

SPEECHES GIVEN BY CLAY T. WHITEHEAD

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

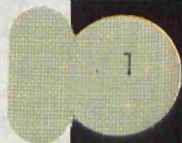
- ✓ 17. Arts/Media Conference - 12/1/72 Washington, D. C.
National Council on the Arts

- ✓ 18. Sigma Delta Chi Luncheon 12/18/72 Indianapolis, Ind.
Indiana Broadcasters Association

- News Conference following 12/18/72
speech

- 19. Interview - CBS Morning News 12/20/72 Washington, D. C.
(Informal remarks --transcript)

- 20. Interview - The Today Show (NBC) 12/21/72 Washington, D. C.
(Transcript) Frank McGee/Bill Monroe



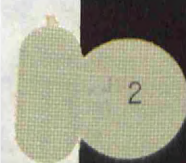
SEMINAR ON URBAN CABLE TV AND THE WIRED CITY

LOS ANGELES, CALIFORNIA

JANUARY 15, 1972

(NO NOTES)

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REMARKS OF

Clay T. Whitehead, Director
Office of Telecommunications Policy
Executive Office of the President

to the

Georgia Radio and Television Institute
Center for Continuing Education

University of Georgia
Athens, Georgia

January 26, 1972

I have looked forward for several months to my visit to the University of Georgia campus here in Athens and to participating in the 27th Annual Georgia Radio and Television Institute. It has been my feeling since taking the job as Director of the Office of Telecommunications Policy that, whenever possible, it is important to get out of Washington and discuss firsthand the problems facing the communications industry.

I would like to spend the greater majority of this hour exchanging views with you and discussing the problems as you see them. But first I've been asked to talk briefly about the future of communications and broadcasting as seen from the Office of Telecommunications Policy.

It is clear to me that man's communications for the rest of this century are already taking shape. Communications technology and the regulatory framework are already in their formative stages. In addition, we're beginning to see the shape of the new services that might be available before this century is over. Mobile communications, in a sense we have never known it, may be available--that is, a telephone in every car, perhaps

in every pocket. We may have world-wide international communications at very low cost. There is also cable television, which may make feasible direct transmission from satellite to your local community; such transmissions could be distributed by cable, which would replace a world of channel scarcity with a world of channel plenty. Computers will come into their own in conjunction with communications systems before the year 2000. In particular, data communications will make possible an information economy; total information communications may become a reality.

By the end of this century, it will be clear that communications of all types will have quite a different shape, but it's very difficult to see what that shape will be. What will be its effect on our lives? How will it affect our economy? Some possibilities come to mind: It may bring about less geographical concentration of information and education. It may create more plentiful opportunities for person-to-person contact and for mass communications. It may bring more services into the home and the office. It is the prime responsibility of the Office of Telecommunications Policy to assess all of these possibilities and to develop policies for Government regulation or deregulation. Such long-range evaluation will help this communications potential turn into an actuality.

Why is it important that we have an office such as the Office of Telecommunications Policy? What's going on in communications that makes this necessary? First of all, I think communications are having a major impact on us as a people that we're only beginning to understand. Communications are growing, growing in use; growing in kinds of service; growing in scope and growing in importance to us. Communications affect intimately how we deal with one another; how we see ourselves as people, as a country; and how we see our world; it affects how we exchange ideas; how we conduct our political processes.

I've mentioned the technology that will be available to us by the year 2000. What man's communications is at the end of this century depends as much on what Government policy is, as on what technology can produce, because communications is a very highly regulated industry. For example, the FCC table of television station allocations was made in 1952. That happens to be 20 years ago, and yet the table remains virtually unchanged today. This allocation drives the structure of our television industry, and is responsible for much of what we will do and have available in the future.

The 38-year-old Communications Act has tended to freeze the relationship between government, private industry, and the public. We have reached a stage in the rapid growth of communications when the relationship must be allowed to be a far more dynamic one. For instance, in the broadcasting industry, the criteria used for license renewal are no longer practical nor do they make sense in many instances. The Fairness Doctrine and other access mechanisms have become a quagmire of government program control. 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.

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.

Last October I offered three proposals--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 deregulate it.

These proposals have had the intended effect of moving along the discussion of some of the real issues that confront broadcasting today. Since that time, we have talked to broadcasters, government officials, public interest advocates and others, and have explained many of the details of the proposals.

I would like today to expand on these proposals further. 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 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 station-produced 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 the 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.

In conclusion, I've tried to suggest in my remarks about communications in the year 2000 that we have the potential before us of a really bright, new world. But that bright, new world creates many complex questions and raises many complex political issues. We want to be very careful that our world does not become Huxley's "Brave New World". Sorting out all its complexities, making some sense out of it, requires us to devote more of our public discussions to these communications issues. For the long run, we will have to develop some sensible, hopefully some wise and forward-looking policies.

But, in the short run, it's going to require much more. I don't need to tell this audience that the public is concerned about the media. They're concerned about press objectivity, they're concerned about programming quality, programming choices; they're concerned about its impact on our children and many other things. A great deal of self-regulation by all parts of the radio and television industry is going to be required in the next few years. The alternative, I'm afraid, is backlash, piecemeal legislation and regulatory action that will serve no one, but could very seriously warp the potential that communications has for man even in the year 2000.

I regret that I don't have a crystal ball to tell you precisely how we're going to resolve all these questions by then, whether for better or for worse; and I think probably for better. That is not given to us to see. But radio and television have served us very well in the past in this country, very well, indeed. The men in it have every right to be proud of their service to this country. This industry has built a great base for the expansion of man's communications and I am confident that the future will be even brighter.

Communications of all types in the year 2000 will play a far larger role in shaping lives, in shaping careers, and even in shaping the very nature of our society. The outlines of man's communications for the year 2000 are being shaped right now. These future conditions deserve our attention; they deserve our very best thinking, because communications, in the deepest sense of the word, is what man is really all about.

Thank you very much.

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REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

before the

Washington Chapter, AFCEA

Shoreham Hotel
Washington, D. C.

February 3, 1972

Mr. President, distinguished guests, and members of AFCEA.

It is a distinct pleasure for me to be with you here today.

In addition to being enjoyable, it's also quite a challenge. Considering the responsibilities that you people in military communications have, and the record of achievement that you have accumulated, it would almost be presumptuous for a person of my tender years to try to put together a message that you haven't already heard.

