

Chapter 1

INTRODUCTION

"Television is a faraway land. When we turn on the TV we see what they're doing there."

So runs one five-year-old's conception of television; and for practical purposes, it is the conception most Americans have of mankind's latest major innovation in mass communications. There seems to be an opacity about television -- an inability or unwillingness to see behind the screen and the knobs on the front panel -- that leaves the viewer feeling powerless or passive or just plain uninterested in why the programming fare that moves over the face of the tube is what it is.

This book is about why we see what we see on television, and more to the point, why we can't see what we can't see. It is about how corporate and governmental forces have interacted to shape the character of American television. It is about the meaning of the First Amendment in a government-regulated medium of expression. It is about the political, economic, and technological choices we as a nation can have or can forego in shaping the future character of television. Ultimately and most importantly, this book is about whether the principles of free expression in a democratic society can and will survive into the age of electronic mass communications.

These topics require us to look at the television industry and its regulatory appendages from without -- from the perspective of American history and the larger issues of America's future. Unfortunately, there is not much literature on the subject of television in this tradition. () Most writing on television falls, by contrast, into one of two categories: critical reviews of TV programming or complicated explanations of narrow legal or technical aspects.

Under the heading of critical reviews, we can include the entire editorial content of TV Guide and the Sunday newspaper TV section, TV columns in weekly magazines, and most studies of the impact of television-watching on children and other groups. The common thread in this category of writing is that it is about the content of the programming that makes it to the viewing screen. While calling into question quite often the quality or appropriateness of TV programming, it seldom questions the reasons why such programming is selected and produced in the first place. [Perhaps the only exception is the ritual condemnation of "ratings" by reviewers who vaguely associate "profits" with low-quality, mass-audience fare they and their associates don't much like and call for someone (unidentified) to do something (unspecified) to curb profits in favor of "better" programming.] Even those articles dealing "behind the scenes" tend to be color stories about

personalities in television or the ratings, reviews, or politics of specific shows. In short, most writing of this sort deals with that realm from the face of the tube out.

The specialized literature on television practices, on the other hand, is concerned primarily with that realm behind the face of the tube. Understood only by the specialist, the law, the technology, the program economics, and so forth have become insulated from outside influences to a considerable degree.

The critical reviews and the specialized writing on television do from time to time meet and even overlap of course. But by being largely separate, they conspire to keep television largely unchanged and to keep our attention from a far more important and more basic perspective: how could the incentives and restraints of television be shifted in accord with various principles or preferences to allow television to become a richer and more responsive medium?

Our goal in this book will be to show that there are significant alternatives to our present system of television, mostly better and mostly in addition to rather than in place of what we now have.

From the outset, three questions need to be addressed:

Why do we need alternatives to our present TV system and the fare it provides, particularly more TV fare?

Where do we look for those alternatives and how can they be brought about?

How do we know they are better?

The first question invites all manner of discourse, that of the critical review variety being the easiest to fall into. It is not the purpose of this book to engage in a critical judgment of current television programming, and such is not necessary to answer the question. We need to know about major alternatives to our current TV system because the ways in which the people in a democracy carry on their public communications clearly have a major impact on the future success and character of that people. America has nurtured the principles of free expression more than any other nation, making the distribution of information, ideas, and ideals as free as possible from excessive restraint by private or governmental power. We have long held that access to a wide range of points of view contributed to the ability of an informed citizenry to determine their own destiny. It is self-evident that such conditions can obtain only when there is the maximum opportunity for choice in what one will read or watch and only when individuals are free to compete for the attention and understanding of their fellow citizens.

The opportunity for more choice in television viewing, therefore, is a far more fundamental and important issue than superficial criticisms of ratings, artistic merit, or political coloration suggest.

