

REMARKS OF

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Clay T. Whitehead, Director

Office of Telecommunications Policy Executive Office of the President

before the

National Cable Television Association Anaheim Convention Center Anaheim, California

June 20, 1973

A little over a year ago, one commentator stated that cable television was going to be just the same thing as regular television, only worse. "Real television," he stated, "dreary, hackneyed, boring, and gutless as it is, is at least run by professionals. All the guys in the cable television companies are the guys who aren't good enough to make it in real television." He then lamented that the only things he had seen on his cable set were old British movies -- which he had seen a thousand times before.

This type of comment about cable is not unique. People have made such statements about every new technology or new service that has ever been introduced in the country. Let me read you some of the things that people were saying in the past about a few new-fangled ideas.

Most investors in the 1870's regarded Alexander Graham Bell's telephone invention as an interesting "toy for hobbyists," certainly not a serious long-term investment. One study reported as follows (see if it sounds familiar):

> Bell's proposal to place the telephone in every home and business is, of course, fantastic in view of the capital costs involved in installing endless number of wires... Obviously, the public cannot be trusted to handle technical communications equipment. Bell expects that subscribers to his service will actually pay for each call made and

they will agree to pay a monthly minimum if no calls are made. We feel it is unlikely that any substantial number of people will ever buy such a concept"

Obstacles of another sort were encountered by Lee De Forest, the inventor of the vacuum tube, which makes radio broadcasting possible. In 1913, De Forest was brought to trial on charges of using the U.S. mails fraudulently to sell stock to the public in his worthless enterprise. The District Attorney charged that De Forest made the absurd and deliberately misleading claim that it would soon be possible to transmit the human voice across the Atlantic. De Forest was acquitted, but advised by the judge to "get a common garden variety of job and stick to it."

Writing in the 1830's on the growth of the new railroad industry, one commentator argued that railroad growth should be curtailed. The reasons:

> Grave, plodding citizens will be flying about like comets. All local attachments will be at an end. It will encourage flightiness of the intellect. Veracious people will turn into the most immeasurable liars It will upset all the gravity of the nation.

The cable industry can expect to hear similar statements made against its development. In fact, the campaign to stop cable has already begun. Statements are being made in the press; arguments are being made to the Government; and the public is being told how cable will end the American way of life. Let's take a closer look at some of these claims and charges against cable.

One is that cable must be stopped because viewers should <u>under</u> <u>no circumstances</u> have to pay (or for that matter, be allowed to pay) for what they watch on a television screen. People can buy paperback books, magazines, and movies, but not television shows. Paying for television is inherently against the natural order of things, and maybe even down-right-un-American.

Never mind that there may be many viewers who would be willing to pay to get programming that advertisers don't find it profitable to support. Never mind that the aged, infirm, and the deaf may benefit immensely from having special-interest programming brought into their homes via cable. And that they would be willing to pay for these benefits.

We all know how closed-circuit movies are catching on in hotels and motels. These critics don't seem to realize that they are creating another immoral purpose for renting a hotel room, namely, to pay for a TV program they can't see in their homes.

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Others claim that mass appeal national television programming promotes a shared national experience. It inculates a unified national vision in our people. Cable's greatly expanded channel capacity would allow people to watch whatever they wanted, thereby fragmenting the audience and destroying this national vision. Cable might even bring low-cost channels devoted to single communities, or school districts, or even neighborhoods. This would turn communities inward, away from national goals, and it must be prevented.

Others charge that cable will violate the individual's right of privacy. A great deal of information on the subscriber's living habits would become available to industry, and government, resulting in "big-brotherism" in its worst form. Never mind the fact that in stopping cable's growth the Government would also be denying individual consumers the right to decide for themselves what they want to see and hear.

Concerns about privacy and security in cable communications are not only legitimate, they are extremely important; but these concerns are not reason enough for the Government to ban cable's development. As it is necessary it is possible to achieve a balance in protecting the right of privacy

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while at the same time allowing customers to buy cable services.

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Other complainers charge that cable's two-way educational, library, banking, shopping, and newspaper distribution services would put an end to human interaction. If people could handle their daily transactions via home cable hookup to stores, banks, and libraries, what would become of social contact? There would be an inhuman sense of alienation and individual anonymity (just as books brought about, I suppose).

Moreover, if people could see movies and sports in their homes, won't our theaters and expensive coliseums and sports arenas deteriorate with the rest of our inner cities? Without the bright lighting that is emitted from our arenas, movie and theater marquees, our inner cities and even suburbs will become even more crime ridden.

Some of these charges are obviously far-fetched, and others are merely self-serving claims advanced by those who stand to lose business by cable's development. Embedded in some of these arguments, however, are elements of fact. We <u>should</u> be concerned over cable's ultimate impact on society. But before we can determine what cable's impact on society will be, we must know how it is going to develop. And at this point it is too early to tell. We have to have some solid data and, to date, very little is available. It is possible, however, to make a few predictions.

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First, cable television is going to come.

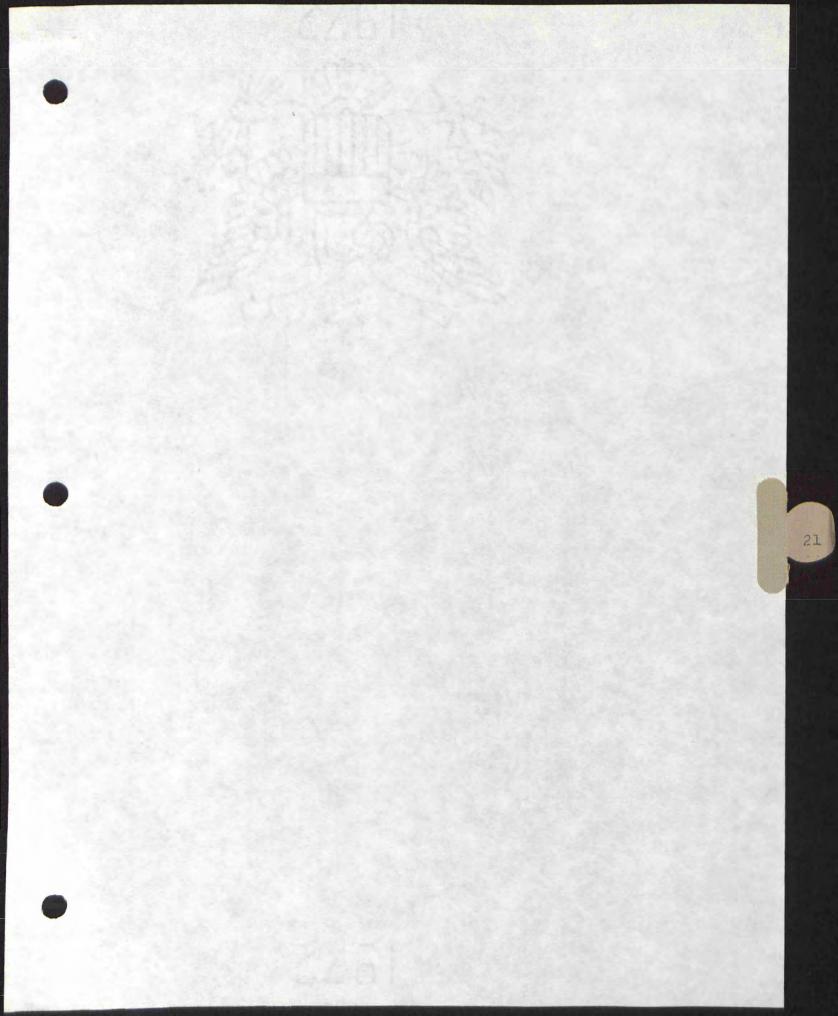
It will come with a multiplicity of channels; the majority of our American homes will be wired for cable; and we will have an electronic information distribution system in which cable and related technologies will play a major part.

Regulation at all levels of Government will have to be sorted out, but the biggest point here is that Government should not block cable's growth. No one has done more to that end than Chairman Dean Burch at the FCC. The Commission has done an exceptional job of getting cable moving again. The cable industry and television public owe a great debt to Chairman Burch for removing the regulatory logjam blocking cable's growth. Many regulatory issues remain, of course, and some important policy issues regarding the regulatory environment for cable must be resolved. The Cabinet committee on cable television has been studying these problems and, hopefully, its recommendations will match the dynamic character and promise of the cable industry. But uncertainties about policy or regulation should not be an excuse for inaction.

Government can go only so far. Cable, like broadcast TV, is going to have to be a profitable private enterprise activity, so don't wait for Government to tell you what to do. The cable industry is going to have to make the next moves. The industry will have to decide whether to expand the range of programming and services presently available to the viewing public and ultimately take its place as full-fledged member of the communications industry. Or whether, instead, to accept the view of many of cable's detractors and remain simply an ancillary retransmission medium or merely as a purveyor of stale old films.

Let's fact it, the viewing public can benefit from the full scale development of cable systems throughout the country only if it means more and better programming with more choice for the viewer. The potential and capacity of cable to expand programming and the consumer's choice is great indeed. Granted, there will be problems and complications in cable's movement to industrial maturity. But they won't be any more difficult than those encountered by earlier entrepreneurs.

Some of the arguments lodged against the development of the railroads, telephone, and radio industries seem ludicrous to us today. But if you people gathered here measure up to those who went before in other industries, if your main concern is finding out what the public -- the consumer -- wants and needs, then I am sure that generations after us will be similarly amused at some of the exaggerated fears and short-sighted statements that were made against cable in its formative years.

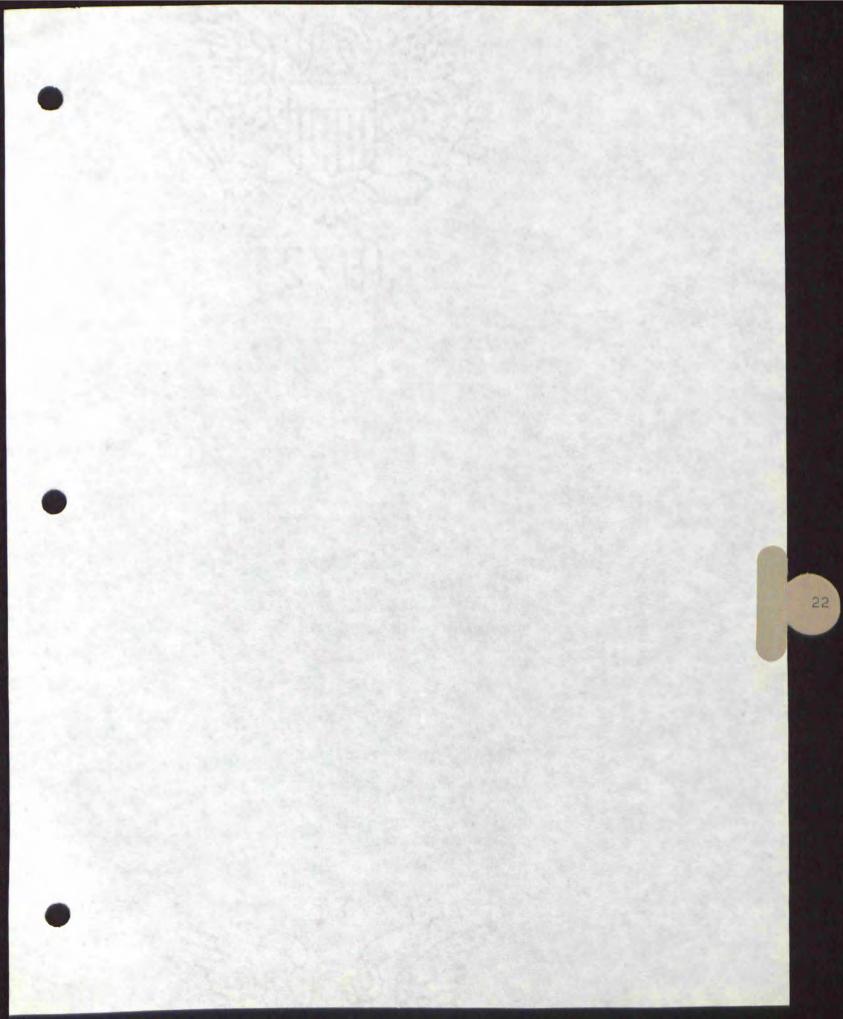


NATIONAL BROADCASTING EDITORIAL ASSOCIATION

WASHINGTON, D.C.

June 27, 1973

(No Text)



STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR OFFICE OF TELECOMMUNICATIONS POLICY

ON

FEDERAL INFORMATION SYSTEMS

before the

Subcommittee on Foreign Operations and Government Information Honorable William S. Moorhead, Chairman Committee on Government Operations U.S. House of Representatives

July 31, 1973

Mr. Chairman, I welcome the opportunity to present my views on the use of advanced information and communications technology to improve Federal information services, and to explain the responsibilities of my Office in that regard. I have with me today Mr. Charles Joyce, the Assistant Director for Government Communications in OTP.

The Office of Telecommunications Policy was established in 1970 to provide a focal point for the development of administration policy in the area of electronic communications, and to coordinate the activities of the various Federal Departments and Agencies in this area. The scope of my responsibilities includes electronic communications, and matters arising out of the joint use of computers and communications. I am not responsible for matters involving solely the use of computers, or for matters in the area of information which are totally apart from any use of electronic communications systems. But this latter point is not particularly limiting with respect to the subjects I will be discussing today since most of the issues of public concern in the area of information handling involve electronic communications in one way or another.

I will now try to cover briefly each of the areas listed in your letter, Mr. Chairman.

OTP Role in Federal Information Systems

First, you asked about our role in providing technological services to other agencies, and in planning, operating and coordinating Federal information systems. OTP does not provide technological services to other agencies. Nor do we operate any telecommunications or information systems, except as may be needed for our own internal use.

We are responsible for providing policy guidance to Federal Agencies which do operate such systems, and for coordinating the efforts of these agencies in the interests of Government-wide effectiveness and economy. To accomplish this task in a systematic way, I have initiated a joint planning process in which Federal Agencies with similar operational missions and communications requirements will work together to optimize the communications operations in their respective areas. The five initial mission areas which have been identified for this type of planning are: National Security, Law Enforcement, Transportation, Environment, and General Administrative Communications. In each area, the agencies involved will be responsible for jointly reviewing their telecommunications plans to eliminate duplication and achieve maximum economy and effectiveness. OTP will review the resulting combined plans to assure overall consistency and adherence to national communications policy.

Sharing and Interconnection

Sharing and interconnection of systems are measures which are pursued within the Government with the objectives of achieving economy and maximizing the usefulness of communications and information systems. These are worthwhile objectives, although I am not convinced that they have been achieved in some of the present programs. In any event, interconnection and sharing are not ends in themselves, and they do entail risks of compromising privacy which must be recognized.

Safeguards

You asked for my views on safeguards needed to protect against misuses of Federal information systems, specifically the invasion of privacy and use for propaganda purposes. In responding to that, let me explain how these concerns present themselves in Government communications planning, and where responsibility lies for action.

While there is no single generally accepted definition of "privacy" or the "right to privacy," it is widely acknowledged that a reasonable freedom from intrusion is essential to normal human growth and stability. The individual should not have information thrust upon

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him. The "right to be let alone" implies a degree of protection from unwanted sights and sounds.

The claim to privacy in the information context is based on the dignity and integrity of the individual. These concepts are tied to the assumption that all information about a person is in a fundamental way his own, for him to determine when, how and to what extent it is communicated to others. People also recognize that much of society's business can be conducted only if confidentiality of communications is respected. By protecting this privacy, society ensures its own well-being and development.

Privacy as a fundamental value is essential to a democratic system, which has, as its highest goal, the liberty of the individual. Privacy, however, is not absolute. There is an inherent conflict, for example, between the Government's need for information to pursue justice and an individual's need for personal privacy.

Electronic technology has greatly increased the ability to acquire and disseminate information. Mechanisms to ensure individuals their privacy and the privacy of their communications have not advanced as rapidly. OTP has undertaken to investigate the adequacy of common law, statutes, and Federal regulations to protect individuals regarding the privacy of their electronic communications

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and the security of the systems carrying them. This is being done with the view towards identifying what policies, standards, or legislative safeguards are necessary.

Communications, computers and other information technologies lower the cost and increase the speed of large scale information collection and processing operations. These technologies can therefore expand the power of the Government and other large institutions vis-a-vis the individual. They <u>could</u>, for example, increase the ability of Government agencies to assemble confidential information about persons to the detriment of individual privacy. They also <u>could</u> increase to an undesirable degree the power of Government to influence large numbers of citizens with respect to Government policies, that is, to propagandize the public. But such results are not inevitable. They must be prevented, and they <u>can</u> be prevented if we are aware of the dangers and develop appropriate safeguards. What are those safeguards?

Privacy

To safeguard privacy, it is essential to protect the confidentiality of data which, by law, is to be collected and used for limited purposes, such as census data, tax returns, social security data, and investigative files. The

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responsibility for protecting such files in most cases must lie with the agencies charged by law with collecting the data. Any breach of confidentiality must be laid squarely at that agency's door. Clear responsibility and procedures for correction are, as they have always been the best safeguards.

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But this simple rule is not enough when Federal systems containing confidential data are to be interconnected, or when confidential files are to be used in shared information systems. Admittedly, there are potential benefits to interconnection and sharing in the form of greater overall economy and wider accessibility within the Government of useful information. However, such steps also contain risks or loss of effective control over confidential data. It is in resolving these conflicting considerations of Government economy and effectiveness and sound public policy that my responsibilities come into the picture.

I have been working with the Federal Agencies who have extensive telecommunications systems to clarify Federal policy on interconnection and sharing. We have not yet come to the point of issuing any all-encompassing policy document -- perhaps we never will. But we have come to an understanding that interconnection and sharing are not ends in themselves. OTP has been insisting on a clearer understanding of the magnitude of benefits and risks involved in interconnecting or combining Government systems.

Looking to the future, I expect that the planning process I referred to will provide more information, for all parties concerned, about plans for the future of Federal Government information systems. To provide guidance for this planning, we have initiated studies to determine more clearly the desirability of shared systems and the risks involved. We are closely following efforts to assess the current state of the art in technology for controlling access within information systems so that we will be well informed on the risks.

Propaganda

The other area of concern is the possibility of abuses in the dissemination of information by the Federal Government. We must recognize that there are important needs for Federal agencies to provide certain types of information to the public. However, two types of abuses can occur: First, undue efforts to influence public opinion in favor of Federal policies, agencies or individuals, and second, extensive provision of routine information services by the Federal Government which could be provided adequately by the media or other private organizations. We are concerned here today primarily with the former possibility, an abuse which might be called propaganda. Again, the primary responsibility for controlling excessive propagandizing must be with each Federal Department and Agency.

An area which bears watching is the provision of public service announcements by Federal Agencies. Broadcasters are strongly encouraged by Federal regulators to carry public service announcements. Federal Agencies may use this opportunity to support the presentation of a wide variety of messages regarding their activities and programs. But we should be alert to possible abuse of this opportunity by Federal Agencies -- the number and type of such messages produced and distributed by the Government must not constitute an unwarranted intrusion into the public mind.

It is possible for the Government to increase its "information power" indirectly or even inadvertently, through projects designed for other purposes. Efforts to develop, demonstrate or utilize various types of information systems or technologies could possibly become new avenues for Federal propaganda, even though that is not the intended result.

One example of this concern is posed by the new warning system designed by the Defense Civil Preparedness Agency -

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the Decision Information Distribution System, or "DIDS." The system, which is still being evaluated, was designed to serve a worthy purpose, namely, warning of impending attack or natural disaster. However, there is some basis for concern about how such a system, once in existence, might come to be used. In view of the possibility of misuse, however remote, I believed that it would be bad policy to force people to have a DIDS receiving device in their homes. We opposed the idea that legislation should be sought to force manufacturers to incorporate such a receiver in every new TV set. OTP established the policy that any purchase or use of home receivers for warning would be on a voluntary basis. Further, we are watching the project closely to assure that no additional functions are planned for the system which might lead to misuse or to competition with the news media or other private sources.

We have also been concerned for some time with Government sponsorship of broadcasting-type communications projects, including the development of broadcasting capabilities on NASA's ATS series of satellites. NASA is discontinuing such development projects, with OTP's concurrence, after the launch of the ATS-F next year.

Our concern is not directed only, or even primarily, toward high technology projects. Indeed, the use of

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very commonplace equipment can be a cause for concern. Through the simple expedient of an automatic telephone answering device, some Federal Agencies have made it very simple - perhaps too simple - for radio stations to record and retransmit announcements about Federal programs which were pre-recorded by Federal spokesmen. The technology involved here is trivial. The impact of such arrangements, however, and the potential for abuse, is great. It is important to be aware of this.

