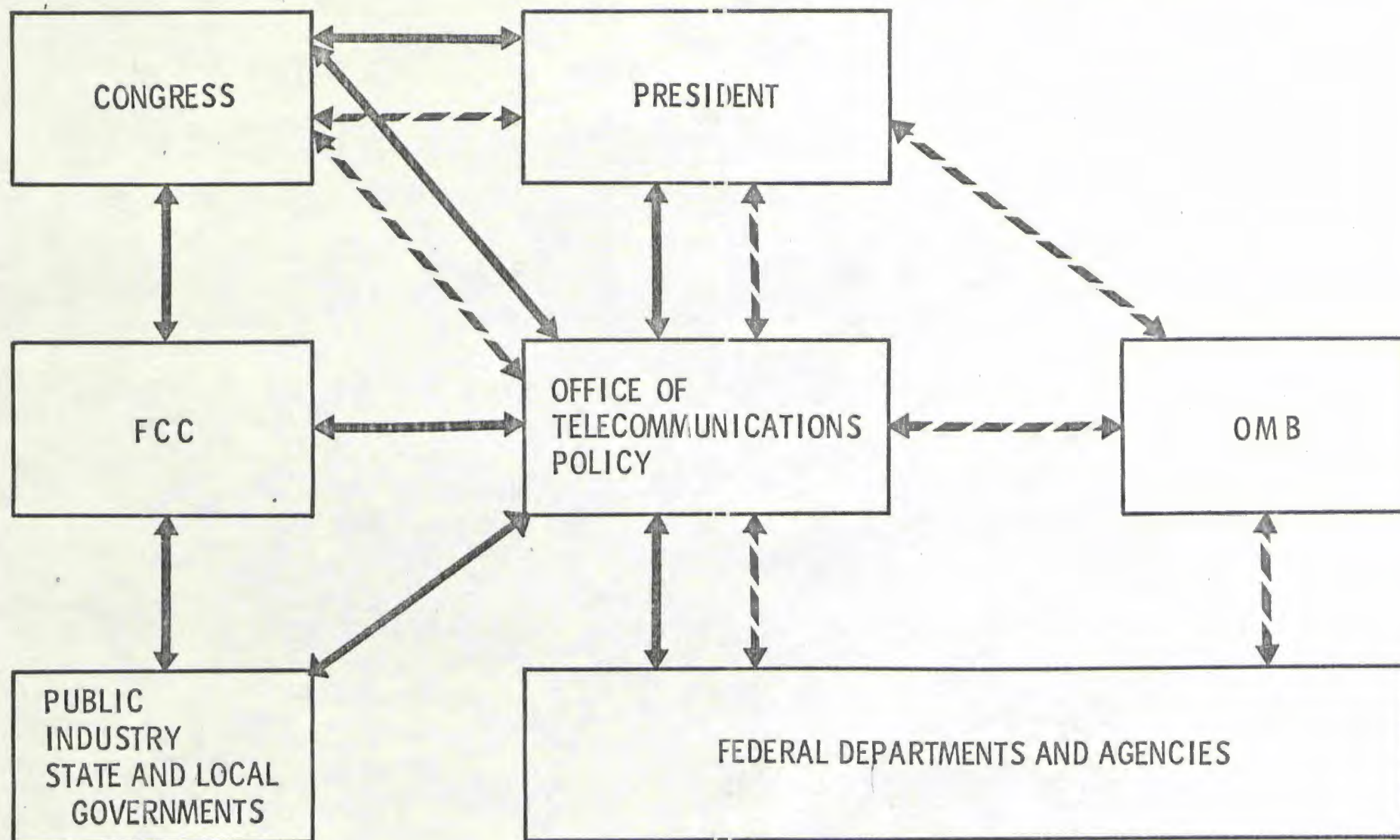
CHART 3





# OFFICE OF TELECOMMUNICATIONS POLICY RELATIONSHIPS

CHART 4



----- Policy For Federal Government Communications  
----- Policy For Other Communications



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

Remarks of Clay T. Whitehead, Director  
Office of Telecommunications Policy  
At the Presentation of the  
Alfred I. DuPont-Columbia University Awards  
in Broadcast Journalism  
Columbia University  
New York, New York  
December 16, 1970

I would like to talk tonight principally about public policy and the regulation of broadcasting, but perhaps it would be helpful if I began with a brief description of the new Office of Telecommunications Policy. There has long been a concern that the Federal Government needed better management and policy direction of its own multi-billion dollar telecommunications activities; and also some capability to assess the implications and policy needs of the rapid expansion of telecommunications in our economy and society.

My Office has both those broad responsibilities, plus certain direct responsibilities for emergency and national security communications and for the Federal agencies' use of the radio spectrum. Additionally, the Director of Telecommunications Policy is designated as the President's principal adviser on telecommunications matters, reflecting our affiliation with the Executive Office of the President. In an oversimplification, we are the executive branch agency for telecommunications policy.



