### Remarks of

# Clay T. Whitehead, Director

Office of Telecommunications Policy Executive Office of the President

### at the

National Academy of Television Arts and Sciences

Americana Hotel New York, New York

January 11, 1973

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

Our system of broadcasting presents this country with a unique dilemma which goes back to the basic policy embodied in the Communications Act of 1934. Section 309(a) of that Act requires the Federal Communications Commission (FCC) to grant applications for broadcast licenses if "the public interest, convenience, and necessity will be served thereby." This necessarily means that the government will be involved, to some extent, in passing judgment on the heart of the broadcast service -- the broadcaster's programming. But then section 326 of that same Act specifically denies the FCC the "power of censorship" and the power to "interfere with the right of free speech" of the broadcaster. The implementation of these two statutory goals requires a difficult balancing act. On the one hand, the broadcasting industry must be responsible to the public through the legal processes of the Communications Act that the public has recourse to see that this responsibility is being exercised. On the other hand, the Government can't use the Act to be too active an intermediary between the public and the industry -- even with the best of intentions -- because the net effect would be to make Government agents out of broadcasting licensees, rather than establish them as independent voices and sources of information in our marketplace of ideas.

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

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

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

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

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

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

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

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The first change would be to extend broadcast license terms from three to five years. When the Communications Act was passed in 1934, the short three year license term was a reasonable precaution in dealing with a new and untried industry. A five year period, however, seems to be a more reasonable period at this stage in broadcasting history. It would inject more stability into the license renewal process and allow the broadcaster more time to determine the needs and interests of his local community and plan long-range programs of community service.

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

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

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

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

The FCC, under current procedures, is forbidden from exercising its independent judgment as to whether a comparative hearing is even necessary. Without initially assessing the past performance of the incumbent licensee, the FCC must throw him into a comparative hearing, which usually involves substantial expenditures of time, money and manpower. The comparative hearing is not unlike the medieval trials by battle, and the winner of this trial is not necessarily the person who will

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best serve the interests of the local community but rather the one who can afford to stay in the heat of battle the longest -- the one with the most time, the deepest pocket, and the best lawyer. Certainly, in this day and age, we can devise more rational and equitable procedures especially when, in all cases, a substantial public interest is at stake.

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

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

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

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

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

Presently, an important factor in determining the licensee's public interest performance is the extent to which he has programmed in 14 specific program categories predetermined by the FCC. And the trend is toward more detailed program categories, more program quotas and more percentages. The Administration's bill is designed to halt this trend toward quantification of the public interest. Confining the FCC's evaluation of the licensee's performance to the bill's ascertainment and fairness criteria makes the local community the touchstone of the concept of public service embodied in the Communications Act. Serving the local community's needs and interests instead of the desires ... of the Washington bureaucrats would become the broadcaster's number one priority.

\* \* \* \* \* \* \* \* \*

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

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

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

There is legitimate room for disagreement about how this balancing process can be best achieved. But the dilemma will not go away and those who criticize our bill can't have it both ways. Don't you want limits on government power such as those in our bill? Or do you prefer the current scheme, with its burgeoning program categories, percentages, and renewals every three years? Do you want the Government to exercise more control over broadcasting? Or should the Government withdraw completely from broadcasting regulation and tell minority groups they have no recourse against the licensee?

When I say critics of our bill can't have it both ways, I mean they can't answer yes to all of these questions. There are a number of quite different, and mutually exclusive, approaches to broadcast regulation.

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

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January 11, 1973

MEMORANDUM FOR

Mr. Ron Ziegler The White House

Attached is a copy of the speech Tom Whitehead will be delivering today at 12:30 p.m. to the New York Chapter of the National Academy of Television Arts and Sciences at the Americana Hotel in New York City. As you requested, the following are the four major changes in broadcast license renewal procedures that would be brought about by the OTP bill.

- The legislation extends the term of license for a broadcast station from three to five years. This increase is proportionate with the time required to recoup the substantial investment in money and effort that a broadcaster must now make, as well as with the time that it takes for a broadcasting operation to provide a high quality of service.
- 2. The legislation provides that policies regarding the grant of licenses -- such as policies regarding multiple or cross media ownership -- must be contained in rules of general application promulgated through the Commission's rule-making procedures. This provision does not modify any of the Commission's powers enumerated under the Communications Act, or constrain its determination of substantive policy. It simply requires that such policy be made through a proceeding in which all views are given the opportunity to be heard and considered, and all information analyzed and weighed.
- 5. The legislation replaces the broad "public interest" standard now governing the evaluation of renewal applications by two specific criteria geared to the applicant's past performance. This is the best evidence there is as to the applicant's qualification for license renewal.

