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Testimony

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November 20, 1970

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

Dear Dr. Whitehead:

Enclosed is the TOP SECRET transcript of your testimony before the Subcommittee on Worldwide Defense Communications. The transcript is submitted for your review to determine its accuracy. That should require nothing more than editorial changes. Since it is the present intention of the Subcommittee to publish the record of its hearings, it is also requested that the transcript be reviewed from the standpoint of national security and that any necessary deletions be indicated with marginal bracketing.

Sincerely,

John T. M. Reddan
Counsel

Corrections telephoned to the Committee.

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~~TOP SECRET~~

2 of 7

HOUSE OF REPRESENTATIVES

STENOGRAPHIC TRANSCRIPT

OF

HEARINGS

BEFORE THE

COMMITTEE ON ARMED SERVICES

Armed Services
Investigating Subcommittee

.....

.WORLDWIDE DEFENSE COMMUNICATIONS

IN THE MATTER OF.....

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~~TOP SECRET~~

STATEMENT BY

CLAY T. WHITEHEAD, DIRECTOR
OFFICE OF TELECOMMUNICATIONS POLICY

before the

Subcommittee on Communications and Power
Honorable Torbert H. Macdonald, Chairman
Committee on Interstate and Foreign Commerce
U.S. House of Representatives

April 17, 1973

Mr. Chairman and members of the Subcommittee, I welcome the opportunity to come here today to discuss the various license renewal bills which have been introduced to amend the Communications Act of 1934.

When the basic structure for the American system of broadcasting was created in the 1920's and 1930's, it was decided that this system should reflect the institutional values and traditions of this country. The structure, therefore, was built on the twin concepts of individual responsibility and localism -- concepts essential to all social and economic institutions, including the media for mass communications.

Built into this broadcast system structure, however, was another important element, which clearly distinguishes broadcasting from the other outlets for expression in this country. Unlike these other media, the broadcast media are federally licensed to preclude property rights in the radio frequency spectrum and to prevent interference among broadcast signals. This fundamental decision was made by the Congress in the Radio Act of 1927 and again in the Communications Act of 1934.

This licensing system presents the Government with a unique dilemma. On the one hand, the Act requires the Federal

Communications Commission to grant applications for broadcast licenses if the public interest, convenience, and necessity are served thereby. This necessarily means that the Commission will have to pass judgment in some way on the totality of the broadcaster's service, an important component of which is the broadcaster's programming. On the other hand, however, the broadcast media should have the full protection of the First Amendment.

This dilemma requires a delicate balancing act on the part of the Government which must be performed within the license renewal process. The FCC and the courts have wrestled with this dilemma in licensing continually since 1934. And as broadcasting has become increasingly powerful and important as a medium of expression and information in our society, the pressures on the licensing system have intensified.

The manner in which renewals are treated goes to the heart of the Government's relationship to broadcasting. The procedures and criteria governing the license renewal process have a profound effect on the daily operations of licensees and the way in which they determine their public interest responsibilities. Considering the power of broadcasting in our society today, these procedures and criteria potentially could have a stifling effect on the free flow of information and ideas to the public.

Current procedures in the license renewal system -- and the trends in broadcast regulation generally over the last decade -- raise the possibility of an unnecessary and unhealthy erosion in First Amendment rights in broadcasting. This could happen if broadcasters, affected by the uncertainty and instability of their business, seek economic safety by rendering the type of program service that will most nearly assure renewal of their license; and that license is, after all, the right to function as a medium of expression. If the Government sets detailed performance criteria to be applied at renewal time, the result could be that the Government's criteria, instead of the local community's needs and interests, would become the touchstone for measuring the broadcaster's public interest performance. Stability in broadcast licensing is, therefore, an important goal of public policy.

Counterbalancing the goal of stability in the license renewal process, however, is the prohibition in the Communications Act against anyone acquiring a property right in the broadcast license. The public has access to the broadcast media only through the broadcaster's transmitter, unlike their access to printing presses and the mails. The First Amendment rights of those who do not own broadcast stations

thus must also be recognized, along with society's interest in a diversity of information and ideas. The Government has an affirmative duty under the Communications Act and the First Amendment, therefore, to foster competition in broadcasting. So the spur of competition and the threat of non-renewal also are indispensable components of the renewal process.

These are lofty and complex considerations. There is room for differing views on the priorities and about the proper balance to be struck. This Administration is convinced, however, that the issues at stake warrant widespread public awareness and debate. They transcend short-run political differences. The age of electronic mass media is upon us; the decisions the Congress makes on license renewal and on other broadcasting and cable matters it will face in the next few years will have a major effect on the flow of information and expression in our society for the rest of this century.

I would now like to address myself, briefly, to the provisions of H.R. 5546 -- the Administration's license renewal bill.

H.R. 5546 would, if enacted, make four major changes with respect to present practice and procedures in the license renewal process: (1) it extends the term of broadcast

licenses from three to five years; (2) it eliminates the requirement for a mandatory comparative hearing for every competing application filed for the same broadcast service; (3) it prohibits any restructuring of the broadcasting industry through the renewal process; and (4) it prohibits the FCC from using predetermined categories, quotas, formats and guidelines for evaluating the programming performance of the license renewal applicant.

Mr. Chairman, my letter to the Speaker of the House transmitting the Administration's proposed bill sets forth in detail the reasoning behind each of our proposals. With your permission, I would like to insert that letter into the record at this point and discuss briefly the four changes we propose.

1. Longer License Term

The first change in the Act made by the Administration's bill would extend broadcast license terms from three to five years.

In 1934, when the Communications Act was enacted, a three-year term was a reasonable precaution in dealing with a new industry. All other transmission licenses are issued for five years, however, and a five-year term would seem

more in keeping with the present maturity of the industry and the modern complexities of broadcasting.

An increased license term would strengthen the First Amendment rights of both broadcasters and the public. It would reduce the opportunity for government interference and the disruption that more frequent, often capricious, challenges can have on the free and unfettered flow of information.

2. Comparative Hearing Procedures

The second change would eliminate the present requirement for an automatic, lengthy, and costly comparative hearing whenever a competing application is filed for the same broadcast license. The FCC would be able to exercise its independent judgment as to whether a comparative hearing is necessary. In the initial stage, the renewal challenger would bear the burden of demonstrating that the renewal applicant has not met the criteria of the Act; 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 not only the incumbent's license, but also his

right to do business as a private enterprise medium of expression. The incumbent, therefore, should not be deprived of the right to stay in business unless 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.

Nothing in this second change would affect the ability of community groups to file petitions to deny license renewal applications. Many of these petitions have in the past served the important purpose of bringing the licensees' performance up to the public interest standard and driving home to broadcasters the interests of the communities they serve.

3. Prohibition Against Restructuring Through the Renewal Process

The third change is designed to preclude the FCC from any restructuring of the broadcasting industry through

the license renewal process. Presently, the Commission can implement policy relating to industry structure -- such as a policy restricting newspaper ownership of broadcast stations -- through the criteria it uses to decide individual renewal challenges. This allows for the restructuring of the broadcasting industry in a haphazard and inconsistent manner.

This change would prohibit the FCC from using against the applicant at renewal time any of its policies that were not reduced to rules. If the FCC wished to impose or change industry-wide policies affecting broadcast ownership or operation, it would have to use its general rulemaking procedures. Besides preventing arbitrary action against individual broadcasters, this has the benefit of assuring that the entire broadcasting industry and all interested members of the public would have full opportunity to participate in the proceeding before the rule was adopted.

By securing important procedural protections for licensees, this change recognizes more fully the First Amendment rights of broadcasters to be free of unpredictable, disruptive Government interference. It also recognizes the public's important right to full participation in any restructuring of such an important medium of expression.

4. Clarification of the Public Interest Standard and Prohibition Against Use of Predetermined Performance Criteria

The Communications Act of 1934 does not anywhere define what constitutes the "public interest, convenience and necessity," and in the intervening years this standard has come to mean all things to all people. To delegate important and sweeping powers over broadcasting to an administrative agency without any more specific guidelines as to their application than the "public interest" is to risk arbitrary, unpredictable ever-increasing regulation.

The FCC has been under pressure to reduce the arbitrariness inherent in this vague standard and establish ever more specific criteria and guidelines. Presently pending before the FCC in Docket Number 19154 is a proposal to establish quotas in certain program categories as representing a prima facie showing of "substantial service." These quotas would be used in the evaluation of a television applicant's program performance in the context of a comparative renewal hearing.

While the Administration recognizes the necessity for a clarification of the FCC's public interest mandate, this clarification should not risk an abridgement of the First Amendment rights of broadcasters and the public.

Our bill is designed to balance this need for clarification of the public interest standard--and the reduction of the potential for arbitrary and intrusive regulation--with the mandates of the First Amendment. It would stipulate that in addition to compliance with the requirements of the Communications Act of 1934 and the FCC rules when evaluating a licensee's performance under the public interest standard, the FCC could apply only the following two criteria: (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. The FCC would be prohibited from considering any predetermined performance criteria, categories, quotas, percentages, formats, or other such guidelines of general applicability with respect to the licensee's broadcast programming.

These two criteria represent a distillation, as stated by the FCC and the courts, of what the most important aspects of the public interest standard mean in the context of license renewals. They do not add anything new to the broadcaster's responsibilities and have routinely

been applied to licensees in the past. However, in addition to these obligations, the FCC (often at the urging of the courts) has been imposing other less certain and less predictable obligations on licensees under the vague "public interest" mandate.

This fourth change in the Administration's bill is also designed to halt the FCC's movement toward quantification of the public interest. The pending FCC Docket 19154 extends the trend to establish ever more specific programming guidelines as criteria for renewal, and indeed it seems that nothing short of Congressional action can stop it.

The statutory scheme for broadcasting envisions the local broadcaster exercising his own independent judgments as to the proper mix and timing of programming for his local community. The FCC's proposed predetermined program quotas and categories further substitute the Government's judgment for that of the local

licensee. Instead of reflecting a public trust, the broadcast license would be a Government contract with the programming designed in accordance with the specified quotas and categories of the Government.

Mr. Chairman, I would now like to address myself briefly to some of the concerns that have been raised during these hearings and in the press concerning the Administration's bill.

First, some critics have argued that if the Administration feels that the current "public interest" standard is too vague and too sweeping, it should support the enactment by Congress or the FCC of specific program standards such as those proposed by the Commission in Docket 19154. Such criticism seriously confuses the issues. Stability in licensing is, as I have already discussed, an important ingredient in securing First Amendment freedoms in broadcasting. But the ultimate stability of specific and detailed program categories and percentages set by the Government is grossly incompatible with the letter and the spirit of the First Amendment.

The First Amendment expressly prohibits the Congress from abridging the freedom of speech and of the press. Yet when the FCC, as an arm of the Congress, begins determining what is

or what is not good programming and what programming is required in order to be permitted to stay in business, surely this threatens nothing less than abridgment of important First Amendment rights.

The FCC's proposal in Docket Number 19154 would intrude the Government into the content, extent, and even timing, of the broadcaster's programming. Moreover, even if such intrusions are disregarded for the purpose of affording licensees some certainty at renewal time, the FCC's proposal appears to be illusory. As Chairman Burch stated before this Subcommittee, "Quality is what we are after rather than number." Nor, I might add, would there be any assurance that the standards would not be expanded over time.

The second concern centers on the bill's "good faith effort" criterion for evaluating the broadcaster's responsiveness to the needs, interests, problems, and issues he ascertains in his community. This "good faith" standard, along with the fairness obligation, would further elaborate on the present "public interest, convenience, and necessity" standard used by the Commission at renewal time.

This "good faith" standard is an important elaboration of the present vague "public interest" mandate. It is the standard the FCC usually uses to describe the essential responsibility of the licensee, namely to make good faith judgments as to how to meet his community's needs and interests. It also appears in the FCC's 1960 Programming Policy Statement and is reprinted from this statement in an attachment on the renewal form. Moreover, the standard is used successfully in other areas of the law where the Government seeks to strengthen incentives for cooperation by private parties without directing the actual outcome of such cooperation.

The most important point about the good faith standard is that, 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.

Under the "good faith effort" test, the FCC would still have to make judgments about broadcaster performance, but those judgments would be more neutral as to program content.

standard -- or the detailed standards approach. Moreover, the courts would have less amorphous issues, with more direct relationship to relevant constitutional considerations in considering appeals from FCC actions.

The third concern is directed toward the Administration's supposed "backtracking" on the Fairness Doctrine. The supposed evidence for this "backtracking" is the inclusion of the Fairness Doctrine as one of the renewal criteria under our bill.

The licensee's fairness obligation in Section 315(a) of the Communications Act to present representative community views on controversial issues is a long-standing requirement, upheld in the Supreme Court's Red Lion decision, and an established practice of the Commission. It is an unfortunate, but for the time-being necessary, protection of the free speech rights of those who do not own broadcast stations and of the broader interest of the public to a diverse flow of information and ideas.

The Administration has supported the enforcement of this fairness obligation as long as it is done principally on an overall basis at renewal time. What we have not supported is the Commission's present approach of enforcing this obligation on an 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.

The renewal criterion in our bill is not the Fairness Doctrine, as that term has been used to indicate issue-by-issue enforcement. Rather it is the fairness obligation: the unchanged, long-standing requirement of the licensee in Section 315(a) of the Act to "afford a reasonable opportunity for the presentation of conflicting points of view on controversial issues of public importance." Its inclusion in the renewal standards would serve as an expression of Congressional intent as to the preferred method for its enforcement.

A fourth concern is the one voiced by most of the representatives of the minority groups that have appeared before your Committee. They are concerned that the Administration's bill would effectively cut off the rights of minority groups to challenge the actions of incumbent licensees on their community responsibilities in such areas as minority hiring and minority programming.

It is true that competing applications based on frivolous or unproven grounds would be more easily rejected. But responsible competing applications based on real evidence of the incumbent licensee's abrogation of his public trust are in no way penalized and would still have the benefit of a thorough public hearing.

Indeed, with the explicit language of the ascertainment criterion we propose, the focus of the hearings would be shifted to the community's concerns in each case, away from legalistic conformance to uniform FCC percentages.

Moreover, the Administration bill does not change the existing procedures for petitions to deny, the tool that has been the traditional and most useful recourse of the minority groups; it will still be available to them intact. I should also point out that the extension of the license term is not going to put licensees out of the reach of their local communities or the FCC for the five-year term. Community groups may still file complaints at any time, and the FCC would still have ample interim tools available to it -- such as short-term renewals, license revocations, suspensions, and forfeitures -- to protect the public interest.

Finally, Mr. Chairman, I would like to address the concerns that have been voiced during these hearings and elsewhere about my remarks in a speech in Indianapolis last December 18. There apparently is some puzzlement over the relationship between our bill and that speech, in which I announced our intention to submit license renewal legislation. There also has been concern about the motives behind our bill. I would like to set the record straight.

The central thrust of my Indianapolis speech was that broadcast licensees have not, by and large, been doing an adequate job of listening to their communities and correcting faults in the broadcasting system--faults that are not, and should not, be dealt with through use of government power. Important First Amendment freedoms were secured to broadcast licensees under the Communications Act of 1934. And with these freedoms came important responsibilities for licensees to ensure that the people's right to know is being adequately and fully served. As has so often been pointed out in Congressional hearings over recent years, the licensees have not, unfortunately, always met these responsibilities--in part because it is easier to let Government define the limits of those responsibilities.

My speech was intended to remind broadcasters and the public that such attention takes on even more importance if governmental controls are to be reduced, as we have proposed. The speech and the bill are related--but <u>not</u> in the way portrayed in the press coverage of my speech. The relationship between the proposed bill and my speech is no more than the relationship between freedom and responsibility we find everywhere in our society. This Office has steadily promoted the cause of <u>less</u> rather than more regulation of broadcasting. But the public and the Congress should not think of increasing the freedom in broadcasting by easing government controls

without also expecting some indication that voluntary exercise of responsibility by broadcasters can operate as an effective substitute for such controls.

The core issue is: Who should be responsible for assuring that the people's right to know is served, and where should the initiative come from -- the government or the broadcasters. The speech focused on the three TV networks as the most powerful elements in the broadcast industry and asked how this concentration of power was to be effectively balanced. Some, who now profess to fight for broadcasters' freedom, would rely on regulatory remedies such as increased program category restrictions, burdening the broadcaster and the audience with the clutter of counter-advertising, banning ads in children's programs, ill-defined restrictions on violence, and the like.

Anyone who has followed OTP policy pronouncements knows that we reject this regulatory approach. We have always felt that the initiative should come from within broadcasting.

The broadcaster should take the initiative in fostering a healthy give-and-take on important issues, because that is the essence of editorial responsibility in informing the public. That does not mean constricting the range of information and views available on television.

The public has little recourse to correct deficiencies in the system, except urging more detailed government regulation. The only way broadcasters can control the growth of such regulation is to make more effective the voluntary checks and balances inherent in our broadcast system.

Some broadcasters, including network executives, have claimed they believe the Administration bill to be a good one, but only if clearly separated from the speech in which it was announced. But freedom cannot be separated from responsibility.

Some observers profess to see in our bill a conspiracy to deprive broadcasters of their First Amendment freedoms. But, clearly, it is others, not this Administration, that are calling for more and more government controls over broadcasting.