When I spoke at the National Convention of AFCEA in June 1970, I said that we had a new Office of Telecommunications Policy with no staff, no charter, no money, and no director. We have made a lot of progress in the last year and a half. So I'd like to take this opportunity to tell you what OTP is up to these days, and how it may affect Armed Forces communications.

Our work falls roughly into three broad areas: national policy, spectrum management, and Federal communications policy and planning.

In the national policy area we are concerned about the regulation of broadcasting, the growth of cable television, the role of the specialized carriers versus existing common carriers, international communications, the domestic satellite, the Public Broadcasting Act, and the means of achieving increased capabilities in mobile radio.

On the spectrum management side, we are responsible for assigning radio frequencies to all Federal Government radio stations. We are also

concerned with the broader question of how the spectrum is carved up in the United States. We are working with the FCC to develop some improved concepts for managing this vital national resource.

In the area of Federal communications, our job is to assure the President and the Congress that the communications systems of the Federal Government are as efficient and effective as possible, and that they will meet the vital needs of the nation under emergency conditions.

The words efficient and effective, of course, cover a multitude of sins. They are open to many interpretations. To the economist, efficiency means the optimum use of economic resources. We might translate it to say -- the most bits per buck.

It's hard to measure economic efficiency in a complicated area like communications. So we sometimes take it on faith that achieving certain specific objectives will increase efficiency automatically. Over the last ten years the main objectives which have been pursued that way have been:

- centralized management
- standardization of equipment
- consolidation of facilities, and
- integration of systems.

Movement in these directions has been very slow, and organizational parochialism is frequently cited as the reason why. I think there may be

a more fundamental reason -- that the real economic payoff of these measures has not been demonstrated.

Consider a specific example. When I first took over this job, one of the major issues needing attention was the question of whether the AUTOVON and FTS telephone networks should be integrated. These are two of the largest and most expensive networks in the National Communications System. The requirements though not identical are quite similar. The government has been studying ways to integrate these networks for over five years, and these studies have cost several million dollars.

We looked at this question, working together with the Department of Defense, the General Services Administration, and the National Communications System staff. We concluded that a simple integration of the two into a single network would compromise performance for military or civil users, or both. As the payoff for that compromise, we could achieve a small increase in the operating efficiency of the networks. We have no assurance that any increase in efficiency would be translated into tariff reductions and budget savings. In short, there is precious little evidence that the pain is worth the gain, and substantial (if qualitative) evidence the other way.

There are qualitative arguments in favor of integrated systems, such as increased flexibility, compatibility, more coordinated planning for the future, and so on. But on the other side, large integrated systems

may be less efficient:

- because they are complex to manage
- because management gets further and further from the user, and
- because users with different needs may be forced to accept some standard device or service.

We have to strike a balance between being efficient and being responsive to a wide array of diverse needs. The next ten years will find an increase in the diversity of communications services and suppliers in the nation as a whole. We must also expect to have a degree of diversity within the Federal Government.

Now don't get me wrong, I am not promoting chaos. There has to be some degree of centralized planning and management of communications in the Federal Government. We can't have every field installation doing their own thing. Communications systems must be designed and run by organizations large enough to have the specialized skills and the technical depth to do a good job. We must centralize enough to produce competent and aggressive technical and management leadership. Beyond that, coordination must be accomplished without unduly watering down the responsibility of the basic operating elements.

There must be continuing review of areas where many communications systems are emerging to perform identical or similar functions.

In such areas, we have to see if there should be only a few systems, or perhaps one. In doing this it is best to focus on future systems instead of existing, stabilized systems. By the time any system becomes operational, a goodly chunk of its life cycle cost -- all of the research, development, and investment -- has already been spent. There is no way to recoup that cost if the system is turned off in favor of another system. So it's hard to save much money by consolidating systems that are already operational. For this reason, we intend to focus our attention mainly on systems that are not yet in the field, or on systems that have a considerable period of growth still ahead of them.

A good example is the area of radio navigation aids. There are several long-range, general purpose navigation systems, and a great variety of medium and short-range, special purpose ones in various stages of development and use. The Federal Government may spend between one and three billion dollars annually over the next ten years in this area, mostly for new hardware. We plan to work with the departments involved in this field to assure that a sound national program is developed -- to avoid controversies like FTS/AUTOVON in the future.

One of the things we are frequently asked is how do we make policy? Sometimes, the way the question is asked, I get the feeling people think that we are a policy factory, and they want to see the assembly line. I try to explain to them that it isn't like that at all.

Particularly in the government communications area, there is a thin line between policy making and planning. What is needed in the government is a sound planning process -- one which constantly recognizes new technology and new needs, and which identifies basic long-range and short-range choices that have to be made. Some of these choices are of broad interest within the government, even beyond the government. These are the policy questions.

So to make policy effectively, there has to be a sound planning process. It must tap into the best reservoirs of knowledge inside and outside the government. It must be a mutual process involving the people responsible for policy, management, operations, development, production and procurement. One of my major goals is to bring the planning process for government communications closer to this ideal.

As a first step, I have invited key policy officials from the Federal Departments and Agencies with major communications operating missions to become members of a Council for Government Communications Policy and Planning. This Council will advise me in the development of policies affecting Federal Government communications. It will provide a means for coordinating, at a broad level, the communications activities of the Federal Government. I plan to consult with the Council before making recommendations to the President on policies, programs or budgets.

I also hope the Council will be a means for getting experts throughout the Federal Government together to tackle problems of broad importance -- before they become crises or beyond repair. Sometimes the people who know the most about a current problem aren't assigned to a place where they can help solve it. I hope through the Council we can identify the most critical problems and find the right people to work on them.

Earlier I mentioned basic goals of efficiency and effectiveness. I said efficiency means getting the most bits for the buck. In those terms, effectiveness means getting the bits from where they start to where they are needed, and getting them there accurately and in time. One of the big problems in communications is that no one person usually has the overall responsibility for that kind of communication effectiveness. Sure, the communicators are responsible from communications center to communications center, but then in many cases other people take over -- messenger services, internal office distribution routines, the staffing process, the computer center, and so on. When someone -- usually someone in Washington -- doesn't know something he should have known, the problem is labelled a communications failure. But it's frequently not the kind of communications failure for which anyone in particular can be held responsible.

The command and control community has a pretty good grasp of this problem, and I think Dave Packard understood it very well when he issued the new directive on the Worldwide Military Command and Control System. If I read that new directive correctly, somebody is going to be responsible for designing the system from top to bottom. He is not just going to be concerned with hardware, but with everything that determines whether the necessary facts get into the hands of the national command authorities -- personnel and procedures included. I think that's a tremendous concept. It provides a framework to judge the effectiveness of existing communications and data processing services, and the need for new systems. It will be hard to implement it, but it's essential to succeed.

