

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

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

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

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

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

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

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

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

The Federal courts and the Federal Communications Commission have steadily increased the role of government in communications.

For some perverse reason, the First Amendment keeps getting bent into the awkward framework of the 1934 Communications Act, instead of the other way around. We continue to acquire new "rights." The courts

have granted us a rather dubious "right to hear"

which appears to hold that the electronic media, as "instruments of the government," are required to "inform" us on public issues of controversy and importance. And who is the arbiter of this function? Why, the government itself. There is an important difference between a "right to be informed" and a right to a media structure which is conducive to freedom of press and speech. Freedom here must mean freedom both from private monopoly and from government censorship, implicit or explicit. The right of free speech and press is quite a different animal from a "limited" right of access, selectively defined and enforced on a case-by-case basis by some Federal agency. Yet, it is in the latter direction that we seem to be moving. There is also an important

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If the public, through the government, doesn't like the programming the broadcasting system produces, they ought to change the incentives rather than encourage the government to make the programming decisions. To provide you with the right incentives, I suggested that we eliminate all government-conceived program categories, percentages, formats and other value judgments on specific program content. Then let the Commission strictly enforce a meaningful ascertainment requirement-- hopefully not in the incredible detail of the Primer--let them judge you by your audience's criteria rather than their own. If this means that New York City stations will have no agricultural programs, and Phoenix stations will have Spanish-language public affairs programs, so be it. And if it means one channel in a large market carries little news while others provide a lot, who are we in Washington to impose our judgment and say no?

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The 38-year-old Communications Act has tended to freeze the relationship between government, private industry, and the public. We have reached a stage in the rapid growth of communications when the relationship must be allowed to be a far more dynamic one. For instance, in the broadcasting industry, the criteria used for license renewal are no longer practical nor do they make sense in many instances. The Fairness Doctrine and other access mechanisms have become a quagmire of government program control. The courts are on the way to making the broadcaster a government agent. They are taking away the licensees' First Amendment rights, and they are giving the public an abridgeable right of access. In effect, the First Amendment is whatever the FCC decides it is.

The point is: We need a fundamental revision of the framework of relationships in which you, the government, and the public, interact. The underpinnings of broadcast regulation are being changed--the old status quo is gone and none of us can restore it. We can continue the chaos and see where we end up. But there has to be a better way.

I do not recall reading in the press many blistering editorials concerning the absurdity of such proposals. Perhaps it is too much to expect you to spring to the defense of your prime competitors for the advertising dollar; but I hope you will set aside the erroneous notion that what is bad for your competitors is necessarily good for you. For the "Fairness Doctrine" is a runaway theory that may trample you next. In the famous case which upheld the constitutionality of the Fairness Doctrine, the Supreme Court accepted, as the essential justification for permitting Government specification of broadcast content, the scarcity of broadcasting outlets. Surely that reasoning should cause your industry some alarm, because there are four times as many commercial broadcasters as newspapers; barriers to entry in the newspaper field are higher; and the industry is generally characterized by higher concentration of ownership than broadcasting. Do you think it fanciful that the Government could impose upon newspapers the obligation to print certain material? Then read the Red Lion case--see how "reasonable" its simple prescriptions are: The object of the First Amendment, you see, is to enable the people to hear all sides, and a rule such as the Fairness Doctrine furthers rather than inhibits that purpose. If you have not heard it seriously suggested that the Fairness Doctrine be extended to newspapers, I have; this is urged repeatedly by some of the more ardent supporters of the Fairness


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I believe strongly that obligations of journalistic balance, fairness and reasonable access do exist. But they are obligations which our society has wisely removed from the power of the State to enforce. When, as sometimes happens, you fail to measure up to your calling, you deserve open and public criticism, for a responsible press is essential to our free society. Government regulation, however, cannot force you to exercise your responsibility properly; in the guise of doing so, it can in fact only relieve you of responsibility.

I do not mean to suggest that the issues are that clear-cut, or the solutions that simple, with respect to the actual application of the Fairness Doctrine to the broadcasting industry by the FCC. The Government has to make some evaluation of the journalistic responsibility of broadcasters, because under our existing system the FCC must determine who among competing applicants is the best qualified to broadcast. As you may know, the Commission is currently reexamining its Fairness Doctrine procedures and I am sure it will do as much as possible to perform its duty of licensee evaluation with the least possible intrusion upon First Amendment rights. But I am concerned, and I think you should be concerned, that this involvement has come to be

IX { I've mentioned the technology that will be available to us by 1990. What man's communications is in 1990 depends as much on what Government policy is, as on what technology can produce, because communications is a very highly regulated industry. For example, the FCC table of television station allocations was made in 1952. That happens to be 19 years ago, and yet the table remains virtually unchanged today. This allocation drives the structure of our television

~~A~~ [industry, and is responsible for much of what we will do
and have available nineteen years from now in the year 1990.

~~A~~ If the radio and TV press of this country is to carry on the traditions of a fourth estate, they must recognize the legitimacy of criticism from other estates. A strong, robust and free press should recognize this dialogue as a very healthy alternative to a much expanded Fairness Doctrine, and I think that a strong, robust and free press really would settle for nothing less.



which makes it almost inevitable that commercial television will offer the kinds of programming it does -- and will not offer the kinds of programming it doesn't. The preferable approach, it seems to me, is not to berate corporations or stations for what they do or do not do; but rather to ask why our current regulatory system does not provide appropriate incentives and structures for meeting those aspects of the public interest which it clearly does not.

One of the things we can avoid is the creation of either private or public power to control content in the new medium. We can remove the stultifying trend of implicit censorship and bureaucratic fairness, and we can reduce significantly the cost of access to the people.

Another thing to avoid is the creation of an industry which is economically dependent on commercial sponsors. We can do this by allowing both advertisers and viewers to make effective demands in the marketplace for programming -- by allowing in addition to advertiser-supported programming, pay-by-channel and pay-by-program subscription both at the programming end and the viewing end. The public interest program has to be economically self-sufficient.

Anyone unfamiliar with the way in which the electronic media are regulated may think it odd that Government determines who gets to use these technologies for what purposes. But this is what happens when Government arrogates to itself the detailed supervision of the communications industries. This Administration believes there are serious defects in this regulatory approach. We believe that Government should advance public interest objectives through policy guidelines rather than through detailed regulation. With respect to developing policy for the new communications transmission technologies, our objectives should be to provide the appropriate economic incentives so that the would-be viewer and the would-be programmer can interact as easily and as constructively as possible. Why should there be any artificial barriers imposed to preclude the use of the new communications technology by magazine publishers?

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I { Television will always reflect someone's concept of quality, reality, and art. The question is whose concept. It can be the voter, the Government and the television networks; or it can be the artist and his audience. We think the freer the flow there is between the artist and the audience the better. And I hope you will think carefully which philosophy is best for the arts in the long run.

This country is a Government, is an economy and is a society full of checks and balances. The press loves to talk about itself as a vital check on Government and of course it is. In many ways the conscientious, the professional journalist is a guardian of the public interest in Government.

IV { So after all is said and done we are left, and I leave you tonight with, what I think is the central question of a free press in a free society, the question originally asked nearly two thousand years ago, "Who is to guard the guardians?"

Thank you very much.