Application of Technology to Information Activities

You asked my views about the development of systems to serve the needs of the public for information of all kinds, and about the agency or agencies which should plan and coordinate the use of technology for such activities. I do not believe that any one agency should be charged with developing information systems for the delivery of all kinds of information to the public. Such an arrangement would in all likelihood lead to the design of a massive delivery system which would then have to be filled with all kinds of data to justify it. This would bring the Federal Government into direct competition with numerous elements in the private sector such as publishers, research organizations, and computer service firms. Furthermore, the control which a central agency could exercise in selecting and editing the information to be contained in

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such a system would be an open invitation to use it to manipulate public opinion.

Any proposal for the use of a Government controlled, electronic communications system for this purpose should be carefully reviewed by higher levels within the Executive Branch and by Congress. Such a review should evaluate the dangers involved, and determine why there is no alternative way to get the job done. OTP has a responsibility to conduct such reviews, and we look at projects which come to our attention from this point of view.

Communications for Social Needs

I am aware of the Committee's interest in the report entitled "Communications for Social Needs" which was produced by NASA in connection with certain other agencies in 1971. The report was prepared as one part of an effort to determine whether and how the research and development capabilities of the nation could be directed, through Federal policy and funding, toward meeting specific national needs.

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We provided our views to NASA during the preparation of this report, but their report was not in accordance with those views. Among the deficiences I noted was too great an orientation toward Federally owned and controlled systems rather than toward private ownership and control, with the inherent dangers I have just described. I strongly opposed the adoption of this report, and it was never presented to the Domestic Council or the President. Thus, the report never received any Administration approval.

This does not mean that all of the ideas contained in the report were bad. The Post Office has been studying electronic mail handling for some time. The warning satellite idea had been considered by our own warning study group, but rejected in favor of the DIDS system.

Such ideas must be considered openly and each evaluated on its own merits. For example, although the "Wired City" proposal as presented in the report was ill-conceived, there is a need for sensible evaluation of the feasibility of providing public services over broadband cable communications systems. Though there is much talk about the potential for the delivery of educational and social services over cable systems, cable today is devoted almost exclusively to entertainment. Cable's full potential for public service is not likely to be developed by

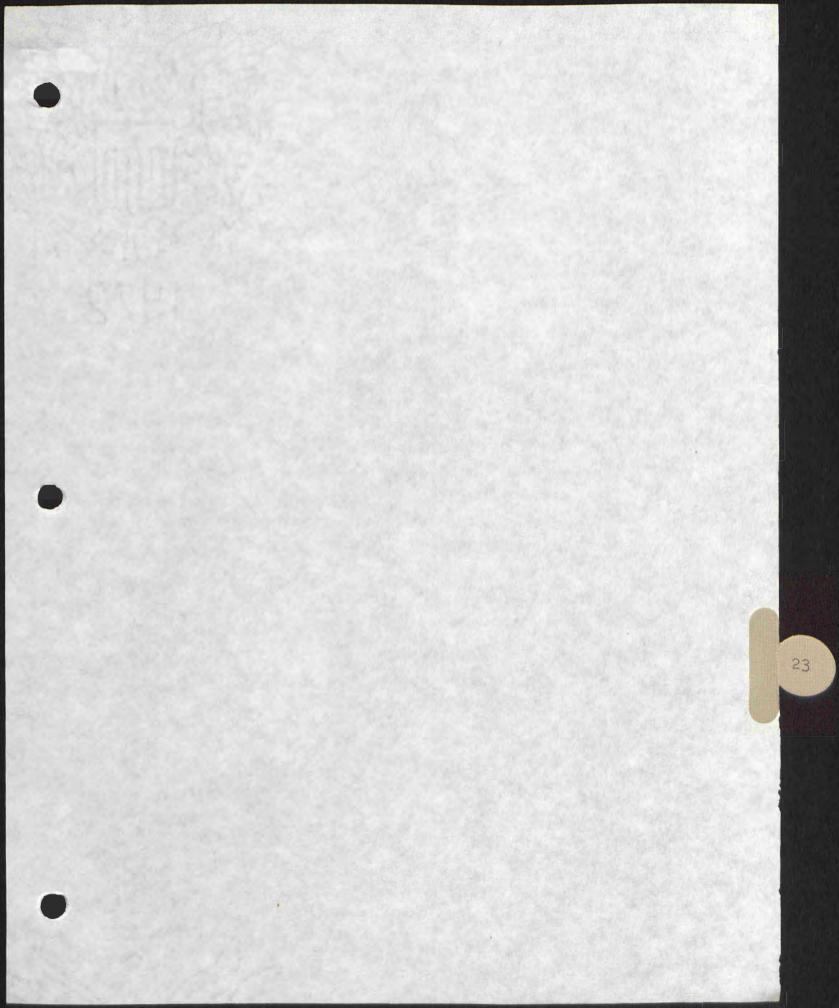
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private industry, and I think that some Federal program in this area is appropriate, with adequate safeguards against the dangers I have described.

In summary, Mr. Chairman, I believe that the potential value of information technology for Government, for society, or for the individual is very high. Much of that potential can best be realized by the private sector in the marketplace. Valid Government functions can also be improved. There are dangers of a subtle but pervasive expansion of Federal influences and activity through the use of these technologies, but such adverse results are not inevitable. They can be overcome, if we set ourselves to the task, by adequate law and policy to assure that only the desired functions are performed. Our responsibility for communications policy, and our location in the Executive Office with a broad overview of Federal activities, gives OTP important responsibilities in the area of protection of the rights and freedoms with which your committee is concerned.

This concludes my prepared statement, Mr. Chairman, and Mr. Joyce and I will try to answer any questions which you and the other members of your Committee and staff may wish to ask.

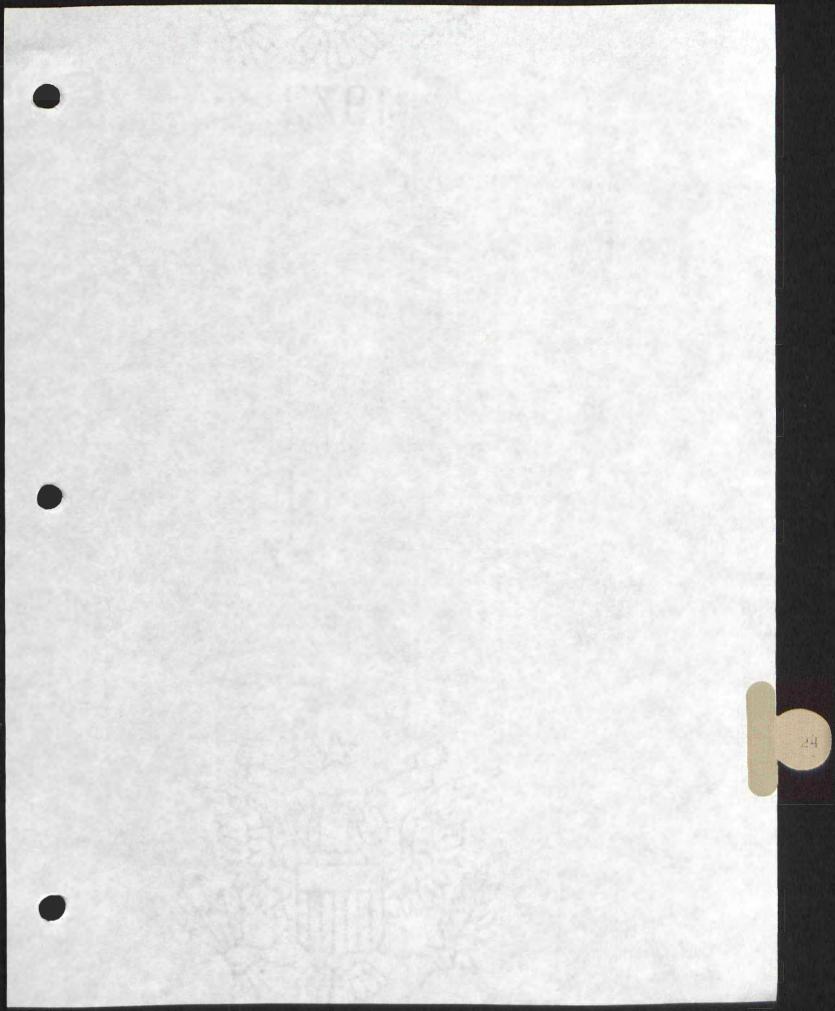
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WHARTON SCHOOL OF MARKETING

PHILADELPHIA, PA.

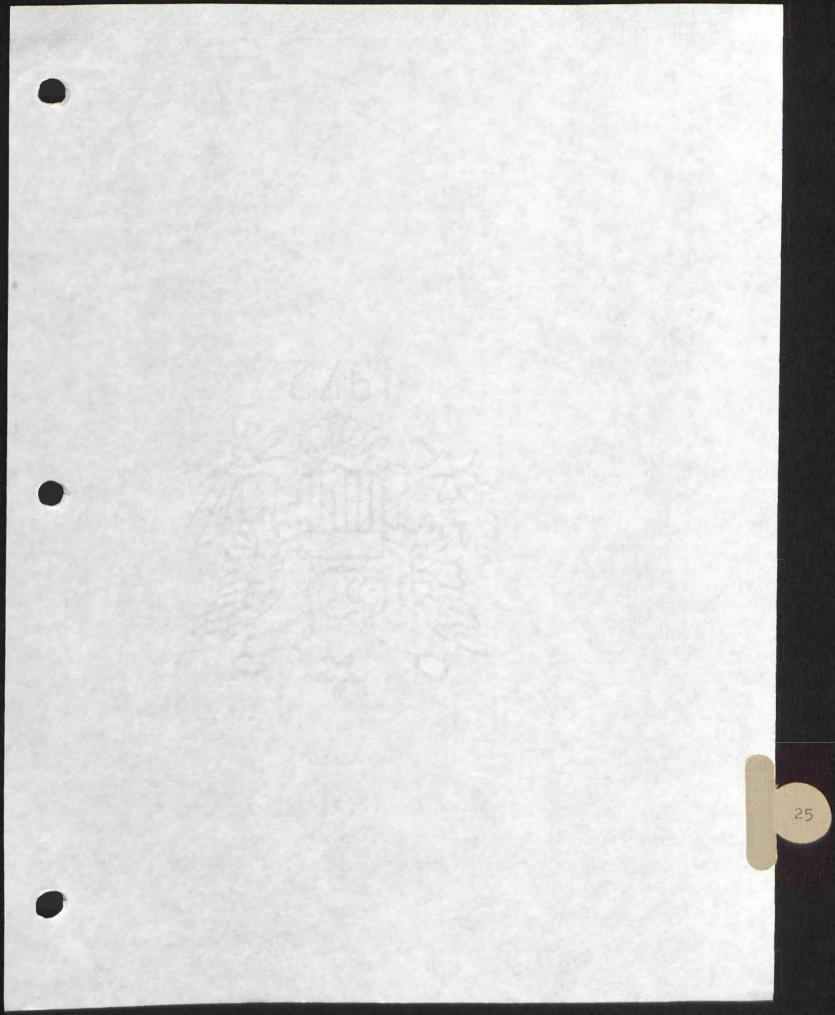
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STANFORD UNIVERSITY

STANFORD, CALIF.

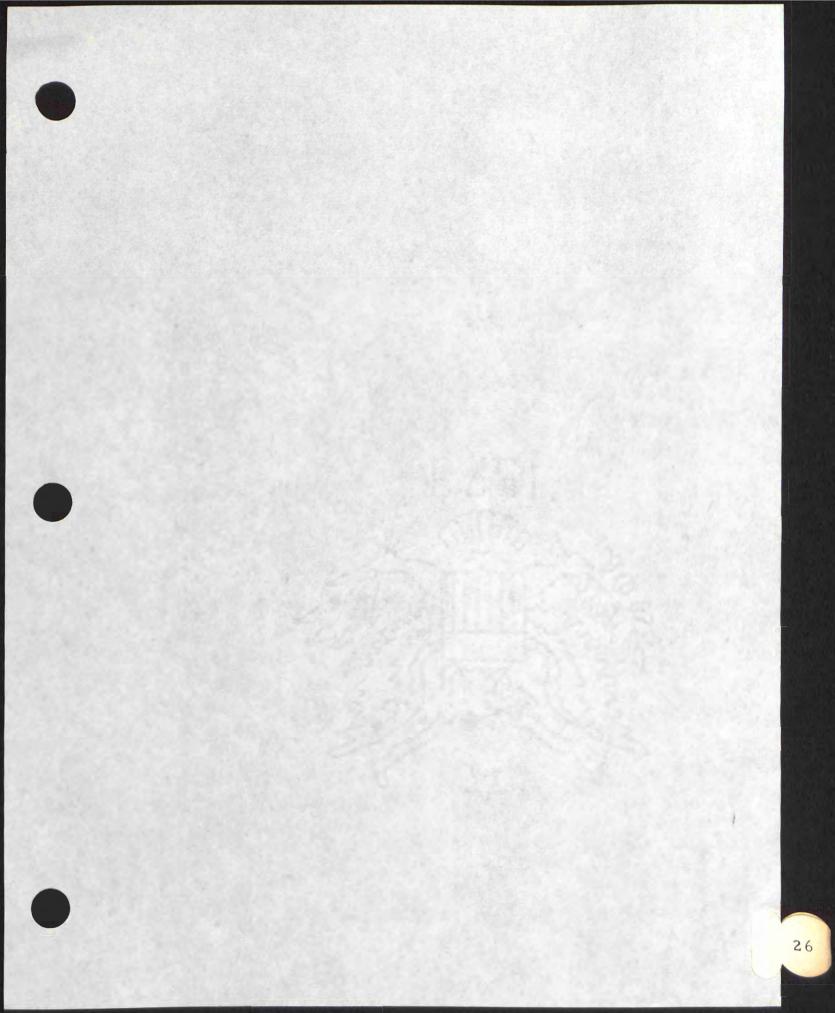
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WASHINGTON JOURNALISM CENTER

WASHINGTON, D.C.

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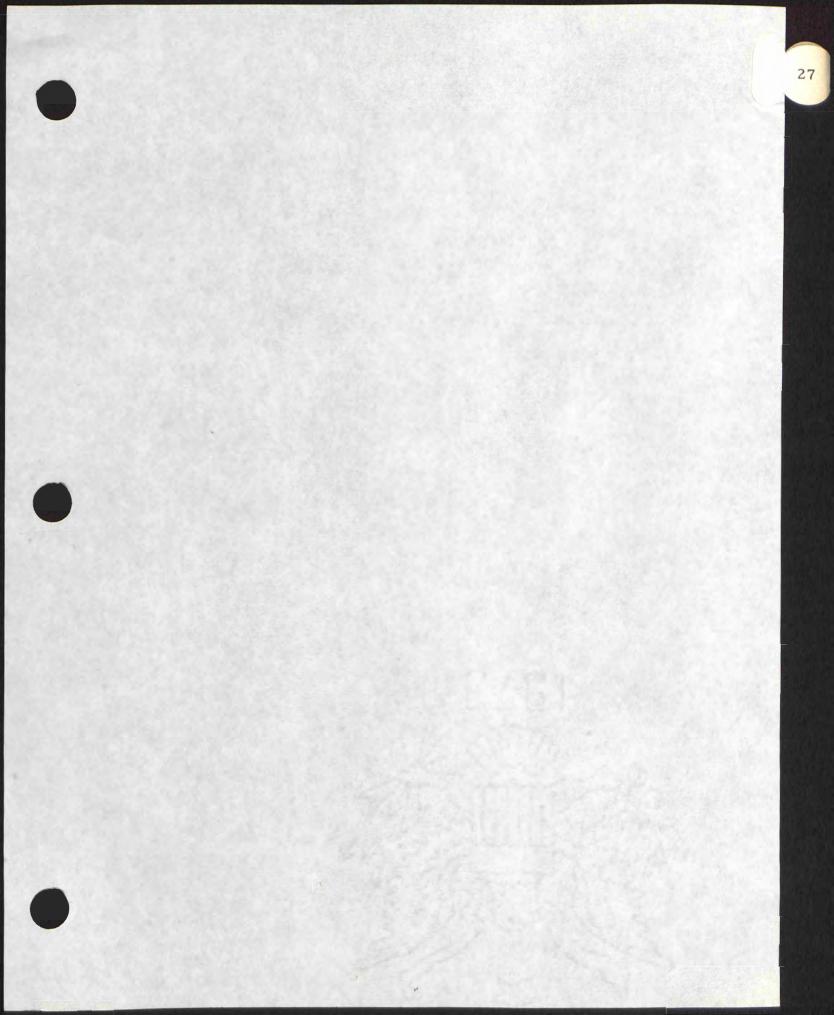


NATIONAL ASSOCIATION OF TELEVISION ARTS AND SCIENCES

SAN FRANCISCO, CALIF.

October 11, 1973





ADDRESS BY

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CLAY T. WHITEHEAD DIRECTOR

OFFICE OF TELECOMMUNICATIONS POLICY EXECUTIVE OFFICE OF THE PRESIDENT

at the

NATIONAL RADIO NAVIGATION SYMPOSIUM MARRIOTT TWIN BRIDGES MOTOR HOTEL WASHINGTON, D.C.

November 14, 1973



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Ladies and Gentlemen:

In sponsoring this symposium, the Institute of Navigation has undertaken an important but difficult task -getting users, suppliers, technologists and government officials talking and working together about future radio navigation systems. I'm sure that at least some among you find that the availability of many different systems -based on the many different technical advances of the last decade -- is a mixed blessing.

A similar situation exists across the entire field of communications. I thought that my most useful role would be to talk about this broader problem.

The scope of the field we are dealing with is illustrated by the following quotation from Nigel Calder, British science journalist:

"Think of a system incorporating the computing, publishing, newspaper, broadcasting and library, telephone and postal services of the country... All these, each growing in its own right and subsumed in one system, will outstrip in magnitude and importance any industry or collective activity in which human beings have been previously engaged."

Frankly, I find that the system Calder describes boggles the mind. But it is indeed what's coming upon us. On this side of the Atlantic, Peter Drucker has a similar vision. He sees the information industry as one of four new industries which will replace steel, electricity, chemicals, and the internal combustion engine as the primary source of future economic growth. Drucker says that most of the money and most of the ingenuity of the information industry will go into the transmission and application of information (that is to say communications) rather than into its generation and storage.

Communications will serve the knowledge industry as railroads and highways serve older product-oriented industries. So it would serve us well to reflect on possible lessons to be learned from the historical influence of government policy on transportation. Government policy over the last fifty years (or the lack of it) has resulted in bankrupting the rail system while creating an all but automatic mechanism for paving over the earth. (It used to be that a politican was judged by his ability to get a road through; now he is judged by his ability to stop one.)

The failure of railroads and the dominance of highways cannot be blamed totally on the activities of regulatory agencies. Rather it is the sum total of Government policy -taxation, subsidy programs, regulation, anti-trust, labor -which has brought on the transportation crisis. All levels of Government, all branches of Government, have played a part.

Today, all the branches and levels of Government are exercising their authority over communications. Regulatory decisions are more often taken to the courts. A Federal-State jurisdictional battle rages over interconnection. Anti-trust moves are rumored. Congressional interest in pay-TV is voiced. International aviation and maritime bodies influence the use of communications for navigation and traffic control. All of these Governmental bodies are responding to pressures from private institutions jockeying for position, while consumer-oriented groups demand greater attention to the public interest.

What are the prospects for a coherent national policy or strategy to emerge from these pressures? There is no fundamental basis for optimism -- the present debates are characterized by much more heat than light. I have no prescription for early relief or a complete cure. However, I can offer a diagnosis, and certain forms of useful therapy.

The sixties was a decade of tremendous advances in communications technology. Satellites, lasers, printed circuits, integrated circuits, signal processing techniques, fiber optics, and a whole host of developments came at a pace more rapid than could be absorbed. The inability -or unwillingness -- of existing institutions to apply all this technology to expand services and lower costs has led to demands for new institutional arrangements, such as the Comsat Corporation and, more recently, competitive entry into certain communications markets.



The challenge of the seventies will be to adapt to this new wealth of communications and information technology, to adapt organizationally, socially, and politically. The Government cannot and should not, dictate how industry and consumers will adapt. But there are some things the Government can and should do to channel the process into constructive bounds. Let me mention briefly three of these areas.

First, there must be more thorough and systematic assessment of the <u>boundaries of competition</u>. Let me illustrate with two examples.

For years many have thought that signal interference made it impossible to have more VHF stations in major markets. The technical realities are otherwise as a new study has just shown. There is room without interference for 60 or more new VHF TV stations -- TV outlets that would benefit the public by providing more choice for the viewer and more competition for the viewer's interest, not to mention more efficient use of the radio frequency spectrum. What the <u>political</u> realities will permit us to do with this knowledge isn't half as clear as the technical realities or the public interest.