Many newspaper editors and columnists have opposed the Administration bill, preferring apparently to keep the current panoply of government control over broadcasting. Freedom from government

regulation for part of the printed press, but not for the electronic press escapes reason, especially when many of those who wish to expand government controls over broadcasting would also see these controls as the precedent for similar controls over the print media.

Other critics, I fear, do not wish to diminish the government's power to control broadcast content. They seem quite willing to create and use powerful tools of government censorship to advance their purposes and their view of what is good for the public to see and hear. We disagree. The danger to free expression is the existence of the legal tools for censorship. We are proposing actions to begin to take those tools from the hands of government.

The Administration bill is designed to strengthen the First Amendment freedoms of broadcasters. All four changes 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 hand of government. I challenge anyone to find in our bill any increase in government power over the media.

In my judgment, Mr. Chairman, the Administration bill is not only the most comprehensive of the many bills before you; it also represents the best attempt at balancing the

competing statutory goals of the Communications Act. The dilemma the Government faces in regard to the regulation of broadcasting is by no means insoluble. And our bill is a step in the direction towards a solution--a solution which means less Government control and more reliance on the licensee's individual initiatives. We are asking the Congress to reduce controls not because broadcasting is perfect, but because its problems should be corrected by the broadcasters and their employees, rather than by government action. Indeed this was the intent of Congress from the very beginning as embodied in the Communications Act. And it is time for Congress now to take an important step towards furthering these long-standing statutory goals.

In your opening statement, Mr. Chairman, you indicated that it was the intention of the Subcommittee to make as complete a record as possible of the many viewpoints and interests affected by the proposed license renewal legislation. You and your Subcommittee are to be commended for focusing attention and debate on these issues, and I welcome the opportunity to add the Administration's comments to this important record.

ADDRESS BY THE VICE PRESIDENT OF THE UNITED STATES
NATIONAL EDUCATION PROGRAM "APRIL FREEDOM FORUM"
Harding College
Searcy, Arkansas
April 12, 1973

FOR RELEASE: 11 A.M. CST (12 Noon EST) April 12, 1973

I am very pleased to have the opportunity to address this 36th Freedom Forum. In selecting "Responsibilities of the News Media in a Free Society" as this year's theme, the N.E.P. Board of Directors and the Forum Advisory Committee have locked horns with a volatile and controversial subject -- one that frequently is treated with much heat and little light. And now that this enraged bull of a subject has been led into the arena, I will engage him with the caution of an experienced matador. I could not ask a better audience than you at Harding College, who have achieved national recognition for your serious and perceptive consideration of important issues. Now, I do not hope to be awarded the ears or the tail for this performance. I would be satisfied if, somehow, the bull became a little more tractable as the result of this venture.

Let me begin by emphasizing my conviction that free and unintimidated news media are essential to a free society. That is not only my conviction and my position, but the position of the Nixon Administration. I state that position with full knowledge that some well-known personalities in the opinion-making media believe and state flatly that the Nixon Administration is committed to their demise through a grand conspiracy to destroy their credibility. We are exerting, they are fond of saying, a "chilling effect on first amendment freedoms."

Now I am not challenging the sincerity of these individuals; I merely say that they are wrong in that conclusion. The idea of interference with the free flow of information to the American people, by Government or anyone else, is repugnant to me. In my speech in Des Moines about the networks, I suggested that greater diversity of opinion, not censorship, was needed in television news. We need to see more sides to a controversy, not black-out the matter entirely. We need to hear more commentators, not less commentary. And, above all, we need some method of assuring that the important events of the day make the network news. Such a small number of network news editors, having common interests and frequently common politics, cannot be aware of the broad interests of the American people. I do not accuse them of any conspiracy, but I do suggest that they are affected by the same peer group prejudices, business interests and loyalties that we are.

You may remember that I spoke a while back about "opinion-making media." I want to be sure you understand what I mean by that term. I do not refer to the typical newspaper or radio or television station. By "opinion-making media," I mean the media of more than local impact -- the large newspapers and magazines which cover the Nation and the world with their own personnel -- the networks -- the wire services. Through their resources, multiple ownerships and wealth, they exert a clout far in excess of any combination of small media -- even a combination with hundreds of times their circulation.

It is significant that most of the cries of "repression" and "conspiracy" which are being mounted today against the Nixon Administration come from the opinion-making media. Very few editors and station owners around the country share their fears. But, again, I do not doubt the genuine concern of these critics in the opinion-making media. They do not trust the Government to be fair to them. I assure you that the Nixon Administration wants to be fair to them, but we do not think they have yet diversified their undertaking sufficiently to fairly report the activities of Government to the American people.

At the base of their concern is the power of Government -- the power to regulate or legislate them to impotence and ultimately to destruction. But is this a logical concern? Governmental power is already diversified; Government is already a conflict of interests in itself. Republican President vs. Democratic Congress. Executive Branch vs. Legislative or Judicial Branch. Liberal vs. Conservative. These diffusions are all safeguards against a monopoly of interest or power cartel in Government. Moreover, the incumbency of an elected leader in Government is limited by law. Power is limited to a term of office. So I would have to say that such fears of unabridged power are mainly fantasies. The media are protected by the Constitution and the American system. Their freedom to rage at us with accusations of censorship, repression and McCarthyism is adequate proof that the alleged "chilling effect" or threat to their freedom is fictional.

At the base of our concern lie several interrelated changes in media patterns and attitudes. These changes have occurred mainly during the past fifteen years and have led to the emergence of the opinion-making media as a formidable social force in our society.

It may be that their awareness of this power has caused them in large part to reinterpret their role in our society. Once journalists believed that their job was to <u>report</u> as much as possible of what happened. Today, the view increasingly seems to be that the media should <u>control</u> the public reaction to what happened.

Consider this statement by one of the Nation's most famous TV anchor men. He says -- "In a highly organized, crowded and complex society, freedom must be taught. Liberty must be learned." The natural questions are "taught" by whom? And "learned" by whom? The commentator makes it clear that it is the media's function to do the teaching, and the American people's role to do the learning. Yet it is about the same American people whom this commentator says: "What I worry about is that many Americans would accept Fascism and believe there is justice in it."

I submit that he can stop worrying now. The American people just aren't that naive. But what is troubling here, beyond this misreading of the American character, is the mind set which gives rise to it. And this mind set is the essence of advocacy journalism. Its practitioners, seeing a given result as right, act more in the style of lawyers developing a brief than as reporters. They ferret out and publicise principally those facts which support their own points of view -- points of view which are considered by them to be revealed truth and the only ones that should be presented to the American people.

In recent years, many of these views have tended to be anti-Government. Recall for a moment the quality of the news we became accustomed to receiving from Vietnam and imagine that you are listening to a commentary on the war by CBS correspondent John Hart, who had this to say in an address given last summer: "... we, as a matter of course, refer to the North Vietnamese and the Communist guerrillas in South Vietnam as 'the enemy' when they are, in fact, the enemy of the Saigon government and the American executive branch."

Now just consider that statement and decide for yourself whether the man who made it could possibly remain objective in his reporting of the war news. And given a group of men with similar views in control of the news selection process, what chance is there of getting an accurate message across to the people?

And this brings us to the crux of the problem, a problem that is one of the most serious we face today. Note carefully the separation made by Mr. Hart between the Executive Branch and the American people. Then analyze the close relationship he suggests between the media and the American people, a relationship almost casually referred to in a recent article by two other distinguished journalists, in which they allude to "a representative of the public -- in the person of the news media."

That quotation, I believe, reveals precisely what is wrong with the way the opinion-making news media view themselves. Their personnel have come routinely to think of themselves as representatives of the people, and just as routinely to view the Federal Government as the enemies of the people.

Now something seems very out of joint about this. Does a man who works for CBS represent the people? Or does he primarily represent CBS? And isn't an elected official, depicted as an enemy of the people, really the person directly accountable to the people who put him in office?

What advocacy journalism ultimately causes is a dispute between a government position and a reporter's position. Traditional journalism positioned the reporter in the stance of an arbiter -- a referee whose only interest was in dredging the truth from two or more contesting political viewpoints. Advocacy journalism makes him a salesman for his point of view.

I submit that it is advocacy journalism more than any other factor that has caused the current ill feeling between Government officials and the opinion-making media. When Government officials defend themselves from what they consider unfair slanting of news stories, the partisan newsmen, outraged at unaccustomed criticism, too often hurls the counter-accusation of "repression" and "censorship." The news media really must learn to get over being so thin-skinned -- particularly when they are so intolerant of thin-skinned officials.

Jerome Barron, Dean of the Syracuse University College of Law, has written knowledgeably and persuasively about freedom of the press. Referring to the subject, he had this to say:

> "Our constitutional guarantee of freedom of press is equipped to deal with direct and crude governmental assaults on freedom of expression, but is incapable of responding to the more subtle challenge of securing admission for ideas to the dominant media. In general, it seems that ideas are denied media space and time unless they come in the carnival attire of the violent or the bizarre."

(And if you doubt the validity of that observation, you haven't contrasted the coverage of Wounded Knee with the non-coverage by two networks of the big parade for Vietnam Veterans in New York.)

Further commenting on this, Professor Barron states:

> "The media owners and managers have astutely identified the constitutional guarantee of freedom of the press with themselves. They read freedom of the press as an immunity from accountability and any kind of legal responsibility."

Referring to the small number of network news selectors, Professor Barron had this to say:

> "Even if that dozen were the equivalent in wisdom of Plato's guardians, it does not need a very profound political philosopher to wonder whether so few should have so much power."

And commenting on media receptivity to reform, Professor Barron said:

> "What must be done is to build diversity into both the private and the public sector. The press has long maintained that everyone should be subject to criticism and oversight. At the 1969 national convention of the Radio Television News Directors Association, I suggested that the press also should be subject to oversight. Later the same day, Dr. Frank Stanton, Chairman of the Board of CBS, quoted what I had said and added: 'What a chilling thought.' But the reality which Agnew describes and the radical reaction to his remarks is also chilling."

There are, of course, other areas of current disagreement between the opinion-making media and the Government. I regret that there is not time to handle them in detail -- that must await another speech -- but I would like to bring them to your attention briefly.

First, there is the substantial disagreement about the right of the media to publish classified governmental documents which have been illegally obtained. The media defense is that the documents should never have been classified, that they are not essential to national security, and that the people have the right to be informed of what Government does behind closed doors.

The Government position is that media personnel are not equipped to judge whether or not a particular disclosure affects the national security. We take the position that intelligence gathering is a matter of accumulating bits and pieces and that a seemingly innocuous fact may provide just what an adversary power needs to discern our intentions -- intentions which security dictates be kept from it.

While I agree that far too many documents are classified, we are moving with all possible speed to reduce the number. Meanwhile, in a genuine controversy about whether or not classification is necessary, it would be better to rely on the professional judgment of experts in the Government rather than the conclusions of a pioneering reporter that the revelation will not injure the United States.

Second, there is the difficult question of general or special privilege for reporters so that they will not have to reveal their sources during Grand Jury or court proceedings. I am sympathetic to the media position that investigative reporting would be inhibited should a reporter in the course of accumulating his data be required to identify the sources. Yet, it seems to me that, once the investigation is complete and the reporter has decided to make public his allegations of impropriety against an individual, that individual must retain his constitutional right to confront his accusers. A person accused of misdoing must not be prevented an adequate defense because he cannot locate his tormentors.

On this same subject, criminally actionable improprieties aside, many in public life are damaged irreparably by snide remarks and scandals published against them and attributed to "reliable sources." The danger here is that, given our trend toward advocacy journalism, the source may be non-existent -- a simple reenforcing tactic of the reporter himself. The press, not being a self-policing profession, gives us no assurances that the normal high standards of established organs may always be maintained.

Now, I don't know how to fairly handle this problem of unidentified sources, but a big help would be a requirement that an unidentified source be referred to simply as "an unidentified source" and not embellished with the indicia of credibility such as "a long-time State Department professional," or "a high level White House staff member," or "people with no ax to grind who are in a position to know."

As I conclude these remarks, I am not at all sure that I have engaged this enraged bull of a subject with proper caution. In some ways, the subject is too mercurial to permit careful handling. But I would like to conclude on an ameliorative note.

There is unquestionably wrong and right on both sides of this controversy. Only reasoned debate and communication between the parties can lead to a solution or even to an improvement. Because it is a matter of immense importance to the American public that information flow credibly and freely to them, the Government and the media must put aside their visceral reactions and engage in a productive, intelligent discussion of their differences. The Administration is prepared to participate in such a discussion.

# # #

BACKGROUND INFORMATION ON FCC'S PROPOSED RULEMAKING ON BROADCAST COMMERCIALS: 1963-1964

I. FCC's Notice of Proposed Rulemaking: May 15, 1963 [1]

In Docket No. 15083 the FCC expressed its concern over practices of licensees with respect to broadcast commercials. The Commission stated that while advertising is the only source of revenue for most broadcast stations, these stations could not be operated primarily in the interest of advertisers or station licensees but must be operated in the public interest -- the interest of the viewing or listening public in the nature of the program service received.

The Commission noted that its past attempts to enforce the public interest in this area -- on a case-by-case basis -- were not satisfactory. Moreover, a large number of applications for broadcast authorizations had been submitted to the Commission which presented serious problems of overcommercialization and, in addition, the Commission's files were replete with complaints from the public regarding the number of commercials broadcast by some stations, the frequency and manner of program interruption, and the length of some commercials. Lastly, the Commission noted the failure of the National Association of Broadcasters to enlist a substantial number of subscribers to its voluntary Code of Good Practice which contained commercial standards. In any case, the NAB lacked any effective sanctions to invoke against any subscribing station that failed to follow the standards. [2]

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[1] FCC Mimeo No. 63-467, May 15, 1963. Reprinted in Broadcast Advertisements. Hearings on H.R. 8316 Before A Subcommittee of the House Interstate and Foreign Commerce Committee. 88th Congress, 1st Session, at 22 (1963) ("Hearings")

[2] Hearings, 22.

Having listed the unsatisfactory nature of past regulatory efforts, the Commission's Notice turned to the advantages of establishing applicable standards by means of its rulemaking procedures:

(1) it would permit an overall treatment of the problem not available in case-by-case consideration.

(2) the rules adopted would be definite providing guidance to licensees and applying equally to all competitors in a given market.

(3) the adoption of specific rules would not, necessarily, foreclose the flexibility inherent in case-by-case treatment, nor preclude the Commission from amending its standards to accomodate changes in the broadcast field.

(4) specific rules would provide the Commission with a broad range of sanctions (cease and desist orders and forfeitures) instead of requiring, in the absence of such rules, reliance on revocation or denial of renewal.

In regards to the applicable standards, the Commission noted that the limitations contained in the radio and television codes of the NAB were particularly suited for serious consideration as the basis for its proposed rules.3/

II. Congressional Reaction

Congressional reaction to the FCC's May 1963 proposed rulemaking came in the form of some "saber rattling" on the part of the House. Congressman Walter Rogers, the Chairman of the House Interstate and Foreign Commerce Committee's Subcommittee on Communications introduced H.R. 8316 on August 30, 1963. 4/ Five identical bills followed later.5/

3/ Hearings, 23.

4/ 109 Cong. Rec. 16199 (1963). Introduced without comment.

5/ H.R. 8381 Mr. Purcell; H.R. 8279 Mr. Broyhill (N. Carolina) H.R. 8896 Mr. Langen; H.R. 8980 Mr. Roberts; H.R. 9042 Mr. Kornegay.

This early "saber rattling" began to turn into a full-scale "cavalry charge" after the bill was scheduled for hearings in November, 1963.

In its report on its activities for the 88th Congress in its report on its activities for the 88th Congress in October, 1964, the House Commerce Committee stated that the purpose of H.R. 8316 was to clarify the Communications Act of 1934 by providing that the FCC does not have the power, by rule, to prescribe standards with respect to the length or frequency of commercials which may be broadcast by all or any class of stations in the broadcast service area. 6/

Testifying at the hearings 7/ on his idential bill, Congressman Purcell listed the reasons for the legislation:

(1) The proposed FCC regulation was, in effect, rate regulation and there is no provision in the Communications Act of 1934 allowing the FCC to impose Federal regulation of advertising rates upon the industry. Section 3(h) specifically states, "...a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." Regulations restricting and limiting this revenue cannot help but have an effect on advertising rates.

(2) The FCC is not a legislative body. If such drastic steps as imposition of Federal commercial time standards is required, the FCC should present its recommendations to Congress and that body, not the FCC, should then determine the advisability of such regulation.

(3) Broadcasters have recognized their special responsibility to the listening public in their codes of good practice for both radio and television and the broadcasting industry is making good progress in regulating itself in this area.

(4) To impose Federal commercial time standards on all stations would bring great economic hardships. Broadcast stations differ in power, in hours of broadcasting, and in type, stability and size of market; overall standards would thus be unfair.

6/ Activity of the House Interstate and Foreign Commerce Committee. 88th Congress, H. Rep. No. 1927. Oct. 21, 1964.

7/ Hearings, 4.

(5) the FCC's proposed action raises serious political questions. If the length and frequency of commercial time is limited by the Federal Government, the next logical step would be Federal regulation of advertising content or even program content. 8/

Congressman Purcell's comments were echoed without substantive variation by the remaining Congressman who testified.

