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THE ADVOCATES - The PBS Fight of the Week

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Topic: SHOULD CONGRESS ADOPT THE
ADMINISTRATION PLAN FOR
BROADCAST LICENSE RENEWAL?

Participants: Advocate Henry Goldberg (pro)

- Dr. Clay Whitehead
Director, Office of Telecommunications
Policy
Author of bill under consideration
- Lee Loevinger
Former Commissioner, Federal Communi-
cations Commission
Attorney, Washington, D.C.

Advocate Lionel vanDeerlin (con)

- Nicholas Johnson
Commissioner, Federal Communications
Commission
- Edward Morgan
Communications attorney,
Washington, D.C.

Moderator: Michael Dukakis

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ANNOUNCER: Good evening, ladies and gentlemen, and welcome to THE ADVOCATES, the PBS Fight of the Week, coming to you from the auditorium in the Department of Health, Education, and Welfare, in Washington, D.C. Tonight THE ADVOCATES asks you to consider the use of your public property, the television channels or airways which, through the Office of the Federal Communications Commission, are licensed to broadcasters; and specifically this question: "Should Congress adopt the Administration plan for broadcast license renewal?"

Arguing in support of the proposal is advocate Henry Goldberg, General Counsel of the Office of Telecommunications Policy in the White House. Appearing as witnesses for Mr. Goldberg are Dr. Clay Whitehead, Director of OTP, and former Federal Communications Commissioner, Lee Loevinger.

Arguing against the proposal is Democratic Congressman Lionel vanDeerlin from California. Appearing as witnesses for Congressman vanDeerlin are Nicholas Johnson, Commissioner of the Federal Communications Commission, and Edward Morgan, an attorney from Washington, D.C.

DUKAKIS: Ladies and gentlemen, may I have your attention, please.

ANNOUNCER: Moderator Michael Dukakis has just called tonight's meeting to order.

DUKAKIS: Good evening, ladies and gentlemen, and welcome once again to THE ADVOCATES. While tonight's proposal is of immediate and direct concern to the people who own and operate and control the nation's 700 television stations, its impact will also be registered on the 99.8 percent of American households who have and watch television sets. The question - "Should Congress adopt the Administration plan for broadcast license renewal?" Advocate Henry Goldberg says, "Yes."

GOLDBERG: You may not know it, but there are seven people in Washington who are passing detailed judgment on the kinds of television programs that you see. It's none of their business, and this bill would make it sure that it is none of their business.

DUKAKIS: Advocate Lionel vanDeerlin says, "No."

VANDEERLIN: Commercial television was once called a vast wasteland. Wasteland or not, a privileged few aim to make it their own private domain.

DUKAKIS: Thank you, gentlemen. We'll be back to you for your cases in a moment, but first a word of background on tonight's question.

Television and radio are unique as forms of free speech in this country because both are subject to governmental regulation. . . .

. . . are all protected from government intervention by the First Amendment guarantee that Congress shall make no laws abridging freedom of speech.

But television and radio are in a different category. There are only a limited number of broadcast frequencies available, and not everyone can have access to them. So in broadcasting, government has taken the role of assigning access in the form of licenses and insuring that those licenses are responsibly used.

The problem becomes how to balance the somewhat contradictory objectives of the First Amendment guarantee of freedom of speech and the government's role of assuring that broadcasters serve the public interest. It tries to do this through the process of issuing and renewing broadcast licenses, and it is in this vital area that tonight's proposal seeks to make changes.

Before we begin, you're going to be hearing some terms this evening that I suspect bear definition. First, the Communications Act of 1934. By this act, Congress affirmed that the airwaves over which television and radio signals are broadcast are in the public domain, that therefore those who use

them to broadcast must do so in a way that serves the public interest, convenience, and necessities.

The F.C.C. The Federal Communications Commission, a Presidentially-appointed seven-member board established by the Communications Act of 1934 to regulate the industry. Each commissioner serves for seven years after confirmation by the Senate.

The license. As the name suggests, the permit issued by the FCC to an individual station owner that allows him to broadcast. There are 700 commercial television stations in the country, each with a license that must be renewed every three years. License renewal is usual but is not automatic.

Competing application. At license renewal time, a rival for the license may seek to get it away from its current holder by filing an application for the same channel to the FCC.

Comparative hearing. When a station's license renewal is challenged by a competing applicant, the FCC will hold a comparative hearing at which it will weigh the qualifications and promises of the competing applicant against the performance record of the license holder.

Petition to deny renewal. Any citizen who believes a particular station has failed to live up to its responsibility under the law may file a petition with the FCC to deny license renewal to that station. This means . . .

In fact, in Mississippi, in 1969, a station charged with systematic racial bias in its programming lost its license as a result of a petition to deny renewal brought by a citizen's group in that state.

These, then, are some of the terms you'll be hearing tonight as we debate a proposal for changing certain key elements in the laws affecting broadcast licensing.

And now to the cases. Mr. Goldberg, why should the Nixon Administration plan for broadcast license renewal be adopted?

GOLDBERG: Well, most dramatically, in recent months a television station in San Francisco dropped two sex-discussion talk programs. And in doing so, the manager of the television station pointed out that he was chicken of the FCC because the FCC had merely announced that it was conducting an investigation into these programs. He said, "We'd be dumb if we did not drop these programs."

Now, can you imagine a newspaper editor saying that the government doesn't approve of our story, therefore we have to kill it? But the broadcast journalist has to think this way because of the FCC license-renewal procedures. They know that the FCC has life-and-death control over their existence. And they run scared to provide the kind of programming that finds favor with the government.

We say that this should not be so. We say that the long-range goal should be to give broadcasters the same freedoms that newspapers editors have. And the Administration bill is an important first step in this direction. And to explain why, I'd like to call as my first witness Mr. Clay Whitehead.

DUKAKIS: Welcome to THE ADVOCATES, Mr. Whitehead. Nice to have you with us.