My point is that to really understand the effectiveness of communications, you have to take a pretty broad point of view. I am not really interested in knowing whether a circuit was up 99 percent of the time or 99.5 percent of the time unless I also know what difference it makes. We will be looking for ways to measure communications effectiveness in the most meaningful way, working with you on decisions to move ahead with needed improvements.

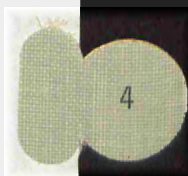
The next ten years are going to be very exciting ones. I think we are going to see a tremendous increase in new communications and electronic devices and services in the home, the office, the automobile,

probably even in the pocket. Certainly the hardware required for these services is going to be technically feasible and probably economically feasible. The limiting factors are going to be the availability of spectrum, the ability to assure privacy and security, and the ability to adapt our laws and institutions with enough speed and wisdom.

We in the Federal Government's communication fraternity are going to have to adapt to this new environment just as the private sector will have to do. We have our problems, but in some ways, I think we are ahead -- as indeed we should be. I look forward to working with you to keep improving.

Thank you.

END



4

REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

before

The Conference Board

New York, New York

February 15, 1972

I am pleased to have an opportunity to meet with such a distinguished group of leaders from such a broad range of industries. I feel very strongly, as I know you do, that only through this kind of mutual cooperation and exchange between Government and the private sector can we meet the challenges and solve the problems facing us in channeling new technologies. We will be studying very carefully the "propositions" and "initiatives" that result from this Conference with just that in mind.

One of those propositions is that those with leadership and decision-making responsibilities must consider information as a major industry, a national resource and a source of economic and political power. I think the point of that proposition is well taken. You are taking a broad perspective and a broad definition of the information industry. The technologies -- computers, communications, film, etc. -- are diverse, as are the applications -- education, finance, government, transportation, and, of course, many others.

The direct impact of the information business is already sizeable and growing at a very rapid rate. Of course, the various parts of the information business will grow and develop somewhat independently, even though there are common technologies and common principles involved. But the indirect impact of the information business is even more pervasive, and it is there that the concept of an information industry is most important to understanding what is going on.

Almost without our realizing it, the American economy has become heavily organized around information and the utilization of information. The inputs to a productive enterprise are no longer the traditional capital and labor only, but rather capital, labor, and information. And, within the general field of information, communication plays a vital role.

Communication is to the information business what transportation is to the industries dealing in goods and materials. Without good transportation, production would be scattered, decentralized and inefficient. Transportation creates large markets and permits efficient production. But it does more -- it has determined where and how we live. One only need consider the influence of rivers and harbors on population distribution to see this influence.

More and more of our national resources are engaged in the information business. Communications will be a major shaping force in this business. More and more it will determine where and how we live, how our businesses are organized, how large they become, and whom they serve. The impact goes beyond our economy. In our society, too, information technology in the forms of telephone and television have done much to change our social, political, and broad informational characteristics.

We have learned from our experience in other fields that regulation of communications has a tremendous impact on the underlying information that is communicated. In broadcasting, for instance, regulatory

policies regarding the number of television channels, programming requirements, and advertising support, have heavily directed television toward programming for mass audiences and mass tastes. As a result, regulatory policy has increasingly gone to questions of content and quality of programs broadcast over the facilities. Why? Because regulation of transmission has shaped the economic incentives and disincentives involved in providing for the programs themselves, and because once regulation is established it tends to expand its purview.

The same is true in the common carrier field of communications where highly detailed regulation oriented around public telephone service inhibits the growth of specialized communications services. Consider, for example, computer/communications services. At the present time, computers are available in a wide variety of configurations and prices. Raw computing power and associated equipment and software for these services are provided in a competitive environment that is quite responsive to social and individual consumer needs. However, when information services draw on communications as well as computers, they must operate within an economic and technological framework that is oriented towards the more conventional forms of communications, and makes carriage of data more expensive and inflexible. Where we draw the regulatory boundary between computer services and

communications will have a big influence on the services offered, the vitality and innovation in the business, and whether the incentives are to suit the technology, the Government, or the user.

So it is clear that government policies and regulatory concepts in the area of communications can have a profound effect on the evolution of the information business. Fortunately, much of the information industry is still young. If we are to guide this industry in a way that serves human ends, we must be prepared to back away from immediate problems and issues and to view things from their largest perspectives. We must trace our decisions back to fundamentals.

Some of these fundamental considerations derive from cultural values, including such issues as access, privacy and humanization. You'll notice that I phrased the last word in the positive: humanization, not dehumanization. While I do not believe that information technology will achieve the utopian ideal, neither do I think that machines necessarily destroy basic human values. Information technology is a tool that we have placed in our own hands. We can use it to enhance our own abilities and potentials, rather than degrade them. Our stress should be on developing the kind of institutions for the technology that serve this positive function, and not on creating defenses to meet a conjured-up parade of horrors.

While it is difficult to predict with any certainty the rate of growth or the detailed composition of the information business of the future, the

basic direction is clear: More information, more highly organized, more heavily dependent on technology, and more rapidly moved around. Who will have access to this emerging system of information -- access as a provider as well as access as a receiver? Will these forms of access be widely diffused or highly centralized? How will information access affect our social and political institutions? What will be its impact on the free enterprise system?

In seeking answers to these questions, we will have to recall the basic principles of variety and diversity that our society and our economy are founded upon. When we structure the information business, we structure the framework for the expression of ideas, for the exchange of information, and for the use of information in business. We will have to think of access that encourages diversity and quality in the sources of information, as well as in the way information is utilized; access that benefits individual human beings and small business, as well as large organizations and institutions; access that minimizes social polarization. Finally, we will have to think of structuring access so as to avoid the development a new class division -- the information-poor and the information-rich -- before that situation can arise.

It is obvious that there are many uncertainties in evaluating what is the best way of providing for access. The answer is neither easy nor readily available. Government cannot force people to be informed; it cannot ignore the realities and the freedoms of the marketplace; nor

can it command the evolution of technology. Government can, however, search for the public policies that will foster an industry and market structure that will encourage the applications and the technology to grow naturally in the most desirable directions.