The FCC submitted its comments on the bill to the Subcommittee and the Commissioners later appeared at the hearings. Briefly summarized, the Commission's position on H.R. 8316 was as follows:

(1) legislative consideration should await the outcome of the proposed rulemaking proceeding. If the FCC found there was no need for the rule, then the legislation would not be needed. If the Commission did determine a rule was needed, it would set forth, as the Administrative Procedure Act required, the basis for that rule. Congress would then be able to review the precise rule and the FCC's factual and policy bases.

(2) the bill would strip the Commission of desirable authority and a great deal of flexibility in dealing with the ever-changing trends in the important area of overcommercialization. Moreover, such legislative prohibitions would be applicable not only to the pending proceeding but also to the indefinite future. 9/

The full Committee report, issued a month after the hearings, made substantially the same arguments advanced by Congressman Purcell in the hearings. "The Committee holds to the view," the report stated, "That the Communications Act of 1934 does not grant to the Commission any specific authority pursuant to any explicit statutory provision

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8/ Hearings, 6.

9/ Hearings, 2-4.

nor does it bestow upon the Commission any 'broad' or 'expansive' powers claimed by it which would authorize it to prescribe by rule standards to govern the frequency or length of commercials." 10/

The report also solidly embraced the case-by-case approach:

> (The) instant legislation in no way affects the authority of the Commission to review in connection with original license applications on an overall basis the past performance or promised performance of applicants for broadcast licenses for the purpose of determining whether such performance serves the public interest. Without any question, the performance to be reviewed includes, among others, the practices followed by applicants with regard to the broadcast of commercials. 11/

A minority report, filed by eight members of the full Committee, 12/ viewed the FCC's proposed rulemaking in regards to overcommercialization as an important and necessary clarification of policy. Since Congress was apparently not going to take positive action in this area, the minority report felt it should at least support the FCC's attempts to provide listeners and viewers with some protections against overcommercialization and to establish some clear-cut overall standards:

> The Commission would be proceeding in an open, fair manner, and not by so-called lifted eyebrow letterwriting techniques or by singling out one of many renewal applicants and making policy by designating his application for hearing on the ground of overcommercialization. 13/

10/ H. Rep. No. 1054, 88th Cong., 1st Sess. 3(1963).("Report")

11/ Report, 7.

12/ The Minority Report was signed by Reps. Sibal, Staggers, Macdonald, Rhodes, Moss, Dingell, Hemphill, Van Deerlin

13/ Report, 24.

The minority also took issue with the majority report's contention that the FCC lacked the authority to make rules relating to the length or frequency of broadcast commercials. The report stated that if the FCC could take overcommercialization into account on a case-by-case basis, there was no reason why it could not lay down, by rule, reasonable standards on overcommercialization. Sections 303(r), 4(i), and 303(b) of the Communications Act of 1934 all gave the FCC rulemaking authority in this area. 14/

III. The FCC's Report and Order: January 15, 1964 15/

The FCC, in its later action on the proposed rule-making on overcommercialization, declined to adopt any specific rules. The Commission cited as the principal reason for its decision, the lack of enough information from which any broad-based standards could be evolved. The rulemaking proceeding had not provided the Commission with enough information and no intensive studies of this problem had yet been undertaken. 16/

The FCC remained convinced, however, of its authority to adopt rules on overcommercialization, "We conceive that our authority to deal with overcommercialization, by whatever reasonable and appropriate means, is well established." 17/

Having decided against adopting overall standards, the FCC embraced once again the case-by-case approach -- but on a more intensified basis:

> We will give closer attention to the subject of commercial activity by broadcast stations and applicants, on a case-by-case basis. Thus, we will continue to require station

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14/ Report, 22-23

15/ 1 P. & F. Radio Reg. 1606 (1964)

16/ Id. at 1609

17/ Id. at 1607

> applicants to state their policies with regard to the number and frequency of commercial spot announcements as well as their past performance in these areas. These will be considered in our overall evaluation of station performance. 18/

IV. Postscript: Later Congressional Action

H.R. 8316 was passed by the House on February 27, 1964, -- almost six weeks after the FCC decided against adopting rules. The Senate took no action on the House bill and it died in the 88th Congress.

The debate on the passage of the bill did not raise any points that were not previously mentioned in the hearings or the Committee Report. The sponsor of H.R. 8316, Cong. Walter Rogers, did speak on the bill for the first time, however, and one of his principal concerns was that the FCC was apparently attempting to turn the radio and television business into rate-regulated common-carriers. 19/

The opposition to the bill was led by Congressmen Celler and Moss. Congressman Celler found the bill to be an unwise inhibition on the FCC's search for an effective remedy to cope with overcommercialization:

> It is no answer to say that the Commission is free to proceed on a case-by-case basis in dealing with individual licensees. The lack of success that has thus far attended this fragmented approach is all too evident. 20/

18/ 1 P. & F. Radio Reg. at 1610 (1964)

19/ One of the more interesting supporting comments was the one by Cong. Skubitz:

> The FCC is a "child of Congress." But like many of our offspring it has become "too big for its britches." It is about time that we beat a path to the woodshed. 110 Cong. Rec. 3870 (1964).

20/ Id. at 3881.

Congressman Moss' comments in opposition to the bill were similar to those of Mr. Celler:

> I think the ad hoc approach to regulating in this field where you have not devised any standards of reasonableness at all on over-commercialization and then at the time of renewal adopting standards which at best would be variable, hold a man guilty and place his rights in jeopardy because he did not adhere to that which he did not understand. 21/

Congressmen Moss and Celler were joined in opposition by only 41 others and the bill passed 317 to 43. 22/

During the debate on the bill, it was pointed out that the FCC had already backed off in its proposed rule-making. In answer to the question as to whether this wasn't concrete evidence of the FCC conceding that they were overstepping their authority, Congressman Moss replied:

> They (FCC) felt they had not accumulated sufficient data if they were going to undertake to develop the data before proceeding further in this area. So the Commission backed away, as the gentleman phrases it, only because they were seeking additional information and not because they decided they did not have the authority. 23/

21/ 110 Cong. Rec. at 3880

22/ Id. at 3910

23/ 110 Cong. Rec. at 3883 (1964)

Congress of the United States
House of Representatives
Committee on Interstate and Foreign Commerce
Room 2125, Rayburn House Office Building
Washington, D.C. 20515

April 3, 1973

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

Dear Dr. Whitehead:

You are invited to testify before the Subcommittee on Communications and Power on various bills dealing with proposed revisions of the Communications Act of 1934, pertaining to broadcast license renewal procedures.

I would appreciate your notifying Mr. W. E. Williamson, Chief Clerk of the House Interstate and Foreign Commerce Committee, of your availability. He can be reached at 225-2927.

If it is convenient with you, the Subcommittee would welcome you on Tuesday, April 17, at 10 AM in Room 2123, Rayburn House Office Building.

Sincerely,

Torbert H. Macdonald

Torbert H. Macdonald, M.C.

Chairman, House Subcommittee
on Communications and Power

THM/ra

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

April 16, 1973

To: Tom Whitehead

From: Mike McCarthy MMcC

Attached is a copy of H.R. 3854. Note the use of "and" on page 2, line 11. It can be interpreted two ways.

The most likely interpretation, it seems to me, is that the two criteria are stated in the conjunctive sense, that is, a challenger must show both that the licensee has not reflected a good faith effort to serve the needs and interests of his area and has demonstrated a callous disregard for law or the Commission's regulations.

The other interpretation is that the phrase is stated in the disjunctive, or alternative, sense. In this case, the challenger would only be required to show the licensee's substandard performance under one or the other of the two criteria--a lack of good faith effort to serve his community or a callous disregard for the law or the Commission's regulations.

In any case, the bill is poorly drafted and can be criticized on this point, particularly when OTP worked hard to clear up any possible inconsistencies or loose ends in H.R. 5546. Moreover, it is not as comprehensive as OTP's bill since it says nothing about the comparative hearing procedures, apparently making no change in this area. The only comment is the puzzling one on lines 15 and 16 which states that the licensee's failure under the two criteria "shall be weighed against the renewal applicant."

93D CONGRESS
1ST SESSION

H. R. 3854

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1973

Mr. ROONEY of Pennsylvania (for himself, Mr. BROYHILL of North Carolina, Mr. BYRON, Mr. CARNEY of Ohio, Mr. CARTER, Mr. GOLDWATER, Mr. HARVEY, Mr. HASTINGS, Mr. HUDNUT, Mr. KUYKENDALL, Mr. LENT, Mr. MCCOLLISTER, Mr. METCALFE, Mr. NELSEN, Mr. PICKLE, Mr. PREYER, Mr. ROY, Mr. STUCKEY, Mr. WARE, and Mr. YOUNG of Illinois) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Communications Act o f 1934 to establish orderly procedures for the consideration of applications for renewal of broadcast licenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 307 (d) shall be amended by striking the first two sentences and inserting the following: "No license granted for the operation of any class of station shall be for a longer term than five years and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such li-

cense may be granted from time to time for a term of not to exceed five years if the Commission finds that public interest, convenience, and necessity would be served thereby: *Provided however,* That in any hearing for the renewal of a broadcast license an applicant for renewal who is legally, financially, and technically qualified shall be awarded the grant if such applicant shows that its broadcast service during the preceding license period has reflected a good-faith effort to serve the needs and interests of its area as represented in its immediately preceding and pending license renewal applications and if it has not demonstrated a callous disregard for law or the Commission's regulations: *Provided further,* That if the renewal applicant fails to make such a showing or has demonstrated a callous disregard for law or the Commission's regulations, such failure or demonstration shall be weighed against the renewal applicant.

93D CONGRESS
1ST SESSION

H. R. 3854

A BILL

To amend the Communications Act of 1934 to establish orderly procedures for the consideration of applications for renewal of broadcast licenses.

By Mr. ROONEY of Pennsylvania, Mr. BROYHILL of North Carolina, Mr. BYRON, Mr. CARNEY of Ohio, Mr. CARTER, Mr. GOLDWATER, Mr. HARVEY, Mr. HASTINGS, Mr. HUDNUT, Mr. KUYKENDALL, Mr. LENT, Mr. MCCOLLISTER, Mr. METCALFE, Mr. NELSEN, Mr. PICKLE, Mr. PREYER, Mr. ROY, Mr. STUCKEY, Mr. WARE, and Mr. YOUNG of Illinois

FEBRUARY 6, 1973
Referred to the Committee on Interstate and Foreign Commerce

.... from BROADCASTING, 12 March 1973

The 201 on Hill who are seeking renewal relief

License-renewal legislation supported by the National Association of Broadcasters has been reintroduced by Representatives Fred Rooney (D-Pa.) and James Broyhill (R-N.C.) with 74 co-sponsors.

A month ago the congressmen introduced identical legislation carrying the names of 20 members of the House Commerce Committee (BROADCASTING, Feb. 12).

Exactly 201 members of the Senate and House had offered renewal bills in the 93d Congress as of last Thursday (March 8). Following is a breakdown of the sponsors by state, House and Senate:

Alabama
House: Tom Bevill (D), Walter Flowers (D), Bill Nichols (D), John Buchanan (R), Robert Jones (D), Jack Edwards (R), William Dickinson (R).

Arizona
House: Sam Steiger (R), John Rhodes (R), Morris Udall (D).

Arkansas
House: William Alexander (D), Wilbur Mills (D).

California
House: Burt Talcott (R), Charles Teague (R), Barry Goldwater Jr. (R), Bob Wilson (R), William Ketchum (R), Robert Mathias (R), John Rousselot (R), Charles Gubser (R), Don Clausen (R).

Colorado
House: James Johnson (R).

Connecticut
House: Robert Giaimo (D), Ronald Sarasin (R).

Florida
House: Don Fuqua (D), Sam M. Gibbons (D), C. W. Young (R), Paul Rogers (D), Claude Pepper (D), Dante Fascell (D), L. A. Bafalis (R), Bill Chappell Jr. (D), Bill Gunter (D), Robert Sikes (D), James Haley (D), William Lehman (D), Charles Bennett (D).

Georgia
House: John Davis (D), John J. Flynt Jr. (D), Jack Brinkley (D), Dawson Mathis (D), W. S. Stuckey Jr. (D), Ben B. Blackburn (R), Robert Stephens Jr. (D).
Senate: Herman Talmadge (D).

Idaho
Senate: Frank Church (D).

Illinois
House: Frank Annunzio (D), George E. Shipley (D), Harold Collier (R), Ralph Metcalf (D), Samuel Young (R), John B. Anderson (R), Paul Findley (R), Robert Hanrahan (R), George O'Brien (R), Tom Railsback (R), Robert McClory (R).

Indiana
House: Earl Landgrebe (R), William Hudnut III (R), Elwood Hillis (R), John Myers (R), J. Edward Roush (D).

Iowa
House: William J. Scherle (R).

Kansas
House: William Roy (D), Keith Sebelius (R), Garner Shriver (R), Larry Winn Jr. (R).

Kentucky
House: Carl Perkins (D), Tim Lee Carter (R), Frank Stubblefield (D), Gene Snyder (R).

Louisiana
House: John R. Rarick (D), Joe D. Waggonner (D), Edwin Edwards (D), Otto Passman (D), David Treen (R).

Maryland
House: William O. Mills (R), Goodloe Byron (D), Marjorie Holt (R).

Massachusetts
House: Silvio O. Conte (R), Edward P. Boland (D), James Burke (D), Paul Cronin (R).

Michigan
House: Charles Chamberlain (R), James Harvey (R), Garry Brown (R), Philip Ruppe (R), William Broomfield (R), Robert Huber (R), Ed Hutchinson (R), Guy Vander Jagt (R).

Minnesota
House: Ancher Nelson (R), Albert Quie (R), John Zwach (R), John A. Blatnik (D), Bill Frenzel (R).

Mississippi
House: David Bowen (D), G. V. Sonny Montgomery (D), Thad Cochran (R), Trent Lott (R).

Missouri
House: William Randall (D), William Hungate (D).

Montana
House: Richard Shoup (R), John Melcher (D).

Nebraska
House: Dave Martin (R), John McCollister (R).
Senate: Carl Curtis (R).

Nevada
Senate: Howard Cannon (D).

New Hampshire
House: James Cleveland (R).

New Jersey
House: Edwin B. Forsythe (R), Robert Roe (D).

New Mexico
House: Manuel Lujan Jr. (R).

New York
House: Samuel S. Stratton (D), James Hastings (R), Norman Lent (R), Joseph P. Addabbo (D), Frank Brasco (D), Jack Kemp (R), Donald Mitchell (R), Bertram Podell (D), William Walsh (R), Angelo Roncallo (R).

North Carolina
House: Walter Jones (D), Richardson Preyer (D), James Broyhill (R), David Henderson (D), James Martin (R), Wilbur Mizell (R), Charles Rose (D), Roy Taylor (D), Earl Ruth (R).

North Dakota
House: Mark Andrews (R).

Ohio
House: Charles Carney (D), Walter Powell (R), William Harsha (R), William Keating (R), Clarence Miller (R), James Stanton (D), Tennyson Guyer (R).

Oklahoma
House: John Camp (R), John Jarman (D).

Pennsylvania
House: Fred Rooney (D), John Saylor (R), John Ware (R), Daniel Flood (D), Albert Johnson (R), Joseph McDade (R), Lawrence Coughlin (R), Edwin Eshleman (R), Herman Schneebeli (R), Lawrence Williams (R), Gus Yatron (D).
Senate: Richard Schweiker (R).

South Carolina
House: W. J. Bryan Dorn (D), Edward Young (R), James Mann (D), Mendel Davis (D), Floyd Spence (R).
Senate: Ernest Hollings (D).

South Dakota
House: James Abdnor (R), Frank Denholm (D).

Tennessee
House: John Duncan (R), Dan Kuykendall (R), LaMar Baker (R), Ed Jones (D), Richard Fulton (D), Robin Beard (R).

Texas
House: James Wright (D), James Collins (R), Abraham Kazen Jr. (D), Bob Casey (D), J. J. Pickle (D), Bill Archer (R), O. C. Fisher (D), Dale Milford (D), Omar Burleson (D), Alan Steelman (R), Richard White (D), Ray Roberts (D), Charles Wilson (D).
Senate: Lloyd Bentsen (D), John Tower (R).

Utah
Senate: Frank Moss (D).

Vermont
House: Richard Mallary (R).

Virginia
House: Thomas N. Downing (D), W. C. Daniel (D), Stanford Parris (R), Joel Broyhill (R), M. Caldwell Butler (R), J. Kenneth Robinson (R), William Wampler (R).
Senate: William Scott (R).

Washington
House: Mike McCormick (D).

West Virginia
House: Robert Mollohan (D), John Slack (D).

Wisconsin
House: Glenn Davis (R), Harold Froelich (R).

Wyoming
House: Teno Roncalio (D).
Senate: Clifford Hansen (R), Gale McGee (D).

Guam
House: Antonio B. Won Pat (D).

House—189 sponsors.
Senate—12 sponsors.