Secondly, where do we look for the alternatives? Changes in the use of ratings, broadcaster profits, public service or artistic requirements, and the like can change the mix of programs from which viewers make their choices, and deserve some careful consideration. But they do not expand the range of choices and the effect of implementation of such changes certainly requires more serious consideration than is usually the case. Changes in technology offer a different route for expanding choice.^{*} By making it possible to bring more channels into the home, to use some of those channels for subscription programming or for access to information libraries, or to achieve higher quality pictures and sound, the viewer's access could be broadened considerably. Most discussions of cable, lasers, satellites, and other technologies to achieve this broadened access have foundered, however, on the question of whether such technology would in fact bring about a wider choice or just more of the same fare. Clearly, without new technologies our choice cannot be significantly expanded; but economic and institutional factors will play an important role in determining what the technology is used for. Finally, we must look to changes in the law and in Federal regulatory policy to find alternatives to the present system of control over and access to the television channels. Indeed, there is reason to believe that this is the most important area for examination in any search for alternatives to our present

system of television. Because of past Federal legislation, the Federal government determines rules for access to television channels and whether and how new television technologies will be introduced. It is because of this primary and pivotal role of the Federal government that the area of Federal policy is so important in determining the nature of our future television system. Moreover, the control of communications by the government is itself a key issue in a democracy and the extent of such control should reflect a conscious choice of public policy, a point that emphasizes even more the need to examine alternatives to the present system.

Our third question about alternatives is how we know they are better. This, of course, is the hardest question of all and will be a major issue to be looked at later on. One way of determining "better" is by comparing the kinds of programming likely to be produced and distributed with a new television system; another is to compare the principles used to establish the terms and conditions for the use of the system and for its growth. To be sure, there is no sharp line between these two approaches, but clearly the first invites expressions of public policy in terms of personal taste and what people ought to see, whereas the latter invites evaluation in terms of how well the system responds to the needs and desires of the public. Without ingoring the valid considerations (Note 1) of certain kinds of program content, the most useful measure of preference for

alternatives to our present TV system is likely to be principles, terms, and conditions linking the TV system to the other concerns of society, because only such content - neutral measures can ultimately line up to the First Amendment when included in public policy.

The purpose of this book, quite directly, is to set forth a basis for evaluating and designing public policy toward public communication in the electronic age and to stimulate broader public understanding and interest in this important subject than there has been in the past. Because of the need for broader public debate on these issues, considerable emphasis is placed on pulling together all the various components of such a public policy and stressing their interactions rather than the detailed workings of any one area.

Throughout the book, but especially in Chapter IX, there is reliance on the premises that the First Amendment by and large has served us well; that a key issue for the next decade as we deal with making Federal policy for broadcasting, cable, and other new technologies will be whether we want the First Amendment to apply fully to our electronic media and whether the First Amendment concepts can endure limited to ink but not electrons; and that, above all, if we come to rely on bureaucratically regulated bureaucracies for our public communication we will have surrendered an essential ingredient of our character and our promise as a people.

Notes

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Note 1.

On the level of individual taste and public discourse, certainly almost any consideration of program content is valid. Even in law and public policy, where we have long eschewed most such considerations because of the First Amendment, however, issues of obscenity, advertising content, libel, criminal incitement, and the like, have traditionally been held to be valid areas for governmental limitations.

Note 2.

Those who would repeal the First Amendment will find this book largely irrelevant to their concerns. It is certainly possible to devise various TV (and newspaper) regulatory systems that dispense with the First Amendment to a substantial degree and still remain consistent with the principles of democratic government. Many western nations have such systems, involving commercial as well as government-owned broadcast stations (See, e.g.) Moreover, the line of reasoning developed and espoused by FCC Commissioner Nicholas Johnson and D.C. Court of Appeals Judge David Lionel Bazelon in the late 1960's could offer such a system if certain inconsistencies were resolved; such a system, however, appears clearly to violate the First Amendment in its logical conclusion. The constitutionality of such a policy is treated at more length in Chapter VI.

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This book is about why we see what we see on television, and more to the point, why we can't see what we can't see. It is about how corporate and governmental forces have interacted to shape the character of American television. It is about the meaning of the First Amendment in a government-regulated medium of expression. It is about the political, economic, and technological choices we as a nation can have or can forego in shaping the future character of television. Ultimately and most importantly, this book is about whether the principles of free expression in a democratic society can and will survive into the age of electronic mass communications.