Another important issue is privacy -- in its widest sense -- including related issues such as the integrity and autonomy of the individual. As our society grows more complex, and we become more independent, we are learning that privacy -- or the capability of controlling who knows what about you, and why, -- is fundamental to all human relations. There is a basic interest in privacy which society must not overlook. However, it is also true that the individual's interest in privacy is frequently offset by his own interest in disclosure, since disclosure is often an indispensable means to achieving another desired good. Millions of consumers, for example, disclose personal information about themselves in order to obtain commercial credit. There is also a broader social interest in disclosure. There may be times when society must obtain some private information in order to act knowledgeably for the solution of social problems. If we absolutely prohibited all data acquisition, more would be lost in terms of foregone social capability than would be gained in terms of greater individual privacy.

I do not think there can be monolithic principles to guide decision on privacy. There are certain kinds of information, or perhaps "zones"

of privacy, which should be protected from all intrusion. Beyond that, individual choice should prevail. There is no single best resolution of the competing interests of privacy and disclosure that applies for each individual or situation. But, Government can assist in shaping utilization of information technology so that once an individual or societal decision is made, there is an effective mechanism for carrying it out.

The new technologies and the new problems that come about will not necessarily require new institutions. Indeed, I think the basic objectives of diversity, choice, access, and privacy are likely to be more fully achieved in our system of private rights and legal procedures for enforcing them than through any new or expanded Federal bureaucracy.

In addition to considerations of access, privacy and humanization, the information business must be structured to achieve a degree of economic efficiency consistent with other goals. The question is how to do this. Much of our trouble in the present communications industry stems from two assumptions made years ago when we enacted the Communications Act of 1934: First, that a good part of the communications industry is characterized by natural monopoly; and secondly, that extensive regulation is necessary to prevent resulting monopolistic abuses. In many ways, the wheel is coming full circle. Instead of natural monopoly, we find that more and more communications enterprises can be competitive in nature. And, in such an environment, we find that regulation affords not just consumer protection, but also uncertainty, delay, and expense. What is the proper balance? Is the substitution of regulation for the

marketplace really best -- really justified -- or is it only due to the force of habit? Can the marketplace really be made to work effectively in such a complex and rapidly changing area?

There are no ready answers for these kinds of questions. We cannot afford to abandon the marketplace; we cannot afford to give up the choice, the diversity, and the freedom that it offers, nor can Government pretend that laissez-faire is an acceptable public policy. Rather, we will have to create new mechanisms and units of exchange which enable market incentives to operate. To illustrate this point, consider the mechanism of copyright. Presently we rely on copyright laws both to give authors the incentive to produce and to establish a unit of exchange in the market system. Once an author copyrights a book, he obtains the exclusive right to sell, publish or copy it. From the proceeds of the sale or licensing of this right, the author is compensated for his labor.

But what will happen if library services come to be provided by a computer based network which feeds information right into the home? The computer permits easy change in the form of information, including the selection of parts of several original works to produce a wholly new product. Copyright laws pertaining only to the form in which an idea is expressed do not cover the situation I've described, where only the underlying information of the idea is used, and not the expression of the idea. Without a broadening of the copyright concept, our author would starve in his garret and the flow of new ideas would dry up. Those

of you who have had experience with copyright can add to this list or problems -- for example, the difficulties of adhering to the procedural requirements of our 63-year old copyright law, like affixing copyright notice to information inserted in a data base. You can ponder over whether an evanescent display of information on a CRT is a "copy" or not.

My point is this: We could strain present copyright laws to accommodate new information technology. But there is a limit to how effective present copyright concepts can be in an environment that is so foreign to it. For the most successful operation of the market, I believe we must find a new kind of property right in information. It should serve the same underlying purposes that present copyright does, but be suited to the use, value and form of information in the newer systems of communication. This is only one example of the kind of changes we must be prepared to make to effectively utilize the marketplace to achieve our purposes.

Let me not keep talking, for I will inevitably get into more and more of the things you have been discussing already. What I have tried to do today is to pull out of the complex issues you have been considering some that seem more important for public policy. Government will have to deal with these problems and your choices as leaders in your institutions will be shaped heavily by what Government does. Similarly, what Government has to do will be shaped by what you do. It is perhaps trite to observe that Government and industry must learn to work

together more closely, but I can think of no area where it is more important, for information is now a major factor in the growth of our economy -- in the growth of your industry -- and policies for the exchange of information always have been a major concern of Government. The importance of all this is matched only by its excitement. We look forward to having the results of this Conference and to continuing to work with you in this exciting field.



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.



REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

before the

National Association of FM Broadcasters
Convention

Palmer House
Chicago, Illinois

April 8, 1972

FM broadcasters--even educational FM broadcasters--are particularly blessed. Engineers consider your portion of the spectrum to be the best one for broadcasting. If true, we should ask what FM broadcasters have done to benefit the public in return for this blessing. It's also appropriate to ask about the role of government regulation--does it help or hinder the public in extracting performance from the broadcasters? I'll suggest answers to these questions today.

It is very difficult to talk broadly about public benefits provided by radio because it is such a diverse and pluralistic medium. With over 7,000 AM and FM commercial and educational stations, you can't describe radio in generalities. It's urban and rural in outlook; it's fundamentalist and radical; it's Muzak and music; it's Top 40 and free form; it's a personal companion, yet it reflects the lifestyle of a new generation; it's variety can be endless.

This alone suggests an answer to my first question about the benefits the public receives from FM radio. FM offers the benefits of quality and diversity; an alternative and a choice. When people turn to FM radio, they find a quality sound, they find something that is unique, and, within FM's great diversity, they find what they want.

Commercial and educational FM broadcasters have not provided this public benefit out of the goodness of their hearts or the fatness of their wallets. They haven't done it because the government has ordered them to be diverse or to offer programming alternatives. Just stop and think what the regulations would look like if government had to order

into existence the sounds you hear when you scan the FM band in a major city.

No, it's clear that FM's service to the public has been spurred primarily by competition in the rough and tumble radio market. In order to survive, FM broadcasters have had to be innovative. You invested in stereo to compete with AM and now anybody who is serious about music has to have at least one FM stereo receiver. And some of you are ready to take the plunge once more and see if quadrasonic sound can be the next breakthrough. The fight for survival ironically has led a lot of FM broadcasters to cut back on heavy doses of commercials every hour. This in itself is an alternative that benefits the public. Automation and other innovations in radio operations are also part of the competition for survival in radio broadcasting.