.... from WASHINGTON EVENING STAR and DAILY NEWS, Thursday, 15 March 1973 - page A-13

FCC Backs Five-Year Licensing

By STEVEN AUG
Star-News Staff Writer

The Federal Communications Commission has come out in favor of legislation that would grant broadcasters five-year license terms, compared with the present three.

The commission took the position yesterday on a 5-2 vote, with Commissioners Nicholas Johnson and Benjamin Hooks dissenting.

It urged approval of the legislation, which would allow it to renew the license of a broadcaster even though it is challenged by a prospective broadcaster, provided the current license holder has substantially served his area and met its needs and interests.

FCC chairman Dean Burch disclosed the commission action in testimony before a House Communications subcommittee which is considering many bills dealing with broadcast license renewals, including a long-awaited Nixon administration proposal sent to to Congress yesterday.

In justifying a five-year license term, Burh said broadcasters make substantial investments in their stations and are entitled to a certain amount of stability.

Burch also said that individual renewal cases should be based on the broadcaster's record, not on such factors as whether the station is owned by a local resident or whether the owner also owns a local newspaper. If the commission is to change the industry structure, Burch said, the only fair way to do it is by a formal rule-making proceeding—not by individual license renewal cases.

Burch's statement comes close to the administration which would prevent the FCC from establishing categories, quotas, formats, or guidelines for programming. It would call for a five-year license. And the present requirement for an automatic hearing when a competing application is filed would be eliminated.

In his dissent, Johnson said the FCC majority would give community groups less opportunity to participate in license renewals. He predicted it would make life more difficult for broadcasters and the FCC alike, because community groups which might be willing to wait three years while a broadcaster changes his policies, might not want to wait five years and the result would be more competing license challenges.

FCC Opposes Administration's B'cast License Renewal Bill, Favors Five-Year Periods

By LARRY MICHIE

Washington, March 14—The Federal Communications Commission opposes the Nixon Administration's proposed broadcast license renewal bill. Chairman Dean Burch today told the House Communications Subcommittee that a Commission majority agrees on the extension of the license term from three to five years and also agrees that a broadcaster who has substantially served his public should win renewal.

But the bill sent to Congress Tuesday by the White House Office of Telecommunications Policy would go too far in insulating existing licensees, Burch suggested. The Administration bill would do away with comparative hearings involving renewal applicants and competing applications for their facilities unless the challenger could raise a substantial issue as to whether the broadcaster had in the past adequately served the public. No hearing at all would be held if the chal-

(Continued on Page 24, Column 1)

FCC OPPOSES ADMINISTRATION'S B'CAST LICENSE RENEWAL BILL

(Continued from Page 1, Column 2)

lenger couldn't prove his point.

Burch said the Commission agrees that a good broadcaster shouldn't have to go through a protracted and complete hearing, but he said Congress should only give the FCC the right to cut the hearing off if the FCC determines that the station "substantially" served the public interest. The FCC wants to retain the right to lift the license of a minimum-performance outlet and award it to someone else.

FCC Amendment

The FCC suggested this addition to existing law:

"In any comparative hearing for the frequency or channel of an applicant for renewal of a broadcast license, the applicant for renewal shall be awarded the grant if such applicant shows that its program service during the preceding license term has substantially, rather than minimally, met the needs and interests of its service area, and the operation of the station has not otherwise been characterized by serious deficiencies."

The general thrust of the Commission position is similar to its 1970 policy statement, which it adopted following the collapse of "The Pastore Bill"—legislation introduced by Senate Communications Subcommittee Chairman John O. Pastore (D-R.I.), but attacked by consumer and minority groups as too protectionist.

The policy statement was thrown out by the U.S. Court of Appeals for D.C., which conceded, however, that "superior" performance by a broadcaster would weigh in its favor in a comparative hearing. Burch noted that the Commission has put its efforts to define "superior" on the back burner pending the outcome of legislative moves on Capitol Hill.

Should Congress fail to pass any bill, Burch said, the Commission will have no choice but to set up some numerical standards—such as percentage of primetime devoted to news—to define what superior is.

The Commission will be invited back later in the hearings, Subcommittee Chairman Torbert Macdonald (D-Mass.) said, to comment fully on the OTP legislation, which had been released so recently that few of the Congressmen had even seen it.

The hearing opened with a long list of Congressmen briefly appearing to back their own bills, which are along the lines suggested by the National Association of Broadcasters and the OTP.

.... from WALL STREET JOURNAL, Thursday, 15 March 1973 - page 26

FCC Asks for Clarity On Broadcasting Rules In License Challenges

Agency Asks Congress to Specify Permit Holding Requirements And Backs 5-Year Issue Term

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON—The Federal Communications Commission asked Congress to spell out what a braodcaster must do to ward off applicants competing for his license.

The commission also supported a proposal to extend the term of licenses to five years from the current three.

The changes would help protect stations from challengers. A clarification of what a station must do to fend off a competitor would clear up a regulatory "muddle" resulting from conflicting court opinions and FCC actions outlining different standards the agency should use to process license challenges, FCC Chairman Dean Burch said.

Mr. Burch told the House Communications Subcommittee that federal broadcasting law should specify that stations that have "substantially," met the needs and interests of the public should be allowed to retain their licenses in the face of competing applications.

Mr. Burch told the panel, which began hearings on a number of bills to extend radio and TV licenses to five years, that the change would eliminate confusion caused by a 1971 court decision suggesting that "superior" programming performance should be a requirement for stations trying to protect their licenses. This term "cannot realistically be used" in considering license-renewal applications, Mr. Burch stated.

In addition, Mr. Burch stressed that the change would emphasize that a station's "past record" on programming must be the controlling factor if his license is challenged. He rejected as an "egregious error" a 1969 decision in which the FCC took a Boston TV station away from Herald-Traveler Corp., a newspaper publisher, primarily to reduce media concentration.

That decision "struck a devastating blow to the important concept of stability" for broadcast-license holders, Mr. Burch asserted.

On Tuesday, the Nixon Administration sent Congress a bill designed to extend licenses to five years and to help protect stations from competing challenges. While Mr. Burch said he supports the Administration's desire to help stabilize broadcast licenses, he objected to a provision that would restrict the FCC's ability to hold hearings on competing applications.

FCC member, Nicholas Johnson, said he opposed extending licenses to five years because it would reduce the opportunities of community groups to participate in license renewal proceedings. In addition, he charged that broadcasters are backing bills that would limit the rights of such groups when they do challenge applications.

FROM NEW YORK TIMES, SUNDAY, 18 MARCH 1973 - PAGE D-19

'Leaving the Public Holding the Bag'

By EVERETT C. PARKER

THE current editorial outcry against assaults by the Nixon Administration on influential newspapers and their reporters and on television news and public affairs programs has largely ignored the interests of a third party, one which has the greatest stake of all in how news is interpreted and disseminated—the public.

Newsmen rightfully see the efforts of the Government to restrict and control the release and reporting of news and to cut down on the discussion of public issues as illegal abridgment of freedom of the press. But a far greater threat is posed by the legal maneuvers to strip reporters of the right to protect the confidentiality of their news sources, by Vice President Agnew's and Clay T. Whitehead's systematic, multifaceted attacks on broadcast news and the Federal Communications Commission's Fairness Doctrine (which requires broadcasters to air programs that deal with controversial issues), and by the evisceration of public broadcasting. We are faced with nothing less than a deliberate attempt to deprive the public of its access to information, and therefore of its ability to participate in the making of political decisions.

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In one of its more perceptive interpretations of the Constitution, the Supreme Court once characterized the basic objective of the First Amendment as "the dissemination of information from diverse and antagonistic sources." The goal is an informed public. By logical extension, all elements and groups must have access to the means of disseminating information — newspapers, magazines and broadcasting—else the public will not be informed. Both direct access —appearance by individuals and groups speaking in person—and interpretative reporting are required.

This right of the public to access has not yet been wholly accepted by newspapers. It has always existed in law with respect to radio and television, but has been of short duration in practice. It was only in 1966, in *Office of Communication of the United Church of Christ v. Federal Communications Commission*, that Chief Justice Burger (then a Circuit Court judge) ruled in a landmark decision that members of the public have the right to intervene in F.C.C. licensing procedures to fight for improved broadcasting service. Before that, the F.C.C. had refused to give legal standing to listener views and complaints.

Since 1966 it has become common practice for responsible citizen groups to appear at broadcasting stations to demand better local program service, more news and public affairs programs, fair treatment of minorities on the air and fair employment practices in the treatment of minorities and women. Characteristically,

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The Rev. Dr. Everett C. Parker is director of the Office of Communication of the United Church of Christ.

these demands are made at license renewal time, when the station is supposed to provide the F. C. C. with proof that it has performed in "the public interest, convenience and necessity" during the preceding three years. In most cases there is a spirited negotiation between the community organizations and the station and an agreement is reached. This means of coming to terms between the station and the community has the official blessing of the F. C. C.

Sometimes the station will not negotiate in good faith. Then the community group files a petition with the F. C. C. asking it to deny renewal of the station's license and to find a new licensee who will be attuned to the public interest. Such petitions do not impose an immediate threat to the stations. They continue on the air, doing business as usual, while the F. C. C. considers the charges made against them. The F. C. C. has never revoked a license because a station rendered poor program service. And F. C. C. procedures are interminable, often being drawn out for as much as a decade. Since 1968, KAYE, a small, right-wing, fundamentalist radio station, has been on trial before the F. C. C. for numerous violations of the Fairness Doctrine, disruption of the city government of Tacoma, Wash., through propaganda attacks on call-in programs, and use of the station to foster racial intolerance and anti-Semitism by open attacks on blacks and Jews. There have been two F. C. C. hearings, each lasting many weeks. Twice the F. C. C. administrative law judge has recommended revocation of the station's license. But the commission has failed to act.

Nevertheless, in spite of this overprotectiveness by the F. C. C., broadcasters bitterly resent being required to consult with the listeners whom they are licensed to serve, and fear those provisions of the Federal Communications Act that permit challenges by competitors or the public against their licenses. Broadcasters, free of charge, enjoy a monopoly of one of our nation's most valuable natural resources, the television and radio frequencies. Yet they will brook no examination of their stewardship. The industry conducts a never-ending campaign for passage by Congress of legislation that will guarantee stations their licenses almost in perpetuity, protecting them from both criticism and legal action by the public, and that will relieve them of the requirement of fairness in programing.

The men who own and operate television and radio stations and networks are businessmen. They are communicators only because broadcasting is the most profitable of all American businesses. Many of them have little concern for news, public affairs, freedom of speech or maintenance of an informed, alert, intelligent public. Their attitudes and policies are typified by the finding of the latest Alfred I. duPont-Columbia University survey of broadcast journalism that in the last year, while network profits are rising, the businessman managers are cutting back on news and public affairs programing.

With its unerring ability to exploit bottom-line morality, the Nixon Administration is dangling before broadcasters a mouth-watering promise of license security and protection against public criticism in return for aid in undermining the First Amendment rights of press and public.

This program went into high gear last June when the President met in the White House with some 50 station licensees. Networks were not represented. The President reportedly promised his support for broadcast license renewal legislation that would extend the license term of stations from three to five years, greatly reduce public service obligations of stations and protect licensees from challenges for poor program service. He is also said to have promised to have the Internal Revenue Service investigate the use of foundation grants to finance citizen license challenges.

Requests by public interest groups for a similar meeting with the President to talk about the need for maintaining public service responsibilities of broadcasters were bluntly turned down by the White House staff.

The White House strategy was openly one of "divide and conquer." It pitted the station licensees against the networks which had already been singled out as being representative of a "liberal" viewpoint that is hostile to the Administration and its programs.

The quid pro quo was revealed by Clay Whitehead in his widely reported speech given before a Sigma Delta Chi journalism luncheon in Indianapolis, in which he announced that a license protection bill would be filed in Congress, while at the same time he sternly reminded licensees of their part of the bargain: Monitor the networks. Stop their "ideological plugola." If necessary, censor network programs.

Opinion polls show that a large majority of American adults depend upon network television as their primary source of news. Bland and inadequate as it may be, network news coverage is trusted by most people, and it is the only national news service that goes directly to the consumer. If stations can be turned against the network news departments—and there is evidence that this is happening in some places—national news coverage on television and radio will lose its independence and the public will be deprived of its primary news source. *(Continued on Page 36)*

The Public Holding the Bag

Continued from Page 20

The White House bill has not yet been introduced in Congress. However, its provisions are well known. One of them is to lengthen the licensing term of stations from three to five years. The license term was once only one year and was increased to three. The framers of the Federal Communications Act were careful to forbid the permanent grant of a broadcast license. Since license renewal provides listeners and viewers with their only real leverage to obtain satisfactory broadcasting service, such an increase in the length of the term will hold off public response so long that it will be meaningless. Furthermore, review by the FCC of five years of performance will be difficult, if not impossible. Thus, the whole concept of periodic accountability which is required by the Communications Act will be destroyed.

Virtually automatic license renewal is very much a part of the White House bill. The FCC would be required to renew the license of any station that "has been substantially attuned to the needs and interests of the public . . . and has demonstrated, in its program service and broadcast operations, a good faith effort to be responsive to such needs and interests; and has afforded reasonable opportunity for its discussion of conflicting views on issues of public importance." Broadcasters could hardly ask for tighter immunization from license renewal challenges. They know it. The National Association of Broadcasters has enthusiastically endorsed the White House bill on the basis of this renewal standard and the five-year licensing term.

But there is a provision in this wonderful gift legislation that broadcasters will ignore at their peril. The bill prohibits the FCC from establishing any standards or requirements whereby it may reach a judgment on what the performance of a station has been. The Commission now has criteria to guide stations in planning programing to serve the public interest. These criteria have largely been evolved out of recommendations the broadcasting industry has made in public hearings as to the kind of programing it considers to be desirable for serving the public. Among the things that stations have been encouraged to program are national, regional and local news; public affairs programs, as required by the Fairness Doctrine; programing in behalf of racial minorities; children's programs; public service announcements; religious programing; weather reports, and services to agriculture. The FCC particularly stresses the desirability of local programing. The Commission also has guidelines respecting overcommercialization.

Under the White House bill these criteria would be swept away and the Commission would have to fall back on purely subjective judgment about station performance. Thus every decision with respect to license renewal would become ad hoc. Every licensee would be treated separately. There would be no objective standard of general application to guide his conduct and he would be judged by standards designed for him alone, after the fact. These standards might well apply to his political loyalty, whatever the FCC—prompted by the White House—might consider that to be.

The White House bill abandons our traditional government of laws and replaces it with a government of men. Each time a licensee faces the FCC commissioners for renewal, he will also be facing over their shoulders the presence and the prejudices of the President.

The broadcaster will still have the right to appeal FCC decisions to the courts, but in the absence of criteria to determine performance, and in a function that touches on so many constitutional issues as does broadcasting, who can predict what the court decisions will be? Inevitably long and costly litigation will be necessary to develop new standards and rules.

The White House bill and similar legislative proposals that have been introduced by a large number of Congressmen in behalf of the National Association of Broadcasters pose a political rather than a legal dilemma for the public. The broadcasters are a tool, albeit a willing one, in a well-thought-out campaign to mute the voice of the people. Usually, regulatory legislation slips through Congress with a minimum of opposition. This may not be the case this time, even though so many Congressmen have rushed headlong to introduce bills at the behest of the broadcasters. Hundreds of substantial organizations and thousands of citizens throughout the country are now concerned about broadcasting and its regulation. Within the fortnight the Broadcasting and Film Commission of the National Council of the Churches of Christ in the U.S.A. called upon Congress "to protect the integrity of the Communications Act [which means not to tamper with its licensing and fairness provisions] and the right of all reporters to the confidentiality of their sources." Churches, parents groups, unions, civic organizations, women's organizations, minority groups and similar bodies were invited to join in.

It will be an epic struggle. Obviously the White House counts on the owners and managers of broadcasting to take the money and run, surrendering First Amendment rights in return for absolute protection of their licenses, and leaving the public holding the bag. Mr. Whitehead has pointed out bluntly that the Administration is smart and tough and determined.

The great sage and cynic who wrote Ecclesiastes had this advice to give which is still relevant: "The words of the wise heard in quiet are better than the shouting of a ruler among fools."

Our forebears were wise enough not to ratify the Constitution until the first ten amendments guaranteeing individual freedoms and freedom of religion and the press had been appended.

The ruler could be any President.

The licensees of television and radio stations may well fit the category of fools if they believe they can trade freedom of speech and of the press for their own economic security, and that the ruler will still permit them to operate independent businesses and speak their own minds.

... from BROADCASTING, 19 March 1973 - pages 33 to 35

The real struggle begins over renewal legislation

A no-nonsense Torbert Macdonald begins House hearings on broadcasters' topic number one as White House bill is introduced; FCC meanwhile moves to adopt its own answers to renewal tangle

The House Subcommittee on Communications and Power, under the firm hand of its chairman, Torbert H. Macdonald (D-Mass.), last week began a series of hearings on license-renewal procedures, which broadcasters have long contended are in critical need of reform if the industry is to continue to be economically viable.

The Macdonald hearing was only one of a series of happenings last week in Washington that saw concrete steps taken to resolve the problem. The Nixon administration finally sent its license-renewal bill to Capitol Hill with only slight alterations to the form first proposed in December (see page 40). And the FCC last week was on the verge of adopting its rules that would streamline its license-renewal procedures and cope with the problem of an ever-increasing number of challenges (see page 35).

