Federal funding of public broadcasting presents a dilemma. On the one hand there is a need for the government to support public broadcasting. On the other hand it should be insulated from government interference. The Public Broadcasting Act of 1967 attempted to deal with this dilemma by creating a system based upon the "bedrock of localism" and, by creating an institution--the Corporation for Public Broadcasting--to serve the needs of local stations.

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

Now let me shift and talk about what some of this means for journalism and the media. There are two main points that I would like to make about the media today and how it is different from what we think about it from the past, what so much of our theory of government-media relations is based on.

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The first difference is that the media in this country have become big business, as we have seen in many ways it has become monopolistic. We have a very limited number of television stations principally programmed by three New York City television stations, i.e., three television networks. We seem to have

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

The second big difference is that Government regulation of the content of television broadcasting is steadily expanding to the point where today we have a pervasive system of content controls administered by Federal bureaucracy over what we see and hear on television. A situation far different than any of us are accustomed to seeing in the print media.

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

communications among non-geographic communities I think will be the predominant theme of communications in this country in the future. And also, more and more, our communications in

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

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

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

you've made it such by your own success. It's no longer a question of whether you must let individuals get on the air to state their views but how they will be provided this access. If individuals must gain this access through the Fairness Doctrine, which is issue-oriented and not intended to give personal access, it would be an illusory right indeed. Exercise of this right would be dependent on the FCC's ideas about who shall speak and who shall not. The individual would have no rights as such, but you would still be forced to put on, sometimes free, sometimes for pay, those assorted groups and spokesmen that the FCC decides you should.

My proposal would create a self-limiting right of direct personal access not dependent on the Government's discretion. This right would be enforced in a manner that would not intrude on the broadcaster's obligation to inform the public on important issues in a fair and balanced manner. It would be a statutory right of paid access to the 10 to 16 minutes in each television hour which the broadcaster sets aside for sale to advertisers. The right would be enforced through the courts and not by the FCC. Views stated in ads would not have to be balanced in

program time. Advertising time and program time would be two separate forums, and the willingness and ability to pay would determine access to the advertising forum. That's not a shocking concept. No one gets free access to the advertising space even on publicly-owned bus lines, let alone newspapers, magazines, or billboards. And we pay more for a full page color ad in Life magazine than for a small ad in the local paper. There is no reason to treat broadcasting differently. No individual has a direct right to have for free the large audience you have built with your programming.

In the program-time forum, an issue-oriented access mechanism would control. The public's right to be informed on important issues and points of view must be recognized and served in program time. Here the licensee's obligation would be enforced as originally contemplated in the FCC's Editorializing Report of 1949. The totality of the programming that is under the licensee's control (including PSA's) would be reviewed by the Commission at renewal time to determine whether the licensee has met his fairness obligation--that is to provide balanced presentations and an opportunity for partisan voices to be heard on the issues. And during the license period, if the licensee badly fails--or doesn't try--to be balanced and fair, a petition for revocation of the license would be entertained by the FCC.

Let's turn now to license renewals. Ever since the days of the "Blue Book," the FCC has told its licensees what type of programming is in the public interest. In the 1960 Programming Statement, it was refined into 14 program categories, featuring public affairs, news, religious, educational and stationproduced programming of virtually any sort. Informally, the signals go out through the jungle-drum network of regulators, lawyers, and licensees, and you get the message as to what kind of programs the FCC wants from you. With the Cox-Johnson 5:1:5 standard, the Commission has also flirted with minimum percentages for the most favored program types. The flirtation has almost become outright seduction, as the FCC now seems ready to adopt percentage standards for determining "superior" performance when an incumbent's renewal application is challenged.

These are disturbing developments--for the public and the broadcaster. If value judgments on program content are unavoidable in the present context of broadcast regulation--and they may be--they should be made as much as possible by the public served by the station and as little as possible by government bureaucrats. As things stand now, hypocrisy prevails, and lip service is paid to local needs and interests while the Broadcast Bureau's concerns and forms really call the tune.