WHITEHEAD: Thank you, Mr. Dukakis.

GOLDBERG: Mr. Whitehead is the Director of the Office of Telecommunications Policy in the Executive Branch and is the author of the bill. Now, as the author of the bill, Mr. Whitehead, why did you feel it was necessary to introduce a bill changing license-renewal procedures?

WHITEHEAD: The process had become confused. As the moderator indicated, in the license process we have a delicate balance between the obligations of the licensee, the station owner, to program in the public interest and his First Amendment freedoms on the other hand. But the FCC, it seems, has largely forgotten about the First Amendment aspects of this dilemma. By and large, they have been increasing their involvement in programming. Recently, for instance, the FCC

made a decision that Lassie was not a permissible kind of show for one category but Wild Kingdom was. Now, if the First Amendment means anything, it means that a broadcaster can decide what kind of animal show to broadcast without the government telling him.

GOLDBERG: But does the FCC control go beyond this individual judgement on programs? Is it more pervasive?

WHITEHEAD: Yes, indeed it is. There are already 14 FCC approved categories of programming, and they're getting more specific. They're beginning to set quotas - 15 percent, public affairs; 10 percent, news, and the like.

GOLDBERG: Well, I think we can concede and, perhaps, forgive the FCC for an occasional absurdity like the Lassie decision, but what's wrong with these seemingly objective standards? How do they lead to impermissible government control of broadcast program content?

WHITEHEAD: What the FCC is saying, in effect, when it sets a standard, is, "You program what we want. You program to these standards, or we'll put you out of business. We'll take your license away."

DUKAKIS: Gentlemen, let me interrupt for a second, if I can. I take it when you're talking about standards of the FCC, it's procedure under which they require stations to devote a certain amount of time to a particular kind of program. Is that correct?

WHITEHEAD: That's right.

DUKAKIS: And are these standards to apply to all stations?

WHITEHEAD: These are standards that apply across the board.

DUKAKIS: Thank you.

WHITEHEAD: You see, when the FCC begins saying that in order to stay in business, you have to meet our standards, our quotas, about the programming, then every broadcaster is going to begin to program to meet those minimum percentages. And it's a short step from there to the government becoming evermore specific about what they mean by their percentages and by their categories, and still another short step to the government interfering with the journalistic and editorial integrity of the television stations.

GOLDBERG: But some kind of standards, I think you would agree, are necessary. What kind of standards would you have the FCC apply to license renewal?

WHITEHEAD: Certainly, some kinds of standards are necessary, but they should be the community's standards, the viewers' standards, as determined by the television station in a dialogue with its community. Now, if a community is heavily interested in something like civil rights or heavily interested in soil erosion, the broadcaster's license would be in jeopardy if he didn't recognize those needs and provide programs . . .

GOLDBERG: This would still be in jeopardy under the bill that you've introduced.

WHITEHEAD: Absolutely.

GOLDBERG: But no matter what standards you use, isn't the FCC still the ultimate judge of whether the broadcaster and his programming is serving the public interest?

WHITEHEAD: That's true. But the question is, is the FCC going to be a neutral judge, judging a contract, so to speak, between the television station and his community, or is the FCC going to be both judge and jury, judging a contract that it wrote between itself and the broadcaster?

DUKAKIS: All right, gentlemen, let me interrupt, and let's go over to Congressman vanDeerlin who's going to ask you some questions now.

VANDEERLIN: Well, Dr. Whitehead, you've been going with your side now six or seven minutes. It seems to me that, in making a big case about instability and uncertainty in the broadcast business, you've neglected one point that might be very important in building this case of yours. So tell us, exactly how many television stations have had their licenses yanked?

WHITEHEAD: Well, a very few have. We should note that.

VANDEERLIN: Well, isn't it true that some 37,000 broadcast licenses have been renewed in this country since broadcast signals were being disseminated, and that there've been only 78 of any kind, radio, any kind of station at all, and that only two television stations have lost their right to broadcast?

WHITEHEAD: It's hard to get the exact figures on this, but that sounds about right.

VANDEERLIN: Well, I found it quite easy to get them. I went to the Federal Communications Commission. All this talk about broadcasters being put out of business, well now, first of all, they operate on a three-year license. By what right do they ever expect an automatic renewal?

WHITEHEAD: I don't think any broadcaster expects an automatic renewal, and I don't think many broadcasters are actually afraid of losing their license. What they're afraid of is that the government's power to take away that license will be used in a way to coerce them to get them to do programming that they legitimately think is not necessarily in the public interest.

VANDEERLIN: Some people have encouraged them in that fear. But this FCC that you speak of, you're making out these seven faceless commissioners here in Washington, these bureaucrats, as they were called, as the guys in the black hats. Well now, first of all, they're seven qualified citizens . . .

DUKAKIS: Congressman, in fairness to Mr. Goldberg, I don't think he referred to them as black hats or bureaucrats. I think he said persons. In any event, let's proceed.

VANDEERLIN: The question, however, is very easily resolved by looking at the manner of their selection. They're picked by the President, confirmed by the Senate. At no time may either political party, or any political party, hold more than four of those offices. And I'm just wondering what is this fear that these citizens are going to behave like commissars.

WHITEHEAD: I'd don't think the fear is that they'll behave like commissars. I think the fear is that they will be driven by their own mechanism of setting ever increasing standards so that they become the arbiters of what the American public is going to see and hear rather than having the community decide what it wants to see and hear.

VANDEERLIN: But isn't it a fact that the opposite is closer to the truth, that the FCC has been far less than vigorous in policing broadcast standards?

WHITEHEAD: The FCC has been moderately vigorous in policing broadcast standards, but they certainly have not been very vigorous in getting the licensee, getting the station owner to determine what his community really wants. All the emphasis is on getting the broadcaster to program to the FCC's idea of what we ought to see and hear.

VANDEERLIN: But wouldn't your bill give us lower standards at renewal time than are observed at the time when original license is granted?