To open the hearing last week, Mr. Macdonald said that the principal problem in overhauling the license-renewal process is "fixing precise legal standards for judging broadcast service. . . . A workable definition of serving the public interest, convenience and necessity remains elusive. Every broadcaster claims he does just that, and every challenger and petitioner claims the opposite." But, warned Mr. Macdonald, if it is found that the FCC's present renewal system is still the best available, "then we should resist the temptation to dismantle it."

During the hearing Mr. Macdonald stated that he has not made up his mind on renewal legislation and will not do so until the hearings are concluded.

Lead-off witnesses were Representatives James Broyhill (R-N.C.) and Fred Rooney (D-Pa.), who two weeks ago reintroduced, with 74 co-sponsors, renewal legislation supported by the National Association of Broadcasters (BROADCASTING, March 12).

The bill, identical to a host of measures offered in the House, would extend the present three-year renewal term to five years. It also provides that, in a hearing, the incumbent licensee will be granted renewal upon showing "its broadcast service during the preceding license period has reflected a good-faith effort to serve the needs and interests of its area . . . and if it has not demonstrated a callous disregard for law or the commission's regulations. . . ."

From the outset Mr. Macdonald wanted to know how "good-faith effort" and "callous disregard" are defined. Mr. Broyhill said a sincere effort to serve community needs was "good-faith effort"; Mr. Rooney defined callous disregard as a situation where an applicant has paid no attention to FCC rules. But it was obvious those definitions were not precise enough for Mr. Macdonald.

FCC Chairman Dean Burch told the subcommittee that the commission believes "that there is no need to tinker" with the present statutory standard or processes in the noncomparative-renewal area. "The public-interest standard is as good a statutory guideline as is feasible in this field. We therefore do not support pending bills which would substitute in the hearing process a new standard such as 'good-faith effort' to ascertain or meet the area's needs and interests." He agreed with Mr. Macdonald that the term is unclear. And, he added, similar objections can be raised to the "callous disregard" language.

It is the comparative-renewal area that needs attention, said Mr. Burch.

"A rational comparative-renewal policy must reflect an appropriate balance between maintaining a competitive spur and insuring stability in broadcast operations —both essential elements of the public interest," said Mr. Burch. He cited four conclusions that can be drawn from those principles:

- The renewal applicant in a comparative proceeding should be judged on his record.
- The "applicant's record should not have to be outstanding . . . to warrant renewal."
- The "applicant's record should not be judged against or required to be superior to some industry average."
- The "applicant's past record must be controlling."

What is needed, said Chairman Burch, is "clarifying legislation" in the comparative-renewal area. He said that legislation should be modeled after the commission's 1970 comparative policy statement on renewals (which the District of Columbia Court of Appeals ruled in May 1971 was contrary to the Communications Act). Mr. Burch offered the following draft bill: "In any comparative hearing for the frequency or channel of an applicant for renewal of a broadcast license, the applicant for renewal shall be awarded the grant if such applicant shows that its program service during the preceding license term has substantially, rather than minimally, met the needs and interests of its service area, and the operation of the station has not otherwise been characterized by serious deficiencies."

At one point, Mr. Burch referred to the June 1971 Citizens Communications

Torbert Macdonald (r) with aide Richard Krolik

Strategy session. NAB President Vincent T. Wasilewski (seated) with key aides at last Thursday's House Communications Subcommittee hearing. L to r: executive vice presidents Grover C. Cobb and James Hulbert, general counsel John Summers.

Center case, which held invalid the FCC's 1970 policy statement. "If [that] case becomes the law of the land," he warned, "then in my opinion the renewal system is up for grabs."

Chairman Burch also said the commission endorses five-year renewal terms (although he noted parenthetically that Commissioners Nicholas Johnson and Ben Hooks disagree and Commissioner H. Rex Lee questions the advisability of a five-year renewal term simply to ease administrative burdens).

Mr. Burch said that a five-year term would reduce the number of renewal applications processed from 2,700 to 1,600 a year, thereby facilitating a more thorough review of each application filed.

Mr. Burch dealt in some detail with the WHDH case, expressing the opinion that the commission's January 1969 decision to award the license to a competing applicant was an "egregious error" that "engendered a spate of competing applications to regular renewal applicants" and "struck a devastating blow to the important concept of stability."

"I'm disappointed you spent so much time on the WHDH case," said Mr. Macdonald after Chairman Burch read his prepared text. Indicating that he did not think that case was a typical one, Mr. Macdonald said if he were a broadcaster he would "look with greater alarm to the stations in Florida" (Post-Newsweek's WLPG-TV Miami and WJXT[TV] Jacksonville)—stations which he said had served the public interest but nevertheless have had their licenses challenged.

Mr. Macdonald expressed the opinion several times that guidelines should be established to enable the FCC's renewal branch to more accurately determine whether stations are serving their communities, and to let stations know what is expected of them.

"I must say I'm terribly wary of a government-imposed insurance policy that everyone has to meet," said Chairman Burch at one point. He noted that any such standard would provide "only numbers. We are after good quality."

When questioned by subcommittee member Clarence Brown (R-Ohio), Mr. Burch had some criticism of the administration's license-renewal bill, which was introduced last week (see page 40). He took issue with the fact that the bill makes no distinction between procedures involving denial petitions and those regarding competing applications, stressing again that it is the comparative process that needs revision. He also indicated that the measure would restrict the commission's freedom to hold comparative-renewal hearings.

Since the administration's renewal bill was introduced last Tuesday (March 13), the day before Chairman Burch testified, Mr. Macdonald said he would invite the FCC back to respond in more detail to that bill.

Indicating the urgency of renewal legislation, Mr. Burch told the subcommittee that if Congress takes no action on renewal legislation it will be incumbent upon the FCC to set guidelines for licensees. He said the commission would be "reluctant" to formulate those criteria. "We'd almost have to spell out percentages [of required programing]," he said, "and I personally think it doesn't solve anything."

In his testimony, FCC Commissioner Nicholas Johnson characterized the administration's renewal bill as "the Nixon lullaby—rocking the American people to sleep by silencing the nation's investigative journalists. . . ."

He accused the commission of "rubber stamping license renewals." He called the legislative proposal outlined by Chairman Burch "a very slippery standard" whose "application will depend on how the commission defines and applies 'substantial and 'serious deficiencies.'" He said the FCC's policy in regard to competing applications is to renew the incumbent's license "unless his behavior is so bad that we would be forced to take away the license even if there were no competing application. . . . In short, nothing is happening at the FCC to lend any credence to the charge that the broadcast industry is headed for some sort of a chaotic collapse."

He charged that "the purpose of this legislation is to hurt community groups."

Mr. Johnson suggested that if the commission wanted to aid small broadcasters in the renewal process, it could do so by linking a station's profits or gross revenues to its performance.

Most of the bills pending before Congress are, he said, "completely racist in application" because they exclude minority groups from applying for stations. "If I were a legislator who voted for one of these pieces of special-interest legislation," he said, "I think I know what kinds of questions my constituents and political opponents would ask. Why did you introduce and vote for the legislation? How does it help the *public?* . . . How much money did broadcasters contribute to your campaign? How much free time did broadcasters give you so you could get re-elected?"

"I reject out of hand your insinuation that renewal-bill sponsors are voting for private interests and against their constituents," Mr. Macdonald told Commissioner Johnson. "Just because someone doesn't agree with you doesn't mean you have to impugn their motives."

Subcommittee member Fred Rooney was more vehement. "You have come here to intimidate 190 members of this body," he said hotly. He said he resented Mr. Johnson's implication that congressmen are pawns of broadcasters.

Both Congressmen Macdonald and Barry Goldwater Jr. (R-Calif.) criticized Mr. Johnson for failing to address himself to the problem. Mr. Johnson, however, made it clear that he did have two principal recommendations: Having the FCC take a stronger role at renewal time through minimum or comparative standards, or—preferably—giving local community groups more opportunity to negotiate with broadcasters. He did not elaborate on those suggestions, however. The problem, he said, is that broadcasters do not want either of those alternatives.

"Congressional resolution of the [renewal] problem is necessary because of the chaotic situation in the broadcasting industry which has grown out of certain decisions of the FCC and the courts," contended NAB President Vincent Wasilewski in his testimony. "We submit that the establishment of renewal hearing standards is a matter for determination by Congress—not the judiciary."

Under the rationale of the WHDH decision, he said, business groups have filed competing applications (which, he noted, are automatically set for hearing) "carefully tailored so as to be preferred on all or most of the comparative criteria" and "complete with glowing paper program proposals." About 50 such applications have been filed in recent years, he said, and "the number will skyrocket if Con-

gress does not resolve the present irregularities."

Another device now being used to undermine broadcasting's stability, he said, is the petition to deny, usually filed by citizen groups and activist groups. About 200 of these have been filed thus far, he said, and "most have raised broad unspecified charges in the hopes of exacting concessions from the licensee; some have been frivolous." While few of these petitions reach the hearing stage, said Mr. Wasilewski, "it is important that the law be amended to make it clear that the issues which might be designated for hearing . . . are confined to matters relative to the licensee's service to his community and his compliance with law and the commission's regulations."

Noting that NAB's proposed legislation would neither guarantee licenses in perpetuity, preclude competing applications or denial petitions nor free broadcasters from government regulations, Mr. Wasilewski said the measure "will provide a reasonable balance between stability, without which the industry cannot function, and the need of the public and the broadcaster to maintain an open two-way channel of communication so that the station remains responsive to public needs."

During the question-and-answer period that followed, Mr. Wasilewski sided with Mr. Burch in his belief that program-performance guidelines would not insure program quality. But he indicated his support for Mr. Macdonald's opinion on the ascertainment-of-community-needs process. Mr. Macdonald called the procedure a "drag on the people involved and the broadcasters. I think that's one thing we ought to just throw out."

In answer to a question from Mr. Rooney, Mr. Wasilewski said he thought NAB could support the administration's renewal measure, provided no additional language—such as that contained in Office of Telecommunications Policy Director Clay Whitehead's Indianapolis speech—is appended to it.

Richard Stakes, executive vice president of the Washington Star Station Group, urged the subcommittee to consider a five-year renewal term and a requirement, contained in the administration's renewal bill, that a competing applicant must demonstrate that an incumbent has not performed in the public interest before the competing application can be considered in a comparative hearing.

He said it cost the station group $400,000 to defend its license in 1969; $200,000 to prepare its renewal application last July, and could cost another $400,000 to defend it if it is challenged again.

The fact that the Washington Star Station Group is affiliated with the *Washington Star* prompted Representative Lionel Van Deerlin (D-Calif.), himself a former newsman, to comment that "there is a positive value in having a newspaper affiliated with a station. I am prepared to insert in any [renewal] legislation a provision to remove this blight —requiring separation of newspapers and stations."

.... from TELEVISION DIGEST, 19 March 1973 - pages 2 and 3

FCC & NAB LEAD OFF RENEWAL HEARING: Taking up where Sen. Pastore (D-R.I.) left off 4 years ago, House Communications Subcommittee Chmn. Macdonald (D-Mass.) opened hearings last week into legislation aimed at stabilizing renewal procedures and extending licenses to 5 years. Unlike Pastore, who suddenly found himself alone with S-2004 when it came under attack by minorities for offering "licenses in perpetuity," Macdonald hasn't associated himself with legislation, finds himself sitting on top of some 76 bills with 190 sponsors, a recommendation from FCC that congressional action "is most urgent" and a long-awaited renewal bill from White House.

Sprinkling warnings that unless industry & FCC got together to take obscenity & violence off air Congress will be forced to act (see p. 1), Macdonald opened first round of hearings by

admonishing FCC Chmn. Burch & NAB Pres. Wasilewski for spending too much time talking about implications of WHDH-TV Boston ("It doesn't prove anything...I don't think any broadcaster thinks that could happen to him."), said industry should be far more alarmed over challenges against Post-Newsweek stations in Fla. (Vol. 13:2 p5) and repeatedly expressed "amazement" that FCC had no guidelines or standards to follow in granting renewals.

White House sent its renewal bill to Congress day before hearing started—and it was virtually ignored during testimony & questioning. (However, it's understood that toward end of hearings Macdonald will recall Burch & Wasilewski after OTP Dir. Clay Whitehead testifies.) Final text, as sent to Hill by OTP, with approval of OMB, is nearly identical to earlier draft (Vol. 12: 52 & White Paper), as OTP left in most phrases to which Commission had objected (Vol. 13:6 p5). In one significant change, OTP left in prohibition against FCC considering "any predetermined criteria" on renewals, and added after criteria "categories, quotas, percentages, formats or other guidelines." New bill also clarifies procedure Commission is to follow in case of competing application, makes it clear that renewal applicant can compete in comparative hearing even after FCC found that competing application should be accepted.

But Burch said that OTP bill wrongly lumped comparative & non-comparative hearings together. "There is no need to tinker with the present statutory standard or process in the non-comparative renewal area," Burch said. "The public interest standard is as good a statutory guideline as is feasible in this field. We therefore do not support pending bills which would substitute in the hearing process a new standard such as 'good faith effort' to ascertain or meet the area's needs & interests." Instead, he suggested amending Sec. 307(d) governing comparative hearings which would award renewal "if such applicant shows that its program service during the preceding license term has substantially, rather than minimally, met the needs & interests of its service area, and the operation of the station has not otherwise been characterized by serious deficiencies."

As situation now stands, Wasilewski said: "No one knows what the governing criteria are with respect to license renewal hearings. As a result, a chilling factor has entered operation of most broadcasting stations. Because of the lack of specific governing standards, the proliferation of petitions, and because, unfortunately, of the intimidation & pressure tactics which have gone along with the uncertain situation, many stations attempt to accommodate the challenger..."

Macdonald agreed on need for standards, pressed Wasilewski for testimony from broadcasters who had been "blackmailed" by petitioners and rebuked him for offering WHDH and WOOK(AM) Washington as only examples of where competing applicants have been successful. "What kind of examples are those?" Macdonald shouted. He said WOOK license was denied for "plugging bookies," and added that odds against challengers were good for broadcasters. "The whole industry is too nervous," Macdonald continued. He referred to OTP as "that Punch & Judy show... You people really overract to anything that emanates out of there."

Dissenting to Burch's statement, Comr. Johnson also attacked Whitehead, accused him of singing "the Nixon lullaby—rocking the American people to sleep by silencing the nation's investigative journalists." (Just before Johnson testified—immediately after Burch—Burch, Comr. Wiley, Gen. Counsel John Pettit and host of other Commission staff walked out of hearing room.) Johnson called renewal legislation "completely racist in application" and warned Subcommittee members that voters will ask: "Why shouldn't we throw you out of office?" He said he may well be among those citizens raising money to campaign against them.

Subcommittee's reaction to that was swift & predictable. Macdonald called it "a great error ...not helpful and I personally regret it...We put our ego on the line every 2 years," he continued, referring to Johnson's decision not to enter Senate race in Iowa. "If you feel Congress is a tool of the broadcasters, why didn't you put your opinion on the line?"

First station represented at hearing was WMAL-TV Washington; its license has been uncontested for only 2 days since Sept. 1969. Other stations will testify beginning March 20: Ancil Payne, pres. of KING-TV Seattle; G. Bennett Larson, WOKR Rochester, N.Y.; Plough Bestg. Pres. Harold Krelstein; Temple U. Prof. Kenneth Harwood. NBC Pres. Goodman testifies March 22. CBS is still undecided.

RENEWAL: FCC VS. WHITE HOUSE

SAYS OTP BILL TOO 'PROTECTIVE'

The FCC opposes the Nixon Administration's proposed broadcast license renewal bill.

Chairman Dean Burch last week told the House Communications Subcommittee that a commision majority agrees on the extension of the license term from three to five years and also agreed that a broadcaster who has substantially served his public should win renewal.

But the bill sent to Congress last Tuesday (13) by the White House Office of Telecommunications Policy would go too far in insulating existing licensees, Burch suggested. The Administration bill would do away with comparative hearings involving renewal applicants and competing applications for their facilities unless the challenger could raise a substantial issue as to whether the broadcaster had in the past adequately served the public. No hearing at all would be held if the challenger couldn't prove his point.

Burch said the commission agrees that a good broadcaster shouldn't have to go through a protracted and complete hearing, but he said Congress should only give the FCC the right to cut the hearing off if the FCC determines that the station "substantially" served the public interest. The FCC wants to retain the right to lift the license of a minimum-performance outlet and award it to someone else. The FCC suggested this sole addition to existing law:

"In any comparative hearing for the frequency or channel of an applicant for renewal of a broadcast license, the applicant for renewal shall be awarded the grant if such applicant shows that its program service during the preceding license term has substantially, rather than minimally, met the needs and interests of its service area, and the operation of the station has not otherwise been characterized by serious deficiencies."

Along 1970 Lines

The general thrust of the commission position is similar to its 1970 policy statement, which it adopted following the collapse of "the Pastore bill" — legislation introduced by Senate Communications Subcommittee chairman John O. Pastore (D-R.I.) but attacked by consumer and minority groups as

(Continued on page 72)

Renewal

(Continued from page 39)

too protectionist. The policy statement, however, was thrown out by the U.S. Court of Appeals for D.C., though it conceded that "superior" performance by a broadcaster would weigh in its favor in a comparative hearing.