These topics require us to look at the television industry and its regulatory appendages from without -- from the perspective of American history and the larger issues of America's future. Unfortunately, there is not much literature on the subject of television in this tradition. () Most writing on television falls, by contrast, into one of two categories: critical reviews of TV programming or complicated explanations of narrow legal or technical aspects.

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The specialized literature on television practices, on the other hand, is concerned primarily with that realm behind the face of the tube. Understood only by the specialist, the law, the technology, the program economics, and so forth have become insulated from outside influences to a considerable degree.

The critical reviews and the specialized writing on television do from time to time meet and even overlap of course. But by being largely separate, they conspire to keep television largely unchanged and to keep our attention from a far more important and more basic perspective: how could the incentives and restraints of television be shifted in accord with various principles or preferences to allow television to become a richer and more responsive medium?

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The opportunity for more choice in television viewing, therefore, is a far more fundamental and important issue than superficial criticisms of ratings, artistic merit, or political coloration suggest.

Secondly, where do we look for the alternatives? Changes in the use of ratings, broadcaster profits, public service or artistic requirements, and the like can change the mix of programs from which viewers make their choices, and deserve some careful consideration. But they do not expand the range of choices and the effect of implementation of such changes certainly requires more serious consideration than is usually the case. Changes in technology offer a different route for expanding choice. By making it possible to bring more channels into the home, to use some of those channels for subscription programming or for access to information libraries, or to achieve higher quality pictures and sound, the viewer's access could be broadened considerably. Most discussions of cable, lasers, satellites, and other technologies to achieve this broadened access have foundered, however, on the question of whether such technology would in fact bring about a wider choice or just more of the same fare. Clearly, without new technologies our choice cannot be significantly expanded; but economic and institutional factors will play an important role in determining what the technology is used for. Finally, we must look to changes in the law and in Federal regulatory policy to find alternatives to the present system of control over and access to the television channels. Indeed, there is reason to believe that this is the most important area for examination in any search for alternatives to our present

system of television. Because of past Federal legislation, the Federal government determines rules for access to television channels and whether and how new television technologies will be introduced. It is because of this primary and pivotal role of the Federal government that the area of Federal policy is so important in determining the nature of our future television system. Moreover, the control of communications by the government is itself a key issue in a democracy and the extent of such control should reflect a conscious choice of public policy, a point that emphasizes even more the need to examine alternatives to the present system.

Our third question about alternatives is how we know they are better. This, of course, is the hardest question of all and will be a major issue to be looked at later on. One way of determining "better" is by comparing the kinds of programming likely to be produced and distributed with a new television system; another is to compare the principles used to establish the terms and conditions for the use of the system and for its growth. To be sure, there is no sharp line between these two approaches, but clearly the first invites expressions of public policy in terms of personal taste and what people ought to see, whereas the latter invites evaluation in terms of how well the system responds to the needs and desires of the public. Without ingoring the valid considerations (Note 1) of certain kinds of program content, the most useful measure of preference for

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The purpose of this book, quite directly, is to set forth a basis for evaluating and designing public policy toward public communication in the electronic age and to stimulate broader public understanding and interest in this important subject than there has been in the past. Because of the need for broader public debate on these issues, considerable emphasis is placed on pulling together all the various components of such a public policy and stressing their interactions rather than the detailed workings of any one area.

Throughout the book, but especially in Chapter IX, there is reliance on the premises that the First Amendment by and large has served us well; that a key issue for the next decade as we deal with making Federal policy for broadcasting, cable, and other new technologies will be whether we want the First Amendment to apply fully to our electronic media and whether the First Amendment concepts can endure limited to ink but not electrons; and that, above all, if we come to rely on bureaucratically regulated bureaucracies for our public communication we will have surrendered an essential ingredient of our character and our promise as a people.

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Note 1.

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Those who would repeal the First Amendment will find this book largely irrelevant to their concerns. It is certainly possible to devise various TV (and newspaper) regulatory systems that dispense with the First Amendment to a substantial degree and still remain consistent with the principles of democratic government. Many western nations have such systems, involving commercial as well as government-owned broadcast stations (See, e.g.) Moreover, the line of reasoning developed and espoused by FCC Commissioner Nicholas Johnson and D.C. Court of Appeals Judge David Lionel Bazelon in the late 1960's could offer such a system if certain inconsistencies were resolved; such a system, however, appears clearly to violate the First Amendment in its logical conclusion. The constitutionality of such a policy is treated at more length in Chapter VI.