In another area, the public interest is not quite so clear. A few years ago, several new specialized communications carriers were licensed under the theory that they would compete to offer the public new services. AT&T with its national telephone monopoly was to be allowed to compete also. But the boundaries between this competition and the monopoly were vague. AT&T now sees inroads on its business and wants the Government to prohibit any further competition, which would in effect require another division of the market administered by Government regulation just like we have had in transportation regulation. But outlawing competitors is certainly no solution. Greater efforts must be mounted to define how the social benefits of monopoly and the responsiveness to consumer demand of competition can co-exist in this field to serve best the overall public interest.

The <u>second</u> form of therapy I want to suggest is giving more attention to <u>defining and then protecting individual</u> <u>rights</u> in an information-oriented society. As we look back on the evolution of industrial society, we see that it called for new Government policies relating to wages, working conditions, full employment, labor practices, and concentration of industrial power. The emerging knowledge-based society will require equal attention toward different, but equally important, individual rights such as information access, privacy, and rewards for the fruits of creative work.

Almost two hundred years ago, the Bill of Rights provided the minimum terms on which the American people would accept the innovations contained in the new U.S. Constitution. Today, as we experience the economic and

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social discontinuities of becoming an information-oriented society, those rights need to be augmented. Unless this is done in a clear and understandable way, <u>every</u> Government initiative in communications will be viewed as a potential conspiracy against the public. The result will be a chronic policy paralysis which periodically becomes dangerously acute.

The <u>third</u> form of therapy I want to prescribe tonight is the development of a new understanding of <u>the role of the</u> <u>Federal Government</u>, particularly Executive departments and agencies, in stimulating, directing and providing information systems and services.

The decades since World War II have seen the Federal Government actively advancing and applying communications and computer technology to support the Defense effort, and then the space program. In this environment, systems engineering flowered and became almost a way of life. As the cold war receded and domestic priorities came to the fore, it seemed for a while that the existing machinery of technological development and the techniques of systems engineering could be turned toward social goals without much ado -- somewhat like redirecting the stream of a firehose.

We now know that this won't work. The applications are too different, the goals too diverse. A Federally

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directed systems engineering effort to solve the problems of society would do too much violence to other Governmental and private institutions -- and to individual rights.

A new pattern of Federal action in fostering electronics and communications technologies must be developed. It must work through the channels of intergovernmental cooperation which President Nixon has stressed to strengthen state and local governments. It must facilitate the application of the technology we have, rather than the cataloging of social needs to justify Government funding of new technology. It must provide for a careful screening of every new program to assure that the Federal Government does not supplant private sources as the principal provider of information services and does not, in the name of protection or uniformity, dictate what services or what information the individual will be allowed to have.

On a related subject, Government must also redirect its machinery for applying new communications technologies to its own operations. Our internal telecommunications posture, on which we now spend \$5-10 billion annually, cannot be a product of uncoordinated planning and internal log-rolling. While no single system can meet all Federal communications needs, neither is there any defense of uncontrolled proliferation of expensive Federal communications

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systems. The American people expect us to administer the Government, not just to keep score. And American industry expects us to use the goods and services they offer whenever possible, rather than building up our own empire -- and rightly so.

Application of these therapies -- competition, individual rights, and limited Federal interventions -- will require new thinking in industry, Government, and the media that won't come easily.

The challenge we face in communications -- changing lifestyles and institutions to take advantage of the profuse electronic developments of the sixties without excessive negative impact -- is not unlike the challenge facing the nation as a whole. The sixties was an era of tremendous social and international turmoil. The war in Southeast Asia, the explosion of the drug problem, soaring crime, and a breakdown of authority in many of our institutions brought this nation to the brink of chaos. I believe history will show that, early in the seventies, we began to pull back from that brink. But an enormous task still remains -to bring a new order to American society -- not an order based on sterile sympathy and procrastinating promises, nor an order based on the platitudes of the past. It must be an order which recognizes today's social priorities,

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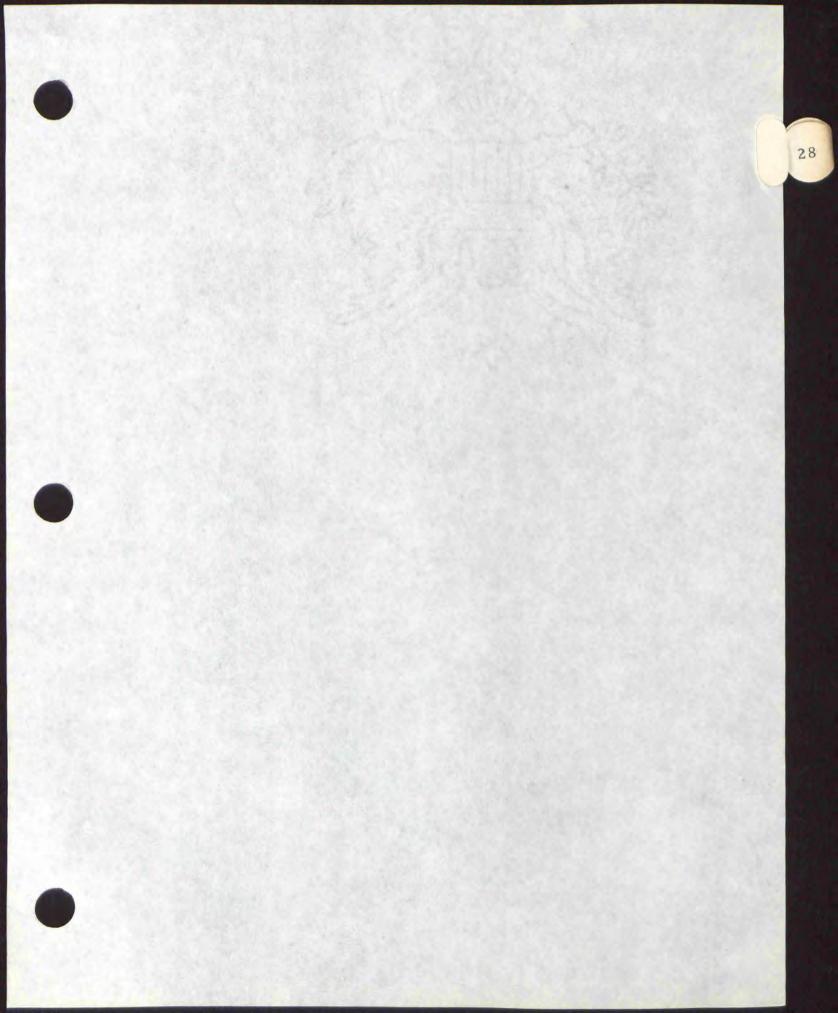
today's economic realities, today's technology. In his first address as Secretary of State, before the United Nations, Henry Kissinger said:

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"We are, in fact, members of a community drawn by modern science, technology, and new forms of communication into a proximity for which we are still politically unprepared. Technology daily outstrips the ability of our institutions to cope with its fruits. Our political imagination must catch up with our scientific vision."

Kissinger was talking about the world community -but you don't have to look that far to see the challenge. We have it right in our own back yards.

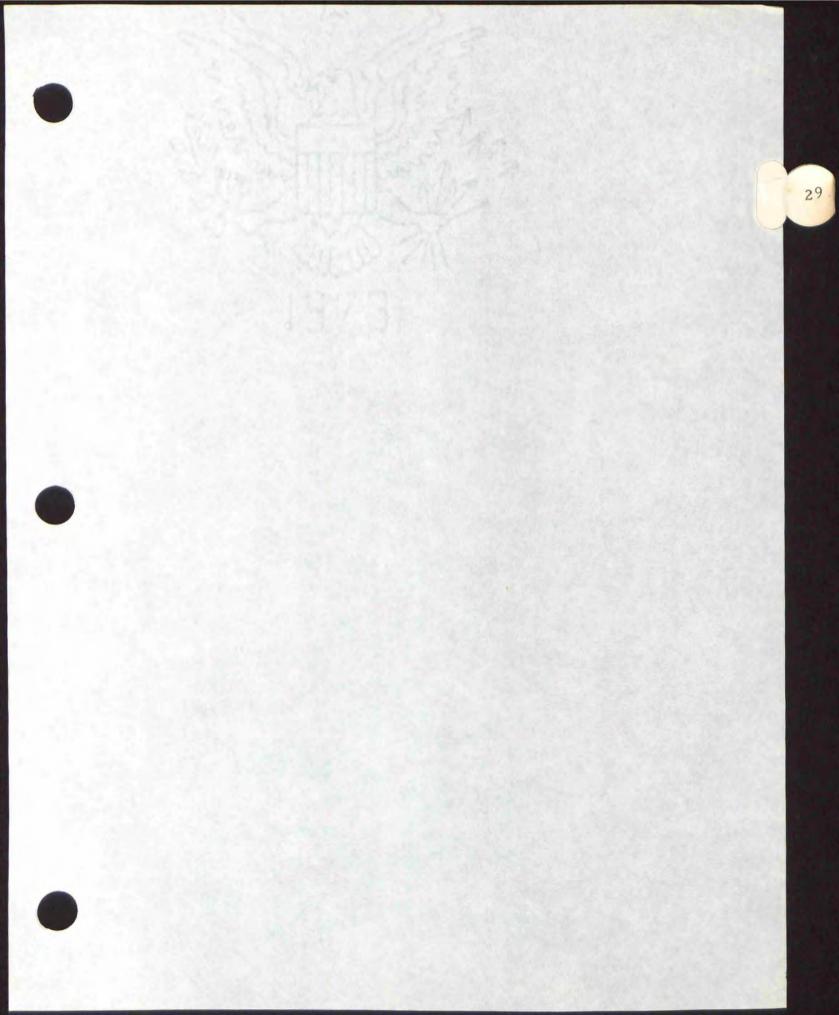




COMMONWEALTH CLUB OF SAN FRANCISCO

SAN FRANCISCO, CALIF.

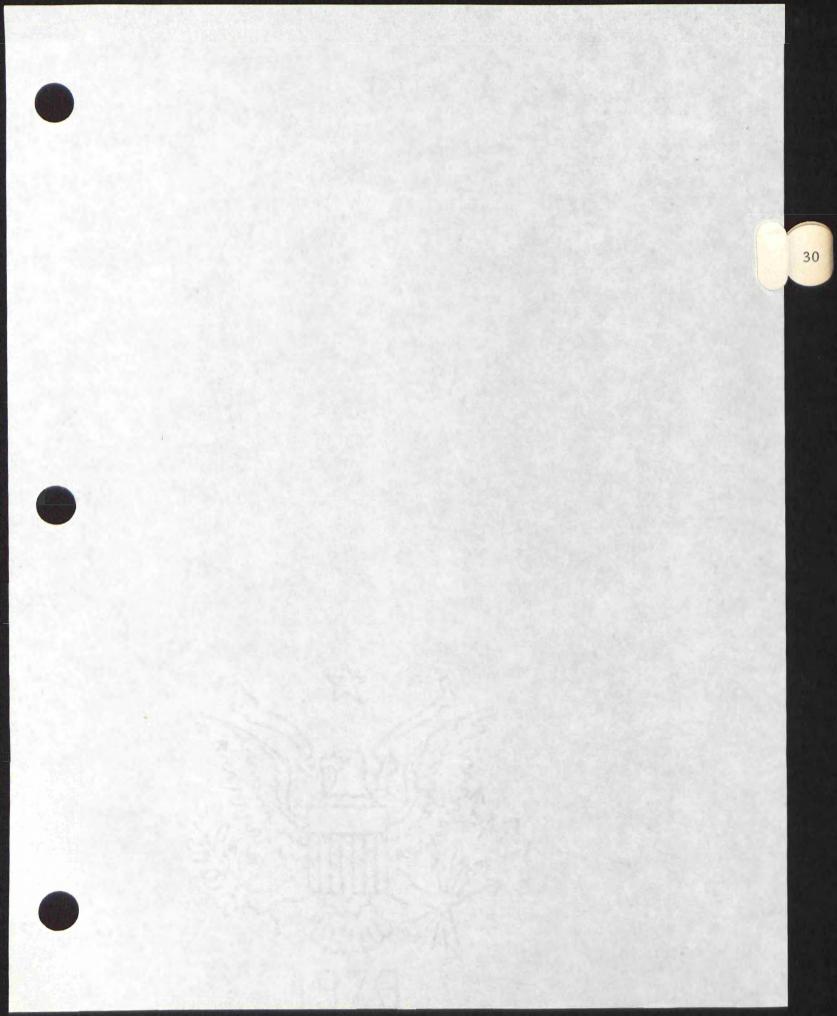
December 7, 1973



MIT SEMINAR

CAMBRIDGE, MASS.

January 8, 1974



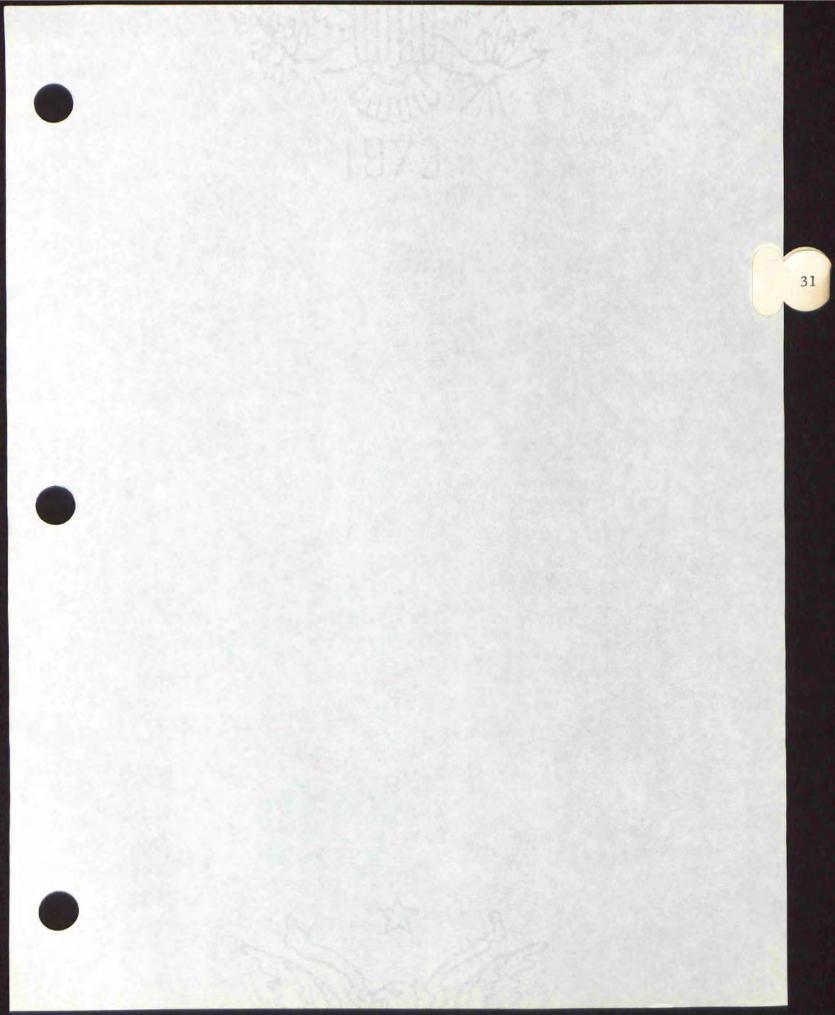
ASPEN CONFERENCE ON CABLE BROOKINGS INSTITUTE

Washington, D.C.

January 16, 1974





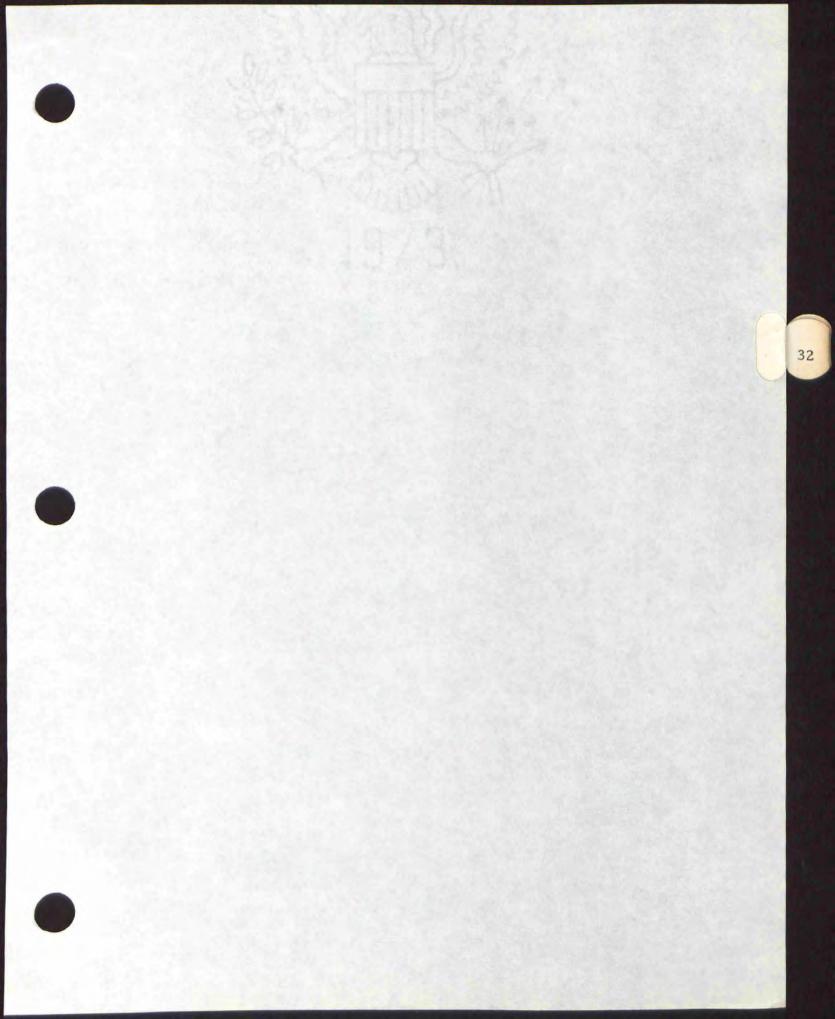


APPEARANCE ON MARTIN AGRONSKY SHOW

WASHINGTON, D.C.

January 18, 1974

(no text)



FOR RELEASE: MONDAY A.M. FEBRUARY 4, 1974

TRANSCRIPT



United Press International Audio Network

Program: "Washington Window" Date: Weekend of February 2-3, 1974 Guest: Clay T. Whitehead, Director Office of Telecommunications Policy Panel: Arnold Sawislak George Marder Edwin Rogers





QUESTION: Mr. Whitehead, we have called you here to discuss the report that a Cabinet Committee you headed has issued proposing long-range policy for cable TV. I would like to ask you in the first place, why did you issue this report, why did you consider it necessary?

Mr. Whitehead: Well for the simple reason that cable television has the potential, the Committee thought, of being a major new communications medium for this country in the future even though right now only 10% of the Nation's homes are wired for cable television. And also because we felt there should be a period of considerable national discussion and debate about how cable television was to come into being; what the government policy for it should be, before it got too large.

QUESTION: I believe that you intend to raise that question on the Hill very soon after the President has agreed to proposed legislation that would implement this report. Suppose you tell us what you consider its most basic or most interesting point.

Mr. Whitehead: The most basic point goes to the very nature of cable television itself and that is that because the signal comes in over a wire into your home rather than coming through the airwaves. That it doesn't have to rely on those scarce airwaves. And that means that you can have practically an unlimited number of channels coming into your television set instead of the now, 3 or 4 that most people have. Reflecting on that, the Committee said, the policy of the government should be one of letting this abundance come into being, let there be a tremendous choice for the viewer, let him have the ability to meaningfully to pick and choose and correspondingly let any one, essentially, who wants to offer programming for the viewer.

QUESTION: Mr. Whitehead, do I understand correctly that the report recommends a very minimum of regulation because there was a fear on the part of the writers that 1984, the fictional domination. Big Brother domination of the people, would arrive unless there was freedom of regulation?

Mr. Whitehead: That is quite right. We have looked at the history of government regulation of television and over the last 10-15 years there has been a steady increase in the amount of government regulation telling television broadcasters and therefore, telling the American people what they are going to be allowed to see and hear in their programming. And we thought that that trend was not for a country who believes in freedom of speech, freedom of the press and the free flow of information, with a citizenry who makes up their own minds about what they believe. So we proposed that cable should be allowed to develop with regulation of the pipeline, to make sure that anyone who wants to can use it to distribute information; to make sure that the viewer has adequate access to that information; but to leave to the marketplace, to leave to the viewer's interests what actually goes over it.