Burch noted that the commission has put its efforts to define "superior" on the backburner pending the outcome of legislative moves on Capitol Hill. But if Congress fails to pass any bill, Burch said, the commission will have no choice but to set up some numerical standards — such as percentage of primetime devoted to news — to define what "superior" is.

The commission will be invited back later in the hearings, subcommittee chairman Torbert Macdonald (D-Mass.) said, to comment fully on the OTP legislation, which had been released so recently that few of the Congressmen had even seen it.

The hearing opened with a long list of Congressmen briefly appearing to back their own bills, which are along the lines suggested by the National Assn. of Broadcasters — and the OTP.

Broadcasters Afforded Greater Security Under OTP Renewal Bill

Washington, March 20.

The Office of Telecommunications Policy last week sent its license renewal legislation to Capitol Hill on the eve of House Communications Subcommittee hearings on similar bills.

OTP director Clay T. Whitehead's Indianapolis speech in December — the one in which "ideological plugola" and "elitist gossip" became household words — was not about the legislation, an OTP spokesman said at a background briefing on the bill. Whitehead was only speaking of the local station's responsibility for what he airs, responsibility that will be enhanced by the bill, the OTP spokesman claimed.

In every discernible respect, the bill affords broadcasters greater license security than they now have. Licensees would have five-year license periods instead of three years and renewal would be routine if they showed that they ascertained and served the public need with fairness and afforded reasonable opportunity for discussion of conflicting views of public importance. That fairness clause has worried those who fear the Whitehead bill is geared to get broadcasters to be more pro-Nixon Administration, but it really appears to be nothing more than the current fairness doctrine. Fairness is to be judged over the entire license period, however, with no possibility of license revocation for a single fairness lapse.

Competing Applications

The biggest protective device built into the legislation is the change in handling competing applications for existing stations. The FCC now must set such license challenges for hearing. The bill says that the burden is on the challenger to prove that the licensee has substantially failed to serve the public interest.

The first step is for the FCC to decide if a real question has been raised. If not, the renewal can be granted promptly. If so, there will be a hearing to find out the facts. After the hearing, depending on the situation, the FCC can renew the license or say it will not renew, and it can then set a hearing on who should be the new licensee — an application from the old licensee could be accepted, and the commission could decide to invite new challengers to ask for the facility.

The bill would also forbid the FCC to require the stations to file program category percentages in their renewal applications, as they do now. Nor could new standards — such as a ban on cross-ownership of newspapers and television stations in the same market — be developed on a case-by-case basis by the FCC out of renewal hearings. Any such policy would have to be part of an overall rule-making proceeding.

The stress is on local responsi-

(Continued on page 60)

OTP Renewal Bill

(Continued from page 39)

bility, an OTP spokesman said, and if a station's coverage area is filled with people who are partial to "elitist gossip," then that kind of programming would be fine.

The bill does not require local stations to be more responsible for the network shows they carry than in the past, the spokesman said. Groups of supporters of President Nixon in Florida have filed against Post-Newsweek tv outlets in Miami and Jacksonville, and the OTP agreed that those challenges would have no standing under the new law if the stations now serve their public well. Under existing procedures, the challenging applications will be put into hearing status at the FCC and treated on the same basis as the license renewal applications, which means the FCC could find in favor of the challengers because, among other things, one of the criteria in selecting among competing applications is local ownership.

.... from WASHINGTON EVENING STAR and DAILY NEWS, Wednesday, 21 March 1973 - page A-15

CARL T. ROWAN

Whitehead Plan Badly Flawed

When television magnates have boasted of "living color" over the last three decades, they have either been talking about a peacock or Raquel Welch's eyes. They sure haven't been referring to black, brown or red faces, which were most conspicuous for their paucity in an industry that is still almost lily-white.

That will come as a shocking commentary to those Americans in big cities who are suddenly accustomed to seeing black anchormen giving the news or black women talking about the weather. Those viewers have no way of knowing that the on-camera black is a facade, a welcome "token" but nonetheless a front which hides some grievous inequities within the guts of the communications industry.

The viewer doesn't understand that even this tokenism was gained (with notable exceptions) only through the pressure of challenges at the Federal Communications Commission at license-renewal time, or through other militant protests.

That is why American minorities look with special disquietude on the Nixon administration's proposal to extend the license-renewal period from three to five years, with the FCC becoming less receptive to challenges—if the local stations will sort of edit or "balance" the network news and the network documentaries which this administration finds so offensive.

The proposal by Clay Whitehead, President Nixon's communications expert, at least offers station owners a bankable carrot as a trade-off for their integrity, but it cheats minorities doubly. The broadcasters will be less inclined to do controversial but constructive programs, like the late Edward R. Murrow's documentary on migrant workers. On the other hand, blacks, Puerto Ricans, Mexican-Americans would lose the license-challenge leverage that makes some stations at least halfway responsive to the needs of the total community.

Some broadcasters will be happy enough at the idea of fewer challenges, or foolish enough to think minorities already have "blackmailed" them, so they will be inclined to swallow the Whitehead pill.

Don't be misled by the face of that black anchorman, or this black commentator, on your TV screen. One out of every three commercial TV stations in the United States hires only whites for management, professional, technical and sales positions—this fact revealed in a study conducted by the Office of Communication of the United Church of Christ in cooperation with the FCC.

The annual reports of 609 TV stations in 1972 revealed that 77 percent of commercial stations are all-white in management, 50 percent employ no blacks, orientals, American Indians or Spanish-surnamed people as professionals, and 81 percent employ only whites as sales personnel.

Or take the question of ownership. Lacking money, big-time credit or political clout, America's minorities got shut out of radio and television. Until a few years ago, fewer than 10 of some 800 radio stations were owned by blacks, and black TV ownership was a joke. Now some 30 radio stations are owned by minorities and an uphill struggle is under way to gain some kind of ownership of UHF-TV and cable-TV.

It is more than just a financial question of whether minorities, too, deserve an FCC license to coin money. It is a matter of minority survival.

The ugly, repressive mood of America today resulted largely because minorities have been the villains of media campaigns about "law and order," welfare, busing, quotas and other highly emotional issues.

If the Whitehead proposal becomes law, the inferior status and the vulnerability of America's minorities will become statutory.

And this is just one compelling "peripheral" reason why Congress ought to flush this administration plan down the nearest drain.

.... from AP, 22 March 1973

CO

CONGRESS-BROADCASTERS

WASHINGTON (AP)-TELEVISION AND RADIO LICENSE-RENEWAL LEGISLATION "SHOULD IN NO WAY BE COUPLED WITH AN IMPLIED THREAT TO EXERCISE GOVERNMENT INFLUENCE OVER BROADCAST NEWS," NATIONAL BROADCASTING CO. PRESIDENT JULIAN GOODMAN SAID TODAY.

"WE BELIEVE THAT A BROADCASTER'S LICENSE SHOULD NOT BE RENEWED IF THE STATION HAS SHOWN A PATTERN OF DISREGARDING AND BEING IRRESPONSIBLE TO THE INTERESTS OF THE PUBLIC," GOODMAN TOLD THE HOUSE COMMUNICATIONS SUBCOMMITTEE.

"AT THE SAME TIME, WE ARE CONVINCED THAT THE BROADCASTER'S SERVICE TO THE PUBLIC CAN BE STRENGTHENED IF HE CAN EXPECT A LICENSE RENEWAL FOR GOOD FAITH EFFORTS TO DETERMINE AND MEET THE NEEDS AND INTERESTS OF THE PUBLIC IN HIS AREA.

MOST OF THE LEGISLATION UNDER STUDY BY THE SUBCOMMITTEE WOULD LET THE FEDERAL COMMUNICATIONS COMMISSION RENEW BROADCAST LICENSES FOR A FIVE-YEAR PERIOD INSTEAD OF THE PRESENT THREE YEARS, AND THERE WOULD BE REVISED PROCEDURES FOR RENEWAL WHEN A COMPETING APPLICATION IS FILED. AN ADMINISTRATION'S BILL WOULD PROVIDE THE FIVE-YEAR RENEWAL AND WOULD REQUIRE RADIO AND TV STATIONS, IN ORDER TO GET A LICENSE RENEWED, TO BE "SUBSTANTIALLY ATTUNED TO THE NEEDS AND INTERESTS OF THE PUBLIC" IN THE AREA SERVED.

UNDER THE ADMINISTRATION'S BILL,THE FCC WOULD BE BLOCKED FROM SETTING CATEGORIES, QUOTAS, FORMATS OR GUIDELINES FOR PROGRAMMING.

BRA28P 22

RENEWAL THREATS--'HOBGOBLINS THAT AREN'T THERE'?: Taking frequent sidesteps into areas of obscenity, violence & alleged news bias, House Communications Subcommittee continued hearing last week on license renewal legislation, focusing on individual broadcasters who lamented implications of WHDH-TV Boston case, pleaded for stability and recounted instances of harassment & even extortion from petitioners. Starting this week, however, hearings take different tack when opponents of 5-year renewal measure testify--minority groups, public interest firms, women's organizations, etc.

Despite broadcasters' appeals, Subcommittee seemed hardly sympathetic, and even some broadcast executives are quietly conceding that hearings may be going badly. "What really has us concerned is [Rep.] Van Deerlin's [D-Cal.] opposition," broadcast official told us, adding that "he appears to have made some headway" in influencing Chmn. Macdonald (D-Mass.). High govt. official told us: "The congressmen are getting damned tired of every broadcasting witness complaining. Instead of talking about renewals, the Committee members talk about dirty movies & obscenity." Also, most observers agree there's little chance Subcommittee will approve OTP bill, although Dir. Clay Whitehead will probably testify next week.

Good gauge of Subcommittee's attitude was expressed by Macdonald when he said that despite "terribly outrageous" actions by minority petitioners against WOKR Rochester, N. Y., he asked station's Exec. Vp & Gen. Mgr. G. Bennett Larson: "You really don't believe you are in any danger of losing your license, do you?" More than once, Macdonald & Van Deerlin attacked FCC's "low standards" in renewing WQAD-TV Moline, Ill.--first contested renewal taken to Appeals Court (then withdrawn) since WHDH (Vol. 12:20 p4). "If they renewed the Moline station, they'll renew anyone," Macdonald said. "So you really ought to take some comfort in that case." He added that WHDH was "an exception" without significance.

Not so, said Charles Tower, exec. vp of Corinthian Bcstg. and former NAB TV Board chmn. "We've been lucky," he said. "Perhaps we see hobgoblins that aren't there... But we have too much at stake. The language of WHDH has general applicability and that language still stands... I don't think [licensees] should be put in risk just because the odds are that it won't happen." Ancil Payne, pres. of King Bcstg.: "It is of paramount importance that we re-

turn to a condition of reasonable & rational security... We are subjected to programming threats, license strikes and a variety of petitions to deny, as well as plunder by promise." Plough Bestg. Pres. Harold Krelstein: "The approach of the protestant is not marked with civility & reason. Instead, it's insult, obscenity, harangue & threat. And there is no indication that it is going to end."

But Macdonald objected to putting all petitioners in same class. "Some really mean it when they say you are not doing a good job," he said. "This Committee faces difficulty separating sheep from the goats, to protect the people doing a good job, but also to permit in those who wish to prove they can do a better job... It is difficult to legislate language that will differentiate between the two." Van Deerlin charged that if FCC "hasn't been rubber stamping these renewals, it's been the next best thing... I understand the door has been opened, but how will this bill affect the ability of an honest challenger to file?" He claimed legislation was designed to "protect the first grandiose promiser," the licensee, and objected "to giving broadcasters civil service status, because that's pretty much what you're asking here." Comparing broadcasters with congressmen, he said "every once in a while someone should be defeated."

First network executive to testify, NBC Pres. Julian Goodman, endorsed OTP renewal bill, although he emphasized "it should be wholly separated from the rhetoric & atmosphere with which it was first announced" by Whitehead last Dec. in Indianapolis (Vol. 12:52 p1). But even more important than 5-year renewal, Goodman said, "is a procedure that does not automatically require a fullscale hearing every time someone files a competitive application against a renewal... We are convinced that the broadcaster's service to the public can be strengthened if he can expect a license renewal for good faith efforts to determine & meet the needs & interests of the public in his area."

"But what about standards?" Macdonald asked Goodman & other witnesses, referring to program percentages once considered by FCC. "Then you know if your station has done a good job" at renewal time, he said. "Isn't that better than reading the minds of the FCC?" However, broadcasters & FCC Chmn. Burch have testified against idea. While NBC has previously endorsed concept of standards, Goodman said legislation was preferable. Another solution to guidelines or standards he said would be to amend law as suggested by Burch (Vol. 13:12 p3) to award renewal if programming service "substantially, rather than minimally" met needs & interests of area.

Tower called percentage plan "an attempt to use arithmetic in a case where arithmetic doesn't tell the whole story... It's up to the broadcaster to know what the community needs are," he said, and defended FCC general ascertainment requirements which Macdonald labeled "a PR effort." Some kind of "investigation of the community pulse is in order," Tower said. "The idea of getting out into the community & talking with people is essential."

Payne also opposed guidelines, which he said would violate First Amendment, and suggested FCC should have no more to do with programming than it did in 1934. "You really surprise me," Macdonald responded. "How can you possibly suggest we go back to 1934... You're saying give us a license and leave us alone... that what's good for broadcasting is good for the country... I have no sympathy with a media that throws the mantle of the First Amendment around it to come here & testify when it suits your purpose and ignore it when it suits your purpose."

Hearings, however, did not focus only on renewals, and with Goodman testifying Subcommittee took opportunity to question virtually every aspect of industry. Rep. Collins (R-Tex.) accused network newsmen of reflecting "backward & downhill" attitudes of Washington & N. Y. Macdonald & Commerce Committee Chmn. Staggers (D-W. Va.) reiterated warnings that unless industry acts soon aginst obscenity, Congress will (see p. 1), and Rep. Brown (R-O.) pressed Goodman, unsuccessfully, to reveal specifics on affiliates' financial dependence on networks.

Not missed was opportunity by Macdonald to quiz Tower on CBS affiliates' reaction to "Sticks & Bones"—fictional story of return of blinded war veteran canceled by network (Vol. 13:11 p6). Was his decision to vote against show "knuckling under" to OTP pressure? Macdonald asked. Tower said program was "unsuitable for TV viewing... a matter of basic taste... We were not in any way, shape or form coerced... It was our decision... The program was not acceptable."

Broadcasters press for fair shake at renewal time

Testimony at Macdonald hearing underscores need for revamping present system, but witnesses are wary of too-rigid guidelines

NBC President Julian Goodman and other broadcast witnesses at last week's House hearings on license-renewal legislation supported an overhaul of the renewal process but shied away from the strict performance guidelines that Communications Subcommittee Chairman Torbert H. Macdonald (D-Mass.) has favored since the hearings began two weeks ago (BROADCASTING, March 19).

Mr. Goodman testified that NBC believes a five-year license-renewal period "would bring about greater stability and reduce the growing administrative burdens of the three-year license-renewal process. Equally important — perhaps more important—is a procedure that does not automatically require a full-scale hearing every time someone files a competitive application against a renewal."

He said "the emphasis of the renewal process should be on the good-faith efforts of the licensee to serve the needs and interests of his audience. This approach will enable stations that do a substantial job of meeting public interests to continue in operation. At the same time it provides a basis for terminating a license where this is not the case."

NBC, he said, supports legislation with this objective—including H.R. 5546, the administration's proposal introduced two weeks ago by House Commerce Committee Chairman Harley Staggers (D-W. Va.) and Representative Samuel Devine (R-Ohio), ranking minority member of the Commerce Committee.

"In supporting the general goal of this bill," said Mr. Goodman, "we want to emphasize that consideration of it should be wholly separated from the rhetoric and atmosphere with which it was first announced" by Office of Telecommunications Policy Director Clay T. Whitehead.

Mr. Goodman cited Mr. Whitehead's statement that "station managers and network officials who fail to act to correct imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable by the broadcaster's community at license-renewal time." Indicating he thought this was an attempt at government intervention in news content, Mr. Goodman said that renewal legislation "should in no way be coupled with an implied threat to exercise government influence over broadcast news."