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Chapter I

Introduction ↙ all caps

"Television is a faraway land. When we turn on the TV we see what they're doing there."

So runs one five-year-old's conception of television; and for practical purposes, it is the conception most Americans have of mankind's latest major innovation in mass communications. ~~After the 1950's, television~~ There seems to be an opacity about television, an inability or unwillingness to see behind the screen & the knobs on the front panel -- that leaves the viewer feeling powerless or passive or just plain uninterested in ~~the~~ ~~schedule~~ ~~weekly~~ ~~schedule~~ of why the programming fare that moves over the face of the tube is what it is.

why we see what we see, or
 more to the point, why we can't
 see ~~what~~ anything else.

This book is about why
 we see what we see on television,
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 have interacted to shape the character
 of American television. ~~It is about~~
~~television's role as a government~~
~~regulated medium in a system of~~
~~free expression. It is about~~
~~the necessary limits, the necessary and~~
~~unnecessary involve~~ It is about
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character of television. Ultimately and most importantly, this book is about whether ~~the American people~~ ~~can have it in their power to~~ ~~sweat a system of free press & free speech in the coming age of electronic mass media.~~ ~~It is not~~ ~~the~~ ~~principles of~~ free expression in a democratic society can & will survive into ~~the~~ the age of electronic mass communications.

These topics ~~cannot be dealt~~ ~~with from within the television~~ require us to look at the television industry & its regulatory apparatus ~~from~~ from without -- from the perspective of American ~~society~~ history and the larger issues of America's future. ~~Too often,~~

~~books, articles, & even government
books, articles, & even the studies
of government agencies ~~from~~
accept implicitly the danger~~

~~They require that we examine the
confluence of technology, economics,
law, politics, bureaucracy, and psychology
to see what are our true choices and
where they reasonably would lead.~~

~~Too often, the literature on television
has focused on one side or the other of
the problem, without bringing together
enough parts of the whole to permit
viable alternatives to be identified --
or ~~it~~ has dealt broadly & too generally
in too much generality to permit identify
~~sufficiently~~ ~~workable~~ specific
workable options.~~

Unfortunately, there is not much literature on the subject of television in this tradition. () Most writing on television falls, by contrast, into one of two categories: critical reviews ~~and~~ ~~or specialized matter for experts in some~~ ~~or specialized~~ of TV programming ~~or narrow~~ or complicated explanations of ^{narrow} legal or technical ~~specialized~~ aspects.

Under the heading of critical reviews, we can include ~~TV gossip columns,~~ the entire editorial content of TV Guide & the Sunday newspaper TV section, TV columns in weekly magazines, and ~~some~~ most studies of the impact of television-watching on ~~various~~ ~~the~~ ~~sub-groups~~ ~~society~~ ~~as~~ children & other groups. Perhaps this type of writing ~~might~~ ~~should~~ could as well be called ~~the~~ ~~sociology~~ of television.

The common thread in this category of writing is that it is about the content of the programming that ~~is~~ makes it to the viewing screen.

While calling into question quite often the quality or appropriateness of TV programming, it seldom questions the reasons why such programming is selected & produced in the first place.

[Perhaps the only exception is the ritual condemnation of "ratings" by reviewers who vaguely associate "profits" with low-quality, mass-audience fare they don't like & their associates don't much like & call for someone ~~to~~ (unidentified) to do something (unspecified) to ~~and~~ curb profits in favor of "better" programming.]

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about the personalities in television or the ratings, reviews, or politics of specific shows. In short, the most writing of this sort deals with that realm from the face of the tube out, ~~taking~~

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television, mostly better and mostly
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~~or~~ what we now have. We proceed
from the premise that ~~how we~~
~~communicate ideas & ideas~~ in a
~~free society~~ - the public communication
~~how the citizens~~ in a democracy
~~communicate amongst themselves~~

~~Before~~

From the outset, three questions need to be addressed:

Why do we need alternatives to our present TV system & the fare it provides, particularly more TV fare?

