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December 9, 1970

Fred Knubel, Director

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MEMO TO EDITORS:

Clay T. Whitehead will deliver his first major address as director of the White House's new Office of Telecommunications Policy on Wednesday, December 16, at Columbia University. He will speak at 5:30 P.M. in the Rotunda of Low Memorial Library on the University's Morningside Heights campus, Broadway and 116th Street.

The occasion is the presentation of the second Alfred I. duPont-Columbia University Awards in Broadcast Journalism. Six silver sculptures by architect Louis Kahn will be presented to individuals, stations and networks for excellence in broadcast journalism in the 1969-1970 season.

Mr. Whitehead, 32, is a former Special Assistant to President Nixon. Following the 1968 election, he served on the President-elect's task force on budget policies and assisted in transitional matters. He joined the White House staff in January 1969, where his responsibilities included the space, atomic energy and other technically related programs, maritime affairs, liaison with regulatory agencies and several economic and organizational matters. He was appointed first director of the Office of Telecommunications Policy in September 1970.

At the first DuPont-Columbia Awards presentation in November 1969, Dean Burch delivered his first major public address as the new chairman of the Federal Communications Commission.

You are invited to cover.

EVENT: Address by Clay T. Whitehead, his first as director of the new Office of Telecommunications Policy.

TIME: Wednesday, December 16, 5:30 P.M.

PLACE: Rotunda of Low Memorial Library at Columbia University, Broadway and 116th Street.

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

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

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

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



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

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

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



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

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



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

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

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

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



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

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

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



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

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

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



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

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

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



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

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

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



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

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



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

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

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



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

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

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



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

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

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



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

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

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



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

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

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



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

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

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



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

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