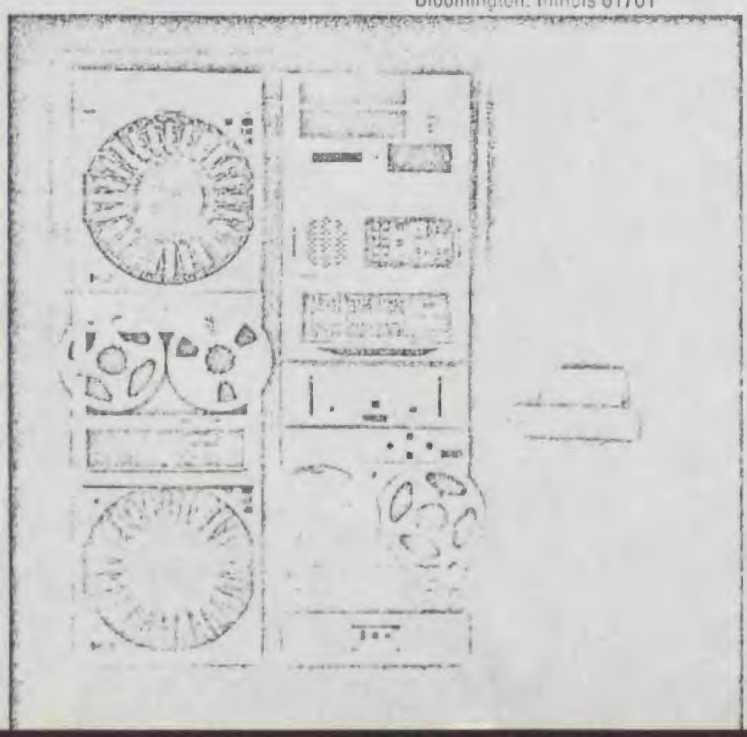
One of Mr. Macdonald's first questions was whether Mr. Goodman thought the FCC should establish specific guidelines on performance standards. Mr. Goodman replied that remedial legislation—perhaps along the lines of the FCC's proposal, which differentiates between substantial and minimal service in a comparative hearing—coupled with a five-year license provision would be the best solution.

Referring to Mr. Goodman's comments about government control of the news, Mr. Macdonald reminded Mr. Goodman that OTP has no control over licensees. "I can guarantee you that Congress will not stand by and let any arm of government dictate the news," he said.

What about a bill that would extend the renewal period and exclude the considerations involving local residency, ownership-and-management integration and multiple ownership to try to avoid ad hoc remaking of the rules? In reply to that question from subcommittee member Lionel Van Deerlin (D-Calif.), Mr. Goodman said: "I think that would be quite workable."

Charles H. Tower, executive vice president of Television Stations Division of Corinthian Broadcasting Corp., cited five reasons why "the need [for renewal relief] is both immediate and intense":

- To restore stability to the industry. "I know of no other regulated industry," he said, "where the right to exist is subject to competitive challenge every three or four years . . . no situation in which someone can come along and take away what I have built simply by alleging that he can do it better."
- To encourage broadcasters to make



NBC contingent. President Julian Goodman (l) appeared before the Macdonald hearings in company of aides Thomas Ervin, executive vice president; Peter Kenney, Washington vice president, and Corydon B. Dunham, vice president-general counsel.

Mutual's own. This prehearing conference included (l to r) Mrs. Henry Rau, Mr. Rau, Richard Brown, Hollis Seavey (of the National Association of Broadcasters) and Mike Michaelson (of the radio-TV gallery). In background Sam Anderson.

audiences and advertisers. "The five Corinthian [TV] stations," he said, have $13.5 million on a cost basis tied up in land, buildings, and capital equipment. This is a substantial sum for a company whose sales are about $25 million a year." He added that the stations' commitment for programing in 1972 was nearly $2 million.

▪ In fairness to those involved in broadcasting — employes, management and stockholders.

▪ To "restore integrity to the administrative and judicial process." The WHDH decision, said Mr. Tower, is "offensive to an elemental sense of fair play and justice."

▪ To remove the danger that politics —either from the legislative or executive branch—could enter the renewal process. Another danger to the renewal climate, he said, is that licensees—in their own self-interest—will be compelled to follow the programing preferences of the FCC majority.

Five-year licenses are desirable, he said, but there are two principles basic to the solution: that a broadcaster "should be judged on his record of program performance in the context of the needs of his area," and that "the structural rules should not be changed case-by-case."

As he had two weeks ago, Mr. Macdonald discounted the importance of the WHDH decision. But Mr. Tower pointed out that the case could have "general application," a danger he pointed to a number of times.

In answer to Mr. Macdonald's question

guidelines, Mr. Tower replied that a ore complex but more realistic solu- n would be some form of community certainment. "The idea of talking to ople in the community in some way is sential," he said.

G. Bennett Larson, executive vice pres- ent and general manager of Flower ty Television Corp., licensee of WOKR- v) Rochester, N.Y., told how his sta- n had been subjected to "extortion" by al groups demanding increased mi- rity programing and hiring in return considering a withdrawal of their peti- n to deny WOKR's license. He urged the committee to reaffirm the licensee's sponsibility for his programing, to con- mn such extortion practices and take ps to shorten the petition-to-deny proc- ess so that the commission would have to issue a decision within five months after the filing of a renewal application. Mr. Larson also asked the subcommittee to make clear that a licensee may not be coerced in any way to employ anyone it does not need. (Mr. Van Deerlin noted later in the hearing that, according to FCC records, WOKR has 78 full-time employes, of whom one is a black and three are American Indians.)

The commission should be empowered to issue five-year licenses, said Mr. Larson, but "should stay out of the day-to-day decisions of programing, commercial load, copyright, fairness doctrine, censorship, children's programs, news and access time."

"For the past four years I have watched the progressive terror of license protest systematically follow the renewal calendar," said Harold Krelstein, president of Plough Broadcasting Co. "The approach of the protestant is not marked with civility and reason. Instead, it's insult, obscenity, harangue and threat."

Mr. Krelstein said measures should be taken to shield broadcasters from indiscriminate petitions and other threats. "If order, stability and continuity of our system of broadcasting is to survive," he said, "a five-year license renewal system embracing checks and balances . . . must be enacted into law by this Congress. . . ."

In answer to Mr. Macdonald's familiar question about performance guidelines, Mr. Krelstein indicated that such yardsticks would "create sameness" and destroy the specialized services of radio.

The reply to that same question from Ancil H. Payne, president of King Broadcasting Co. was that it is difficult to establish such standards and to rate program content. Congress and the FCC should, on First Amendment principles, stay out of the programing area, he said.

In his prepared testimony, Mr. Payne contended "that the licensing procedure has become so oppressive and even perilous as to be at least partially self-defeating. . . . It would seem logical and reasonable to reduce this investment in time, energy and paperwork and allow broadcasters to employ their resources toward better programing . . . Simplifying applications and extending the license period from three to five years would be a step in the right direction."

Once licensed, Mr. Payne said, a broadcaster should receive renewal if he has lived up to the promises he has made; otherwise, his license should either be revoked or become a matter of competition.

The concern of minority and other groups about gaining access to broadcast facilities is a legitimate one, Mr. Payne said. "Congress can, through proper funding and capital financing, enable already well-trained minority groups to legally and properly acquire ownership right now."

Other witnesses who favored license-renewal relief included Mutual Affiliates Advisory Committee President Henry Rau and committee members Richard Brown, Sam Anderson and Edwin Mullinax.

Mr. Rau suggested inclusion in renewal legislation of a requirement that a challenger post a bond to cover the expenses of the station if its strike application is unsuccessful.

Another suggestion, which Mr. Van Deerlin termed "excellent," came from Mr. Mullinax. It was for replacing the massive renewal detail required by the FCC with a 300-500-word summary, describing past performance and future plans.

Virginia Pate Wetter, president and general manager of WASA(AM)-WHDG-(FM) Havre de Grace, Md., came out in favor of licenses in perpetuity, subject to periodic review by the FCC, which would place heavy emphasis on past performance.

Broadcasting Mar 26
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A mass movement to a scene of troubles

Focus now is turned to renewal relief as broadcasters return to Washington after four years that produced prohibition against cigarettes on air, wholesale attacks on license renewals, threats to proprietary advertising

Most of the nation's broadcasters were to converge this week on Washington in accord with a custom decreeing that annual conventions of their principal trade association will be held there every fourth year, after the inauguration of a President. The hope is that a new administration will be persuaded to subdue the hostiles who infest the federal establishment. The hope is seldom realized. But once again the migration is in progress, and soon it will be known whether this is yet another jet-age version of the lemmings' doomed excursions to the sea.

Washington has been the site of contradictions, disappointments and downright humiliations. At the opening session of the National Association of Broadcasters' 1961 convention a young President who had been elected by television debates breezed in unexpectedly with the nation's first astronaut in tow, fresh from his space capsule. That sensational curtain raiser was followed by the maiden speech of the young President's young appointee to the chairmanship of the FCC. Newton Minow discovered instant fame when he stabbed the delegates in their P&L statements with the charge that television had become a vast wasteland.

Only four years ago Richard Nixon, new in office, made a smiling appearance at the NAB's opening session, spoke about his Vietnam policies and antiballistic missiles, then much in the news, but said virtually nothing about broadcasting or broadcast regulation. At about the same time the White House was releasing the text of a letter the President had written to compliment Senator John O. Pastore (D-R.I.) for threatening legislative suppression of so-called sex and violence on the air. The President said he shared the senator's concern about "misuse" of television and television: an FCC decision in the Boston channel-5 case has made licensees vulnerable to challenges, and the commission's efforts to repair things have been reversed by an appellate court. The fairness doctrine has been applied to some types of advertising; the principle of counteradvertising—messages intended to take issue with the content of those that advertisers place in paid time—has been vigorously espoused by Mr. Nixon's appointee, recently retired, to the Federal Trade Commission chairmanship. On the Hill booby traps await the unwary step of every passing broadcaster.

Then why are all those delegates smiling as they begin circulating through the hospitality suites? It may be partially explained by 1972 revenues that were the best in history and by 1973 sales that are on the upside. But is it also because this is the quadrennial when the hope of a turnabout in Washington will be fulfilled at last? There are those who think so.

"I am optimistic," said Grover Cobb, the NAB's senior executive vice president and over-all boss of government relations. "The lines are more open than they used to be. The dialogue is freer with both the FCC and Congress."

In legislation the NAB's principal attention now is directed to the bills that would restore the license-renewal process to the state it was in before the Boston case was decided. Mr. Cobb said he thinks there is a chance that the Congress will adopt remedial legislation this year, though the connection of license renewals with affiliate surveillance of network news by Clay T. Whitehead, director of the Office of Telecommunications Policy, "occluded the situation."

Different experts give different odds on license-renewal relief. Among the three network vice presidents in Washington, Eugene Cowan of ABC, Richard Jencks of CBS Inc., and Peter Kenney of NBC, the range is wide, though none will be quoted. One said last week the chances of passage were "very good" before Mr. Whitehead made his Indianapolis speech last December linking renewal legislation to affiliate responsibility for network bias. Chances diminished afterward but have now "brightened considerably." In this network executive's view the White House bill would be desirable, and the legislative history compiled in hearings now going on before the House Communications Subcommittee (see page 52) would serve to disconnect it from Mr. Whitehead's observations about "ideological plugola" in network journalism.

The Washington representative of another network is less sanguine. "Renewal relief is alive but breathing heavily," he said last week. "The exact role of Whitehead is hard to appraise."

This executive lines it up this way: Favoring the bill are the broadcasters who admittedly "are better organized than ever before." Opposing it are minorities who assert it would discriminate against them in challenging incumbents. Congressmen who support the broadcasters run the risk of being tarred as


Mr. Shea


Mr. Ockershausen

Now it's a horse race. After a long weekend of thinking it over ("Closed Circuit," March 19), Hamilton Shea, executive vice president of Gilmore Broadcasting, Harrisonburg, Va., last week announced his candidacy for joint-board chairman of the NAB. Mr. Shea's entry into the election campaign promises to make a contest of what once seemed a shoo-in for Andrew M. Ockershausen, vice president of the Washington Star Station Group, Washington, the only previously announced candidate still in the race.

Mr. Shea, who supervises the broadcast activities of WSVA-AM-FM-TV Harrisonburg; KODE-AM-TV Joplin, Mo.; WEHT(TV) Evansville, Ind.; and WREX-TV Rockford, Ill., currently is chairman of the NAB legislative liaison committee, but is not now an NAB board member. Previously, however, he was on the television board for four years, serving as vice chairman in his third year and chairman the fourth year during the course of two-year terms ending June 1971.

Mr. Ockershausen, responsible for the operations of WMAL-AM-FM-TV Washington; WLVA-AM-TV Lynchburg, Va.; and WCIV(TV) Charleston, S.C., has been on NAB's executive committee for the last three years. He is also currently in his second year as chairman of the radio board and previously was vice chairman.

Election of a joint-board chairman to succeed Richard W. Chapin, of Stuart Sta-

nsensitive to minority interests. The question, he says, is whether the White House will seriously try to get its legislation passed. "If the White House decides not to use up any of its chips, there won't be any legislation," he said. "In the legislative process it's always easier to block something than to enact something."

The third network executive put the prospects in other terms: "On a scale of 10 the chance of adoption was never better than six and is now less than five." Why? "Moderate to liberal Democrats who were originally prepared to accept the accusation of racism as the price of supporting a bill that black groups oppose are unwilling to act as agents for the White House in its game to pit affiliates against network news."

Whatever the outcome on the license-renewal front, NAB officials believe they have brought off one legislative gain by adopting new television-code restrictions on drug commercials (BROADCASTING, March 5). The action, they are confident, has forestalled legislation to suppress drug advertising on television and radio.

But other measures of varying conse-

Text continues on page 44; below and on page 42 is the NAB convention agenda.

The official NAB agenda

(SH for Shoreham, SP for Sheraton Park, MF for Mayflower, WH for Washington Hilton)

Monday, March 26

Early-bird workshops

American Women in Radio and TV. Forum room, SH. 8:30-10 a.m. *Women Power: Use It or Lose It!* Panel: Rose Blyth Kemp, AWRT president; Rita Hart, Foote, Cone & Belding; Virginia Pate Wetter, WASA(AM)-WHDG(FM) Havre de Grace, Md.

Broadcast management looks at OSHA. Continental room, SP. 8:30-10 a.m. Color-film orientation on the Occupational Safety and Health Act. What it is, what it takes to comply. A video inspection tour of a workplace. Moderator: Ron Irion, director, broadcast management, NAB.

Legal workshop. Diplomat Room, SH. 8:30-10:00 a.m. Some caveats on fraudulent billing, payola and program-length commercials. Moderator: John Summers, general counsel, NAB. Panel: William B. Ray, chief, FCC complaints and compliance division; Arthur L. Ginsburg, chief, FCC complaints branch; John H. McAllister, chief, FCC compliance branch.

Minority training and placement. Palladian room, SH. 8:30-10:00 a.m. Alternatives to the traditional sources for minority employes. Moderator: Elbert Sampson, coordinator minority affairs, NAB. Panel: Lionel Monagas, National Association of Educational Broadcasters; Richard Weinman, Oregon State University.

Radio news workshop. Maryland suite, SP. 8:30-10:00 a.m. Community news and sources—exchange ideas on covering one, cultivating the other. Moderator: Travis Linn, WFAA-AM-FM Dallas. Panel: Dick Wright, WTAG(AM) Worcester, Mass.; Curtis Beckmann, WCCO-AM-FM Minneapolis.

Research workshop. Delaware suite, SP. 8:30-10:00 a.m. A report on how smaller-market stations can afford to do useful research, with a multimedia presentation of the results of one station's study. Moderator: John Dimling, NAB vice president, research. Panel: Brigham Young University research team; Owen Rich, Professor of Communications, Brigham Young University; Dale Moore, chairman, Western Broadcasting Co., Missoula, Mont.; Richard Block, vice president and general manager, Kaiser Broadcasting, Oakland, Calif.

Management sessions

General assembly. Regency room, SH. 10:30-12 noon; doors open 10 a.m. (Joint session with engineering.) Music by: U.S. Navy Band. Presiding: Robert F. Wright, WTOK-TV Meridian, Miss., convention co-chairman. Invocaton: The Rev. Kenneth Hildebrand, minister of the Central Church of Chicago. Presentation of Colors: Joint Service Color Guard. *Presentation of NAB Distinguished Service Award to* Ward L. Quaal, WGN Continental Broadcasting Co. *Remarks:* Mr. Quaal.

Management luncheon. Sheraton Hall, SP. 12:30-2:30 p.m. Presiding: Wendell Mayes Jr., KNOW(AM) Austin, Tex., convention co-chairman. Invocation: Rabbi Richard Yellin, Adas Israel Congregation. Introduction: Vincent T. Wasilewski, President, NAB. Address: Sam J. Ervin Jr. (D-N.C.).

Joint radio-TV assembly. Regency room, SH. 2:30-3:45 p.m. Presiding: Richard W. Chapin, Stuart Broadcasting, Lincoln, Neb., chairman, NAB board. Keynote address: Vincent T. Wasilewski, president, NAB. *Government-relations symposium*—a discussion with members of the NAB executive committee and convention delegates.

Television assembly. Regency room, SH. 3:45-5 p.m. Presiding: Peter Storer, Storer Broadcasting, Miami Beach, chairman, NAB TV board. *Television board nominations.* Ballot box will open from 5:00-6:00 p.m., lower lobby, Shoreham. *Japanese-U.S. Television Program Festival.* "Reflections on Japan"—a digest of selected educational and cultural films produced by NHK of Japan. Under auspices of the first Japanese-U.S. Television Program Festival. *Awards, National Academy of Television Arts & Sciences.*

Tuesday, March 27

Early-bird workshops

Code authority workshop. Club room A, SH. 8-9:30 a.m. The new TV rules for proprietary remedies and multiple-products announcements. Panel: Stockton Helffrich, NAB code authority director; Jerome Lansner, NAB assistant code authority director.

Legal workshop. Tudor room, SH. 8-9:30 a.m. See Monday listing for details.