Where do we look for those alternatives & how can they be brought about?

How do we know they are better?

The first question invites all manner of discourse, that of the critical review variety being the easiest to fall into. It is not the purpose of this book to engage in a critical judgment of current television programming, and such is not necessary to answer the question. We need to know ~~more~~ about major alternatives to our current TV system.

because the ways in which the people in a
 democracy ^{carry on their} public communications in a
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 have a major impact on the future
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 America has nurtured the principles
 of free expression more than any
 other nation, ~~making the~~ making
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Secondly, where do we look for the alternatives? Changes in the use of ratings, broadcaster profits, public service or artistic requirements, and the like can change the mix of programs from which viewers make their choices, but do not expand and deserve some careful consideration. But they do not expand the ~~total~~ range of ~~the~~ choices and the ^{effects of} implementation of ~~these~~ such changes certainly requires more serious consideration than is usually the case. Changes in technology offer

a different route for expanding choice. By making it possible to bring more channels into the home, to use some of those channels for subscription programming or for access to information libraries, or to achieve higher quality pictures & sound, the viewer's ~~range of choice in what he access~~ ~~to~~ ~~considerably~~ could be broadened considerably. Most discussions of cable, lasers, satellites, & other technologies to achieve this broadened access have ~~failed to excite the imagination of the public or the industry~~ ~~foundered, however,~~ ~~on the "chicken-and-egg" dilemma~~ ~~foundered, however,~~ on the question of whether such technology would in fact bring about a wider choice or just more of the same fare. Clearly, ~~new technologies are a necessary step~~ without new technologies ~~to~~ our choice cannot be significantly ~~be~~ expanded; but economic & institutional factors will play an important role in determining what the technology is used for. Finally,

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 of our future television system, ~~that~~
~~so much of the analysis of that subject~~
 Moreover, ~~because~~ the control of communications
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~~we must differentiate between two~~
~~quite different approaches for measuring~~
~~"better"~~ One way of determining "better"
 is by comparing the kinds of programming
 likely to be produced & distributed
 by ~~under an alternative television~~

with a new television system;
 another is to compare the principles
 used to establish the ~~the~~ terms &
 conditions for ~~use & growth~~ the use
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 To be sure, there is no sharp line
 between these two approaches, (~~Note 1~~),
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present TV system is likely to be principles, terms, & conditions linking the TV system to the other concerns of society, ~~(Note 2)~~ ~~only such measures~~ ~~can~~ because only such content-neutral measures can ultimately live up to the First Amendment in ~~changing~~ ~~public~~ ~~policy~~. ~~(Note 2)~~ ~~(Note 2)~~ when included in public policy.

~~The purpose of this book is twofold, & the reader is entitled to know from the outset what the writer hopes to ~~accomplish~~ intends to accomplish. The first purpose is very basic: to stimulate~~

The purpose of this book is to clarify ~~pull~~ together all the various components of ~~public~~ necessary to the development of public policy for our electronic mass media, i.e., television ~~(Note 3)~~, & to

The purpose of this book, quite directly, is to set forth ~~some~~ a basis for evaluating & designing public policy ~~for the need~~ toward public communication in the electronic age and to stimulate ~~some~~ greater, broader public ~~interest &~~ understanding & interest in this important subject than there has been in the past. Because of the need for broader public ~~involvement~~ debate on these issues, considerable emphasis is placed on pulling together all the various components of such a public policy & stressing their interactions rather than the detailed workings of any one area.