WHITEHEAD: Oh, to the contrary. Our purpose of our bill is to insulate the broadcaster from capricious government actions. The purpose is not, and it would not, and in no way could, insulate the broadcaster from the community.

VANDEERLIN: But to get a broadcast license, most of which were purchased at a fee of about \$150, a man at least has to show, an applicant has to show that he's going to be responsive to community need. He has to make quite a demonstration of his ability to meet that promise. At renewal time, under your bill, regardless of the purpose of your bill, all he's going to have to show is that he's made a good faith effort to be responsive to community need. What is a good faith effort?

WHITEHEAD: Good faith effort means that he has earnestly and sincerely tried, based on the information available to him, to direct his programming to meet the needs of communities, needs and interests, that he's discovered in discussions with them. It's the same kind of good-faith effort that we have in the law of collective bargaining, where the government wants to assure that there's a fair give and take and understanding, sincere effort, but the government doesn't want to direct the outcome of that bargaining.

VANDEERLIN: I think you could fill this auditorium, Mr. Whitehead, with the sheets of documents and legal treatises that have been written on good-faith effort in the labor field.

WHITEHEAD: But it's certainly less capricious, Congressman, than the current public-interest standard which means whatever the seven commissioners want it to mean.

VANDEERLIN: All right. But you tell us, you're so satisfied that broadcast is going to be responsive to community needs, you call it ascertainment, I believe. I wonder if anybody in this auditorium has ever been asked by a broadcaster what he wants to see on television. Well, if we're not going to talk to anybody but the mayor and the President of the Rotary Club as a broadcaster, how are we going to be so responsive to community need?

DUKAKIS: Mr. Whitehead, this will have to be a fairly brief answer.

WHITEHEAD: Well, I have to say I agree completely with your implicit assumption that broadcasters ought to talk to a wider section of their community. That's what our bill is all about.

DUKAKIS: All right. Let's go back to Mr. Goldberg for an additional question.

GOLDBERG: Mr. Whitehead, since the question has been raised, let's get it out on the table now. What is the relationship between the local station and its network and its community under your bill? How would this change?

WHITEHEAD: Our bill would encourage the station, the local station, to be a conduit, funneling the views of his community back up the line to the network corporate headquarters in New York so they could have a better understanding of the kinds of programming that might be needed.

GOLDBERG: Would the station have to blip out objectionable comment from the network if it came down the line?

WHITEHEAD: Of course, not. Of course, not. What we're trying is to get the stations to add additional points of view where they feel that the network doesn't present an adequate range. . .

DUKAKIS: I'm sorry, Mr. Goldberg, I'm sorry. We're going to have to go back to the Congressman. Congressman, another question or two.

VANDEERLIN: Mr. Whitehead, utilizing the logic of your bill, could I, as a Congressman, claim the right to be reelected if I'd make just a good-faith effort to make good on my promises?

WHITEHEAD: The judge, in that case, would be the citizens that are voting.

VANDEERLIN: Well, but the fellow running against me, should it be sufficient that he has to have me impeached before he can run against me? Because that's what your bill would do with a broadcast license.

DUKAKIS: A brief response, please, Mr. Whitehead.

WHITEHEAD: Well, I think a broadcast license is quite different from a public office.

DUKAKIS: On that note, I'm afraid I'm going to have to interrupt. Mr. Whitehead, thank you very much for being with us on THE ADVOCATES.

WHITEHEAD: Thank you.

DUKAKIS: Mr. Goldberg, another witness, please.

GOLDBERG: Well, I would hope that when Mr. van-Deerlin is going to be reelected, he will be judged by his community and by community standards on his broadcast record and not by a government agency. And to further illuminate this point, I'd like to call as my next witness Mr. Lee Loevinger.

DUKAKIS: Welcome to THE ADVOCATES, Judge Loevinger. Glad to have you with us.

GOLDBERG: Judge Loevinger is, as his title indicates, a former judge and an assistant attorney general. He was appointed by President Kennedy as an FCC Commissioner and served on the Commission between 1963 and 1968. He currently practices law in Washington, D.C. Now, Mr. Loevinger, what is the major problem in present broadcast license renewal procedures.

LOEVINGER: The major problem today is that the FCC is becoming increasingly concerned with the control of programming. The FCC has virtually taken charge of broadcast programming in this country to the point where they are making ridiculous decisions such as one of those mentioned by Dr. Whitehead, where they're telling you whether or not you can watch the Olympic Games, baseball games. Literally, this is the case. These things pour out week by week from the FCC, programming decisions.

GOLDBERG: Wasn't this the basic evil that the First Amendment was intended to avoid?

LOEVINGER: The First Amendment was passed because the men who wrote the Constitution were opposed to the control of mass media by means of licensing, precisely.

GOLDBERG: Well, I think we can agree that the licensing procedure is a potential tool of FCC control of programming. But is it actually used?

LOEVINGER: It is actually used in every element and every aspect of broadcasting. I remember one case when I was on the Commission when a man came in from Eugene, Oregon, which had two VHF stations, proposed a UHF licensee for a vacant channel. He proposed 70 percent entertainment, which he said would be classic movies, 30 percent educational, which would be lectures by the University of Oregon professors. The FCC said he doesn't meet our requirements because he doesn't have agriculture, weather, talk, discussion, cooking, religion, whatever; and so they sent him for a hearing, wouldn't give him a license.

GOLDBERG: You mean the community didn't complain about his . . .

LOEVINGER: Nobody asked the community. Has anybody from the FCC ever talked to you about what kind of programming you like?

GOLDBERG: Judge Loevinger, it's been suggested that one reason we should treat broadcasting differently from newspapers is the scarcity of outlets in broadcasting. Do you think that's an adequate rationale?

LOEVINGER: That's utterly inadequate. The moderator, inadvertently or otherwise, made an error when he said that there were 700 commercial stations. He probably meant 7000. There are today over 8000 radio and television broadcasting stations. Ninety-eight percent . . .