Minority affairs workshop. Forum room, SH. 8-9:30 a.m. A look at affirmative-action and equal-employment opportunity programs by minority broadcasters responsible for their development and implementation. Moderator: Elbert Sampson, NAB coordinator minority affairs. Panel: Mal Johnson, Cox Broadcasting; James Long, Storer Broadcasting; Lee Hatcher, FCC; Darryl Dillingham, RKO Radio; George Norford, Group W.

Promotion/PR workshop. Virginia suite, SP. 8-9:30 a.m. How to capture a community. Moderator: Babs Pitt, advertising and promotion manager, CFCF-TV Montreal. Panel: Stan Pederson, advertising and promotion director, WMAL-TV Washington; Taffy Wilber, president, Wilber & associates; Allan Page, KGWA(AM) Enid, Okla.

Radio news. Maryland suite, SP. 8-9:30 a.m. See Monday listing for details.

Research workshop. Delaware suite, SP. 8-9:30 a.m. See Monday listing for details.

Slow pay . . . made faster. Continental room, SP. 8-9:30 a.m. Ways to improve collection of past-due accounts and reduce those credit and collection problems that put the squeeze on the bottom line. Moderator: Joseph J. McCabe, treasurer, KPLR-TV St. Louis and director, Institute of Broadcasting Financial Management. Panel: Howard A. Brandt, credit manager, WGN Continental Broadcasting; Leonard Schwartz, Siegel, Sommers and Schwartz; counsel, ANPA; Robert Lyman, senior vice president, Benton & Bowles.

Management sessions

Radio management conference. Regency room, SH. 9:45-12 noon. Presiding: Andrew M. Ockershausen, Evening Star Broadcasting and chairman, NAB radio board. *Meet your new radio directors. Salute to American Forces Radio—30th anniversary. Radio music license committee report:* Harold R. Kreistein, Plough Broadcasting; Emanuel Dannett, committee counsel.

Radio Information Office. Charles T. Jones Jr., director.

Re-regulation of Radio. Richard W. Chapin, Stuart Broadcasting Co. Co., and chairman, NAB board; Richard E. Wiley, FCC commissioner; Harold L. Kassens, assistant chief, FCC Broadcast Bureau; FCC Re-Regulation Task Force Members: J. J. Steve Crane, Phillip S. Cross, John M. Taff.

Radio Advertising Bureau presentation. Miles David, president,

uence and support still command broadaster attention. Among them:

▪ S. 805 by Senator Frank Moss (D-Utah) and H.R. 2744 by Representative Robert Tiernan (D-R.I.) to establish federally funded institute to study the mpact and effects of advertising. "This ooks harmless enough in its original orm," said one network vice president ast week, "but sooner or later that institute would begin producing antiadvertising material." Said Mr. Cobb: "I get ueasy thinking about it. That institute ould get into counteradvertising, kid hows, proprietary remedies."

▪ S. 966 by Senator Gaylord Nelson D-Wis.) to require, among other things, hat all drug advertising be cleared by the Food and Drug Administration and that it contain complete information on therapeutic values and possible side effects. "That," said one Washington operative, "is the sort of copy print can accommodate but we can't."

▪ S. 1231 by Senator Moss to eliminate advertising of alcoholic beverages as a tax-deductible expense.

▪ H.R. 4397 by Representative Jerry Pettis (R-Calif.) to prohibit broadcasting of alcoholic-beverage advertising during hours when children may be tuned in.

There are perhaps 20 other bills of direct application to broadcasting pending in the Congress to deal with such matters as the measurement of alleged violence on television, elevation of ceilings on political-campaign spending, prohibition of television blackouts of sports events if sold out, modification of the equal-time law for political candidates.

Perhaps the liveliest prospect for legislative interest is promised by a bill not yet introduced—to establish fees that cable television will pay to copyright owners. In the aftermath of an appellate-court decision holding cable systems liable for copyright payments on the distant signals they import, a revival of Hill interest in new copyright legislation is expected. In that, there will be three sides—broadcasters, copyright owners and cable interests, and perhaps a fourth element among the broadcasters. The Association of Maximum Service Telecasters will insist that any copyright bill contain a "graveyard clause" embedding FCC rules on cable carriage in the law, where they could be changed only by an act of Congress. "That," said Lester Lindow, executive director of AMST, "is the important part. Broadcasters aren't vitally concerned with the schedule of copyright fees that may be adopted."

When delegates' minds stray this week from problems on the Hill they can turn to the other principal pressure point, the FCC. There the head of steam may be somewhat abating, but Washington representatives think the gauge will stop long before it gets to zero.

This, of course, is the year in which, as broadcasters note with unanimous relief, Nicholas Johnson's term on the FCC at last expires. And who is to succeed him? Little matter to those who have had to deal with him. "This is one time," said a network official, "that I prefer the devil I don't know to the devil I do."

It is also the year in which Chairman Dean Burch is expected to leave for larger enterprises. There are some broadcasters, the more militantly anticable, who hope for a successor who will be more congenial to their aims. In their view Mr. Burch has inclined toward cable interests when the broadcasters wanted him to incline toward them.

That view is reflected in the concern that most broadcast-establishment figures now express about the outcome of rulemaking to impose restrictions on what broadcasters call the threatened siphoning of movies and sports from commercial television to pay-cable television. All of the comments have been in the FCC's hands long enough for staff analysis, and a decision is due. Some broadcasters find it an "ominous silence," as one described it, and fear that there may be sentiment among commissioners to give broadcasters less protection than they want.

Other rulemakings of prime importance also await disposition. Among them:

▪ The one-to-a-market proposal to prohibit common ownerships in the same markets of television and radio stations, television stations and newspapers and cable systems and newspapers.

▪ The proposal to limit or prohibit commercials in children's-television shows and to impose minimum criteria on the programing.

▪ The proposal to legitimatize the re-

bursement of expenses incurred by allengers to broadcast licensees.

Refinements in license-renewal procedures (BROADCASTING, March 19).

And still in progress is the re-regulation of radio, intended to remove some the encrusted rules that broadcasters ntend have no modern meaning. About at, said the NAB's Mr. Cobb, broadsters may be hopeful.

However, if all else fails to swing the CC toward moderation there awaits a medy in the form of legislation introced but never seriously considered. R. 3252 and 3254 by Representative hn Dingell (D-Mich.) would abolish e FCC and distribute its functions to her agencies.

Addenda

Following are companies at the NAB convention in Washington which were not available for inclusion in the *BROADCASTING*, March 19 special report. List also includes revisions and corrections to the earlier compilation.

Hotel abbreviations: SP-Sheraton Park; SH-Shoreham; WH-Washington Hilton.

Equipment

ABTO **SP A211**
1926 Broadway, New York 10023
Product: Black-and-white-to-color film system—modified cameras and projectors. *Personnel:* Frank Marx, Tom Einstein, Edward Hamilton.

Kline Iron & Steel Co. **SH D306**
1225 Huger Street, Columbia, S.C.
Product: Towers.

PAMS Electronics **SP F540**
4141 Office Parkway, Dallas 75204
Product: Distributor and representative for various equipment lines.

Rowe International **SP M390**
75 Troy Hills Road, Whippany, N.J. 07981
Product: CPC-75 player/recorder, CPC-60 and CPC-10-1 background/music player, central-studio music service. *Personnel:* Russ Eckel, Bob Johnson.

TV program exhibitors

Capricorn Productions **Solar Suite, WH**
711 Third Avenue, New York 10017
Product: Living Easy with Dr. Joyce Brothers (195). *Personnel:* Dan Helpern, Ed Pierce, Dennis Kane, John Murphy, Vic Bikel, Marty Pollins, Mike Seligman.

Century 21 Productions **WH**
21 Turtle Creek Square, Suite H, Dallas 75219
Product: TV audio/video ID and intro series; Telesounds, TV audio thematic series. *Personnel:* Mike Eisler, Tom McIntyre, Al Shore, Jim Kerr.

Trans-American Video Inc. **SP K300**
5900 Wilshire Boulevard, Los Angeles 90036
Product: Animal World (26), *Nancy Wilson Show* (65), *King Family* (three specials). *Personnel:* Leslie Wallwork, Jim Isaacs.

Winters-Rosen Productions/ Distribution **Georgetown Inn**
10 East 49th Street, New York, N.Y. 10017
Product: George (26), *George Kirby Show* (26), *Rollin* (26), *Story Theatre* (26), *Roger Ramjet* (156), enertainment specials (12. *Personnel:* Burt Rosen, Ernie Glucksman, Pierre Watkins, Tad Reeves, Len Hammer, Bill Madden, Tom Keegan.

Yongestreet Productions **WH**
357 North Canon Drive, Beverly Hills, Calif. 90210
Product: Hee Haw (26), *New Hollywood Palace* (26). *Personnel:* Nick Vanoff, Alan Courtney, Sam Lovullo and Jerry Franken (of McFadden, Strauss & Irwin, PR representative).

Radio program exhibitors

Century 21 Productions **WH**
21 Turtle Creek Square, Suite H, Dallas 75219
Product: ID's, commercial production and related services. *Personnel:* Mike Eisler, Tom McIntyre, Al Shore, Jim Kerr.

Century System **Solar Suite, WH**
Product: Adult popular-good music. *Personnel:* Gordon Potter.

.... from AP, 28 March 1973

CONGRESS- BROADCASTERS

BY CARL D. CRAFT

WASHINGTON (AP)-RADIO AND TELEVISION LICENSE-RENEWAL LEGISLATION "MERELY PROVIDES INSULATION FROM CITIZEN GROUPS AND PROTECTION AGAINST COMPETITION," CONGRESS WAS TOLD TODAY.

ALGERT KRAMER OF THE CITIZENS COMMUNICATIONS CENTER SAID IT DOES THIS "BY LENGTHENING THE LICENSE TERM, BY CHANGING BOTH THE PROCEDURES AND STANDARDS APPLIED IN COMPARATIVE HEARINGS, AND BY CHANGING THE STANDARDS APPLIED IN PETITION-TO-DENY PROCEEDINGS."

"IT DOES NOT ATTEMPT TO ADDRESS WHAT MAY BE THE LGITIMATE CONCERNS OF BROADCASTERS AND RECONCILE THEM WITH THE COMPETITIVE SPUR AND THE PUBLIC PARTICIPATION CONTEMPLATED" BY THE 1934 COMMUNICATIONS ACT, KRAMER TOLD THE HOUSE COMMUNICATIONS SUBCOMMITTEE.

THE CENTER IS A NONPROFIT LAW FIRM GIVING LEGAL HELP TO CITIZEN AND COMMUNITY GROUPS "SEEKING TO FOSTER THE RESPONSIVENESS OF BROADCAST MEDIA TO ALL SEGMENTS OF THE COMMUNITY," KRAMER SAID. "THE GROUPS WE REPRESENT DO NOT HAVE AN ECONOMIC INTEREST IN THE OUTCOME OF THE PROCEEDINGS IN WHICH WE REPRESENT THEM," HE ADDED.

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WASHN ADD CONGRESS- BROADCASTERS (112)

NO STATION HAS LOST ITS LICENSE "BECAUSE OF ANY ERRATIC RENEWAL POLICY," HE SAID, "BUT IF THERE ARE LEGITIMATE CAUSES OF CONCERN, THEN ANY LEGISLATION PROPOSED BY THE INDUSTRY SHOULD FOCUS ON THOSE."

FOR EXAMPLE, HE ADDED, "BROADCASTERS SAY THEY SHOULD NOT LOSE THEIR LICENSES TO UNTRIED COMPETING APPLICANTS WHO 'OUTPROPOSE' THEM WITH 'BLUE SKY' PROMISES. IF THAT IS THE SOURCE OF THE CONCERN THEN THE LEGISLATION SHOULD ADDRESS THAT ISSUE DIRECTLY.

"IT MIGHT PROVIDE THAT A NEWCOMER MAY NOT BE AWARDED A PREFERENCE FOR HIS PROPOSED PROGRAMMING UNLESS HE SHOWS A VERY SUBSTANTIAL LIKELIHOOD THE PROPOSAL WILL BE REALIZED. MOREOVER, HE SHOULD BE HELD TO A STRICT STANDARD OF ACCOUNTABILITY FOR MEETING THOSE PROPOSALS."

UNDER STUDY BY THE SUBCOMMITTEE ARE BILLS THAT WOULD LET THE FEDERAL COMMUNICATIONS COMMISSION RENEW BROADCAST LICENSES FOR A FIVE-YEAR PERIOD INSTEAD OF THE PRESENT THREE YEARS, WHILE THERE WOULD BE REVISED PROCEDURES FOR RENEWAL WHEN A COMPETING APPLICATION IS FILED.

THE FIVE-YEAR RENEWAL ALSO IS CONTAINED IN THE NIXON ADMINISTRATION'S PROPOSAL THAT WOULD REQUIRE RADIO AND TV STATIONS, IN ORDER TO GET A LICENSE RENEWED, TO BE "SUBSTANTIALLY ATTUNED TO THE NEEDS AND INTERESTS OF THE PUBLIC" IN THE AREA SERVED.

THE FCC ALSO WOULD BE BLOCKED, UNDER THE ADMINISTRATION'S MEASURE, FROM SETTING CATEGORIES, QUOTAS, FORMATS OR GUIDELINES FOR PROGRAMMING.

.... from NATIONAL REVIEW, 30 March 1973 - pages 382 and 383

BROADCASTING DILEMMA

London, March 2—Mr. Fred Friendly, Professor of Journalism, consultant to the Ford Foundation, and the originator of a TV documentary, has delivered a most provocative speech, in which he says it flatly and simply that the Nixon Administration is out to censor the news, that it has discovered a way of doing this, that its instrument is Dr. Clay Whitehead, the head of the White House telecommunications office, and that most broadcasters are poltroons. A few observations:

1. It has been the rule ever since the Federal Communications Act was passed that owners of radio licenses need to reapply for said licenses every three years. In the application for renewal it is the practice of a broadcaster to go on quite incontinently about the virtues of said broadcaster, to describe the great benefits that inure to the community as the result of his administration of the facility, and so on. I can think only of testimonials to prospective members of college fraternities, delivered in great and usually vinous length by the applicants' sponsors, by way of social comparison.

Now up until quite recently, the renewal of a radio and television license was pretty routine. But the spirit of consumerism swept the country in the late Sixties, and it happened that sitting on the Federal Communications Commission was Mr. Nicholas Johnson, an amiable Nader-type who has trouble sleeping at night for fear that somebody, somewhere, is making money. As a result, one or two spectacular challenges were made, and the entire industry looked up from its boilerplate exercises in narcissism and began to worry. Senator Pastore of Rhode Island took an interest in the matter and proposed a law that nobody should be permitted to apply for another man's license until that license had been removed from him for delinquency. I found this proposal sound law and sound psychology. It is not appropriate to stress one's advantages as a husband over against the incumbent until after the divorce. But Senator Pastore was beaten by a lobby of consumerists who, having seen Paree, were intoxicated at the prospect of engaging the attention of the FCC and applying for choice licenses in New York, Boston, Los Angeles, or wherever by the simple expedient of describing how much more greatly the new owners would serve the community than the old. Since the stakes are up at $50 million, and the cost of filing an application with the FCC is less than $100,000, hot money rushed in to bathe in this lacuna of broadcasting law.

2. Along comes Mr. Whitehead. He clearly announces himself as a representative of Richard Milhous Nixon, protesting against the uniform bias of radio and television news. And he suggests a deal. If the radio and television stations will themselves agitate for better balanced news analysis from the networks, then the Administration will support a law that stretches the three-year renewal period to five years.

Now Mr. Friendly—and a great many others—are quite incensed by this maneuver. It is their position that the White House is in fact saying to the individual station owner: Look, the news you are getting out of New York and Washington from Cronkite, Sevareid, Brinkley, et al., is slanted (Whitehead's term was "ideological plugola"). Now under the Fairness Doctrine, it is your responsibility to see that there is substantial expression of opposing views. If you fail to exercise pressure on New York and Washington, we will not guarantee that your station licenses will be renewed.

And of course if the threat is that plainspoken, then Mr. Friendly is right, the networks would perish from this earth. At least that part of the network news that is not devoted to golf matches or coronations.

3. What I wonder, however, is why Mr. Friendly and his associates have concentrated their ire on Whitehead. They quite rightly warn that if any broadcaster goes to embarrassing lengths to endear himself with the Nixon Administration, he is going to be an especially conspicuous target for a post-Nixon Administration, and all that will result from the mess is a thorough politicalization of the news—that or an avoidance of it so meticulous as in effect to destroy broadcast journalism.

But surely Mr. Friendly has failed to single out the truly solid institutional solution—which is to let out the licenses permanently. It is their periodic exposure to the travails of renewal that is the club, available to the politicians, through which to express their displeasure. Professor Milton Friedman gave the recommendation years ago: Let the current owners amortize their stations, then let the frequencies be sold at public auction—permanently. And, a most important concomitant—let no one stand in the way of the development of cable television, or pay TV. That way Eric Sevareid could be as biased as he likes, and it is nobody's business but his, his employer's, and the people who tune him on—or off. One hopes that in his passion to combat Whitehead's co-option of the Fairness Doctrine, Mr. Friendly will not marshal his forces against the extension of the licenses. □