It is largely our regulatory policy, not the broadcaster, that is hypocritical. The theory is that licensees should be local voices, that they should investigate the needs and interests of the public they serve and reflect them in their programming. Government has created a set of incentives for

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This same type of approach also underlies the recent counter advertising proposal of the Federal Trade Commission (FTC). The FTC proposed that time be given to discuss advertising claims that are disputed within the scientific community, or to discuss the negative aspects of advertised products. What this boils down to is that there would be government-controlled access to the broadcast media to state a personal opinion on almost any matter. Although this proposal was made in the FCC's Fairness Doctrine inquiry, it has little to do with that Doctrine. Rather it would shape the Doctrine into a new tool to regulate advertising, and thereby expand it far beyond what was originally intended and is now appropriate.

Although the FCC will still be second-guessing the licensee in order to give content to this "good faith" standard, we will have shifted the focus and purpose of government supervision to enforcement of the local needs and interests requirement in programming. This alone is an effort worth making.

However, the logic the court relied on to make this key finding is a tautology--that is, true simply because its truth is asserted. The BEM tautology is that, in the past, something unique about broadcasting justified extensive government involvement, now the extent of government involvement is the thing that makes broadcasting unique. This kind of logic is specious and cannot support unique treatment for broadcasting under the Constitution.

When the faulty logic of the BEM case is exposed, all that remains is the effort to control content in broadcasting because it is an important and effective communications medium, and this effort, the Constitution forbids. The court made this effort simply to create a personal right of access mechanism for the broadcast media. But, in using a government instrumentality theory to accomplish this, the end result is an abridgeable right of access--abridgeable at the discretion of the government. There may indeed be legitimate reasons for creating a right of access to broadcasting. If so, it should be a right that does not depend on government discretion for its implementation. Furthermore, it should be created under clear legislative guidelines and not under a conceptual approach that distorts the First Amendment protections of broadcasting simply as a convenience.

The Fairness Doctrine has usually been justified as serving the need to inform the public on important issues in a balanced manner. But this is not the goal of counter advertising. That goal is to give the consumer more realistic information about the products he is being urged to buy. That's a fine objective. It's the objective of the FTC's regulation of deceptive and misleading advertising in all media. But it's not a goal that the Government should try to achieve through content regulation of the broadcast media. There are substantial practical problems involved in implementing counter advertising via that route that the FTC never considered. Free access could be required to respond to almost any broadcast ad. Any one of them could cut into broadcast time and set off a barrage of charges and counter-charges, resulting in a bewildering clutter of opinions. Equally important, the counter advertising proposal could not be sustained in the courts without faulty logic similar to the reasoning in the BEM case. How else could a broadcaster be forced to provide free access?

Once access were provided for the counter advertising purpose, neither practical problems nor the dangers of faulty logic are likely to prevent this government-controlled access right from being applied to programs as well as ads. It's not as farfetched as it may sound. How would the courts respond to claims that a weekly series on the FBI suppresses negative aspects about this agency; or that the doctors and lawyers appearing on the audience's favorite programs are not representative of those the average viewer meets; or that Sesame Street's Cookie Monster encourages poor eating habits and Big Bird is a male

There are those who argue that the Fairness Doctrine and a requirement of access are congenial to a free society because they represent a sort of "affirmative censorship"--that is, they do not exclude any idea from the marketplace, but to the contrary give the widest possible circulation to all opinions. It seems to me this approach misses the point of the First Amendment. The reason our Constitution prohibits censorship of the press is not because all ideas are equally worthy of being expressed. Some are quite obviously not worth a nickel; you would not publish them in your newspaper, nor would any responsible man publish them in his. The purpose of the Constitution is not to dispense with the exercise of this editorial judgment and responsibility--for that would mean not only social chaos but also a genuine diminution rather than an increase of personal freedom. What if the British could have compelled Tom Paine to devote half of each of his pamphlets to "the other side" about the Revolution? Or if the anti-Federalists could have compelled Madison and Hamilton to give equal time to the opposing view in their Federalist Papers? Such compulsory inclusion would be as tyrannical as the more traditional, exclusory form of

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censorship--and at least as foolish. Despite the rationalization of the advocates of "affirmative censorship," it ultimately harms rather than furthers the true goals of the Constitution. The First Amendment was meant to take the Government out of the editing business--whether the editing consists of deletions or insertions.