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The first of these criteria is the licensee's responsiveness to the needs and interests of the communities he services, and the second is the licensee's fulfillment of the fairness obligation, as it is stated in section 315(a) of the Communications Act. Employment of these criteria will have two effects: it will establish the local community rather than any artifical or arbitrarily determined program mix requirements or performance standards as a point of reference in determining whether or not a license should be renewed. Furthermore, it will provide for general oversight by the Commission of the licensee's adherence to the fairness obligation, and lessen the need for day-to-day enforcement of the obligation on a case-by-case basis.

4. The legislation establishes procedures for consideration of competing applications for the license for which renewal is sought. As with those governing petitions to deny -- which are not changed by the legislation -- these procedures specify that the challenger must first show that grant of the renewal application would be inconsistent with the legislation's criteria for renewal. If this showing is made, then a full comparative hearing is held. These procedures assure that healthy competition for licenses is an essential part of broadcasting, but that at the same time, such competition occurs within an overall environment of predictability and stability.

If you have any further questions, you can reach me through my secretary at X4990.

> Brian P. Lamb Assistant to the Director

Attachment

BPL:cjc cc: DO Chron DO Records Whitehead (2) BPE Subject Chron Itinerary for Clay T. Whitehead New York, New York January 11, 1973

# Thursday, January 11, 1973

8:30 a.m.	Coyt will pick you up Lv. National airport via American #303 Arr. La Guardia	
10:00a.m.	Interview with Mr. Sandy Lechner Eye Witness Exclusive ABC-TV 433 West 53rd	(212) 581-7777
12:30 p.m.	Address before the NATAS Imperial Ballroom B Americana Hotel 53rd Street and 7th Avenue	(212) 581-1000
2:30 p.m.	Meeting with Irving Kristol Century Club 7 West 43rd Street	(212) 593-7124
4:00 p.m.	Meeting with James Shepley and Barry Zorthian Time Life Building 6th Avenue and 50th Street	<b>(212)</b> 556-5495
5:00 p.m.	Interview with Theo Sklover Open Channel 220 West 22nd Street (Between 7th and 8th Avenue) 16th Floor Ed Bluin	(212) 354-8910
	Lv. LaGuardia via American #339	

## THE NATIONAL ACADEMY OF TELEVISION ARTS AND SCIENCES



New York Chapter 1270 AVENUE OF THE AMERICAS NEW YORK, NEW YORK 10020 TELEPHONE: (212) 582-0190

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Mr. Clay T. Whitehead Director Office of Telecommunications Policy Office of the Whitehouse Washington, D.C.

Dear Mr. Whitehead:

On behalf of our President John Cannon, the members and guests of the New York Chapter of The National Academy of Television Arts and Sciences, please accept our sincere thank you for being our "Drop-In" Luncheon speaker on Thursday, January 11th.

The Academy benefited greatly from your visit and I trust there will be many occasions in the future when we will again have the advantage of your presence and thoughts.

May I add that it was a personal pleasure to have had the opportunity to meet and speak with you. If I can be of any assistance to you at any time, please do not hesitate to call.

In the meantime, I remain

Respectfully yours, 1/2a an

Dan Tyra, Producer "Drop-In" Luncheons

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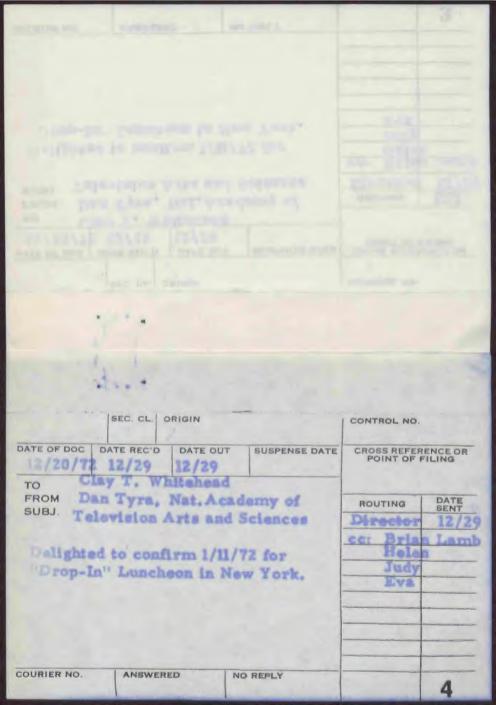
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# THE NATIONAL ACADEMY OF TELEVISION ARTS AND SCIENCES