To the maximum extent possible, I have withheld my personal views until the end. Many readers will disagree strongly with my conclusions in Chapter IX. In the end, however,

~~I would be failing myself & the reader
one can hardly stimulate debate interest
& debate~~

~~To the maximum extent possible,
most of the book~~

Throughout the book, but especially in Chapter IX, there is reliance on the premises that the First Amendment by & large has served us well; ~~that the key issue in communications~~ that a key issue for the next decade as we deal with making Federal policy for broadcasting, cable, & ~~as~~ other new technologies will be whether we want the First Amendment to apply fully to our electronic media ~~& whether the concepts of free flow of freedom of expression can survive if~~ the separation of government & the media ~~is~~

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of democratic government. Many western nations ~~do~~ have such systems, involving ~~both~~ commercial as well as government-owned broadcast stations (See, e.g., —)

Moreover, the line of ~~FCC and~~ ~~and~~ reasoning developed & espoused by FCC Commissioner Nicholas Johnson & DC Court of Appeals Judge ^{David Lionel} ~~Bozeman~~ ^{Bozeman}

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in the late 1960's could offer such a system if certain ~~and~~ inconsistencies were resolved; such a system, however, ~~it~~ appears clearly to violate the First Amendment in its logical ~~and~~ conclusion. ~~More on this~~ ~~subject is treated~~ The constitutionality of such a policy is treated at more length in Chapter VI.

Notes:

F.C.C. Approves Policy on Children's TV

By DAVID BURNHAM

Special to The New York Times

WASHINGTON, Oct. 24—The Federal Communications Commission gave final approval today to a policy statement that all television stations must provide a reasonable amount of programming for children and that a significant part of it should be educational.

The 37-page policy statement also said that broadcasters should provide for the viewing needs of the preschool child, that children's programming should not be shown only on weekends and that television hosts should not serve as salesmen.

While approving the general policy statement, the commission rejected the request of Action for Children's Television, a consumer group, that it adopt specific rules banning advertisements on children's

programs and requiring specific amounts of programming at specific times.

Concerning advertising, the commission accepted the code recently worked out by the National Association of Broadcasters under which advertising on weekend children's programs would drop from 12 minutes an hour to 9 minutes and 30 seconds an hour on Jan. 1, 1976. This is the same level of advertising now permitted by the code on prime-time television.

The policy statement results from an inquiry into children's television and advertising begun by the commission in January, 1971, at the request of Action for Children's Television, which is based in Boston.

According to the commission, the proceedings prompted an "overwhelming" response, with

more than 100,000 citizens expressing their opinions about children's television.

The commission defended its decision not to impose specific rules as consistent with its historic and court-sanctioned role of imposing only general affirmative duties on broadcasters in return for their right to use the public airwaves.

"We believe this traditional approach is, in most cases, an appropriate response to our obligation to assure programming service in the public interest and, at the same time, avoid excessive governmental interference with specific program decisions," the commission said.

Critics of the commission have expressed disappointment with its decision not to issue specific rules. Some lawyers familiar with F.C.C. procedures,

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however, believe the policy statement will strengthen the hand of citizens' groups in influencing the broadcast patterns of individual stations, which must renew their licenses every three years.

"One of the questions to be resolved here is whether broadcasters have a special obligation to serve children," the commission statement said. "We believe they clearly do have such a responsibility."

The commission said it therefore expected television broadcasters, as trustees of a valuable resource, to develop and present programs to serve the needs of children.

The statement said it was "not enough, however, to state that children have a right to programming particularly designed for them. Children, like adults, have a variety of needs and interests that cannot be fully served by programming which provides entertainment and nothing more."

"While we are convinced that television must provide programming for children, and that a reasonable part of this programming should be educational in nature, we do not believe that it is necessary for the commission to prescribe by rule the number of hours per week to be carried in each category," the F.C.C. said.

Here, as in several other parts of the policy statement, the copy available for newsmen in the commission's press office appeared to show a slight last-minute softening of the F.C.C.'s position. In the phrase concerning now much programming should be devoted to education, the word "must" had been scratched out and replaced by the word "should."

A similar deletion appeared in the statement where the commission said it had found a few stations that presented no children's programs. "We trust that this report will make it clear that such performance (or other low levels) will not be acceptable for commercial television stations which are expected to provide general program service to their communities," the original statement said.

In the policy statement in the press office the words within the parenthesis had been ruled out.

The commission said that to help determine if the television stations were adhering to the advertising limits imposed by the broadcasters code, the license renewal form would be amended to require information on how many minutes of commercials were broadcast in each hour of children's programming.