With respect to the Federal Government's own communications activities, the OTP has very strong authority for establishing and enforcing policy. In the area of national policy, our role is to be the spokesman for the executive branch in the policy dialogue with the Congress, the FCC, and the public.

Telecommunications in the United States is in a period of rapid and fundamental change. Telecommunications has already had a significant impact on our economy and on our life styles. Families spread across the continent stay in touch by telephone and watch the same evening news shows. Business relies heavily on the telephone, teletype, and broadcast advertising. Air travel as we know it today would be impossible without telecommunications. Our police and fire protection would be crippled without telecommunications capabilities. Millions watched men first walk on the moon, and millions watched the disturbances in Watts and Chicago. And without the broadcast media, the drastic change in our national mood and mores that has occurred over the last decade could never have taken place in so short a time.

Technical, economic, and social issues are tightly intertwined in telecommunications policy. Rapid change is being forced upon us and compounds the difficulty of sorting out the issues. Every once in a while, I briefly reflect on the scope and complexity of our task and yearn for a simpler day. But telecommunications policy has become an entirely new and rapidly changing ball game.



From a technical and economic standpoint, the communications industry is becoming increasingly more complicated. Yet each of the different communications services presents quite different issues of public policy; and it is the public policy aspects that are particularly vexing. Tonight I would like to focus on the public policy that has evolved on broadcasting and where it seems we might be headed.

My basic theme will be that many of the dissatisfactions with broadcasting grow out of the way we have structured that industry rather than from failings within the industry itself. That this industry structure is largely the product of government policy -- or the lack thereof. That such policies as we do have are an accumulation of ad hoc solutions to piecemeal problems -- that have now come to be considered nearly immutable rules. That these rules, together with our rapid technical, economic, and social change are creating a dynamism of their own; rules lead to problems which justify more rules. That we the public -- including for a change those of us in government -- are in danger of losing control of this process. That the rules and the process are conspiring with our emotions to take us down a road we might well prefer to avoid. And finally, that the really critical policy question is that of access to the broadcasting media.



Government policy with respect to the media has always been considered particularly important and sensitive. Free speech and free press are central to our concepts of democracy and an open society. An informed body politic and a robust political process depend on a free, open, and vital exchange of ideas.

These precepts have served us well. But we are suddenly faced not only with difficult social and economic changes, but at the same time, with major changes in the pervasiveness and impact of the communications media. And these two kinds of change are not independent of one another. The media are shaping social change as well as reflecting it.

The role of ideas and how we exchange them within our society have never been more important. We cannot expect that broad premises and constitutional guarantees will automatically lead us to sound public policy in communications. We have a complex, profound, and emotional problem on our hands. Now that we have truly become a national community, how shall we communicate:

The press has always played a particularly important and visible role in this process of communication. The terms "the press" and "the media" are often used interchangeably, but they are not at all the same. It is particularly important for purposes of government policy that they should not be confused.



Now that broadcasting journalism has become so important, our "press" institutions no longer are confined to the printed media. "The press" has come to mean the classical function of investigating, reporting, and commenting on the news. It is a profession and an institution of its own that transcends any particular medium. "The media" now include both electronic and printed vehicles carrying an increasingly wide range of entertainment, education, and information generally.

It is important to distinguish three separate but related concepts: the freedom of the press, the free speech rights of the media owners, and the obligations of the media owners to the public. My discussion here is concerned primarily with the obligations and free speech rights of the broadcasting media, rather than with the press as such. But, of course, government policies toward the media have a direct and often important impact on the press institutions.

There is some thinking that the First Amendment rights of the press to be protected from government control imply also an affirmative obligation of the press to be comprehensive, impartial, and objective. It is noteworthy that in the past year we have had both the Vice President and officials of a strongly liberal persuasion arguing precisely the same point. The Vice President was referring to the professional responsibility of the press, while others have been suggesting a legal responsibility of the joint press-media owning entity.



I also favor objectivity, comprehensiveness, and impartiality in the reporting of the news. But we must be very, very careful in trying to translate those noble objectives into enforceable government policy. For the most part, those are moral and professional obligations of the press rather than legal obligations. It assuredly is fair game for elected officials to comment on the way in which those obligations are being met, but it is another thing entirely to suggest that the government should somehow enforce standards of press performance.

We all accept the fundamental principle that the freedom of the press and the freedom of speech of individual citizens are to be protected from government encroachment, even for high purpose. But then why is the government so deeply involved in content-related aspects of communications policy? I believe the answer is that we have carried the theories underlying our regulation of the broadcasting media to their logical conclusion. And we don't like where we are.