QUESTION: I do want to raise this question then. Did not the pendulum swing the other way so that you are permitting by such minimum regulation a topsy-turvy development of the end product which would defeat the purposes that President Nixon set for this Commission, and that is to avoid instability, or to bring a stable growth * to the industry.

Mr. Whitehead: I don't think so, unless you think for instance that our magazine business is topsy-turvy. One of the great things about this country is its ability to translate the great creativity and imagination of its citizenry into useful outputs. I don't think we need the government to dictate how that is going to be done. Certainly, the monopoly aspect of who controls the wire has to be regulated. But I am quite willing to trust to the freedom of the marketplace and the people developing programming and sending it out and rely on the common sense of viewers in picking out what they are going to watch and what they are not going to watch. I don't that is chaos, I think that is just freedom of choice.

QUESTION: Well, you have mentioned in the report that you feel that this industry ought to develop as did the newspaper or magazine or filming industries, rather than as did the broadcasting industry which has been regulated very closely. Is there a potential in this for very small audiences, that is to say, someone who is interested only in training hunting dogs or a person who is only interested in outdoor programming that there might be one channel? Is it going to be inexpensive enough to be feasible for these very special interest kind of programming on channels to make enough on their own -- as is true in magazine publishing today?

Mr. Whitehead: We think it will be possible. Not at the very outset, of course, because when you don't have

a lot of homes connected it's hard to get all those hunting dog fans hooked up to the cable to get a viable audience. But once the majority of the Nation's homes are wired, for instance, just as the Nation's homes can now be reached by the Postal Service, I think you will find these kinds of programs springing up and the man who wants to put on a show about hunting dogs or stamp collecting will not have to compete against the people who want to put on something like "Lassie" or a big entertainment special. His competition will not be against that guy, for who can pay the most money to get the scarce amount of time that the broadcaster has. He will simply say - I think there are enough people out there who will - enough advertisers that I can make a go of this and I spend my \$2000 or \$3000 a month to rent a channel and I think I can make some money at it. I think encouraging that kind of thing is what government should be doing. The key to it of course, is the large number of channels so that all this can be there at once and the viewer can meaningfully pick and choose what he wants to see.

QUESTION: What do we mean by large number of channels? Right now we have as you said three or four very high frequency channels in a community and I guess the potential for that many or more ultra-high frequency channels on regular television channels. Now, how many could a home television set take on cable? An unlimited number?

Mr. Whitehead: It's practically unlimited. It is going to be limited, I suppose, by supply and demand factors. Right now, modern cable systems typically have 20-30 channels. Some of the systems are being put in today with 50 channels and by the simple expedient of laying another wire or adding a little more sophisticated amplifier here and there, the capacity can be expanded to 100 or 200 or more channels just like the telephone company manages to take care of how many more people move into an area.

QUESTION: Would you visualize that homeowners would pay a fee for each channel that they use? Is that the way it would work?

Mr. Whitehead: No I think it will be more flexible than that. We think that you will see three kinds of channels. Like channels today, many channels will be supported directly by advertisers and you will be free just to go click--click--click and see what is there and watch it.

QUESTION: But you would pay to be hooked up to the cable?



Mr. Whitehead: You may or may not have to pay to be hooked up to the cable. It may well be that the people who are putting on the programming, the advertisers and other people will pay the basic charge. The second type of programming will be just pure pay programming; something that you particularly want to see that there is not enough advertiser interest in or you don't want any ads in it -- you want to see it without ads. Certainly, you should be allowed to pay for that if you want to see it. The most promising kind of program though, I suppose, is much like our magazine industry today where part of the cost is paid by the person who views the material and part of it is picked up by the advertiser. You look at many of our speciality magazines -take hobby magazines as an example -- part of the material that the reader is interested in is the advertisement. On the other hand, it wouldn't be possible for those advertisers to support the whole cost of the magazines themselves so the viewer or the magazine buyer has to pay a share of it and it all works together very well to get the viewer what he wants. "I think you will see that kind of channel popping up in cable.

QUESTION: Mr. Whitehead, I would like to get back to a basic point. You seem to be saying that you see no need for protection of consumer interest in programming once we have the diversity of channels that cable television provides. Your words seem to reflect a total reliance on free competition and the diverse marketplace of cable television. Does the record of the free diverse commercial market in this country justify that faith that you seem to express?

Mr. Whitehead: Not completely. We certainly didn't take the naive view that the customer doesn't need any protection. There is a whole section in our report devoted to just the question of protecting the customer in his dealing with the various cable entities. On the other hand, it is our view that the government can set down some firm rules, some laws that can be enforced by the courts that limit the power of the great economic monopolies that are going to control this medium. So that, their incentives will run to providing the customer with more choice rather than less and we think that thru that device, the day-today involvement of the Federal Government in deciding what is allowed on channels and what is not allowed on channels can be held to the absolute minimum.

QUESTION: But you are talking about laws and controls over the way that the cable industry is set up. But what about the crux of the matter? That is, the content of the programming which the Federal Communications Commission controls rather rigidly over the airwaves of television at the present time?

Mr. Whitehead: What we are saying is that as long as there is the freedom - in a meaningful sense - for a large number of businesses, a large number of non-profit organizations to distribute their material over the cable just as they now distribute it thru the Postal Service -- that there is no need for the government regulation unless you believe, the government regulation of what we see and hear is a good thing in and of itself. There are some people who do believe that. They think that the government has a positive responsibility to keep the citizenry from seeing certain kinds of things.

QUESTION: Perhaps that is the basis of some of the criticisms that have been raised against your report?

Mr. Whitehead: Oh yes, very definitely. There are a lot of people in Washington, for instance, who think they know better what is good for the viewer than the viewer does himself. It is just not a view that this Administration or the Cabinet Committee could accept. We think that this country was built around the freedom of choice of what we see and hear and that should be the policy of the govenment.

QUESTION: I wanted to ask you about the question that a lot of people are concerned about. That is this business of pay TV and sports broadcasts and movies. Now, what do you see as developing as a result of the policy that you've recommended in those terms? The Sunday football games to be very specific. I think that is what everybody is hung-up about.

Mr. Whitehead: Well, Sunday football games, Saturday football games, I think we all have to realize that professional sports occupy a rather unique place in the role of American entertainment, particularly on television. The Congress of the United States has given the professional sports leagues an exemption from the antitrust laws which means that they are not subject to the same kinds of competition that everyone else in the entertainment business is. Because of that, the Committee felt that we couldn't just allow these professional sports leagues to move their television shows from advertiser support onto cable and a pay basis so that you would have to pay to watch the Super Bowl or you have



to pay to watch the Sunday afternoon games. So that, as long as they enjoy that specific economic exemption from the Congress, the Congress should continue to require that these games stay on free advertiser-supported stations. But for every other kind of entertainment, we think the customer would be best served in the long run by the absence of government controls over what he is allowed to pay for. The idea of the government saying, for instance, that there are certain kinds of magazines we can't buy because advertisers want to use them as vehicles for distributing their wares is something I don't think any of us would feel very comfortable with and there really is no reason why we need that in television any more reason why we need it in the print media. So what we are saying, is that in the long-run, people ought to be allowed to buy whatever programming they want, which means that possibly entrepreneurs will be encouraged to develop special interest programming that people will be interested enough that people would rather buy that than watch what they get for free, but the one exemption will be sports -- at least as long as the sports . leagues are set up the way they are.

QUESTION: What will this mean to the broadcasting industry as now constituted and the consumer? Doesn't it mean that except for the one exception, you mentioned, the big sports field, that the inevitable development will be that people will be paying for their entertainment that they got for free before?

Mr. Whitehead: Well it will, of course, be up to each viewer. I think the key point to remember is that whatever you may think about the American people, they aren't dumb and they aren't going to pay for something unless they think its better than what they are getting for free. The advertiser-supported television in this country has performed a tremendous service. It's a great entertainment forum -- millions -- tens of millions of people enjoy it, but that medium has its limitations. We all are familiar with the complaints of viewers whose favorite show is taken off the air because only 5 or 10 million homes watch it. Well now wouldn't it be far preferable to have a mechanism that when the show gets to be so unpopular that only 5 million people want to see it and it gets taken off advertiser-supported network television. People who really want to see it should be allowed to pay a dime or a quarter an episode and continue to see it. I think the way to look at it is the opportunity to use your hard cash to pay people so that they will deliver what

you want. That way you have a real meaningful voice in what you get. And of course, there is still going to be a lot of advertisers around who are looking for entertaining materials to continue the advertiser-support of television.

QUESTION: Mr. Whitehead, I'd like to go back to the question that Ed raised earlier and which I think is the very heart of the report. I'd like to quote something from it as a matter of fact. You say the question of the relationship between the private communications media and the government is in many ways is the ultimate issue of a free society. Now, you expressed the hope that cable will produce great magazines and newspapers -- say Readers' Digest and Time Magazine and Newsweek and the Post Dispatch, the Chicago Tribune, the Washington Post, this is a hope. Is there any assurance that because you are so greatly fearing regulation that you would allow Madison Avenue with 'Lassie' and the profits that could be made out of that to pre-empt this field so that these individual localized media cannot compete against the Madison Avenue approac. You do not require or set up a mechanism that this inevitably will develop without competition.

Mr. Whitehead: We take some steps, but you are quite right, we don't insure it. There is no way, for instance, that the government today insures that a local, neighborhood newspaper which may be nothing but a weekly mimeograph sheet which is carried around is going to survive. There is no government guarantee that that will compete with the big downtown newspapers. There is no guarantee that the local county newspaper will compete with the great news magazines of the country. If the government is gonna get in the business of guaranteeing those kinds of things, then the government is in effect telling you what you are going to be allowed to see. I think that the government should certainly take positive steps to make sure that it is possible to do that. That if a small group of citizens wants to put on a half-hour video show at a very low cost -- which is the equivalent of their mimeograph sheet and they do want to take it down to the cable system and say hey -- would you put this on for a half-hour every evening and we will pay you the going rate for distribution. I think the government should encourage that, the government should facilitate it. One of the things we proposed in our report for instance, is special rates for the use of cable by non-profit groups, by educational groups. We raised the possibility of rates that are graduated according to the number of viewers so that low audience programs would not have to pay proportionately as much as the big audiences. There are lots of things the government can do to encourage these kinds of things but when you take that final step and say that the government

has to assure it. What you are really saying is that I feel so strongly that there are things that people should be required to see and hear that I'm going to use the great power of the government and that is censorship.

QUESTION: Mr. Whitehead, although you made the careful distinction between cable TV and its diversity of channels and the limited number of channels in broadcast television, your remarks seem to address themselves critically toward the policies that the FCC now has for broadcast television. I have heard that criticism about your report itself. Could it be said that you are indirectly criticizing the present policies of the FCC toward broadcast television?

Mr. Whitehead: Well that wasn't one of the purposes of the report because we did confine ourselves just to a new medium of cable. On the other hand, I personally have been more than indirectly critically of the FCC's regulation of broadcasting. I think that the FCC has gone too far, for good and legitimate purposes, no doubt but they have gone too far in extending government control over the television programming -- as to say what we see and hear and I think that should be rolled back.

QUESTION: Has their purpose been protection of the consumer interest in quality broadcasting or is there perhaps some other purpose that might of crept into their policy?

Mr. Whitehead: Well in any regulatory agency there is always rather an uneasy balance between protecting the customer and protecting the industry that is being regulated. One would have to be niave to say that both factors weren't at work in the FCC.

QUESTION: For example, are you perhaps opposing regulation per se, or is it perhaps a philosophical contingent that you have percieved to a social or political philosophy behind the programming standards that the FCC has set?

Mr. Whitehead: Well I'm certainly not opposed to regulation as such. I realize that when you have such great economic power and potential monopoly power that the government has to regulate. The question is what kind of regulation, and I have yet to see a convincing argument that our government or any other kind of government can regulate the content of television programming and do it a politically neutral way. I think it is inevitable that the political biases of the people doing the regulating will creep in and that's why I think that the



Government's proper approach to regulation of television ought to be the encouragement of more competition rather than the encouragement of more government control over what it is we actually see and hear.

QUESTION: Well let me ask you some specific hypothetical questions, if there is such a thing. If a very wealthy person with his own strong political views decided that he wanted to rent or lease one of his channels, just as he can issue a newspaper today, this policy of yours would be wide open for that as long as he stuck to the laws having to do with libel and obscenity and all the rest of the things that cover the whole print media -- is that not true?

Mr. Whitehead: That's quite right.

QUESTION: What about this business, and this is a delicate area, of X-rated films are legal, or some of them are legal, from day to day we don't know. But presuppose that a film that has been X-rated but that is not banned, would there in your mind be a channel for adults for those kinds of films for what some people might call obscenity or pornography?

Mr. Whitehead: Well, first of all I think we have to realize that the concept of a channel will be fading away. The idea of a television set that has 100 click stops on it, that is we go skimming across 100 channels just isn't feasible. T think what it will come down to is a rather sophisticated TV guide which tells us what is available and which buttons to puss to get whatever we want at that particular hour. So the concept of a channel carrying blue movies is not something that you are likely to see. On the other hand, there is no doubt that even today on television there is certain material that we generally feel is acceptable for adults but not particularly acceptable for children, and to some extent the networks try to accommodate that by broadcasting that material late at night. There is a different standard late at night than there is early evening hours, on the theory that the kids aren't awake to see it.

QUESTION: May be a mythical safeguard.

Mr. Whitehead: It may be a mythical safeguard. With cable I think you have a much more effective safeguard. Number 1, I think there will have to be some actual physical choice by the viewer, and this can easily be controlled by a plastic credit

card, a key, or something, to make sure that certain channels simply can't be watched unless you have the device to turn it So much as people lock up certain books they don't want on. their children see, they can lock up certain channels that they don't want their children to see. And then there is the step, of course, of the man in the local community who is controlling the distribution of the programs. I think there should be laws and the Committee recommends this, that the home viewer can decide for himself if there are certain kinds of materials he does not want to receive, just as you can today send a form to the Post Office and say "I don't want to receive obscene materials, I don't want to receive materials from this and that source.." So you should be able to go to the local cable office and say, "I don't want to receive obscene materials in my home and I don't want to receive programs that have originated from such and such sources," because they are offensive to me. It is a very simple matter for the cable operators to throw a few switches on his computer and those things simply won't get into your home. So, whether or not there ever are X-rated movies on television, I think that the key point to bear in mind is that each person will be able to choose for himself which of the material made available will actually come into his home.

QUESTION: How do minorities get a voice in this cable communication media that is going to be set up, where they are a little short of money than the crusader that Arnold talked about just a few moments ago?

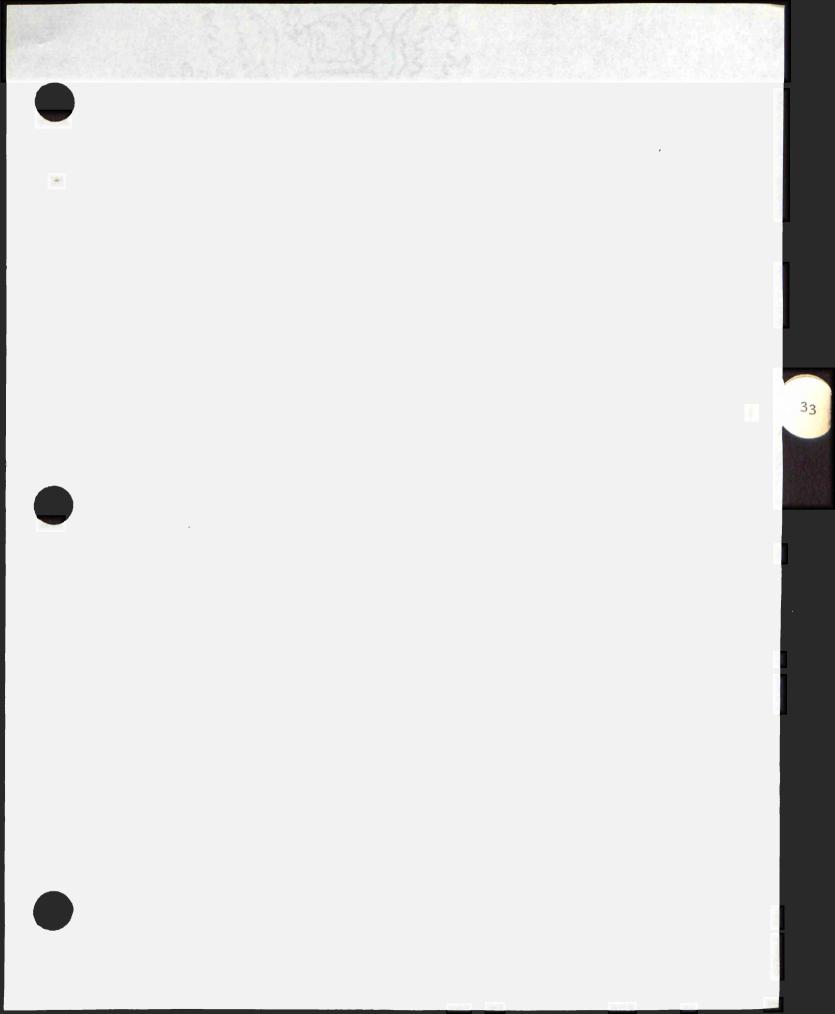
Mr. Whitehead: They may not be able to buy as much time as the crusader, or by pooling their resources through some kind of political action group they may actually be able to have more time than the lonely rich crusader. I think the important thing to recognize here is that by separating the ownership of the cable from the right to program on it, we suddenly relieve the need of various groups to have large sums of money in order to have an effective say. Right now many black groups for instance, many Chicano groups, are faced with the prospect of trying to raise the money to buy a television station, which is a very expensive proposition, in order to be able to put on their programs. Or else they come to the government and try to get the government to take the station away from somebody who now has it and give it to them.

If cable develops the way we have projected, that whole problem evaporates, and they simply go to the national level, or to the local level, or to the state level, they simply arrangement to lease the channels for half an hour, for an hour, or a channel for a whole day, and they put on their program. So, I think it will mean much great oportunities and much more realistic opportunity for minority groups.

QUESTION: Earlier in the program, George used the timeframe 1984. What are we talking about in terms of time. When will this diverse world of unlimited channels be available country-wide?

Mr. Whitehead: I don't know, and anyone who tells you he does know, II think is assuming too much. The real question is 1) how will the government regulate it. If the government continues to regulate cable as an adjunct to over-the-air broadcasting, defining over-the-air broadcasting as our primary service, then I think you can see the possibility of the Government severely limiting the number of cable channels in order to protect the economics of the existing broadcast industry, and if that is the case, it is going to take cable a very long time to get anywhere, and indeed it may never get anywhere. There just simply wouldn't be the programming material to make it worth its while. On the other hand, if we do open it up to all kinds of new programmers and say anyone can put on programs that anyone can see, then you have a much more free market-type situation, and I think you should see the growth of cable, per se like the growth of the stereo record. In the beginning I can remember I used to be a hi-fi buff. There were very few records that you could choose from. If you put together a very expensive hi-fi system and played about five to ten records, because that's all that were available, it really made use of your system but as more and more people got systems, more and more records were recorded and, of course, today we have -- what is it -- thousands and thousands put out yearly. I think you'll see the same with cable. As more and more homes are wired more and more people will begin to develop these services and as more and more of the services are available more and more people will want to hook up to the cable to see what's going on and there will come a mushrooming effect. Now, when that happens I don't know. would guess we are talking, more say 1984 or 1985 or thereabouts for having half the country's homes connected to cable.