In the rationale for the Fairness Doctrine that I sketched out for you a moment ago, I see at least two problems, and these discrepancies may, upon further examination, reveal some ways to get out of the fairness dilemma. First of all, I don't think it's axiomatic that technical regulation of frequencies necessarily leads to federal regulation of content. When you stop to think about it, that concept really seems like the technocracy run rampant. Secondly, I think there's an inevitable conflict in the way we have structured the broadcast industry. The broadcaster is a business man. His private rights inevitably conflict with his theoretical duty to defend a great public trust and responsibility. The problem is not directly one of channel scarcity; we have more radio and television stations in most markets than we have newspapers. The problem

is not directly connected to the control of frequencies. There is no necessary reason, as I said, why the frequency chaos cannot be cured without content regulation.

The problem, it seems to me, is one of access and economic control, both of which are determined by government policy. Because the man who owns the transmitter, by public policy, determines what is transmitted, there is no public right of access to television in this country unless you want, and can afford, to buy a television station. You don't have to own a newspaper to use a printing press. The broadcaster as a businessman decides who, when and what appears on his television station. By and large, station owners do a tremendous job of meeting the public's interests. Most broadcasters are not greedy businessmen; they are truly dedicated to the welfare of their community.

But as controversy grows in the country, the problem arises of who determines when the broadcaster's private rights and his private decisions conflict with his public duty. Under our current system, it's the FCC. Who determines when the broadcaster's concept of the public interest differs from the Government's concept of the public interest? Again, it's the FCC. Now that means Government control of content. No matter how you say it, it's Government control or content and I think that's a very bad precedent in a country such as ours.

In fact, the FCC has moved toward a standard of fairness in the presentation of ideas rather than fairness in the condition of their exchange. That is a very important distinction. The approach should be exactly the opposite in this country. Fairness in the conditions of exchange of ideas is rooted deep in the American tradition. Government-enforced fairness in the presentation of ideas leads, I'm afraid, to a very dim if not a very dark road of bureaucratic brokering of ideas. Regulation tends to beget regulation in Washington. And here I think that means more Government control of content. Now, I'm not too worried because the people at the FCC are fine, dedicated people. I'm not so worried about tyranny in this country. I'm worried about just plain, old bureaucratic mediocrity - dulling bureaucratic mediocrity. If you think the range of choices that's available to this country with only three television

At this point, we are perilously in danger of jumping out of the frying pan into the fire: We have created and actively preserved a structure which makes it unfailingly uneconomic for television to serve many public service needs, however strongly felt, in an industry that is by public policy uneconomically competitive. But we indignantly berate the broadcaster for following the incentives of economic survival that public policy has sent out for him in the first place, and in the process we raise the very dangerous spector of Federal content control.

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Nonetheless, despite public broadcasting's positive achievements, there remained serious deficiencies. The purpose of the 1967 Act was to prevent local stations from ever becoming mere conduits for the programming of centralized production sources. But there was a tendency toward centralized program decision-making by CPB and PBS, its wholly-funded interconnection service.

Interconnection was viewed by the Congress primarily as a means of program distribution and not as a means of establishing a fixed-schedule network. But the distribution of programming over the interconnection system by PBS amounted to precisely the kind of federally-funded "fourth network" which the Congress sought to avoid. Such a monolithic approach to public broadcasting is inimical to the letter and spirit of the Public Broadcasting Act.

Another problem area is the funding of public affairs programs. Public affairs and current events programs are important components of public broadcasting's contribution to the flow of information. Indeed, this type of programming is recognized as part of every broadcaster's responsibilities under the Communications Act of 1934. But there

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

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

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

The second force retarding innovation in electronic communications is monopoly. Private business in the electronic communications field today is very much characterized by monopoly. The common carrier field by the American Telephone and Telegraph Company, and the television field by the three television networks. Now it is argued, principally by those corporate vested-interests, that the United States has the best television system in the world; that the U.S. has the best phone system in the world; and, indeed, the status quo in communications in this country just turns out to be the optimum communications system for the future.