DUKAKIS: Judge Loevinger, let me just clarify that. I meant 700 television stations. There are, of course, thousands of . . .

LOEVINGER: There are something over 700 television stations.

DUKAKIS: I see. . . .

LOEVINGER: But how can 98 percent of the population of the United States get three or more stations; 70 percent can get six or more; and over 30 percent can get nine or more. There's only one city in the United States that has more than two newspapers. The scarcity argument actually falls before the facts.

GOLDBERG: But Judge Loevinger, it seems to me that we're stuck with licensing in the Communications Act. How can we minimize the dangers of licensing?

LOEVINGER: We can minimize the dangers by prohibiting the FCC from considering program content. We've got federal control of broadcasting in order to prevent interference by people on the same frequency. There is no necessary relationship between technological assignment of frequencies and control of broadcast programming. Government has no more business controlling broadcast programming than it does controlling newspaper content. This is what I'm in favor of. I don't care whether it's this bill or some other bill with the same principle. The principle of the bill that we are now discussing specifically prohibits FCC control of content of programming and of news, and that is the important and basic issue for the people of the United States. Do you want the government, this government or any government, controlling your news content.

DUKAKIS: Judge Loevinger, let's see what the congressional arm has to say about all of this. Congressman.

VANDEERLIN: Mr. Loevinger, do you watch much television? Would you call yourself a buff, sir?

LOEVINGER: No.

VANDEERLIN: You apparently think it could be improved then, do you?

LOEVINGER: I don't know anything that couldn't be improved, Congressman. Do you?

VANDEERLIN: Well, apparently, a lot of people in this country watch television a number of hours a day. I take it you're not one of them. Would you want to turn your back on any system which might permit the . . .

LOEVINGER: . . government to control it. Yes, sir!

VANDEERLIN: . . to permit broadcasters to do a better job.

LOEVINGER: Yes, sir. Just like the people who wrote the Constitution, Congressman.

VANDEERLIN: You, of course, agree that, with the exception of obscenity and libel and lotteries and incitement to riot, which obviously don't belong on the air, it's your view that broadcast license renewal should not be granted or denied or conditioned on anything broadcast or not broadcast.

LOEVINGER: Content of programming. Yes, sir, we have far less to fear from the errors of journalists and broadcasters than from monopolistic control by a government agency.

VANDEERLIN: By the same token, it's perfectly all right for a station out in Los Angeles that showed the same movie 26 times to show it a 27th time?

LOEVINGER: If they think that they can get anybody to watch it. As a matter of fact, I would watch television once in a while if they'd repeat some of the good shows.

VANDEERLIN: Well, they're doing it. What about "Jack, the Ripper" on Saturday morning when the kiddies are watching?

LOEVINGER: I don't know anything about "Jack, the Ripper."

VANDEERLIN: What about hand-gun advertising on children's programs?

LOEVINGER: I don't think they ought to be permitted to sell hand guns, and it's up to you, sir, in Congress, and your friendly liberal colleague, your friend and my friend, John Dingle, to prohibit hand guns.

VANDEERLIN: The bill that you are supporting tonight would deny the FCC the right to controls such as you're referring to.

LOEVINGER: Let's say this. It would give the government the same controls over broadcasting and its news that it now has over newspapers and its news.

VANDEERLIN: Well, let's talk about that station down in Jackson, Mississippi, a community with about 35 percent Black population - a station there whose manager was a member of the White Citizens' Council, who urged the citizens of Jackson to go arm in arm with the Governor up to Oxford to keep James Meredith, or "that nigger," as he called him, out of the University of Mississippi. Was it proper and fitting for the Commission to renew that station's license and wash its hands?

LOEVINGER: The Commission did not wash its hands. It gave it a one-year conditional license renewal, and one of the conditions was that they fire that manager.

VANDEERLIN: The Commission twice kept that station on the air, and that station would be on the air today with that management if your fellow Minnesotan, Judge Warren Berger, hadn't stepped in and forced the Commission to do its job and forced Lee Loevinger to do his job, while he was at it.

LOEVINGER: I beg to differ, sir. That's wrong. That's wrong. . . .

VANDEERLIN: I don't know how . . .

LOEVINGER: Congressman, your facts are simply wrong.

DUKAKIS: Congressman, let's let him respond.

LOEVINGER: We said that the one-year license, conditional license renewal, would have resulted either in a completely new kind of programming and management of that station or the revocation of that station before the hearing ordered by the Court even began. Actually, it broadcast for years under the court order relating to a hearing; whereas the whole thing would have been disposed of before it ever got to a hearing.

VANDEERLIN: Mr. Moderator, is there time for a question about a station up in Moline, Illinois, which promised 12 hours of local programming a week when it got its license, and after three years it came back for renewal. It hadn't put the first hour of local programming on the air, and the license was extended on grounds of, well, other stations in the community are just about as bad. Was that good faith?

LOEVINGER: No, I don't believe it was. But do you think that we ought to stop newspapers from publishing because you don't like what they publish?

VANDEERLIN: I think that the broadcasting of the United States is on bands and channels which are owned by the people of the United States, and the purpose of the Federal Communications Commission is to make sure that the public interest is served on those bands and channels.

LOEVINGER: I think the public interest is better represented, sir, by the Constitution of the United States than by the transitory judgement of seven people who happened to get onto the FCC.

VANDEERLIN: But you think that once the license applicant makes it into the magic circle and has his license, he should just stay there forever.

LOEVINGER: No, sir.

VANDEERLIN: Provided he doesn't run down the street with his clothes off.

LOEVINGER: No, as a matter of fact, this bill and the proposals for other similar bills before the Congress have nothing to do with keeping your license forever. We're talking only about one thing and that is about comparative hearings. Comparative hearings are not the way minorities and poor people and those that don't like programming get into the act. They do it by a petition to deny licenses. They get their hearing relatively easily, relatively cheaply. To get into the act here, you have to go hire a high-priced lawyer like Ed Morgan and pay millions of dollars . . .