To many of you, however, competition may not be an unmitigated joy. While it has benefitted the public, and FM revenues have climbed substantially, strong competition also means that many commercial FM broadcasters will lose money. The FCC's financial data bear this out. While there'll always be losses as long as there's competition, the percentage of stations losing money needn't be as high as it is at present. We hope that increased penetration of FM-equipped radios and greater advertiser acceptance of FM and interest in its audience demographics will improve FM's viability and increase service to the public. Educational FM's financial picture will also brighten as the Administration makes good on its commitment to greater Federal financial support.

To sum up on the public benefit side, we can conclude that the highly competitive FM medium is generally providing entertainment, information, and educational services of a type and in a manner that serves the public.

Turning to the regulatory side, the success or failure of a government policy has to be judged in terms of the results it produces. In this regard, FM's success in serving the public is due in no small measure to the fact that government policy has allowed FM broadcasters freedom from detailed regulation. Don't underestimate the importance of this factor. The absence of onerous regulation has left FM broadcasters free to compete by using specialized programming and technical innovations. And effective competition in the FM band has served the public. In our view, this regulatory freedom resulted in part from a coincidence and in part from deliberate FCC policy.

First the coincidence. It is a fact of life that new communications technologies are regulated in direct proportion to their social impact and their technical or economic impact on existing technologies. So FM was fortunate to arrive on the scene at a time when the government's attention was diverted by television. TV was and is a medium of such great social and economic impact that FM benefitted from some inattention on the part of a regulation-minded government.

In addition to the coincidence, the FCC decided to encourage FM by easing up on regulatory strictures regarding common ownership, joint station operations, and specialized program formats. Generally speaking, the FCC's FM regulation has been flexible and intelligent. The Commission nudges you from time to time with prohibitions on excessive AM-FM duplication and by increasing requirements for minimum hours of operation. But there's no denying that it's been easier to own, transfer, renew, program, ascertain, and otherwise comply with regulations in the FM radio service. The FCC deserves credit for regulating you in this manner. And FM broadcasters deserve credit for using this freedom to compete in the radio marketplace and to offer real alternatives to the public.

There is a lesson for us in FM's history. If allowing more leeway for competition has worked to strengthen FM's performance, it may be wise to use this approach more widely in broadcast regulation. We could even move beyond a simple extension of this approach and develop a new style of regulation by clear policy guidelines rather than detailed supervision. This brings me to the suggestions for radio that OTP made last fall.

We made two suggestions. First, radio must be viewed as a different medium from TV and it must be regulated differently. We pointed out that government regulatory policy must take account of radio's greater numbers, its different competitive situation, and its different impact on the public mind and on public debate. Radio is a different medium with a different message. It more closely approaches the competitive free

enterprise system than many other segments of the broadcast industry. In urban areas, there are many radio services and competition is vigorous. Indeed, FM's growing success confirms our hypothesis that, in radio, competition is a regulatory device that can produce substantial benefits to the public--many of which simply can't be regulated into existence. Therefore, with respect to regulation of radio, where there is little scarcity of outlets, competition is vigorous, and access costs for speakers and listeners are low, we should harness natural competitive incentives and use them to serve performance goals such as program quality, diversity, and innovation.

That's the first of our suggestions for radio regulation. The second is that we need a comprehensive experiment to test the hypothesis that more regulation by competitive incentive will produce more benefits for the listener. An experiment would help us determine how best to combine competitive forces and government requirements to produce the desired public service objectives.

This led us to suggest that OTP and the FCC develop a pilot program to test the feasibility of this more flexible type of regulation. The details of the project could be worked out within the limits of the FCC's power to conduct experimental programs. The essential concept is to select a few representative radio markets and remove some regulatory requirements not mandated by the Communications Act--requirements which seem to be counterproductive or unnecessary. The results of the experiment, which would extend over three or more years, would be closely monitored while

it is in progress, station performance would be reviewed, and public satisfaction would be gauged. For example, in the test areas, all radio assignments and transfers could be pro forma, the programming section of applications would not require information on programs and commercial practices, and case-by-case enforcement of the broadcaster's fairness obligation could be relaxed.

There is evidence that a more flexible and selective style of regulation will produce better service to the public. However, there just isn't enough known about alternatives to the present mode of regulation to warrant immediate changes, but we'll never know enough until we try. Therefore, rather than get involved in an extensive rulemaking proceeding or in a congressional debate, an experiment would simply allow us to proceed at once to test the hypothesis. We would know what types of regulation produce the desired results of diversity and innovation; what types of regulation are counter-productive; and what types do not make a difference either way.

I should stress that we are not suggesting this approach because we are slavishly devoted to an ideology based completely on competitive free market theory. We think that by lessening detailed supervision and giving more leeway to competitive incentives, broadcasters' performance would improve and the public would benefit. But if the experiment shows, for example, that FM broadcasters use their freedom to increase commercial matter to 20 minutes an hour, to become the 32nd middle-of-

the-road station in a market, to scream news headlines in the middle of Top 40's cacophony, or to go back to 100% AM-FM duplication, then government will have to regulate to achieve valid public interest goals. We also will have learned that broadcasters cannot match their rhetoric with performance, unless they are closely supervised by the government.

In short, we are not suggesting a simplistic approach to radio regulation. It's not an "either-or" proposition of regulation or nonregulation. We are result-oriented. We have suggested this experiment in selective regulation because we think it would benefit the public. We will not know whether a new type of regulation would produce these results without making the attempt. And we should make the attempt. I urge you to work with us and the FCC to define the ground-rules for an experiment and help us get on with the task of serving the larger public interest to which we are all dedicated.

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REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

before

National Association of Broadcasters

50th Annual Convention
Conrad Hilton

Chicago, Illinois

April 10, 1972

I've been called a lot of names since becoming the Director of OTP. The one that has intrigued me most is "Czar of the Airwaves." I've thought about this and have concluded that having a government broadcasting czar would be in the public interest. If you will indulge me for a bit, I will try to explain why.

The knowledgeable people in this country--our elite citizens--realize the basic flaw in our broadcast system: Broadcasting is just too important to be left in private hands. Instead, the Government should control what the people see and hear--for their own good, of course. There are a lot of ways we could do this. We could nationalize the broadcast industry and run it ourselves. But it would be easier to leave broadcasters in place and simply make them agents of the government. Then broadcasters, as the government, would be subject to First Amendment restrictions but would have no First Amendment rights.