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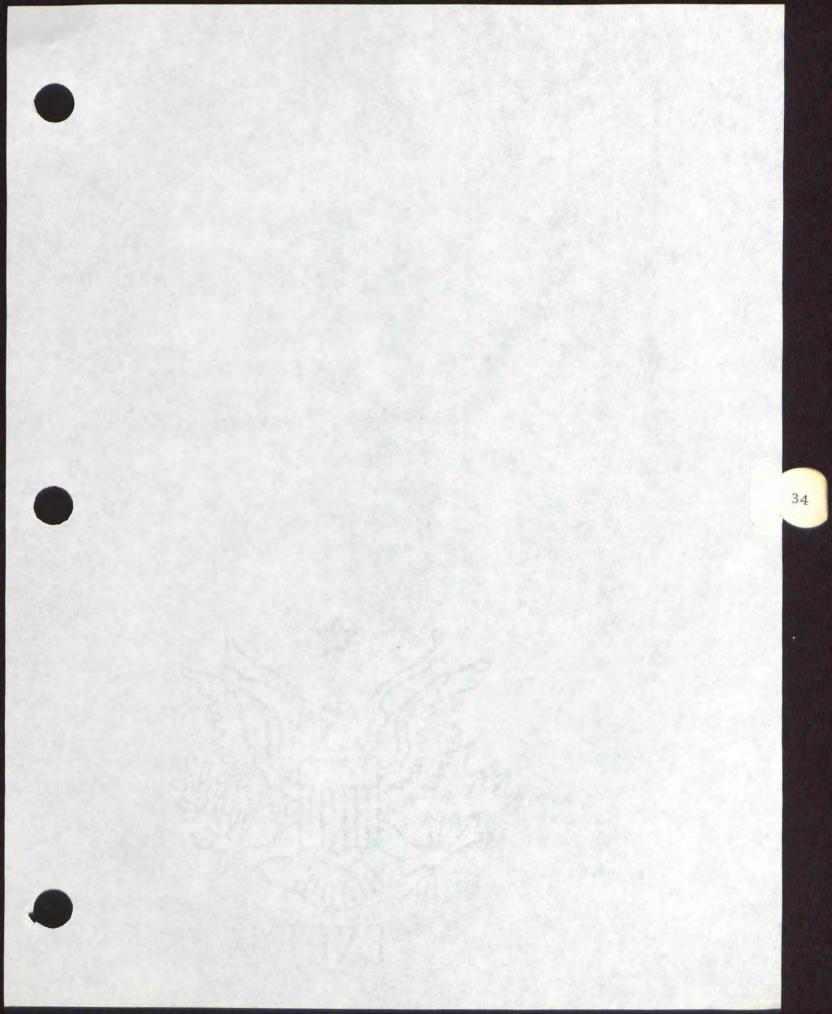


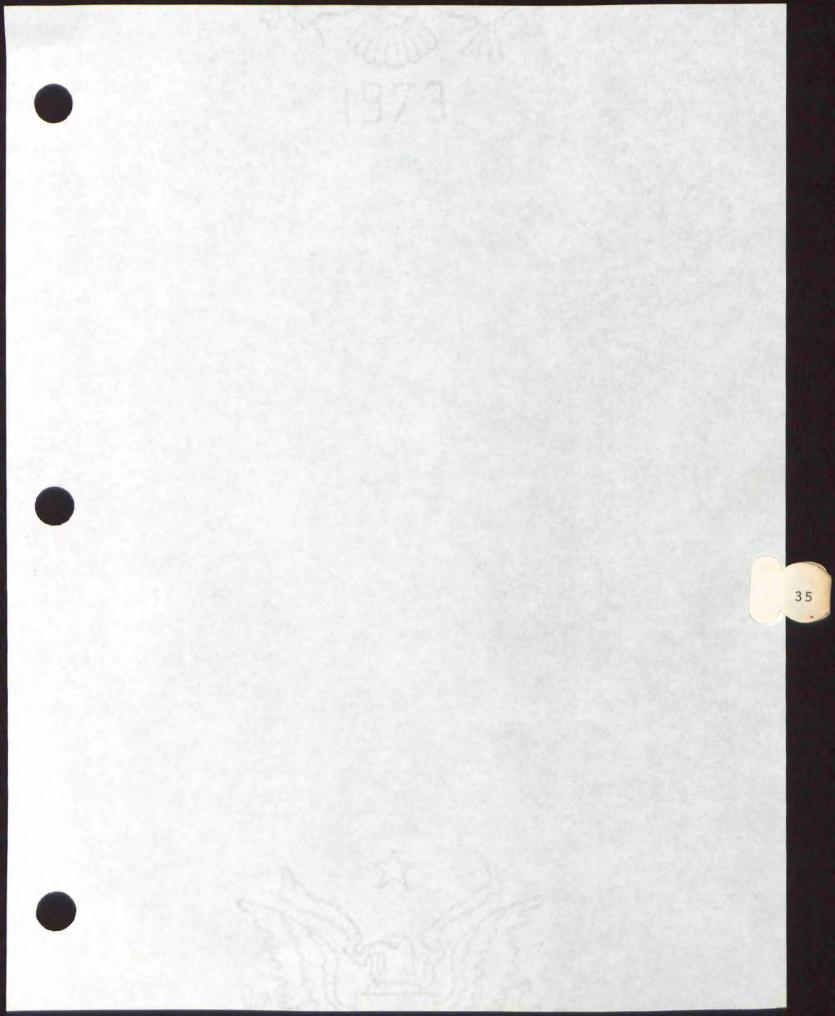
ADDRESS TO WASHINGTON PRESS CLUB

WASHINGTON, D.C.

February 7, 1974



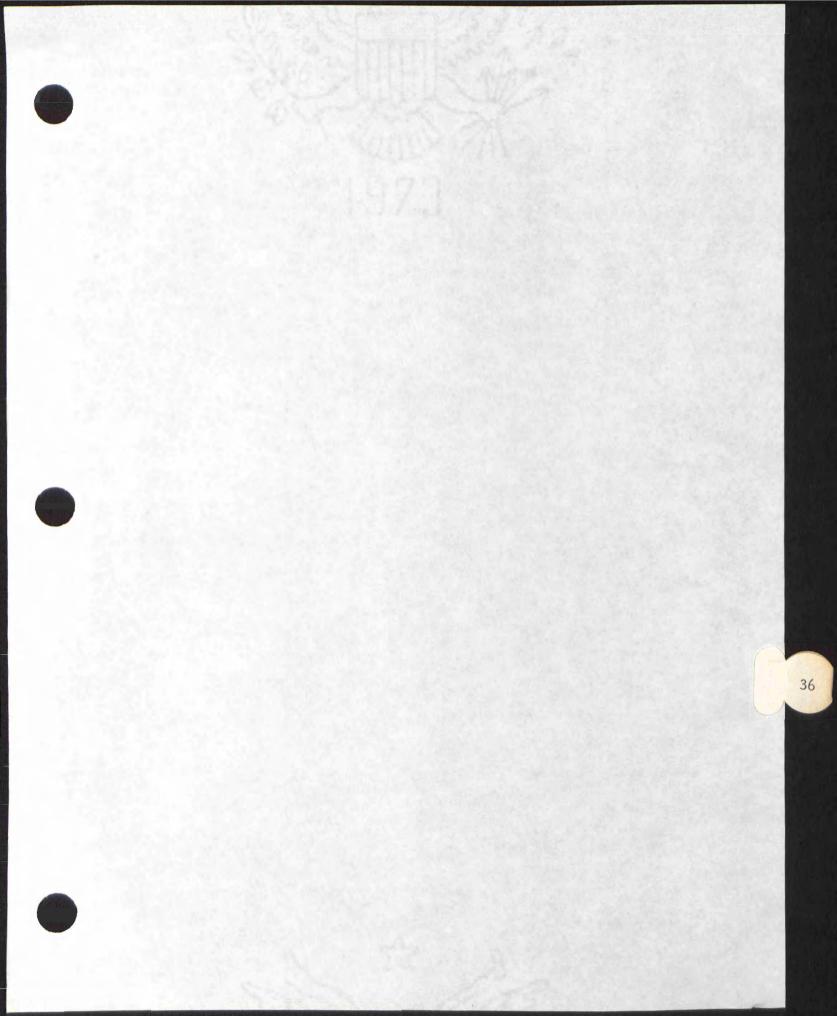




UNITED CHURCH OF CHRIST

NY, NY

March 18, 1974



YALE UNIVERSITY SEMINAR

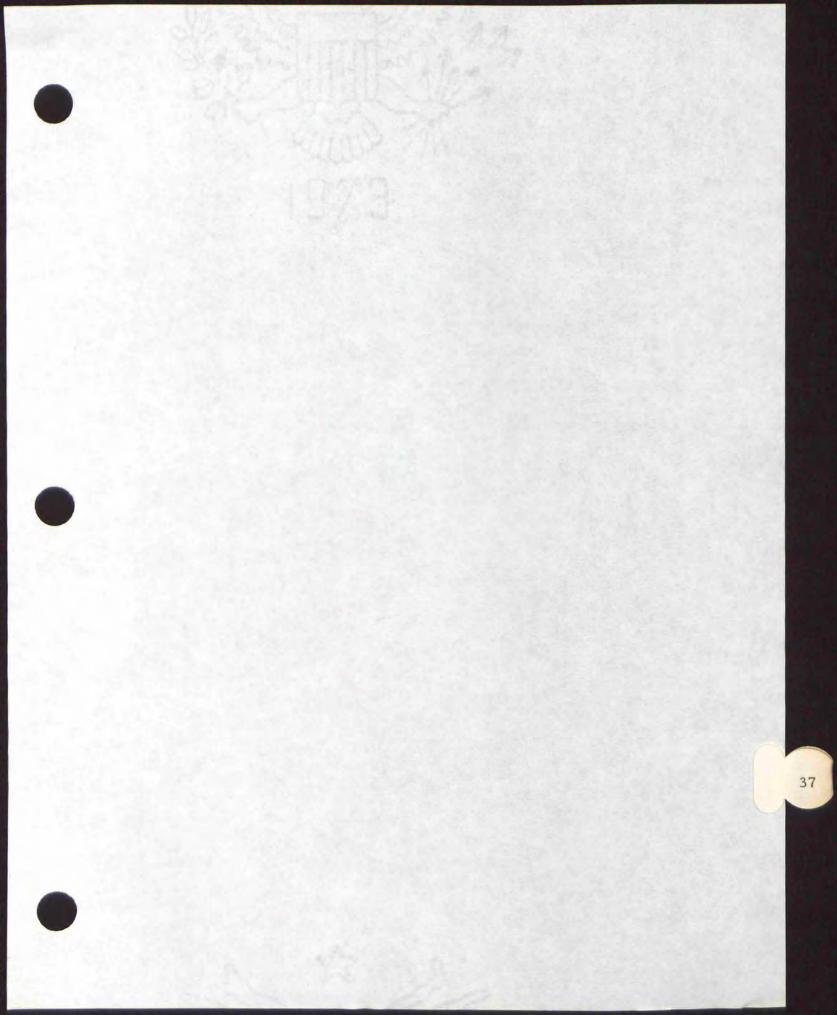
NEW HAVEN, CONN.

March 26, 1974

(No text)







STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR

OFFICE OF TELECOMMUNICATIONS POLICY

before the

Subcommittee on Treasury, Postal Service and General Government Honorable Tom Steed, Chairman Appropriations Committee U.S. House of Representatives

April 1, 1974

STATEMENT BY

CLAY T. WHITEHEAD DIRECTOR

OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss with you the budget request of the Office of Telecommunications Policy (OTP) for Fiscal Year 1975. I believe you have our Budget Estimates for the upcoming year. With your permission, I would like to submit for the record a more detailed statement of the 1973-1974 Activities and Programs for our Office.

OTP has requested \$9,512,000 for Fiscal Year 1975, an increase of \$7,442,000 over our Fiscal Year 1974 appropriation. Most of this increase, \$6,098,000, represents a transfer of the funding for the technical and analytical support provided to OTP by the Office of Telecommunications, Department of Commerce, transferred from the Commerce budget to our own budget. This transfer and consolidation is the result of suggestions of this Subcommittee, your counterpart in the Senate, as well as the House and Senate Appropriations Subcommittees for State, Justice, Commerce, and Judiciary.

The \$6,098,000 requested in our budget for Commerce support activities includes an increase of \$1,717,000 (and 23 additional positions) for the support program itself. Most of this increase is necessitated by the rapid growth and change in the Federal Government's use of radio frequencies. This requires a larger number of frequency assignment requests to be processed and increases the workload of technical analysis needed to keep that growing number of communications, navigation, and radar systems from interfering with one another. OTP is now processing approximately 5,000 frequency assignment actions per month, we have implemented procedures requiring all Government agencies to submit their frequency plans well in advance so that spectrum availability can be evaluated prior to the commitment or expenditure of public funds.

In addition, \$1,100,000 is requested for our program of outside studies and research beyond the scope of our staff or that of the OT support group. We have reviewed carefully the need for this program of studies, especially considering the inclusion of the Commerce support in our budget, and have concluded that it is by far the most effective and least expensive way of meeting research needs that require highly specific expertise or large research teams too expensive to retain on a full-time basis. The remaining \$244,000 increase is to provide for eight additional fulltime employees, to reimburse GSA for the cost of leased space (as required by law this year), and to cover other minor increases in general expenses. I would like to point out that the past year has been a very active one for OTP, and I would like briefly to highlight some of this activity.

In the field of public safety communications, OTP has prepared, in cooperation with other agencies, a comprehensive plan for emergency medical services. This plan provides for nationwide standardized frequencies for emergency medical use, specialized medical data handling circuits, communications networks for biomedical telemetry, and other features designed to provide rapid communications capability in medical emergency situations. Medical authorities have stated that this program could lead to the saving of thousands of lives each year. OTP has also continued its implementation of the "911" universal

In October 1973, OTP initiated a formal program for the planning and coordination of the Federal Government's telecommunications systems and services. The objectives are to identify communications activities and resources, to promote economy through sharing of facilities and elimination of duplication, and to encourage the use of more efficient communications to improve productivity. The program requires each department to document its long-term planning for communications and to submit plans for interagency coordination at an early date. The first reports under this program are to be submitted in August of this year.

In the area of cable television, the President's Cabinet Committee on Cable, for which OTP provided staff support, completed its study and published its report. OTP is now preparing legislation, to be introduced later this year, that would implement certain recommendations of the Committee.

With regard to broadcasting, OTP submitted legislation to the Congress in 1973 proposing a revision of the FCC broadcast license renewal procedures. We have also developed legislation to provide long-term financing for the Corporation for Public Broadcasting, and we have forwarded to the FCC a preliminary report on VHF broadcast frequency assignments that may lead to new television stations to expand the viewers' choices in many localities.

In other areas, we have prepared legislation to amend the Communications Satellite Act of 1962 to reflect changes in international satellite communications that have occurred over the last twelve years and to clarify procedures for the establishment of new international satellite systems. We have submitted

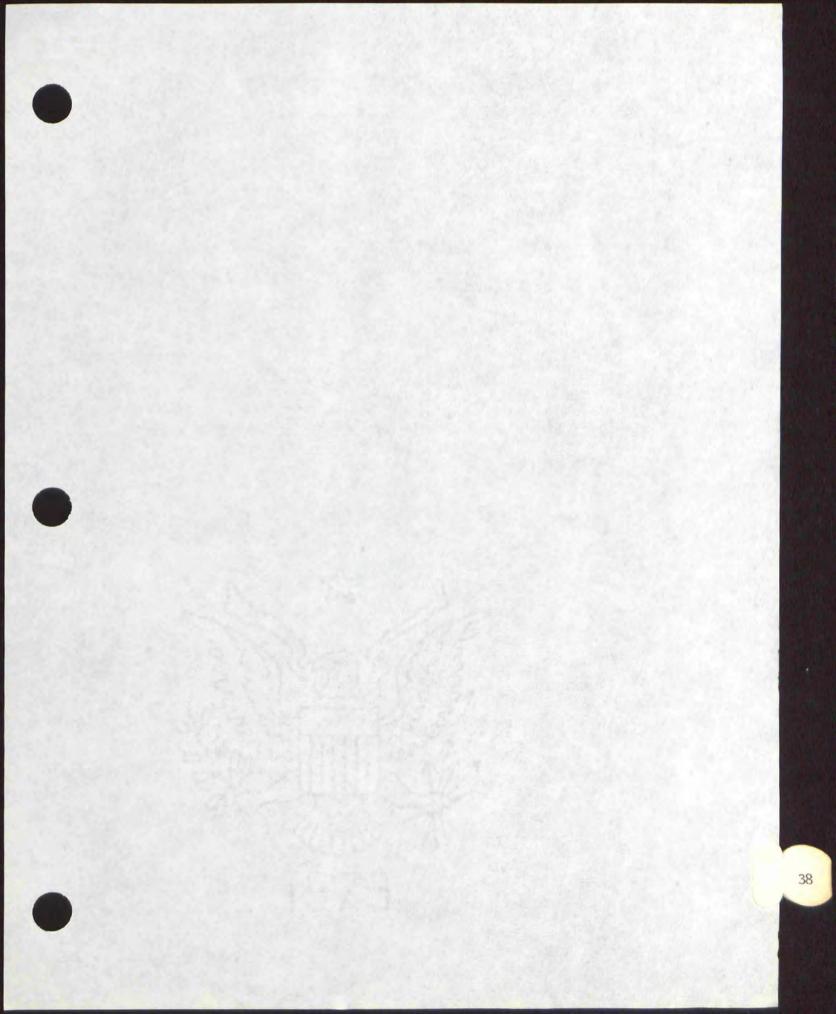
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policy recommendations to the FCC regarding frequency allocation and regulatory procedures for land mobile radio services. If adopted, these recommendations would result in the increased availability of economical two-way mobile radio and car telephone services for small businesses, local governments and private citizens. Two years ago, a similar OTP policy recommendation in the area of domestic satellites was adopted by the FCC, and that policy is now on the verge of implementation; this month, we shall witness the launch of the first domestic communications satellite for service to the United States.

We shall continue our studies of regulatory procedures and industry structure for common carrier communication services, especially with regard to the introduction of new technologies, with the objective of making these services available to the American public in a more efficient and effective manner.

I am prepared to discuss these and other matters with the Subcommittee, and I particularly welcome the opportunity to discuss these matters with the new members of the Subcommittee and familiarize them with the programs and policies of our Office.



REMARKS OF

Clay T. Whitehead, Director

Office of Telecommunitcations Policy Executive Office of the President

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· HALLE

at the

University of Maryland College Park, Maryland

April 23, 1974

(transcript of actual remarks as delivered)

Thank you very much.

Listening to the introduction, I reflected very briefly on the relationship between all the policy and economic studies that I did in school and later at the Rand Corporation, and how well that prepared me for my life in the White House. In all deference to your faculty, I will only say to you students that I hope they do better by you as you go out into the world of journalism. On the job training is a very real thing in the White House, and a very real thing in Washington, and it is one of the miracles of our system that people, at least some people, learn as fast as they do.

I am supposed to talk to you tonight about communications and the future, and again, I thought back to my days at Rand when we were doing some studies and I was working with a number of people who were trying to predict what America would be like in the year 2000 (or the year 1976 for some studies) and being a bit of a cynic I began to compare some of their projections with what had actually materialized. As we did more and more analysis and more and more study of the projected studies, we came to the conclusion that predicting 25 years into the future (which is kind of an interesting timeframe) was totally impossible. Projecting ten years into the future, which is just far enough so that you begin to think you might see something interesting, the error rate was something approaching 95%. When you begin to predict one year in the future, no one liked to do that because people remember what you projected, and that was not one of the most popular areas of prediction at Rand.

When I came to my current job I began to think about communications policy, which to me meant how do we regulate communications in the country, what kind of communications do we want for the future, what objectives do we seek our communications systems to serve. In short, where ought we be going? I found very little concensus on any of that. So tonight, if I may, this being a university audience, rather than try to tell you how communications will develop in the future, I thought I would simply try to reflect to you some of the perspectives on what will guide the development of communications in this country and hope that will be of some value to you in drawing your own conclusions.

Much of the popular discussion of communications in the future centers on Marshall McLuhan and his concept of a global village. All of us everywhere in the world, or at least everywhere in this country, have access to much the same kind of information. And then I reflect about the theme of the Rand conference which was specialized communications, the media of the future. Superficially it might seem that there is a conflict between the two, but I think that the exact opposite is true. In the global village, or at least the American village, we are finding a whole host of new communities, non-geographic communities, communications. By definition we are talking about specialized communications. This kind of specialized

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communications among non-geographic communities I think will be the predominant theme of communications in this country , in the future. And also, more and more, our communications in this country will be electronic. I am not sounding the death knell to the <u>Baltimore Sun</u>, I am not sounding the death knell to print journalism, but simply reflecting that electronics is and will be playing a much larger role in our future. Already the lines in electronic and print communications are blurring. We have long distance xerography within the telephone lines. We have telex, and right now the Dow-Jones Company distributes the <u>Wall Street Journal</u> across the country by microwave where it is printed up in remote regional printing presses.

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Since the war, since World War II (betrayed my age there in calling that the war), there has been a tremendous outburst of creativity and development in electronics, but unfortunately most of this creativity, most of this development, has not found its way into electronic communications. There are two big, big forces that are retarding experiment and growth in electronic communications.

The first is your friendly U.S. Government and the 1934 Communications Act, which this year is forty years old. By virtue of that Act, which I presume made sense in its day, no electronic communication service of any kind can be offered

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in this country without the prior approval of the Federal Communications Commission. The FCC has a way of asking the would-be entrepreneur to prove that his service is worthwhile, to prove that his service is economical, to prove that the public wants it, before he is allowed to even try. I think you can see that that kind of discourages innovation.