VANDEERLIN: Would you tell that broadcaster he's going to keep his . . .

LOEVINGER: . . . and to have a financial statement in order to get into this kind of an act.

DUKAKIS: Congressman, you're going to have a chance to get back at Judge Loevinger in just a second. Let's go back to Mr. Goldberg for one additional question.

GOLDBERG: Well, it seems that the Congressman is concerned about fat cats and making the licensee at the broadcast station too secure, and if he is too secure that he'll ignore his public interest obligation. Do you feel that that's a problem?

LOEVINGER: It's just like the New York Times and The Washington Post. They are the most secure and among the richest newspapers in the country. Do people think that they are complacent and fat cats? Actually, what we now have is a renewal roulette, which means that the licenses are put up for grabs. As a matter of fact, Commissioner Johnson, himself, has described the comparative process as equivalent to pulling names out of a hat. But in order to get into this game, you have to show you've got financial worth, that you can start a television station. It's a game for millionaires. It isn't a game for poor people. In order to get into the renewal roulette game as it's now played, you've got to have a couple of million dollars and an expensive Washington lawyer, and I don't think that ought to be the way it's run.

DUKAKIS: All right, Judge, I want to give the Congressman equal time.

VANDEERLIN: So, what you're supporting instead is a system by which the present structure of the broadcasting industry, about which the viewers don't give a hoot, will be protected; but you won't do a thing about what they see on the air.

LOEVINGER: No, sir. What I'm supporting is enactment of the First Amendment in the Communications Act, Congressman. I don't want the FCC saying, "We're going to make these judgements on the basis of whether we like or dislike your program."

DUKAKIS: Gentlemen, on that note, I think I'll have to excuse Judge Loevinger. Thank you very much. Thanks for being with us. All right, Mr. Goldberg.

GOLDBERG: Thank you, Mr. Loevinger, for a very fine statement. Let's get back to the founding fathers and the freedoms that they guaranteed for us in the Constitution. They were careful to point out, as James Madison wrote, that what was to be feared more than violent and sudden usurpations of freedom was the gradual and silent encroachment on it. And in the name of the public interest, the FCC has been the agent of just such gradual and silent encroachment on broadcast freedoms; and the public interest demands that the scope of its power to control programs be curbed.

DUKAKIS: Thank you, Mr. Goldberg. For those of you at home who may have joined us late, Mr. Goldberg and his witnesses have been arguing in favor of the Administration's proposal to revise and change the method by which we renew broadcast licenses. Now, we're going to turn to the case against. Congressman vanDeerlin, the floor is yours.

VANDEERLIN: The argument for easier broadcast license renewals is based on a false premise. We're told, and you've heard this evening, that new laws are needed to protect the stability of the broadcast industry. Well, this is just nonsense. Broadcasters, in the main, are doing very well financially. A few realize as much as 100 percent a year on their investment.

So broadcasters don't need this bill, and, believe me, neither do you. It would padlock an important part of the public domain, the very airways that belong to all of us. It would place private profits above the public interest. It would effectively erect a "Do not enter" sign across the door to fuller opportunity for racial minorities and for women. But perhaps most outrageous of all, it would deprive you, the viewer, of any say whatever over what comes across that television screen that you're watching right now.

You know, the Federal Communications Commission is supposed to be the watchdog of the industry. Well, if this bill passes, that watchdog will become a lap dog, in the lap of the industry.

As our first witness on the negative side this evening, I call the Honorable Nicholas Johnson.

DUKAKIS: Welcome to THE ADVOCATES, Commissioner. Nice to have you back.

JOHNSON: Thank you.

VANDEERLIN: Mr. Johnson is a member of the Federal Communications Commission. Mr. Johnson, the First Amendment has been paraded back and forth across this stage tonight like so many tin soldiers. Now, if you're on this side of the argument, I guess you must be against the First Amendment. Is that right? Are you against free speech?

JOHNSON: Well, that's what they'd have you believe. I must say I was very impressed with the report of how vigorous the FCC has been during my tenure. I scarcely recognized the agency.

Well, I think we should make very clear at the outset the Supreme Court has ruled in this area, has made unequivocally clear that the First Amendment rights are not those of the broadcasters'. The First Amendment rights are those of the audience. The First Amendment rights are yours and mine to have an opportunity to present points of view that represent our

point of view, to have the opportunity to hear the full range of diversity that is available in our land, unencumbered by corporate censorship or pressure from the executive branch. That's what the First Amendment is about.

VANDEERLIN: Well, on the seven years that you've been on the Commission, Mr. Johnson, you've been pretty close to the action. What's this bill doing before the country? What brought it about, in your opinion?

JOHNSON: Well, a variety of forces. I think one would be less than candid not to at least make some reference to the fact that this administration has been engaged in an effort to control the content of the commercial and public broadcasting stations of this country. This legislation was proposed by Dr. Whitehead in a speech in which he talked about elitist gossip and whatnot on network television and news and how efforts should be made by local stations to stomp out that kind of criticism of the administration - the same kind of label that was applied to The Washington Post's early reports of the Watergate events. That's what the administration is trying to do with the bill. What the industry is trying to do is to get the kind of economic protection that Commissioner Loevinger spoke of. As Variety Magazine once editorialized, the average American confronted at gunpoint with a demand for your money or your life would gladly offer up the money. Not so, the American broadcaster. Asked to turn over your First Amendment rights and mine to the executive branch in exchange for license renewals for a five-year term and virtually automatic renewal, he gladly offers up his First Amendment rights. That's what the broadcasting industry is about. And these two forces have met, and they have produced this package of legislation.

VANDEERLIN: Well, ideology apart, is the industry shaky?

JOHNSON: That is really laughable. I mean, in the last 10 or 15 years, we've had something like 26,000 license renewals. All right? Out of those, there have been 0.5 percent that have been subject to a

petition to deny, 0.2 percent that have been subject to a challenge. Of those that have been successful, where the license has actually been lost, we're now talking about a fraction of one percent that constitutes 0.0037 percent of the licenses.