In short, the rights of listeners and viewers would be paramount. Of course, no individual would have the right to express his views on the air, or see any particular program. You see, it is the people as a whole who have free speech rights on the airwaves. Government alone can be trusted to control programming, in order to make broadcasting function consistently with the First Amendment.

Once the rights of the viewer and listener are firmly established, no matter what the problem may be, the Government can readily solve it. What about the constant pressure for higher quality programs? Government could simply require greater percentages of broadcast time for drama, ballet, opera, and blue grass music. Is there concern about violence on the home screen? Government could rule all violent

programs off the airwaves. If news and football must be kept, however, we could require warnings that they may be injurious to the viewer's mental health. Is there a groundswell of opinion against ads in children's programs? Government could forbid broadcast advertising for any product that may appeal to children. Do many believe that the consumer's anguish could be alleviated by counter advertising? A responsive government could handle this by making advertisers buy spots for split-screen presentation--one half for the ad and one half for the counter. Is there a clamor for personal access to the broadcast media? Government could respond to it by using the old soapbox technique, only Government decides who gets on the soapbox for what purpose. We'd rely on the stations' traffic departments to schedule appearances and to make sure that no one's right to be heard in prime time is infringed.

Of course, there will be some drawbacks to this type of broadcast system. The programming may turn out to look, in fact, like a typical license renewal application. That is, it may consist of programs that the government thinks are in the public interest, but do not attract audience attention or advertiser support. If this happens, we may need to subsidize broadcast stations to keep up the flow of programs that are good for the public. Talk about real public broadcasting!

But discounting the drawbacks, there could be a lot of advantages for broadcasters in the Czardom. For example, broadcasters would be relieved of the time-consuming responsibility of exercising judgment

and discretion in serving the public interest, there would be no need to limit multiple ownership and cross-ownership, no need to assure that the best qualified person has the license, and no need for license renewals. In the words of a famous broadcast personality: "Try it, you'll like it."

That's enough fantasy. Let's get back to reality. I'd like to talk about two current matters--a pending Supreme Court case and a regulatory proposal. The court case involves a group called Business Executives Move for Vietnam Peace (BEM) and its attempt to purchase anti-war spot announcements. The Supreme Court will be reviewing a decision of the D.C. Court of Appeals, which states that broadcast licensees are agents of the government --in effect, are the government--for First Amendment purposes. The decision in this case may well determine whether the government-controlled broadcast system I described is only my fantasy or your future reality.

Most public discussion of the BEM case has centered on the result which required the sale of some broadcast time for editorial-type ads. But, as with most Supreme Court cases, the implications will be much broader. Without getting too deeply involved in the legalities, let me explain. We would not expect to see a BEM-type result if a newspaper were involved in the case rather than a broadcast station. A privately-owned newspaper or magazine can't violate anyone's First Amendment rights by refusing to print a letter to the editor or run an editorial ad. That's because the courts have held that the private

sector enjoys the benefits of the First Amendment and only government is subject to the restrictions.

Until BEM, it was thought that the different treatment accorded the print media and the broadcast media was constitutionally justified because of the scarcity of spectrum space. That was a rationale that left broadcasters separate from the government and entitled to most of the benefits of First Amendment protection. But the Appeals Court in BEM moved far beyond the spectrum scarcity approach to create a new rationale for singling out the broadcast media for unique treatment under the Constitution. An outline of the BEM reasoning goes like this: (1) Broadcasting is now the most important public forum; (2) the content of such an important medium must be regulated for the public to derive full benefit from it; (3) the First Amendment barrier to content regulation of a communications medium does not shield government activities; and (4) therefore, content can be regulated if broadcasting is found to be the government for First Amendment purposes.

However, the logic the court relied on to make this key finding is a tautology--that is, true simply because its truth is asserted. The BEM tautology is that, in the past, something unique about broadcasting justified extensive government involvement, now the extent of government involvement is the thing that makes broadcasting unique. This kind of logic is specious and cannot support unique treatment for broadcasting under the Constitution.

When the faulty logic of the BEM case is exposed, all that remains is the effort to control content in broadcasting because it is an important and effective communications medium, and this effort, the Constitution forbids. The court made this effort simply to create a personal right of access mechanism for the broadcast media. But, in using a government instrumentality theory to accomplish this, the end result is an abridgeable right of access--abridgeable at the discretion of the government. There may indeed be legitimate reasons for creating a right of access to broadcasting. If so, it should be a right that does not depend on government discretion for its implementation. Furthermore, it should be created under clear legislative guidelines and not under a conceptual approach that distorts the First Amendment protections of broadcasting simply as a convenience.

This same type of approach also underlies the recent counter advertising proposal of the Federal Trade Commission (FTC). The FTC proposed that time be given to discuss advertising claims that are disputed within the scientific community, or to discuss the negative aspects of advertised products. What this boils down to is that there would be government-controlled access to the broadcast media to state a personal opinion on almost any matter. Although this proposal was made in the FCC's Fairness Doctrine inquiry, it has little to do with that Doctrine. Rather it would shape the Doctrine into a new tool to regulate advertising, and thereby expand it far beyond what was originally intended and is now appropriate.

The Fairness Doctrine has usually been justified as serving the need to inform the public on important issues in a balanced manner. But this is not the goal of counter advertising. That goal is to give the consumer more realistic information about the products he is being urged to buy. That's a fine objective. It's the objective of the FTC's regulation of deceptive and misleading advertising in all media. But it's not a goal that the Government should try to achieve through content regulation of the broadcast media. There are substantial practical problems involved in implementing counter advertising via that route that the FTC never considered. Free access could be required to respond to almost any broadcast ad. Any one of them could cut into broadcast time and set off a barrage of charges and counter-charges, resulting in a bewildering clutter of opinions. Equally important, the counter advertising proposal could not be sustained in the courts without faulty logic similar to the reasoning in the BEM case. How else could a broadcaster be forced to provide free access?

Once access were provided for the counter advertising purpose, neither practical problems nor the dangers of faulty logic are likely to prevent this government-controlled access right from being applied to programs as well as ads. It's not as farfetched as it may sound.

How would the courts respond to claims that a weekly series on the FBI suppresses negative aspects about this agency; or that the doctors and lawyers appearing on the audience's favorite programs are not representative of those the average viewer meets; or that Sesame Street's Cookie Monster encourages poor eating habits and Big Bird is a male

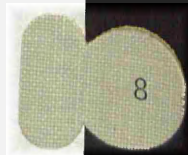
chauvinist pig. It could get so bad that Archie Bunker could kickoff the broadcast week on Saturday nights and the rest of the week would be devoted to rebuttals. Some may think that the public wants endless debate on the merits of aspirin, household cleaners, the FBI and Marcus Welby, but I hardly think that an infinite variety of charges and counter charges is what the public wants or what advertisers will underwrite.