The second force retarding innovation in electronic communications is monopoly. Private business in the electronic communications field today is very much characterized by monopoly. The common carrier field by the American Telephone and Telegraph Company, and the television field by the three television networks. Now it is argued, principally by those corporate vested-interests, that the United States has the best television system in the world; that the U.S. has the best phone system in the world; and, indeed, the status quo in communications in this country just turns out to be the optimum communications system for the future. But I think while I agree it is true that we do have the best television system, we do have the best telephone system, it's precisely because we do have the best that we in this country have the ability as no other country in this world does to look beyond basic telephone service, look beyond a basic level of national mass television service, and look to a whole host of new and specialized communications for those non-geographic communities of interest which I mentioned before.

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Let me talk briefly about the common carrier field. The telephone business today has a lot in common with the automobile business. For years and years the only Ford that you could get was a black "Model T" and the same with the telephone. Today we have in both the telephone business and the automobile business a proliferation of colors and models, and a lot of optional equipment, but precious little real choice and precious little competition about totally different kinds of communications that we might want -- data, facsimile, computer terminals in the home. Just imagine all those little calculators made in Japan that you would plug into your telephone -- from there into the computer -- from there into the college -- from there into a friend's home -- from there to yourbank -- remote access to libraries. All of that is technically possible, and it looks economically possible. But none of it is going to come until we have some competition in common carrier communications the way the foreign companies gave us competition in the car business.

Let me turn then to television. It seems hard to believe that the public interest in this country could possibly be served by freezing the number of TV channels that we have today, and by blocking the growth of cable television which could greatly expand the number of TV channels each of us has to choose from. Yet if you listen to the broadcast industry today, if you listen to the three television networks, that is exactly what you will be told, that only by preserving the limited number

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of channels to choose from can we have quality television. I think exactly the opposite is true. Cable television has to be allowed to grow on an economic basis, as a medium co-equal with broadcasting. It has to have its own regulatory framework passed by the Congress. It has to develop not as a second class medium, living off broadcast television, but rather a new medium encouraged to have a diversity of programming, a multitude of channels -- and that means much more choice for what each of us wants to see and hear.

In short, the world of the future is going to need more communications, it is going to need lower cost communications; and one way or another the great institutions -- the United States Government, the phone company and the three television networks -are going to have to change in order to permit that to come into being.

Now let me shift and talk about what some of this means for journalism and the media. There are two main points that I would like to make about the media today and how it is different from what we think about it from the past, what so much of our theory of government-media relations is based on. The first difference is that the media in this country have become big business, as we have seen in many ways it has become monopolistic. We have a very limited number of television stations principally programmed by three New York City television stations, i.e., three television networks. We seem to have

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fewer and fewer newspapers each year. With the limited number of TV stations, with the shrinking number of papers, with the TV stations often owned by a newspaper in the community, we find fewer and fewer media voices that are available to each of us as citizens.

The second big difference is that Government regulation of the content of television broadcasting is steadily expanding to the point where today we have a pervasive system of content controls administered by Federal bureaucracy over what we see and hear on television. A situation far different than any of us are accustomed to seeing in the print media. The FCC has 14 favored categories of programming, and now they are talking about setting minimum percentages to apply nationwide to what each television station has to program in order to keep its license. As we all know with the tremendous profits in television broadcasting, it would have to be a rather dumb or a rather courageous broadcaster who would not conform to what the FCC wants in the way of programming. We have a Fairness Doctrine, an old goal, something like what motherhood used to be in the days before zero population growth. None of you would be against fairness, but one can wonder about fairness in the media, when that fairness is decided by a Government bureaucracy. When a Government agency seriously undertakes to decide what are issues of public importance, how many sides there are to each of those issues, who qualifies as a legitimate spokesman, whether or not each of those sides on each of those issues has received adequate

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coverage, you begin to wonder about censorship. Similarly the FCC's prime time rule, wherein they undertake to specify which hours of which days of the week, which kinds of programming can be taken from the network, which are to be produced locally or bought from syndicated sources.

In short, we have in place today a system of Government control of what we see and hear that seems at least superficially (there is nothing wrong with it being superficial in this regard) to be totally at odds with the First Amendment of our Constitution. How does that come to be? Well, this kind of regulation of broadcasting was based originally on the concept that broadcasters use the public airwaves, and there are a limited number of those airwaves, therefore the Government has some obligation to see how they are used on behalf of the public. But more and more in FCC decisions and in Supreme Court decisions, the rationale has subtly shifted -- shifted away from the use of the public airwaves, and shifted to the fact that there are a scarcity of broadcast stations available. But when scarcity becomes the rationale to the Federal Government deciding about the appropriateness of what the media are programming, we have to look rather nervously over our shoulder at what is happening in the newspaper business. With fewer and fewer newspapers, there are already fewer newspapers, pure daily newspapers in this country, than there are radio broadcast stations. In many communities there are more broadcasting television stations than there are newspapers. In short,

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the scarcity rationale applies directly to newspapers, and particularly when you consider the joint ownership of a newspaper and a television station in a particular market, you begin to see scarcity with a vengence.

We look at the situation in Florida where a court of law requires newspapers to give space for the answering of editorials. We see that upheld by the Courts, and we look nervously at the Supreme Court with its justification of controls over the media based on scarcity. We really have to wonder where we are going.

Many people in this country would like to see a Fairness Doctrine for newspapers. They would like to see an equal space requirement in the newspapers just like we have an equal time requirement in broadcasting. If scarcity is the only thing we have to demonstrate as an excuse for Government regulation of the content of the media, there will be no shortage of self-appointed overseers of the public interest who will prove scarcity in order to justify using the processes of the Government to make sure that their point of view gets attention in each of the media.

But I think all of us, if we back-off a bit, even though we might approve of some of the specific results of some of that FCC regulation of broadcasting, even if we might like to see some group of poor people get free space in a newspaper in order to answer an editorial, we all have to ask ourselves if we really believe that a bureaucractically-administered press is a free press. In my judgement there is no way. There is no

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such thing as a slightly-administered system of censorship -be it negative censorship to get the media to delete certain types of coverage; or be it the equally pernicious positive censorship, whereby the Government requires the media to give prominent attention to favored points of view.

The big challenge in electronic communications for the next few years is to make sure that we have a free electronic press and that we keep our free print press. The big challenge to that (the big danger that that will not come about) is not a number of special assistants in the White House who seem demonstratively lacking in judgement, who skirt the edge if not going over into the realm of illegality in using Government processes to coerce the media into providing coverage. I think what we are seeing today in our Government is a clear demonstration that people who lack the judgement to refrain from breaking the law to achieve those ends will be caught.

The real threat is not there. The real threat is the year by year gradual accumulation of perfectly legal Government administration by the FCC and the Courts of more and more details -- all for the best of causes, all for the public interest -of what actually goes out over our airwaves. With concentrated effort and attention in the Government and with concentrated effort and attention on the part of journalists (be they print or be they in the electronic media), with a lot of public support, -- and I am not sure that the press establishment in this country can demonstrate either much concentration of effort and attention for much public support, -- but if that could be... -- The way to do that is to systematically reverse the trend over the last ten years of creeping FCC controls over what our electronic media are programming.

What I have said applies with a vengence when it comes to cable television. In cable there seems no need to compromise the public interest and the private interest. Properly regulated, cable television guarantees no use of the airwaves, therefore, no rationale for Government oversight; no scarcity of channels, therefore no need to ration who gets access; it offers us low cost. In short, it all adds up to no excuse on cable television for the Government to control the use of channels or the content of channels as long as we simply assure that everyone has access to those channels, just as everyone today has access to the use of printing presses and the use of the mails.

But when all of that is said and done, when we have slowed the trend towards Governmental specification of what our television system is going to program, when cable television has come and brought lots of television channels, and when Government has no authority whatsoever over how those channels are programmed, when the battle for real press freedom is won and we have a free electronic press just as we have a free print press, when the Government has no legal way to compel fairness,

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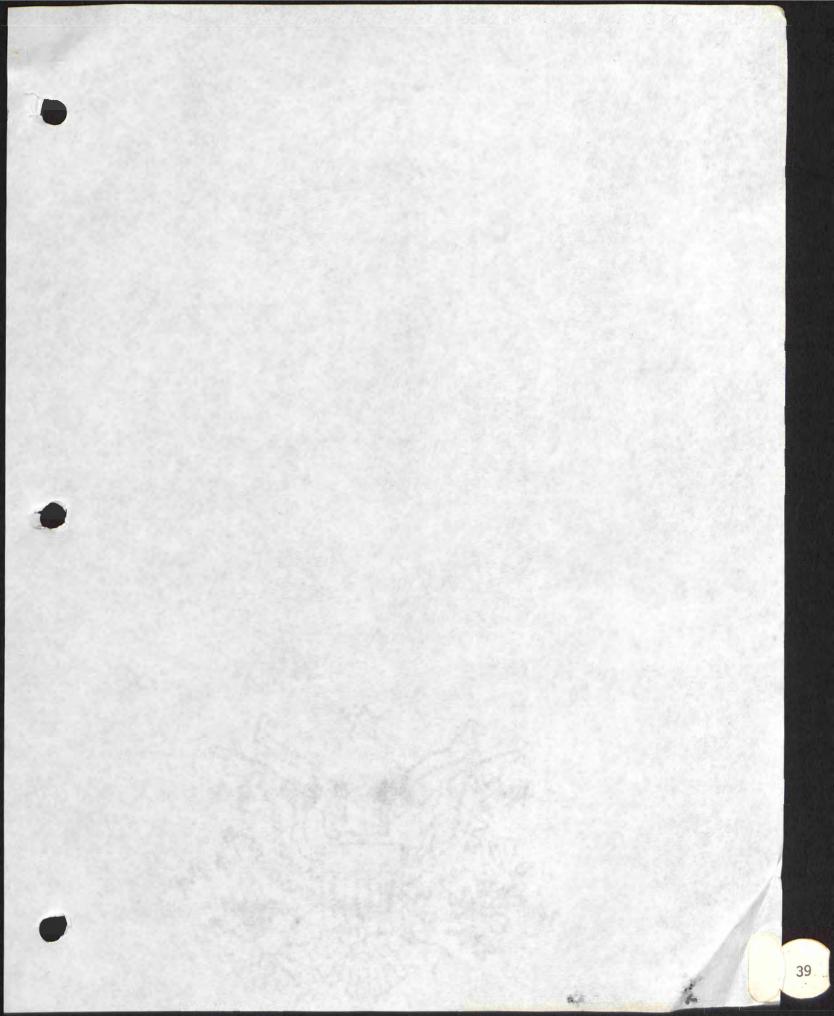


competence, judgment, accuracy and so forth on the part of the professional journalist, then when that nirvana arrives where does journalism go?

This country is a Government, is an economy and is a society full of checks and balances. The press loves to talk about itself as a vital check on Government and of course it is. In many ways the consciencious, the professional journalist is a guardian of the public interest in Government.

So after all is said and done we are left, and I leave you tonight with, what I think is the central question of a free press in a free society, the question originally asked nearly two thousand years ago, "Who is to guard the guardians?"

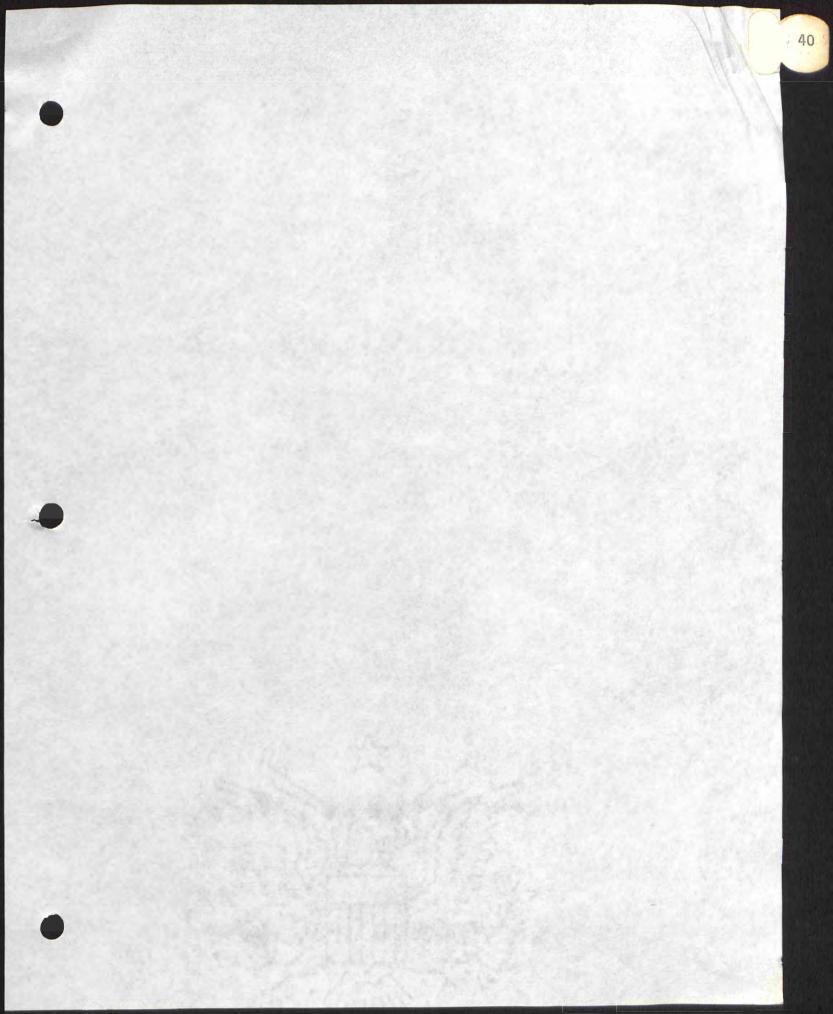
Thank you very much.



FEDERAL COMMUNICATIONS BAR ASSOCIATION WASHINGTON, D.C. MAY 14, 1974

(NO TEXT)





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

before the

Subcommittee on Treasury, Postal Service and General Government Honorable Joseph M. Montoya, Chairman Appropriations Committee United States Senate

May 30, 1974

STATEMENT BY

CLAY T. WHITEHEAD DIRECTOR OFFICE OF TELECOMMUNICATIONS POLICY

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to discuss with you the budget request of the Office of Telecommunications Policy (OTP) for Fiscal Year 1975. I believe you have our Budget Estimates for the upcoming year. With your permission, I would like to submit for the record a more detailed statement of the 1973-1974 Activities and Programs for our Office.

OTP has requested \$9,512,000 for Fiscal Year 1975, an increase of \$7,386,000 over our Fiscal Year 1974 appropriation. Most of this increase, \$6,098,000, reflects the consolidation into the OTP budget of the funding for the technical and analytical support provided to OTP by the Office of Telecommunications, Department of Commerce. This is being transferred from the Commerce budget to our own budget. The transfer and consolidation is the result of suggestions of this Subcommittee, your counterpart in the House, as well as the House and Senate Appropriations Subcommittees for State, Justice, Commerce, and Judiciary.

The \$6,098,000 requested in our budget for Commerce support activities includes an increase of \$1,717,000 (and 23 additional positions) for the support program itself. Most of this increase is necessitated by the rapid growth and change in the Federal Government's use of radio frequencies. This requires a larger number of frequency assignment requests to be processed and increases the workload of technical analysis needed to keep that growing number of communications, navigation, and radar systems from interfering with one another. OTP is now processing approximately 5,000 frequency assignment actions per month. We have implemented procedures requiring all Government agencies to submit their frequency plans well in advance so that spectrum availability can be evaluated prior to the commitment or expenditure of public funds.

In addition, \$1,100,000 is requested for our program of outside studies and research beyond the scope of our staff or that of the OT support group. We have reviewed carefully the need for this program of studies, especially considering the inclusion of the Commerce support in our budget, and have concluded that it is by far the most effective and least expensive way of meeting research needs that require highly specific expertise or large research teams too expensive to retain on a full-time basis. The remaining \$188,000 increase is to provide for eight additional fulltime employees, to reimburse GSA for the cost of leased space (as required by law this year), and to cover other minor increases in general expenses.

I would like to point out that the past year has been a very active one for OTP, and I would like briefly to highlight some of this activity.

In the field of public safety communications, OTP has prepared, in cooperation with other agencies, a comprehensive plan for emergency medical services. This plan provides for nationwide standardized frequencies for emergency medical use, specialized medical data handling circuits, communications networks for biomedical telemetry, and other features designed to provide rapid communications capability in medical emergency situations. Medical authorities have stated that this program could lead to the saving of thousands of lives each year. OTP has also continued its implementation of the policy relating to the "911" universal emergency telephone number.

In October 1973, OTP initiated a formal program for the planning and coordination of the Federal Government's telecommunications systems and services. The objectives are to identify communications activities and resources, to promote economy through sharing of facilities and elimination of duplication, and to encourage the use of more efficient communications to improve productivity. The program requires each department to document its long-term planning for communications and to submit plans for interagency coordination at an early date. The first reports under this program are to be submitted in August of this year.

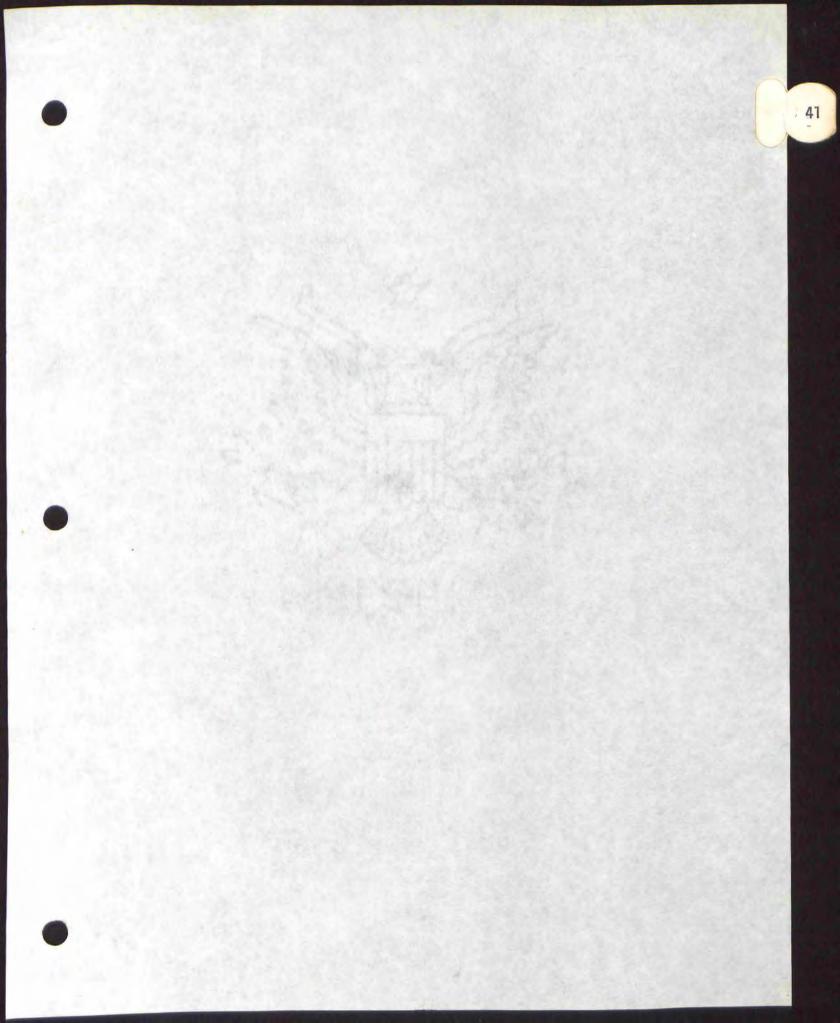
In the area of cable television, the President's Cabinet Committee on Cable, for which OTP provided staff support, completed its study and published its report. To implement certain recommendations of the Committee, OTP has prepared legislation, now in the OMB clearance process, and hopefully it will be submitted to the Congress later this year. With regard to broadcasting, OTP submitted legislation to the Congress in 1973 proposing a revision of the FCC broadcast license renewal procedures. We have also developed legislation to provide long-term financing for the Corporation for Public Broadcasting, and we have forwarded to the FCC a report on VHF broadcast channel assignments that could lead to an increase in the number of VHF television stations.

In other areas, we have prepared legislation to amend the Communications Satellite Act of 1962 to reflect changes in international satellite communications that have occurred over the last twelve years and to clarify procedures for the establishment of new international satellite systems. We have submitted policy recommendations to the FCC regarding frequency allocation and regulatory procedures for land mobile radio services. These recommendations have been taken into account by the FCC in its rulemaking proceeding, and, hopefully, will result in the increased availability of economical two-way mobile radio and car telephone services for small businesses, local governments and private citizens. Two years ago, a similar OTP policy recommendation in the area of domestic satellites was adopted by the FCC, and that policy has now been implemented; just recently we witnessed the launch of the first domestic communications satellite for service to the United States.