VANDEERLIN: Dr. Loevinger would probably like to know where you got that information.

DUKAKIS: Congressman, I'm going to have to turn to Mr. Goldberg to find out, if we can. Mr. Goldberg, some cross-examination, please, of Commissioner Johnson.

JOHNSON: The answer to that question, if you're curious, is the same as Congressman vanDeerlin's source, the FCC.

GOLDBERG: Federal Communications Commission.

DUKAKIS: Whatever we can say about it, gentlemen, I guess it does have its statistics.

GOLDBERG: It has the statistics, yes. If the industry is not so shaky, how come they were thrown, as you would have us believe, into a complete snit by having Mr. Whitehead talk about ideological plugola and elitist gossip?

JOHNSON: I'm surprised that you, of all people, would raise that issue, but I'm delighted that you have, and I'm delighted to address it at length.

GOLDBERG: I didn't raise the issue.

DUKAKIS: Please make it brief, if you would, Commissioner.

GOLDBERG: Yes.

DUKAKIS:

JOHNSON: I've been told I'm not supposed to talk about this at all; but since you've asked me, I gather I can.

DUKAKIS: Briefly.

GOLDBERG: Yes, briefly.

JOHNSON: No, this came at a time when - I mean, the Vice-President Agnew speech was given prior to what turned out to be the largest gathering of American citizens in Washington to petition their government ever in the history of the nation. Agnew went on, made his speech . . .

GOLDBERG: I'm going to have to interrupt

JOHNSON: The networks did not cover that live. . .

GOLDBERG: Please, please.

JOHNSON: This is the answer to your question.

GOLDBERG: Well, it's not the answer to the question.

JOHNSON: Well, it most certainly is.

GOLDBERG: If the industry is . . .

JOHNSON: The network . . .

GOLDBERG: If the industry is secure in its First Amendment rights, it shouldn't make a damn bit of difference to them what Mr. Whitehead said.

JOHNSON: Network newsmen, at the time, acknowledged that they should have covered that demonstration live - the largest gathering in the history of the country, some of the best entertainment ever in the history of the country. They did not cover it. . .

GOLDBERG: We're back to demonstrations . . .

JOHNSON: And they did not cover it . . .

DUKAKIS: Gentlemen, I'm a little confused. Let's have a question from Mr. Goldberg and see if we can get an answer.

GOLDBERG: I'm confused. I'm confused too.

JOHNSON: Dr. Whitehead's speech came at a time when the administration . . .

GOLDBERG: Obviously . . . Obviously, Commissioner Johnson. Obviously, Commissioner Johnson, you like regulation, and you like licensing. You think it's a good way for the public to get its voice in the media. Why not license newspapers?

JOHNSON: Quite the contrary. I'd be delighted to abolish the FCC. But until we do . . .

GOLDBERG: That's not the question.

JOHNSON: But until we do . . .

GOLDBERG: Why not license newspapers?

JOHNSON: There are a lot of historic and social and legal reasons, as you're perfectly well aware.

GOLDBERG: What?

JOHNSON: For one thing, there is a limited amount of spectrum . . .

GOLDBERG: Well, now wait a minute. . .

JOHNSON: There is not yet in this country a limited amount of newsprint.

GOLDBERG: In Los Angeles, we have approximately nine television stations and one newspaper. Now, how many more television stations do we need in Los Angeles before you will give them the same freedom that you give to the newspaper in Los Angeles?

JOHNSON: As a practical matter, there are a great many more than one newspaper in Los Angeles. New newspapers can spring up whenever they can, you know, put together a printing press . . .

GOLDBERG: Oh, they're then springing up all over the place . . .

JOHNSON: Suburban newspapers, indeed they are. . .

GOLDBERG: Suburban newspapers.

JOHNSON: Underground newspapers, journals, and reviews . . .

GOLDBERG: Underground newspapers.

JOHNSON: All kinds of newspapers. No, there's an increase in the number of newspapers. The point is . . .

GOLDBERG: How many national news services do we have in this country, news wire services?

JOHNSON: Two.

GOLDBERG: Two. Well, that's a scarcity. Why not license them?

JOHNSON: Because the scarcity is not imposed as a result of a limited public resource, as you well know. You can increase the number of newspapers. There is no way that you can put another television station into the Washington, D.C. or Los Angeles or New York City.

GOLDBERG: There isn't? There are channels available in Washington, D.C.

JOHNSON: There is no way . . .

GOLDBERG: There are two UHF channels available.

JOHNSON: There is no way you can put in more channels than the number that have been assigned to it, as you know.

GOLDBERG: Well, there are unused channels in Washington, D.C. Now, I think we can both agree that the Commission can use its licensing power to influence programming, that an FCC commissioner said recently that any FCC pronouncement against a particular kind of programming has to pall over the entire industry, and such regulation creates a chilling effect of enormous proportion on all forms of broadcast discretion. Who was that commissioner?

JOHNSON: I presume that it was me . . .

GOLDBERG: It was you. Of course, it was you.

JOHNSON: May I have an opportunity to say more about it?

GOLDBERG: Now, I have a question. If you'll give me an opportunity to ask my question.

DUKAKIS: No, Mr. Goldberg, let's let Commissioner Johnson respond to that as briefly as he can.

JOHNSON: Yeah. Now . . . He can ask . . . What do you want to ask?

GOLDBERG: Well, if it's bad for the FCC to speak out and use its "Big Brother" power against programs it doesn't like, isn't there the same danger for speaking for programs that it does like or that you like?

JOHNSON: I'm happy to address that. I think that the FCC should not involve itself with the content of programs for the same reason the President of the United States, the Vice-President, and Dr. Whitehead, should not involve themselves in the content of programs, and I've consistently held to that position.

GOLDBERG: But let's . . .