As with all discussions of broadcast regulation, and its theory and practice for fun and profit, we eventually get around to the public, and ask about the government's and the broadcaster's responsibility to the listeners and viewers. Some seem to believe that broadcasters and the public sit at opposite ends of a seesaw and as broadcasters lose their freedom, the public's freedom is increased. But this is a dangerous and grossly oversimplified view. It tempts those who hold it to back into a broadcast system in which the government decides what the audience sees and hears. However, it is one thing to back into this type of system and quite another thing to advocate its adoption purposefully. It is particularly distressing, in this regard, to see an FCC Commissioner acting as one of the most strident proponents of this type of system. Does Commissioner Johnson consciously realize where his advocacy will take us, or is he so dazzled by his own rhetoric that he fails to see the consequences? When he charges some broadcasters and some government officials with activities running the gamut of morality from child molesting to murder, is this merely the

latest escalation of rhetoric or is it a calculated device to enlist public support for the denial of constitutional rights to broadcasters? In any event, no one should be led blindly to a government-controlled broadcast system by proponents of an elitist philosophy that masquerades as populist, while presuming that government knows what's best for the people.

Of course there is room for improvement in many aspects of broadcasting. But in the areas that I have discussed today, the broadcaster and the public he serves are on the same side, and the broadcaster's loss of independence diminishes us all.

The problems I have discussed today are complex. I honestly do not have the complete solution to all of them. But I do not feel too badly about it, because I don't think anyone does. I do know that the status quo has slipped beyond our ability to bring it back and there are no simple changes to be made. Change must come, but it must be orderly and it must be planned responsibly. Perhaps it is too late for this. Maybe it is too late to preserve the private enterprise system of broadcasting in our country. This Administration hopes not. We hope that it's not too late to fight for freedom in broadcasting. For when we do so, we preserve the public's interest in a free press and in a medium of expression that is open to diversity and change.

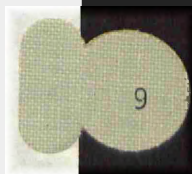


INTERNATIONAL RADIO AND TELEVISION
SOCIETY COLLEGE CONFERENCE

NEW YORK, NEW YORK

APRIL 20, 1972

(NO NOTES)



REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunications Policy
Executive Office of the President

at the

American Newspaper Publishers Association
Convention

Waldorf Astoria Hotel
New York, N.Y.

April 27, 1972

As was intended to be conveyed by the somewhat awkward name of the Office of Telecommunications Policy, I really have nothing directly to do with your business of newspaper journalism. My proper province is the field of electronic communications -- radio and television, telephones, undersea cables, and communications satellites. There are, however, a number of areas in which my concerns overlap with yours, and I would like to discuss a few of them with you today.

First of all, there is the area of cable television. As you know, this new technology today enables enormous electronic communications capacity-- 20, 40 or even more television channels--to be brought into the home. The end of last month, following a compromise agreement among broadcasters, cable owners, and copyright holders which OTP had something to do with, the Federal Communications Commission adopted new rules which have the effect of permitting significant growth of cable television in major cities in the near future. Present predictions are that 40 to 60 per cent of the nation's homes will be wired for cable by 1980.

The significance of cable for you newspapermen is varied. First of all, I suppose you must look upon it as a new competitor for the advertising dollar. And perhaps a competitor more formidable than over-the-air television, because its production costs (and therefore advertising rates) can be lower and also because its enormous channel capacity enables it to carry specialized programs targeted for relatively narrow audience groups.

But I think you should also regard cable as an opportunity-- providing the possibility, in the not-too-distant future, of

significantly improving the process of printed news preparation and distribution. I refer, of course, to the potential for facsimile reproduction and delivery of your product. Processes which are now technologically feasible will enable the permanence, convenience and completeness of the print media to be combined with the promptness of electronic news--at least for those specialized users willing to pay a premium for the service--and perhaps even for the public at large. But aside from its ability to assist your present business, I think you should regard cable in and of itself as a new field for the application of your peculiar talents and experience. For cable television is above all a local communications medium. In the area covered by a single broadcast signal, there may be scores of separate cable systems, each with production facilities to serve the particular needs and interests of its own community. Good newspapermen have always been experts on the subject of local needs and interests. You can use that experience to assure that the new medium achieves its full potential for diversity and for community service. You can use it, that is, if you are permitted to do so.

Which leads me to the crucial question of whether our regulatory system will enforce an artificial segregation between newspapers and cable television, based upon the differences in their present technology and ignoring the substantial similarity in their functions and needs. As you know, there have been pressures in recent years to exclude newspaper acquisition of interests in radio and television broadcast stations--and even

to undo newspaper ownership where it already exists. Whether prohibition of joint ownership will be created in this field is a serious issue, especially in these early days of cable television. To my mind such a prohibition would be a great mistake--and there are means of structuring cable ownership and development so as to avoid its necessity, even in the eyes of the most zealous opponent of "media concentration." The President's Cabinet committee on cable television is currently examining this issue, among others. We are seeking to develop options which will enable you to share the benefits of this new technology--and the public to enjoy the fruits of your participation.

I want to turn now from discussing your relationship with the new technology to discussing your relationship with the old--if anything as new as over-the-air television can be called old. I hope to convince you that some of television's major problems are your problems as well--and that you should be concerned with the search for the correct solutions. The first of these problems is the so-called "Fairness Doctrine." As originally stated, this principle requires the broadcaster to present various sides of controversial issues of public importance. As recently applied by the courts, however, it has been held to require free counter-time when controversial issues are even implicitly raised by advertisements (for example, ads for automobiles, which are said automatically to raise the controversial issue of automobile use as a source of air pollution). And most recently, the Federal Trade Commission has suggested that the Fairness Doctrine should require all advertisements to be

subject to counter-ads which point out the omitted "negative aspects" of the products. (These "negative aspects" would even include the fact that a competing product which does substantially the same job costs less!)