Last week, OTP submitted a report to Congress concerning a Federal Government program to assess the biological effects of radio waves. This second annual report summarizes activities by several Government agencies during 1973. The program is designed to produce a sound scientific understanding of how non-ionizing electromagnetic radiations affect man and his environment. Internationally, progress was made in establishing cooperative activities and technical exchange in this area. For example, an international symposium was held in Warsaw, and a United States delegation is now meeting in the Soviet Union.

I am prepared to discuss these and other matters with the Subcommittee, and I particularly welcome the opportunity to discuss these matters with the new members of the Subcommittee and familiarize them with the programs and policies of our Office.

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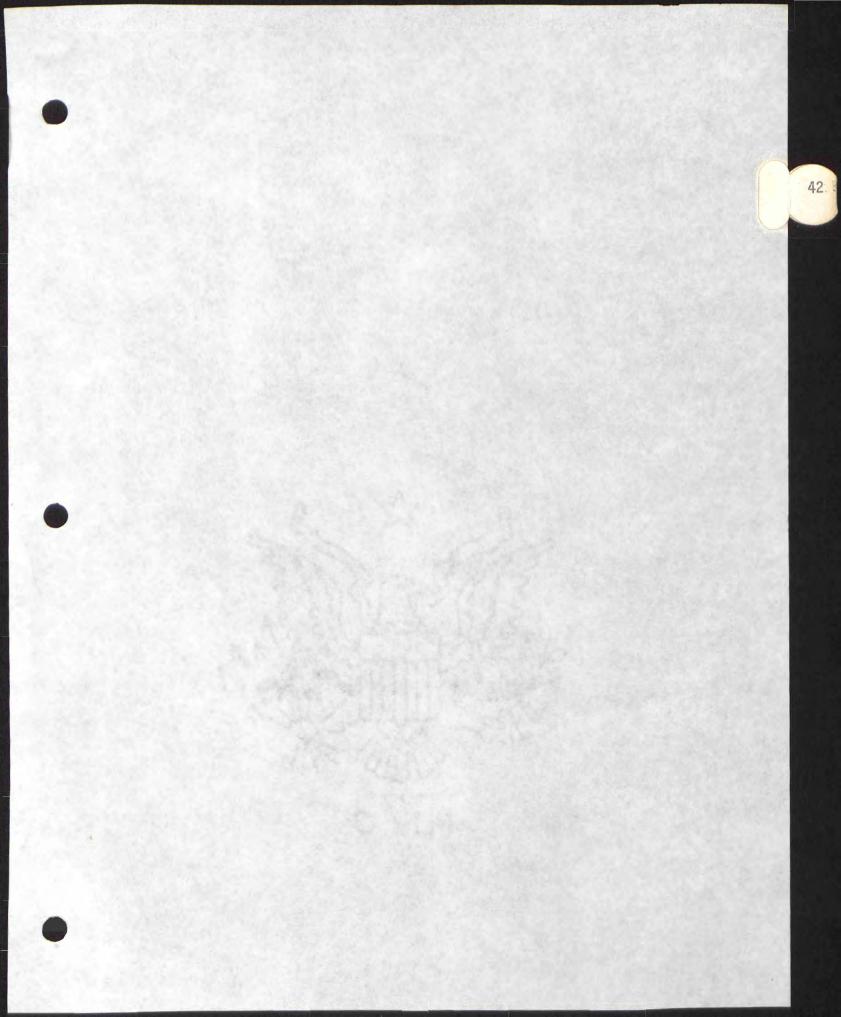


NATIONAL CONVOCATION OF STATE LEGISLATIVE LEADERS ON CABLE TELEVISON

ALBANY, NEW YORK

(NO TEXT)





STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR OFFICE OF TELECOMMUNICATIONS POLICY

ON

BROADCAST LICENSE RENEWAL LEGISLATION

before the

Subcommittee on Communications Honorable John O. Pastore, Chairman Committee on Commerce United States Senate

June 18, 1974

The basic structure for the American system of broadcasting, created in the 1920's and early 1930's, was premised on the twin concepts of private responsibility and public accountability. In that the broadcaster was authorized to use the public airways, a scarce resource, he would be responsible for serving the needs and interests of the people in his local community, and would thus be held accountable to the public for the service he rendered in executing this responsibility. As part of this structure, and clearly distinguishing broadcasting from other media, was the provision that broadcasters would be federally licensed. This fundamental decision was made by the Congress in the Radio Act of 1927 and again in the Communications Act of 1934.

The licensing system, thus, presents the Government with a unique dilemma. On the one hand, the Act requires the Federal Communications Commission (FCC) to grant and renew applications for broadcast licenses if the public interest, convenience, and necessity are served thereby. This necessarily means that the Commission will have to hold the broadcaster accountable for, and pass judgment in some way on, the broadcaster's programming. On the other hand, there is a fundamental Constitutional principle and public policy that the First Amendment should protect from governmental intrusion and interference those who disseminate news, information and ideas to the public, so that the free flow of information to an informed electorate will be unimpeded.

This dilemma requires a particularly delicate balancing act on the part of the Government with respect to license renewal procedures. The manner in which renewals are treated is basic to the Government's relationship to broadcasting. The procedures and criteria governing the license renewal process inevitably have a profound effect on the daily operations of licensees and the way in which they determine and fulfill their public interest responsibilities. If broadcasters see instability in license renewal, they may seek economic and regulatory safety by rendering the type of program service that will most nearly assure renewal of their license. If the Government sets detailed performance criteria to be applied at renewal time, the result will most likely be that the Government's criteria, instead of the broadcaster's perceptions of his local community's needs and interests, will become the benchmark for measuring his public interest performance. Neither the broadcaster's nor the public's First Amendment interests in the free flow of information would be served in such situation.

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Broadcasters should be permitted and encouraged to disseminate ideas and information, whether popular or unpopular, whether consistent or not with the views of any particular government. Broadcasters should be encouraged to serve the actual needs of their communities rather than some arbitrary definition of needs imposed by a federal bureaucracy. Yet, current and proposed license renewal procedures could give the FCC the power to renew licenses of only those broadcasters whose programming meets government-imposed standards or criteria. The price of achieving stability in broadcast licensing should not be the insulation of broadcasters from their local communities by making them more responsive to the Government.

Counterbalancing the goal of reasonable stability in the license renewal process, however, is the prohibition in the Communications Act against anyone acquiring a property right in the broadcast license and the First Amendment goal of promoting a diverse and unfettered flow of information and ideas. The Government has an affirmative duty under the Communications Act and the First Amendment, therefore, to foster competition in broadcasting and to assure that broadcasters are responsive to the needs of their communities. The spur of competition and the threat of non-renewal also are indispensable components of broadcast regulation.

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These are lofty and complex considerations. There is room for differing views on the priorities and about the proper balance to be struck. The issues transcend short-run political differences. The decisions the Congress makes on license renewal and on other broadcasting and cable communications matters it will face in the next few years will have a major effect on the flow of information and freedom of expression in our society for the rest of this century.

The Congress can take an important step now by adopting a renewal policy that brings reasonable stability to the renewal process; that insulates the broadcaster from the effects of arbitrary and intrusive governmental influence; that turns a broadcaster toward community standards and away from Government standards; and that protects the public through clarification and enforcement of the broadcasters' public interest obligations.

I would now like to address myself primarily to the provisions of S. 1589, the Administration's renewal bill, and to H.R. 12993, the House bill, and analyze them in terms of the problems and objectives just discussed and needed changes in license renewals that should be made.

There are four essential changes that should be made with respect to present practice and procedures in the license renewal process:

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(1) the term of broadcast licenses should be extended from three to five years; (2) there should be no requirement for a mandatory comparative hearing for every competing application filed for the same broadcast service; (3) restructuring of the broadcasting industry through the renewal process should be prohibited; and (4) the FCC should be precluded from using predetermined categories, quotas, formats and guidelines for evaluating the programming performance of the license renewal applicant.

1. Longer License Term

Both S. 1589 and H.R. 12993 would extend broadcast license terms from three to five years. We support this proposal as consistent with the public interest goal of stabilizing the renewal process.

In the early days of radio a three-year license term was a reasonable precaution for dealing with and supervising an infant industry. In keeping with the present maturity and modern complexities of the broadcasting industry, a five-year term for broadcasters would be appropriate and consistent with the terms for all other licenses granted under the Communications Act.

2. Comparative Hearing Procedures

Presently, the law requires an automatic, inevitably lengthy and costly, comparative hearing whenever a competing application is filed

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for the same broadcast service. Under the Administration bill, S. 1589, the procedures presently applicable to a petition to deny renewal of a license, which are unaffected by our bill, would apply also to a competing application. Thus, the challenger would bear the initial burden of demonstrating that the renewal applicant had not met the renewal criteria of the Act; the FCC would be able to exercise its independent judgment as to whether a comparative hearing was necessary; and a hearing would be required only if the Commission had cause to believe that the broadcaster's performance might not warrant renewal.

It is important to remember that at stake in a comparative hearing is the incumbent licensee's right to operate as a private enterprise medium of expression. In order to insure that such expression is robust, wide open, and unintimidated, this right should be revoked only if clear and sound reasons of public policy demand such action. This change would afford the licensee a measure of stability and some necessary procedural protections. We should not lose sight of the fact that being put through the effort and expense of a five to ten-year comparative hearing is itself a penalty that can be imposed upon a superior broadcaster simply by filing of a competing application.

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The expectation of receiving a hearing automatically, with no additional burden of establishing deficiencies in an incumbent's performance, can only encourage the filing of competing applications for bargaining leverage, or harrassment. This undermines the stability of the renewal process, turning it into a forum for inflated promises, and increasing the risk that the process will be abused for ideological or political purposes.

H.R. 12993 lacks procedural safeguards incorporated in S. 1589 and thus fails to afford the broadcaster sufficient procedural protection from these risks.

3. Prohibition Against Restructuring Through the Renewal Process

The third necessary change is to preclude the FCC from any restructuring of the broadcasting industry through application of various policy criteria in individual renewal cases. Under S. 1589, the FCC would be prohibited from using against the renewal applicant any uncodified policies. If the FCC wished to impose or change industry-wide policies affecting broadcast ownership or operation, it would have to use its general rule making procedures. This proposal would prevent arbitrary action against individual broadcasters; would foster the certainty and stability necessary to good broadcast operations; and would

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have the additional benefit of assuring that all other interested parties would have opportunity to participate in the proceeding before the rule was adopted.

For that reason, we support that provision of H.R. 12993 prohibiting the utilization of cross or multiple ownership or integration of ownership and management policy principles as criteria in a renewal proceeding unless codified. It should be clear, however, that S. 1589, prohibiting utilization of any policy not reduced to a rule, affords both the broadcaster and the public much greater protection from capricious administrative action than does H.R. 12993, and is thus to be preferred.

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4. Clarification of Renewal Standards and Prohibition Against Use of Predetermined Performance Criteria.

The Communications Act of 1934 fails to define what constitutes the "public interest, convenience and necessity," and in the intervening years this standards has come to mean different things to different people. Important and sweeping powers over broadcasting delegated to an administrative agency without any more specific guidelines as to their application than the "public interest," almost invite arbitrary, unpredictable, and ever-increasing regulation. Such vague standards also invite rampant second-guessing of administrative agency action by the

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courts.

While there is a need to clarify the public interest test used to evaluate the performance of a renewal applicant, we must avoid adopting a test that would risk abridging the First Amendment rights of broadcasters and the public. Such a risk is presented by the current impetus, expressed in the Commission's Docket No. 19154, for example, to establish performance quotas or program percentages as a means to judge a licensee's programming performance.

While such standards would appear to be purely quantitative criteria, it is difficult to conceive of an instance in which the Commission would not look beyond the mere numbers. Since program performance would be what is being measured, it seems reasonable to assume that the Commission would be driven inevitably to making qualitative judgments on program content within quantitative benchmark. If past regulatory history is a reliable indicator of future conduct, we could expect to see such quantitative criteria applied in an increasingly subjective manner and inflated over the years in an elusive game of measure and countermeasure between the regulators and the licensees.

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If this should occur, the licensee would not be fulfilling his obligations to operate the station in accordance with the needs and interests of his community, but in response to the requirements of a Federal agency.

S. 1589 would therefore explicitly prohibit the FCC from considering any predetermined performance criteria, categories, quotas, percentages, formats or other such guidelines of general applicability with respect to a licensee's programming.

H.R. 12993 contains no prohibition against such quantification of the public interest and is deficient in that regard.

Both H.R. 12993 and S. 1589 would clarify present license renewal standards, but go about the task in different ways. S. 1589 provides that in addition to compliance with the technical, legal, financial and other requirements of the Communications Act of 1934 and the FCC rules, the FCC could apply only the following two criteria when evaluating a licensee's past or proposed performance under the public interest standard: (1) the ascertainment obligation, by which the broadcaster must be substantially attuned to the needs and interests of its service area and make a good faith effort to respond to those needs and interests in his programming; and (2) the fairness obligation, by which the broadcaster must provide reasonable opportunity for discussion of conflicting views on public issues.

These two criteria represent a distillation of what the public interest standard means in the context of license renewals. First, that the broadcast license is granted in trust for public service to a particular locality, and second, that the licensee, as trustee, is responsible for providing such service. The FCC's role would be limited to review of the licensee's reasonable and good faith efforts in executing these obligations. In the context of FCC review of broadcaster performance, "good faith" is an objective standard of reasonableness and not a subjective standard relating to the broadcaster's intent or state of mind. It makes clear the intent of Congress that the FCC is to focus on the community's definition of its needs and interests in programming rather than imposing on the broadcaster and the community the Commission's own judgments about what is good programming.

H.R. 12993 also would condition the renewal of a broadcast license on the retrospective assessment of a licensee's ascertainment efforts and whether his operations have been responsive to the needs, views, and interests of the public

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in his service area as ascertained. This provision is similar, of course, to that of S. 1589. Both bills would turn the broadcaster back to his community to find what programming will serve the public interest, and are thus designed to reduce the role of the government in the relationship between a broadcaster and the local community which he serves. We therefore support this aspect of H.R. 12993.

Although we do not consider the House bill's failure to address specifically in this context the broadcaster's fairness obligation as a serious deficiency, the Congress should not allow the opportunity presented by license renewal legislation to pass without expressing the need for some substantial improvement in enforcement of the fairness obligation under the FCC's Fairness Doctrine.

The broadcaster's fairness obligation to present contrasting views on controversial issues of public importance is a longstanding requirement. It is intended to protect the broad interest of the public in fostering a diverse flow of information and ideas. We support the enforcement of this fairness obligation as long as it is done principally, and as originally intended, on an overall basis at renewal time. What we do not support is the present approach of enforcing this obligation on an

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issue-by-issue, case-by-case basis. It is this enforcement process that has come to be known commonly as the Fairness Doctrine and has become so chaotic and confused.

Contraction of the other

If the Congress decides to make no specific reference to the fairness obligation, then the legislative history of the renewal bill should include a congressional statement that the preferred way to evaluate the broadcaster's journalistic responsibility is by overall review of his performance under the fairness obligation at renewal time rather than on a case-by-case basis throughout the license term. The legislative history of H.R. 12993 is silent in this respect, and that in itself is a deficiency.

H.R. 12993 would add some provisions to the Communications Act that S. 1589 does not cover. These include addition of the word "views" to the usual formulation of the broadcaster's ascertainment obligation; a requirement for FCC procedures governing negotiations between broadcasters and persons raising significant issues about station operations; a requirement for strict adherence to time limits for filing petitions to deny; removal of the exclusive jurisdiction of the U.S. Court of Appeals for the District of Columbia over license renewal matters and other appeals of certain decisions and orders of the FCC; requirement for continuing FCC study of deregulation in the broadcast service; and a requirement that the FCC complete action on Docket No. 18110, regarding cross-ownership matters.

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I have no quarrel with most of these provisions. I believe, however, that the addition of the word "views" would inject confusion into the ascertainment process, and I support Senator Scott's bill in its deletion of the word. Moreover, I object to the section dealing with FCC procedures for good faith negotiations with complainants during the course of the license. period. Of course, broadcasters should always deal in good faith with persons raising significant complaints. This is an important obligation that most broadcasters have met throughout the years. But I see no need to invite further FCC regulation of the relationship between the broadcaster and the communities he is licensed to serve, nor to cast this relationship in an adversary mold. The license renewal process itself, if improved by the legislation before the Congress, will provide adequate incentives for the broadcaster to cooperate with local public groups and interests, if the license is to be renewed.

* * *

The major concerns with H.R. 12993 are that it does not provide adequate insulation from the harassment that can arise from the present automatic hearing requirement for competing applications and from the increase in Government control of program content that could result from adoption of illusory quantitative program

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standards and guidelines. These are serious deficiencies in light of recent broadcast regulatory history which has witnessed an increase in filing of competing applications, and an apparently inexorable accretion in regulatory power, and willingness to apply that power, to force compliance with administratively imposed program requirements. The 1960's, for example, were marked by the administrative and judicial evolution and application of the Fairness Doctrine on a case-by-case basis to specific program and commercial content; the <u>WHDH</u> case; and by the regulatory establishment of licensee obligations to carry specific types of programming. This process has continued into the 1970's, which have been marked by a variety of proposals to force broadcasters to carry counter-advertising, to prescribe how children's programs should be improved, and to set mandatory percentages of various types of TV programming.

Of course, the FCC and the courts have not had this territory entirely to themselves. Executive Branch officials in this and past administrations have also expressed their concerns about broadcast program content. But the Executive Branch has no life and death control over broadcasters, as do the other branches of government, so broadcasters can pay the Executive Branch less heed. But, given the trend of increasing Government controls, it is easy to see why broadcasters might get edgy when any official makes a critical comment.

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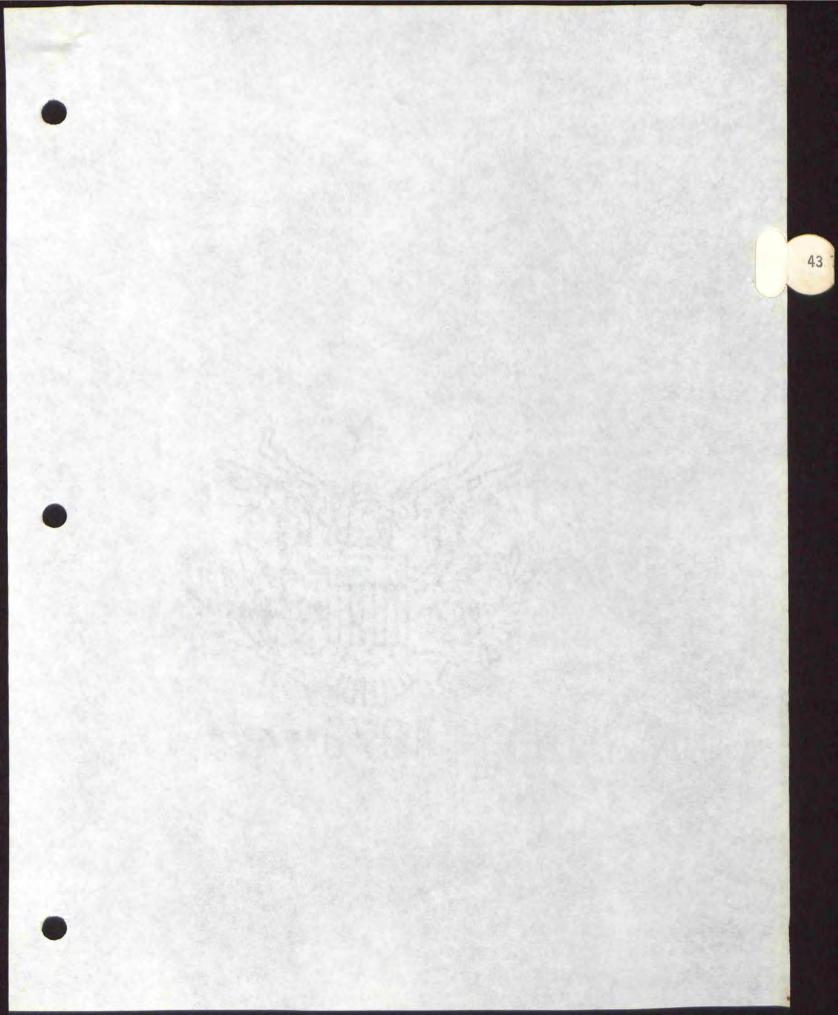
Whether attempts to influence broadcast programming have come from the FCC, the courts, or the Executive Branch, it is the existence of regulatory mechanisms of program control that gives rise to the potential for abuse, and it is the existence of these mechanisms that the Congress should deal with through enactment of legislation.