JOHNSON: I do think, however, if I may complete my answer, that the whole theory underlying the American broadcasting system is that there will be local service of the kind that you purport to be interesting. If there is to be such local service, the FCC or somebody has got to require a minimal amount of time that will be devoted to that local service. . .

GOLDBERG: And if all . . .

JOHNSON: . . . without saying what goes in it.

GOLDBERG: And if all broadcasters provide that minimal amount of time so that you have uniformity, won't you look beyond the mere quantity into what's being provided of all the public affairs . . .

JOHNSON: I just stated . . .

DUKAKIS: A very brief answer, please.

JOHNSON: I just made it very clear to you that I will not, that I am interested in categories. I'm not interested in content.

DUKAKIS: Gentlemen, let's go back to Congressman vanDeerlin for a quick question.

VANDEERLIN: Mr. Johnson, you've often been a minority down there at the Commission. Does that prevail on this issue too? How do your colleagues feel about the Whitehead bill?

JOHNSON: Well, as a practical matter, as industry supportive as the FCC has been over the years, certainly for the time I've been there, even the FCC doesn't support this particular bill. It does support industry protections through legislation, but not this bill, which it believes to have been . . . drafted and not suitable for the purpose and . . .

DUKAKIS: Mr. Goldberg, one last question, please. One last question.

GOLDBERG: Commissioner Johnson, you stated that broadcasters are really agents of the government for First Amendment purposes. Does this mean that they have no First Amendment rights, that they are subject to the whim of what a particular FCC thinks they should program or should not program?

JOHNSON: No, of course, not. It's not I who said that; it's the Supreme Court of the United States. . .

GOLDBERG: Well, you said it just then.

JOHNSON: What they meant, when they said it - I was quoting from the Court - what they meant when they said it is that the stations have an obligation. There is no right of private censorship in a medium not open to all. That's a quote from the Supreme Court's opinion. They're saying the First Amendment right belongs to the viewers and watchers, to those who wish to participate by contributing local talent and ideas and whatnot to the programming of the local station.

DUKAKIS: Gentlemen, I'm sorry, I have to interrupt. Commissioner Johnson, thank you very much.

JOHNSON: Thank you.

DUKAKIS: Congressman, another witness, please.

VANDEERLIN: Our second witness for the negative, I call Edward P. Morgan.

DUKAKIS: Mr. Morgan, nice to have you with us.

VANDEERLIN: Mr. Morgan is a prominent communications attorney with a little more than a quarter century of practice before the Federal Communications Commission. But you're also a television station owner, aren't you, Mr. Morgan? What are you doing here on this side of the argument?

MORGAN: Well, it may not be easy by some standards, but I happen to believe that I'm on the right side of the argument.

VANDEERLIN: Well, obviously, I'm not contesting that with you, but I wondered if this bill wouldn't serve to enrich you as a station owner.

MORGAN: Perhaps in one sense. But to be responsive, Congressman, to the point you're making, in my judgement, this bill is so fraught with serious evils that if I responded fully we'd be here all night. . .

VANDEERLIN: Well, what's the worst thing about it, then?

MORGAN: The worst thing about it is, contrary to the suggestions made, is that it virtually eliminates public participation in the renewal process. And if there has been any great meaningful development of the law in the past decade, it has been the right of the public to participate in great decisions of administrative bodies.

VANDEERLIN: It is this participation that has upset the industry.

MORGAN: Well, those who own stations are upset about the possibility that they might lose them in the presence of entities able to provide better service. Another great evil of this bill is the fact that it freezes the face of American broadcasting and makes it unchanging and unchangeable, and that is bad.

VANDEERLIN: You think that in the present licensing system, there is a healthy opportunity to improve the product.

MORGAN: There always is so long as there is an opportunity open for public spirited people to come forward and say, "We believe we can do a better job, and all we ask is the opportunity to prove it in a hearing."

VANDEERLIN: You were representing an applicant who said they could do a better job in that bizarre operation out in Los Angeles. I think we have about a minute left, and I wish you'd briefly tell us that Los Angeles story.

MORGAN: Well, that story hurts me a little, Congressman. Four years ago, the hearing examiners determined that the challenging group were far better qualified for the station, and the Commission has been sitting for four years trying to render a decision.

DUKAKIS: Mr. Morgan, a hearing examiner, I take it, is somebody who is an employee of the Commission and hears the case first.

MORGAN: They now call them administrative law judges.

DUKAKIS: And then the case goes up to the full Commission?

VANDEERLIN: And what's happened since that bad report came out on the . . .

MORGAN: Well, quite interestingly, I had to go to the Court of Appeals for a writ of mandamus to get the Commission to act, and only today, the court gave the Commission 14 days in which to make up its mind.

VANDEERLIN: Well, then what you're telling us is that in Los Angeles, after the action was taken, the judgment rendered by the hearing examiner, the Commission still hadn't moved in four years.

MORGAN: That's correct.

VANDEERLIN: In what way did this threaten the license of the operator which had been found unsatisfactory.

DUKAKIS: A brief answer, please, Mr. Morgan.

MORGAN: He continued to make about five million dollars a year on the operation, all that time.

DUKAKIS: All right, let's go over to Mr. Goldberg for some questions.

GOLDBERG: Mr. Morgan, I, too, am surprised to see you on this side of the argument because, according to my information, you argued before the Federal Communications Commission on license renewal procedures and said that "in so far as a great commission of this sort is concerned, it should not play the numbers game, these quotas for programs. It should not engage in what is kind of a negative censorship. It demeans the Commission. If the viewers find no fault with the performance, then renew the license." Was this your position?

MORGAN: Precisely, and . . .

GOLDBERG: Isn't this the position of our bill?

MORGAN: Oh, your bill doesn't begin to approach that, Mr. Goldberg.

GOLDBERG: Mr. Morgan, wouldn't our bill eliminate the kind of numbers that you felt would lead to negative censorship and would demean the Commission?