I do not recall reading in the press many blistering editorials concerning the absurdity of such proposals. Perhaps it is too much to expect you to spring to the defense of your prime competitors for the advertising dollar; but I hope you will set aside the erroneous notion that what is bad for your competitors is necessarily good for you. For the "Fairness Doctrine" is a runaway theory that may trample you next. In the famous case which upheld the constitutionality of the Fairness Doctrine, the Supreme Court accepted, as the essential justification for permitting Government specification of broadcast content, the scarcity of broadcasting outlets. Surely that reasoning should cause your industry some alarm, because there are four times as many commercial broadcasters as newspapers; barriers to entry in the newspaper field are higher; and the industry is generally characterized by higher concentration of ownership than broadcasting. Do you think it fanciful that the Government could impose upon newspapers the obligation to print certain material? Then read the Red Lion case--see how "reasonable" its simple prescriptions are: The object of the First Amendment, you see, is to enable the people to hear all sides, and a rule such as the Fairness Doctrine furthers rather than inhibits that purpose. If you have not heard it seriously suggested that the Fairness Doctrine be extended to newspapers, I have; this is urged repeatedly by some of the more ardent supporters of the Fairness

Doctrine in broadcasting. In 1970 a bill to this effect was introduced in the House of Representatives.

Let me mention another instance of Government intervention, more recent than the Fairness Doctrine and more fearful to your colleagues in the broadcasting industry. Last summer, the United States Court of Appeals for the District of Columbia held that broadcasters could not refuse to sell advertising time for the presentation of politically controversial material. The justification for this severe restriction upon the editorial freedom of a private broadcaster? The justification was that he was no longer a private broadcaster but a "public trustee"-- virtually an arm of the Government, and therefore subject to the same Constitutional constraints as the Government itself. And how did he become a "public trustee"? Surely not by waiting in line. He seems to have become so quite by accident, through the combination of two factors: (1) his importance as a medium for the communication of ideas, and (2) the high degree of Government involvement in his activities.

I am sure you see the possibility of applying similar reasoning to your industry. The first of these two factors unquestionably exists. As to the second (extensive Government involvement in the industry) that is easy enough to find--or, if we can not find it, to create. Consider the Newspaper Preservation Act of 1970; the special second-class postage rates; the FCC cross-ownership rules; the special protection from libel actions accorded to the press; and the governmental provision of special facilities such as press rooms, news briefings, press passes to areas where the citizenry at large is denied access.

Surely these are all examples of Government "involvement" in the print media. In fact, by a queer twist of logic it might be said that the First Amendment itself is a sort of special Government privilege accorded to the press, thereby justifying a governmental requirement of "fair access" in exchange.

As I am sure you know, several states have already passed laws requiring newspapers to print replies to personal attacks. This is just the thin edge of the wedge. A number of commentators have urged more extensive Federal regulation of newspapers, in reliance upon various provisions of the Federal Constitution. The signs indicate that we have taken the first steps down a road which is long, difficult to retrace, and extremely dark at the end.

The point of these last comments is to urge your support in recalling our citizens to a proper understanding of what the relationship between the Government and the mass communications media should be in a free society. Of course regulation always seems like a quick and ready solution to the inequities and the inadequacies that we see about us. I have a file drawer full of letters from citizens--many of whom purport to be ardent devotees of private initiative, limited government, and a free society--complaining about this or that "slanted" program on television and requesting Government intervention to set it right. It is difficult to be against balance; it is difficult to be against fairness; it is difficult to be against the proposition that no one should arbitrarily be denied access to the media. But being

in favor of these principles does not necessarily mean being in favor of their implementation by the Government. No society that ever adopted a system of censorship did so for reasons which it thought were any less noble than balance, and fairness, and access. But the nobility of the purpose does not alter the ultimate intellectual desolation to which the system leads.

There are those who argue that the Fairness Doctrine and a requirement of access are congenial to a free society because they represent a sort of "affirmative censorship"--that is, they do not exclude any idea from the marketplace, but to the contrary give the widest possible circulation to all opinions. It seems to me this approach misses the point of the First Amendment. The reason our Constitution prohibits censorship of the press is not because all ideas are equally worthy of being expressed. Some are quite obviously not worth a nickel; you would not publish them in your newspaper, nor would any responsible man publish them in his. The purpose of the Constitution is not to dispense with the exercise of this editorial judgment and responsibility--for that would mean not only social chaos but also a genuine diminution rather than an increase of personal freedom. What if the British could have compelled Tom Paine to devote half of each of his pamphlets to "the other side" about the Revolution? Or if the anti-Federalists could have compelled Madison and Hamilton to give equal time to the opposing view in their Federalist Papers? Such compulsory inclusion would be as tyrannical as the more traditional, exclusory form of

editorship--and at least as foolish. Despite the rationalization of the advocates of "affirmative censorship," it ultimately harms rather than furthers the true goals of the Constitution. The First Amendment was meant to take the Government out of the editing business--whether the editing consists of deletions or insertions.

I believe strongly that obligations of journalistic balance, fairness and reasonable access do exist. But they are obligations which our society has wisely removed from the power of the State to enforce. When, as sometimes happens, you fail to measure up to your calling, you deserve open and public criticism, for a responsible press is essential to our free society. Government regulation, however, cannot force you to exercise your responsibility properly; in the guise of doing so, it can in fact only relieve you of responsibility.

I do not mean to suggest that the issues are that clear-cut, or the solutions that simple, with respect to the actual application of the Fairness Doctrine to the broadcasting industry by the FCC. The Government has to make some evaluation of the journalistic responsibility of broadcasters, because under our existing system the FCC must determine who among competing applicants is the best qualified to broadcast. As you may know, the Commission is currently reexamining its Fairness Doctrine procedures and I am sure it will do as much as possible to perform its duty of licensee evaluation with the least possible intrusion upon First Amendment rights. But I am concerned, and I think you should be concerned, that this involvement has come to be

regarded in some quarters as not a necessary evil attending the peculiar nature of the broadcast licensing process, but rather as a positive good which should be extended to all segments of our mass communications media. As that philosophy spreads, the freedom of your industry is endangered.

There is without question no nation in the world that has a longer or more vibrant tradition of press freedom than the United States. And I think it is no accident that the most rapid growth of journalism has likewise occurred here--providing for the American people the most complete and current information on international, national and local affairs. As I indicated at the beginning of this talk, your industry now stands to benefit from a new technology which can increase still further your ability to educate and inform. I have discussed the new technology together with the old freedoms--cable television together with Tom Paine--because without the freedoms, the technology is not worth the trouble it takes to turn it off. This Administration intends to implement policies that will give full scope to both the technology and the freedom, in order that your industry may continue its responsible role so vital to an open, democratic society.