New York Chapter 1270 AVENUE OF THE AMERICAS NEW YORK, NEW YORK 10020 TELEPHONE: (212) 582-0190

December 20, 1972

Mr. Clay T. Whitehead Director Office of Telecommunications Policy Executive Office of the President Washington, D. C. 20504

Dear Mr. Whitehead:

Brian Lamb has just informed me that you have graciously consented to be our guest at the "Drop-In" Luncheon Series.

We are delighted to confirm the date of Thursday, January 11, 1972 from 12:00 P.M. to 2:00 P.M. in the Royal Box of the Americana Hotel, 53rd Street and Seventh Avenue.

The format is simple - cocktails from 12 Noon to 12:30 P.M.; an informal talk with or without questions and answers from the floor on the subject of your choice; and a buffet luncheon starting at approximately 1:00 P.M.

Should you have any questions, please do not hesitate to ask. In the meantime, we look forward to seeing you on the llth.

Sincerely yours an

Dan Tyra Producer

cc: Mr. Brian Lamb

DT:js

DAVID A. BRAUN First Vice-President IMERO FIORENTINO Second Vice-President GLORIA OKON Secretary LEE POLK Treasurer BOARD OF GOVERNORS MILDRED FREED ALBERG GARY BELKIN LEN BERZOFSKY DAVID A. BRAUN ELINOR BUNIN EVELYN F. BURKEY JOHN CANNON JOSEPH CATES IOAN GANZ COONEY IVAN CURY DAVID DAVIDSON OSSIE DAVIS ARTHUR E. DURAM SYDNEY H. EIGES IMERO FIORENTINO CRAIG FISHER JOHN CHARLES FORD GINA GAYLORD BARBARA GREENBERG KATHLEEN M. GREENE MARTHA GREENHOUSE GILBERT T. HODGES HAROLD M. HOFFMAN CELESTE HOLM RICHARD N. HUGHES MARSHALL JAMISON WILLIAM M. KLAGES ANDREW LASZLO, A.S.C. ANN LORING LARRY LOWENSTEIN WILLIAM C. MacPHAIL LLOYD MARX ULPIO MINUCCI GLORIA OKON RALPH PAUL ALFRED L. PLANT LEE POLK JULES POWER ERNEST RICCA IOHN ROCHFORD LILLIAN RUSSO VICTOR SACK RICHARD SHORE, A.S.C. ROBERT G. SIMON DIANA STARK MANYA STARR PAUL TAUBMAN SY TOMASHOFF EDWIN T. VANE MYRA WALDO ELMON D. WEBB ROBERT WUSSLER DARLENE ZITO

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New York Chapter 1270 AVENUE OF THE AMERICAS NEW YORK, NEW YORK 10020 Mr. Clay T. Whitehead Director Office of Telecommunications Policy Executive Office of the President Washington, D.C. 20504



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LAW OFFICES KOTEEN & BURT 1000 VERMONT AVENUE, N.W. WASHINGTON, D.C. 20005

January 17, 1973

TELEPHONE REPUBLIC 7-5566 CABLE ADDRESS "KOBURT"

Dr. Clay T. Whitehead Office of Telecommunications Policy 1800 G Street, N.W. Washington, D.C. 20504

Dear Tom:

I enjoyed meeting you at the Taft managers meeting. When you get a free moment, please give me a call and let's get together.

Best regards.

Sincerely,

Victor E. Ferrall, Jr.

# Thursday 1/4/73 SPEECH 1/11/73

) Brian advises Mr. Whitehead will be travelling with Julius Boucha when he goes to New York on Thursday, Jan. 11 -- so we will be making couch reservations.

Brian will be going up on Wednesday, Jan. 10, alone.

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Clay T. Whitehead

Tickets to be picked up at 16th & K Sts., N.W. American Airlines, Wednesday, January 10, 1973

Thursday, January 11, 1973

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Thursday, January 11, 1973

7:30 p.m. Lv New York La Guardia via AA 339 8:28 p.m. Ar Washington National

Brian P. Lamb

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