The free and open exchange of ideas is fundamental to our way of life and our governing process. It is not enough for the government simply to refrain from interference with free press and free speech. We have an affirmative obligation to see that conditions are conducive to such exchange. The government should foster maximum opportunity for the expression and dissemination of ideas. In short, the government does have a role to play



in developing public policy with respect to the structure of the broadcasting media industry. By industry structure I mean such things as ownership concentration, competition, conditions of access, who pays for the access and for the programming, and the degree of joint control over transmission outlets and programming sources.

The day of the soapbox on the village green and the daily or weekly newspaper as the principal means of communicating ideas to the public is a day of the past. The print media remain important, of course, and for many thoughtful and reflective purposes, they have become even more important. Radio has become our most pervasive medium. But it is increasingly television that has the strongest impact on the discussion of ideas and issues.

Television broadcasting is different in many ways from the print media. Different in impact, in adaptability to various types of messages, in appeal to children; different in all ways suggested by the still enigmatic thought that "the medium is the message." But broadcasting is also different in the way it is treated in the law, and that is what I want to focus on here. The broadcasting industry as it is structured today is not a classical private enterprise development. It is the direct product of law and government policy. As a creature of the government, it deserves particular attention by government and by the public.



It also deserves some discussion. When radio broadcasting first began, the use of the frequency spectrum was catch-as-catch-can. There was considerable self-defeating interference among stations. It became obvious that some order would have to be imposed, and the government stepped in to fill that role. Technical standards for noninterference were easily defined, but some rationale was needed for deciding who was to use what frequencies. As with every other resource, frequencies useful for broadcasting are limited; some are more usable and therefore more valuable than others.

There were many ways this assignment function could have been set up. Assignments could have been sold to the public, much as federal lands were. They could have been leased for specific uses; they could have been held by the government. Instead, we chose to give these rights to individual applicants for limited periods of time. The actual ownership was retained for the public and the licensee was required in return to use his public resource in the public interest. Under this approach there had to be some arbiter of whether the licensee is meeting his public interest test, and that has come to be for all practical purposes, the FCC.

Now this is all well and good so long as no one expects radio or television to be serious news media, and so long as television is a new and novel entertainment medium. But television has now become the



major vehicle that informs the average American about the world around him. It is the major source of his exposure to the issues confronting our society. It is just a question of time under such a scheme until someone asks for a more precise definition of just what the blazes "the public interest" means. That question is now being pursued more and more vigorously. The FCC has been pretty vague about it for obvious reasons. But it basically means whatever they and the courts say it means. And that means federal regulation of content.

In the area of entertainment programming, there is much grumbling about program content. But this has not produced any major strains on the regulatory process, and therefore has had little impact on regulatory policy. The FCC has for all intents and purposes allowed a market to develop in broadcasting licenses based on their value as an entertainment and advertising medium. Many of these licenses have great financial value because of the monopoly advertising power inherent in the limited number of stations licensed in any given locality. The value of other licenses is less than operating costs. Those licenses are, therefore, unused for the same economic reasons that there are so few newspapers. Since there is money to be made by programming to reach the largest possible audience with a limited number of outlets, the marketplace incentives work toward programming wanted by large audiences. There is, of course, the vexing



problem of unprofitable public interest programs and programming for minority tastes. But at least the majority tastes are passably satisfied most of the time; and the profitability of programming for the majority seems to subsidize enough minority-interest and public-interest programming to keep the FCC and the community complacent.

In the discussion of controversial issues, however, the FCC has taken a somewhat different regulatory approach. Here, so the theory goes, the station must devote a significant fraction of its programming time to the discussion of controversial public issues and must afford each side of such issues a reasonable opportunity to be heard. The objective is overall fairness in coverage devoted to important controversial issues. The problem is how this is to be enforced.

What the Commission has done is to attempt to evolve precedents out of specific cases. As a result, however, we find the Commission requiring each individual station to be "fair" in its handling of each individual issue, rather than attempting to create an open marketplace of ideas in the media of a community. Under the Commission's approach, the Commission itself is the final arbiter of what is an issue or idea, of which side has or has not been presented fairly on a particular station, of how many different sides the public should hear, and of who is an acceptable spokesman. It has produced an intricate, confusing, and inherently arbitrary



series of rulings on broadcasting media fairness that clearly limit the free speech of the broadcaster and clearly discourage the free and open exchange of ideas we seek to foster. The reason for this confusion is clear: There can be no a priori definition of fairness that would be viable in a public debate so diverse as ours.

A summary of the FCC's current theory then is roughly as follows: Because of the scarcity of frequencies for broadcasting, and because they are distributed by the government to be used in the public interest, and because the broadcasting function is so important in our society, broadcasting station licenses are valuable public trusts. These valuable public trusts are to be given to private interests, but they are to be used in the public interest. The government is the final arbiter of what constitutes the public interest. The final step in this reasoning is that fairness in the coverage of controversial events and ideas is in the public interest and, therefore, must be determined and enforced by the government.