I submit that much of the current political turmoil over abuse of FCC processes makes it clear that there is a definite need for increasing the insulation of the broadcaster from governmental intrusions in his First Amendment rights. This could be achieved by enactment of license renewal legislation that contains the essential safeguards of S. 1589 which are missing from H.R. 12993.

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S. 1589 is designed to strengthen the First Amendment freedoms of broadcasters. All four changes in our bill promote the cause of less -- rather than more -- Government regulation and substitute, as much as possible, the voluntary exercise of responsibility by broadcasters for the often heavy and arbitrary hand of Government. In short, both S. 1589 and H.R. 12993 turn the broadcaster back to his service area for guidance on his program service, but only S. 1589 achieves this fully by insulating the broadcaster from arbitrary or capricious Federal interference in his First Amendment rights.

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363 June 20, 1974. - FED NES -h .7 STATEMENT OF CLAY WHITEHEAD, DIRECTOR, GFFICE OF 1 TELECOMMUNICATIONS POLICY 2 Mr. Whitehead. We are not here/today (prepared) to testify 3 on all the bills under consideration. We came principally to 4 GSAS address certain aspects of the FEDNET procurement and our role 5 in it. 6 OTP, of course, has been involved in the privacy issue since 7 its founding in 1970. And as you and other people have commented, 8 technology seems to be rapidly outpacing our understanding and intereste officiality during 9 grasp of what it is doing to privacy issues, 10 As recently as 1968, a major Presidential review of communi-11 cations issues could be submitted to the President without delvin 12 at all into the privacy question. It has been coming. upon us 15 very rapidly. For fample w in the proven in those 14 In the last year, OTP has done a humber of things. 15 began a major study to define the scope of privacy interests 16 and the ways in which the Federal Government could come to grip 17 with the problem. We have prepared a report to the President on 18 cable television with a section on privacy and are now drafting Washington, D.C. 20003 19 legislation to send to the President for-forwarding to the Hill on this matter, as referred to in the Vice President's letter 20 21 We instituted (last year)the Governmentwide communications to senator . Erve S.E. 22 planning process under OTP Circular No. 12, which for the first 2: time gives a focal point within the Federal Government, for 24 015 we can see the communications planning of all the Government 25

proverials for communication fetures an. agencies' for data and tying together information data banks. Phone (Suet 202) 544-1 in-one place 2 We made a recommendation to the President last year that 3 which he include in the State of the Union message -- and he subsequent? 4 which led did -- a new initiative on privacy, leading to the establishment 5. Domestic Council Privacy Committee of the commission/under the Chairmanship of the Vice President. 6 first GSA's FEDNET proposal/came to OTPsattention for-the-first 7 (as part alour) time-in December of last year in the context of our role-in over-8 Win hours seeing the agency communications plan. This Committee has the (tradego til sellects bit will comment 9. correspondence between OTP and GSA, and I think those of our 10 concerns and our actions. _I_think, it is important to note that 11 GSA has reduced the scope of its plans and has adopted a more 12 stretched-out procurement schedule which gives more opportunity 13 for review. 14 In my judgment, however, there is still reason to be con-Laspect R.G. The GSA 15 cerned. The deferral of the DCN proposal certain satisfies 16 our major concerns on procurement, but it does not address the 17 privacy question. Using even the scaled-down computer procure-18 ment with the existing communications line does not substantial Washington, D.C. 20003 19 change the character of the system. We are still talking about 20 an interconnected information system owned and operated by the 21 Federal Government at a rather substantial increase in scale ov Vinvoliting S.E. 22 anything we have seen before. OTP, OMB, and, of course, the treet. 23 Congress should continue to be concerned about the privacy app 24 of what GSA is doing. 25

However, I am confident that the planning process that GSA 1 has agreed to does give opportunity for OTP, OME, and the Congres 2 to oversee GSA's actions and to review the implications from a 3 privacy and procurement standpoint before system implementation 4 begins. I do not think D need to tell this Committee that I 5 think such oversight will remain very important. 6 Senator Percy. Thank you very much, Mr. Whitehead. 7 I just have one question for you. 8 Earlier in these hearings, Vice President Ford's written 9 testimony made reference to efforts by the Administration to 10 develop legislation to prevent snooping and other abuses of 11 personal privacy by cable television. I understand that the 12 Office of Telecommunications Policy will soon propose a Cable 13 Communications Act of 1974 with certain privacy provisions. 14 - Can you tell us what they could do or would do? 15 This act, that is now in the final stages Mr. Whitehead, 16 of drafting, would putlaw certain kinds of information that-coul from aller 17 adjulithant the consent of the cable subscribed be-collected/and-would-guarantee, that the citizen has ample 18 Lt evende and Falle 10) opportunity, through technical standards set by the FCC and 19 through other measures, very akin to the postal privacy act, pos 20 privacy laws, to make sure that he can control what information 21 The cable subscriber could i comes into his home, and equally that he can control what infor 22 . 1 .1 mation the is doing with his cable system, what kind 23 of communications he is getting access to, the content of those 24 communications, would be totally under his control .-- And the 25

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from disseminating any of that information to anybody else. Senator Percy. Right now we have such market research organizations such as A. C. Nielsen who work out arrangements with television viewers to put monitors on their sets. They compensate them for this. They try to pick a representative cross-section. They provide very valuable data to advertisers, the general public, and so forth.

cable operator would be precluded, as a marter of Federal law,

without the cable substribel's actual consent

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Is it possible, however, with cable television, without adequate legislation to prevent it, for someone to just go in 10 and monitor what programs a family views and watches, how long 11 they look at them, when they change, without that individual 12 knowing it; and sell that information? 13

Would this be, in your judgment, an invasion of privacy that 14 should be protected against? . 15

I think it is Mr. Whitehead. It certainly is possible. 16 important to note, though, that that same thing is possible with 17 over-the-air broadcasting now ... There have been commercial 18 proposals to set up a service similar to Nielsen, but using a 19 truck that merely drives up and down the streets, monitoring the 20 radiation from television sets and keeping track of which homes 21 are tuned to which channels at which time. 22 In my view, that would be an invasion of privacy, whether

is done under the current technology or whether it is done under 24 And I think we should have laws that clearly prohibit 25 cable.

PAUL WARD

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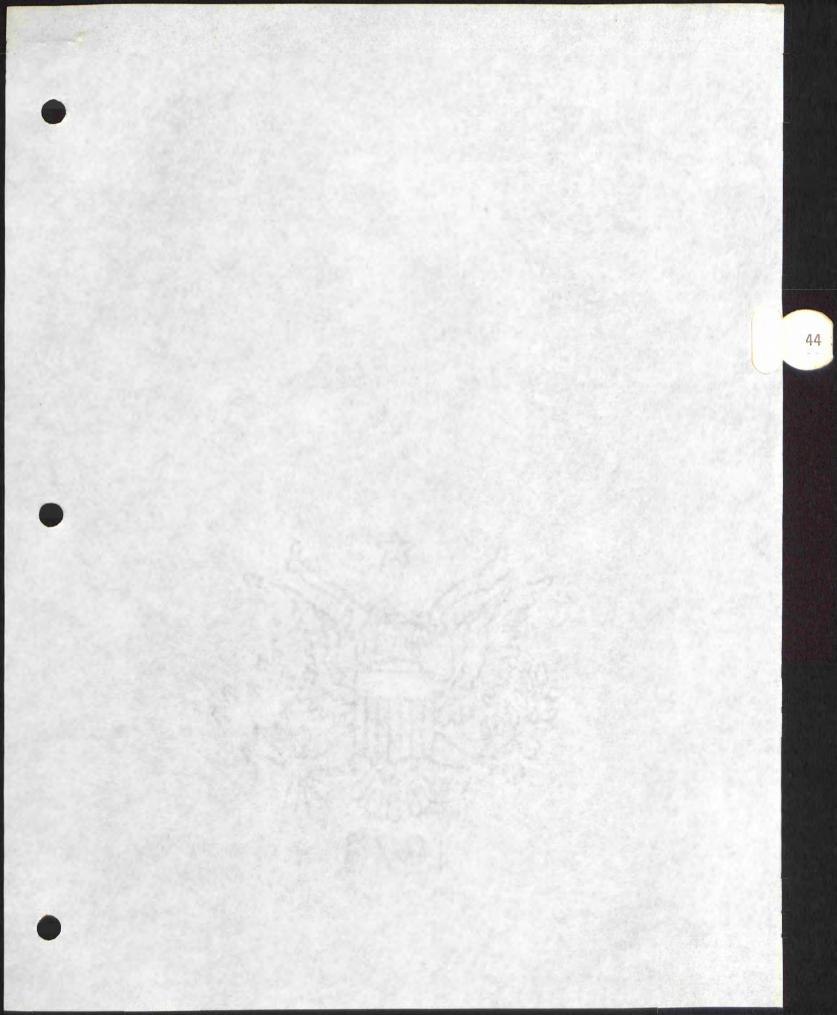
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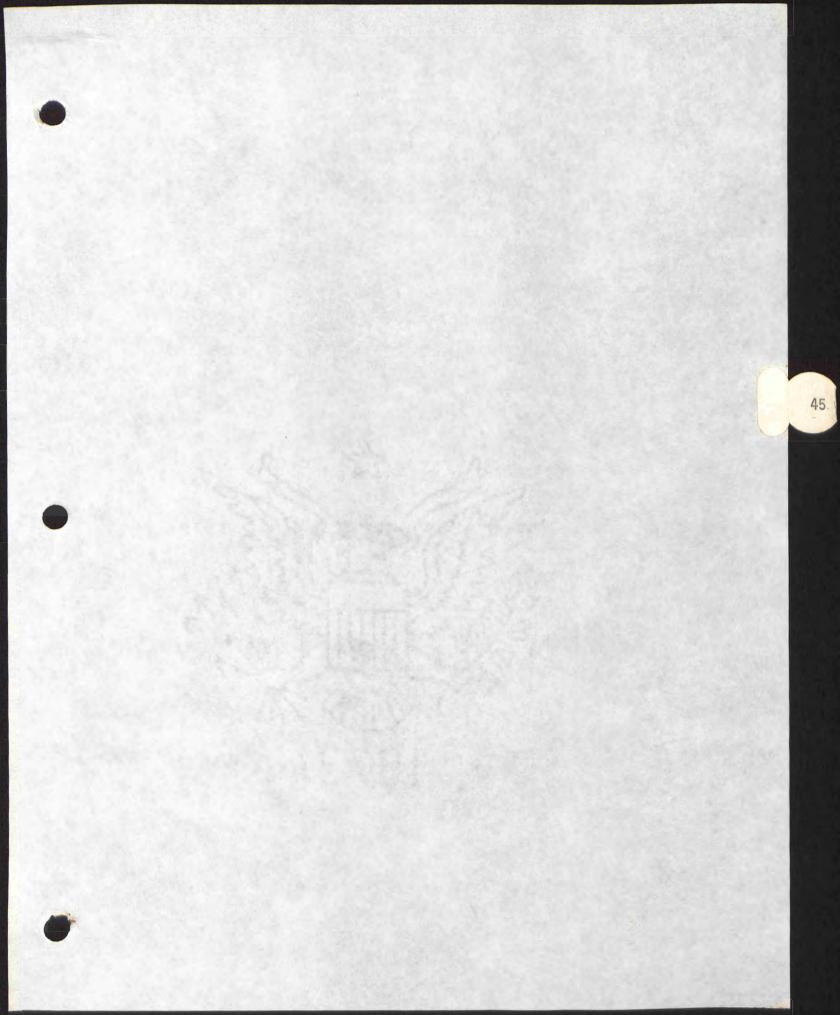
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Ture (Area 202) 544-6000	10 Firs et, S.E., Washington, D.C. 20003	1	Those with that kind of surveys, unless, of course, like Nielsen, the home-
		2	owner gives his consent.
		3	Senator Percy. Thank you very much for being with us this
		4	morning.
		5	I have no further questions.
		6	Mr. Whitehead. Thank you.
		.7	Senator Percy. Our next witness; Donna Schiller, the Presi-
		8	dent of the League of Women Voters. And she will be accompanied
		9	as I understand, by Ms. Doris Bernstein.
		10	It is a particular pleasure to welcome my own constituents.
		11.	I am happy to say that I am the first male member of the Chapter
		12	of League of Women Voters in Willamette, Illinois, last Sunday
		13	on its 50th anniversary, to become a member, I think the first
		14	male member.
		• 15	Ms. Schiller. Senator Percy; I had planned in my remarks
		16	to welcome you on behalf of the League of Women Voters of
		17	Illinois as one of our new members. It is a pleasure to have
		. 18	you.
		. 19	Senator Percy. I would like to say it is just simply a
		20	reaffirmation of my close affiliation with and devotion to the
		2	League for better than 20 years. I worked with them back in
		2	2 the '50s in the implementation of the passage of trade legisla-
		2	3 tion, always urging that they somehow at the dinner table at
		2	4 home enlighten their protectionist husbands to the necessary
			25 national policy which I thought their wives far better underst

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WARD & FAUL	1	t	han they did. And now it is national policy.	
	2		I think that husbands can be educated and informed at	
	3	m	eetings as well as at home.	÷
	4		Thank you.	
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STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR OFFICE OF TELECOMMUNICATIONS POLICY EXECUTIVE OFFICE OF THE PRESIDENT

ON

S. 3825

PUBLIC BROADCASTING FINANCING ACT OF 1974

before the

SUBCOMMITTEE ON COMMUNICATIONS HONORABLE JOHN O. PASTORE, CHAIRMAN COMMITTEE ON COMMERCE UNITED STATES SENATE

August 6, 1974

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Mr. Chairman, members of the Sub-Committee, I welcome this opportunity to appear before you today to discuss S. 3825, the Administration's proposed long-term funding plan for public broadcasting.

It was four years ago that I appeared before you at the hearing regarding my confirmation as Director of the Office of Telecommunications Policy (OTP). At that time, you reminded me of this Administration's pledge to submit a long-range funding plan for the Corporation for Public Broadcasting (CPB) and the local educational stations it is intended to serve. I promised that we would do so. I never realized then what an arduous journey it would be before we could keep that promise.

Working closely and constructively with public broadcasters, we have now devised a financing mechanism that satisfies as fully as possible the many objectives and concerns surrounding such an important and sensitive subject.

Mr. Chairman, the bill is analyzed in detail in the material we submitted with the legislation, and I offer it for the record. Therefore, I would like, in my time here today, to review briefly how we arrived at this financing approach and how this approach serves and enhances the fundamental principles first set out in the Public Broadcasting Act of 1967.

Those principles are, first, that there must be local station autonomy from centralized control within the public broadcast system and, second, that there must be insulation of programming from Government control arising out of the use of Federal funds.

We all agree that program choices must be left to the judgment of broadcasters, independent of the wishes of Government officials. But a medium of expression funded through the Federal appropriations process can never be totally independent of Government. It matters little that governmental control is not actually exerted over programming; the mere potential for such control and influence can chill--or charm--the exercise of independent judgments by educational broadcasters. For these reasons, the Carnegie Commission on Educational Television strongly recommended permanent, insulated financing for the Corporation--that is, financing completely free of the budgetary process of the Executive Branch and the appropriations process of the Congress.

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OTP rejected this recommendation, just as the Johnson Administration and this Sub-Committee did in 1967, when legislation created the framework, but not the financing, for public broadcasting. The reason for the rejection is that the Congress has an inescapable responsibility for holding the recipients of tax dollars accountable for their use of public funds. This is a valid and necessary governmental responsibility even when the recipients of such funds operate a communications medium.

Annual appropriations are just as unacceptable as permanent appropriations, because there is insufficient insulation between the budgetary and appropriations processes and sensitive programming judgments. A multi-year appropriation represents a reasonable balance between the conflicting objectives of insulated financing and Government fiscal responsibility.

We did not, however, urge multi-year appropriations prior to this time, since we felt an obligation to see that public broadcasting was developing in line with the goals of the 1967 Act--to do otherwise would be to set in concrete a system which worked at cross purposes to the intention of that legislation. The Administration's recognition of this responsibility was interpreted by some as an attempt to dismantle public broadcasting. But we were not quarrelling

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with public broadcasting as envisioned in the 1967 Act. We did object to a fixed schedule, real-time public network controlled and programmed in Washington in a manner that made a sham of meaningful local participation.

Despite those problems, this Administration continued its support for the public broadcasting system, recognizing its contributions as well as its shortcomings. Our funding requests for CPB have increased from \$5 million in 1969 to \$60 million for 1975. But we rightly withheld support of a long-range, insulated funding plan, until the public broadcast system operated with checks and balances adequate to merit long-term funding without intervening Congressional review.

Over the years public broadcasting changed. The structure of the system and the policies of CPB and the Public Broadcasting Service now reflect the importance of a direct and real local station participation in programming decisions at the national level. We have reached the point where insulated funding of the system is not only appropriate, it is essential if public broadcasting is to continue its present course to excellence and diversity.

I would now like to turn to the provisions of the Administration's proposed bill. S. 3825 is more than an appropriation for public broadcasting. It completes the basic structure established in

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the 1967 Public Broadcasting Act by providing for insulated funding, with Congressional oversight every five years, and fosters the goal of local autonomy by the "pass-through" of funds to local stations.

Under this financing plan, funds would be simultaneously authorized and appropriated on the basis of a matching formula. The Federal Government would match 40 percent of the entire public broadcasting system's non-Federal income for each fiscal year. This amounts to one Federal dollar for every \$2.50 contributed to public broadcasting by non-Federal sources.

This matching fund formula insures strong Federal support for public broadcasting and, at the same time, creates an incentive to generate non-Federal contributions. As the Federal share will represent at most 28 percent of public broadcasting's total income, the matching principle also assures that Federal funds will not dominate the financing of the system.

It is clearly necessary for the Administration to propose and for Congress to set a maximum amount--or ceiling--for the Federal funds available in a given year. The annual ceilings

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proposed in S. 3825 reflect the Administration's estimate of the needs of the system. The ceilings also take into account the other demands upon the Federal budget, as well as the overriding need to economize in the face of current fiscal problems. I believe that the ceilings in our bill are adequate. Naturally, those in public broadcasting believe that higher ceilings are needed. However, this is the first venture into multi-year appropriations for public broadcasting and it is prudent to establish conservative limits at the outset.

The proposed legislation also serves the essential principle of localism by building into the system checks and balances against centralization of power over programs and operations. The Administration's support of localism often has been misconstrued to mean that we are against nationally produced and distributed programs and want only those that are produced and originated at local stations. Of course, there must be a balanced mix of nationally and locally originated programming, but this is not the main thrust of the localism principle. It is that local educational stations should have a substantial role to play and a voice in national programming decisions and a meaningful choice in deciding whether to broadcast those programs

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to their local audiences. This concept goes back to the Congress' own intent in the 1967 Act. The system created by that legislation was based on the concept of localism not merely because local autonomy in and of itself was seen as a desirable social goal. It is also the best way to promote the more basic concept of diversity. Only when there is assurance of substantial diversity of ideas and information will a Government-funded medium of expression be compatible with our country's values; and it is only then that exercise of governmental budgetary responsibilities can be limited to five-year intervals.

To foster the principle of localism, S. 3825 requires that a substantial percent of the annual appropriation of the Corporation be passed on to the local stations for use at their discretion. In addition to insuring significant financial support for local stations, the bill requires the Corporation to consult with the stations in making decisions regarding the distribution of the Federal funds.

I recognize that, controversial as it has been in the past, the notion of pass-through funds to enhance local station autonomy in a structure of checks and balances is not particularly controversial now. As is apparent from the enactment of the

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Budget Reform Act of 1974, however a multi-year appropriation is an extraordinary request to make of both the Executive and Legislative branches. But public broadcasting, and the viewers and listeners it serves, should ask for or accept no less from those of us in Government.

The financing of public broadcasting presents rare and unique circumstances in which the Executive and Legislative branches should give up some of the control they wield over federally funded programs by virtue of the annual authorization and appropriation process. This unusual funding mechanism is essential, if the public broadcasting system as conceived by the 1967 Act is to succeed. It is that simple. For that reason the Administration has put aside its own reservations and has proposed this bill. For the same reason Congress should loosen its control of public broadcasting's pursestrings and pass this legislation.

The past seven years have brought us all to a point at which we simply must trust the people who run the stations and the national public broadcast organizations and trust the American people who would be the true beneficiaries of this funding approach. I am not asking the Congress to have blind faith in public broad-

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casting; just as I did not ask that of the President in urging him to send this legislation to the Congress. But we have created the system; it is a reality. We must now give it a chance to succeed according to the original vision for a truly independent and financially insulated system of public broadcasting. To do so, I have discovered, you must be willing to respect both reality and idealism. This bill is our best effort to combine the two. I commend it to you and your colleagues.