The implications of this theory applied to broadcasting regulation are serious, but there is a distinct possibility that the theory may be extended to other media. Already there are fewer daily newspapers than radio stations. And the spectrum scarcity foundation for this theory is tenuous. Cable television does not use the broadcast spectrum; yet cable operators are held to the fairness standard on programming they originate. Not all of the spectrum reserved for broadcasting is used. The major



limitations on the broadcasting media are already economic rather than technical. They derive from the number of media outlets a local advertising market will support and from the joint ownership of programming sources and transmission media. This is not very different from the situation of the print media, and there is talk of extending the public trust theory of media regulation and the fairness doctrine to print media. This will be particularly easy should the day come, as it well may, that print is distributed directly into the home electronically. But do we want that result?

Many argue the FCC should carry this theory forward and pursue more vigorously the public interest responsibilities it places on the private broadcaster. But I am much concerned that this theory of broadcast regulation and the industry structure implicit therein leads inexorably toward government regulation of content. However mildly we are now into that business, it is bad precedent. There are few stopping points along the way to increasingly detailed government prescription of content, and there are many incentives to continue down that road once we have embarked upon it.

Now I am all for the public interest in broadcasting. And I am for the concept of private enterprise ownership of the media. But I feel our public policy has a built-in inconsistency: We have structured the



industry so that the incentives provided the private owners of the electronic media go one way, and we then impose public interest requirements directly counter to those incentives.

We are reminded that this year is the fiftieth anniversary of broadcasting in the United States. "Fifty years of service, and the best is yet to come." I believe that. The private enterprise broadcasters of this country have served us well. They deserve credit and even praise. But when we place on one small group of private businessmen the responsibility for exercise of a broad public trust, we have violated a basic principle of human nature and have created a serious conflict of interest situation. The strains of a contrived and fundamentally unsound public policy are beginning to show. Why the sudden change?

Our society has changed. Changed from loosely connected local communities to a national community; changed from a naive, parochial public to a better educated, better informed public. Most importantly, our citizenry is tremendously more aware of the diversity of issues and viewpoints surrounding them. They are more inclined to make their own judgments than to accept predigested views. Broadcast journalism has played a big role in bringing about this transformation, and the news we need as a people has changed accordingly. The evening news is less and less



a description of a world outside the average American's experience, and more and more a discussion of events in an increasingly familiar world. We still need factual and investigative reporting, but we increasingly need and want interpretation and commentary. The fact that a better informed and more aware citizen prefers to make his own judgments means that more and more issues are going to be in need of public discussion.

How do we encourage the interpretation, commentary, and the free expression of ideas on the broadcasting media under the existing theory of government regulation? I am not optimistic. It is not that I am so concerned with government censorship in the United States nor even with political intimidation, and I am certainly not crying crisis. But I am concerned with a tendency for government regulation to produce more meddlesome ad hoc-ery than wisdom; more dulling mediocrity than vision. We are not likely in this country to allow tyranny or suppression of ideas; but we conceivably could allow a bureaucratic frustration of the free and open exchange of ideas. And that would be profoundly unhealthy.

I would like to close on an encouraging note. These are complex and difficult problems. But they can be dealt with in a positive and constructive way. We have simply passed the day when the ad hoc



improvisation of policy is satisfactory. We now face a great challenge in thinking through what we expect of our broadcasting institutions and how we should go about achieving our objectives.

At the center of that challenge are the issues of access to the broadcasting media. The free exchange of ideas in our society will require access to the media at both ends. Failure to resolve the access issue is what is driving the government to determinations of fairness in the presentation of ideas rather than fairness in the conditions of their exchange. It is not a free exchange when the government prescribes which ideas are to have what representation. I might add that the free press function also has an important stake in the access issue. The access issues will force us to sort out the imprecision in our thinking about the conflict between the free speech rights and the obligations of the media owners. We will have to face up to the fact that the combination of media ownership and programming control drives the government to deal with that conflict in ways that are ultimately undesirable.

The broadcasting media offer a tremendous potential beyond the great service that they already offer. Those of you here tonight, and particularly those being honored, have a better vision than most of what the potential might be. My Office has the responsibility for addressing the public policy aspects of this challenge, as do the FCC and the Congress.



But it is not a job we in government can do by ourselves, and it is not a job we should do by ourselves. Our purpose is not to dictate policy, particularly in such a sensitive area as broadcasting. Our purpose is to encourage the development of a thoughtful policy through the cooperation of the government, the public, and the media.

We actively seek the cooperation of those professionals such as yourselves who have given thought to these problems. But these ideas are also important to every citizen. I would hope that the broadcasting journalist as well as the broadcasting owner would become more concerned with these questions of policy -- both for the sake of his profession and for the sake of his public, to see that they get the attention, thoughtfulness, and understanding they deserve.