MORGAN: What your bill would do, in that area, is but a small part of what is wrong with your bill.
. . .

GOLDBERG: But you supported that.

MORGAN: And interestingly, you have suggested that all these things the FCC is supposed to have done by setting quotas and numbers and so on; Mr. Goldberg, that isn't correct. All the FCC has ever done has been in the area of public service programming, where it has used a percentage factor . . .

GOLDBERG: But you opposed these . . .

DUKAKIS: Mr. Goldberg, let Mr. Morgan respond.

MORGAN: . . and if they dropped below that, to determine if they should look into it further. So your whole premise is in error, sir.

GOLDBERG: But you opposed the use of these percentages because you believed it would be negative censorship, or did you change your mind, sir?

MORGAN: Oh, I think the utilization of firm, hard percentages is not the correct way to evaluate the performance of the licensee. That should be determined by the public participation in it because the airways belong to the public.

GOLDBERG: And the public participates through the competing applications that you represent before the FCC. And according to my records, that of 15 pending competing applications, you, sir, are the counsel for nine of the challenges. And as a broadcaster, I would say that you are more secure than most broadcasters 'cause

all you have to do is don't file a competing application against yourself.

MORGAN: I won't.

DUKAKIS: That's a long question. How about a reasonably concise answer?

MORGAN: Beg your pardon?

DUKAKIS: I say it's a long question. How about a brief answer?

MORGAN: I didn't get the question. What was it?

GOLDBERG: Mr. Morgan, I think you did get the question.

DUKAKIS: Is it a fact that you represent nine out of 15 competing applicants?

MORGAN: Oh, sure. I'm sorry I don't represent all 15.

GOLDBERG: It's quite a lucrative business.

DUKAKIS: Mr. Goldberg, another question, please.

GOLDBERG: What kinds of stations are being challenged? Are these the bad apples, the bad broadcasters?

MORGAN: No, I don't . . .

GOLDBERG: Are they the ones that are owned by newspapers, like The Washington Post in Florida.

MORGAN: I don't know, Mr. Goldberg. In the case the Congressman mentioned, the hearing examiner found that the incumbent had a miserable record of serving the public interest. Now, that's one type of station.

GOLDBERG: What about the newspaper-owned stations, like The Washington Post stations in Florida that you're representing in a competing application?

MORGAN: Well, that case is pending, and I don't intend to tell on this program why I feel that our case there is a strong one, but I can assure you there were sound reasons . . .

GOLDBERG: Do you think that newspapers should own broadcast stations?

DUKAKIS: Mr. Goldberg, let's let him finish his answer.

MORGAN: I'm through.

DUKAKIS: All right.

GOLDBERG: Should newspaper publishers own television stations, as a general rule?

MORGAN: Oh, I don't think there should be a rule per se that they shouldn't own them, but I would say this, that the Supreme Court in its construction of the First Amendment said the American people are entitled to their news and intelligence from diverse sources; and if there were a choice, I were prefer that the newspaper be under one ownership and the television station under another.

GOLDBERG: And you do this through the renewal process.

MORGAN: Well, I think in the renewal process, you should have an overall evaluation under all the relevant criteria.

GOLDBERG: And in this sense, you disagree with Commissioner Johnson who said it is far better to provide consistent national standards for station ownership by general rule-making than to **evolve** them in a case-by-case happenstance . . .

DUKAKIS: Mr. Goldberg, let's let Mr. Morgan make a brief response. Do you agree or disagree with Commissioner Johnson on that?

MORGAN: I think the only decent literature we've had from the FCC has been from Nick Johnson. I agree with him.

DUKAKIS: All right, let's go back to Congressman vanDeerlin. Congressman, just one more question.

VANDEERLIN: Do you know of instances, Mr. Morgan, in which the opportunity to challenge a license, either by petition to deny or an applicant for a channel, where this has improved the product of a station?

MORGAN: I would say, and I say this very sincerely, that I think the greatest improvement in American television has occurred in about the last seven or eight years when the broadcasters have come to realize that a challenger may come along and have the potential of taking that station away from him. Yes, indeed, it's improved broadcasting.

DUKAKIS: All right, Mr. Goldberg, an additional question, please.

GOLDBERG: Yes. Since you are agreeing with Commissioner Johnson on the fact that newspaper ownership should be done on a nationwide general rule-making basis, you also agree with him that the comparative hearing, which you rely on in competing applications, is an amorphous glob, and you might as well draw numbers out of the hat in choosing licensees?

MORGAN: Well, the way the Commission's been conducting a lot of hearings, it's an amorphous glob, but if they would conduct them properly and expeditiously and resolve them in reasonable time limits, it wouldn't be a glob.

DUKAKIS: Gentlemen, I'm afraid I can't allow any more answers or questions. Thank you very much, Mr. Morgan. Congressman. A brief word, Congressman.

VANDEERLIN: Well, I think our witnesses have served to set the issues in focus. They've made it clear that what we need in broadcasting is more competition and that the Whitehead bill is a step away from more

competition. They've set the record straight on the First Amendment, showing that the only First Amendment protection the Whitehead bill offers is the opportunity to carry news or not to carry news. And I don't think that that's the kind of television that's going to serve better the American people.

DUKAKIS: Thank you, gentlemen. That completes the cases on both sides. Now it's time for our advocates to summarize their cases. Congressman van-Deerlin, your summary, please.

VANDEERLIN: I hope that the stakes in this contest have been made very clear because this is about the only chance you may have to hear this subject discussed in depth on any television.

A small self-interest group is trying to lock up the television channels of America for their own permanent, personal, private use. This is understandable. We don't punish cats for chasing birds. But it's my job as a congressman to help see that the public airways that belong to the people are used in the people's interest and not for private enrichment.

Now, a landmark decision lies ahead. I hope that you will all play a part in making that decision. First, of course, I hope you will mail your votes to this ADVOCATES program. But I hope you'll do more than that. I hope you'll let your congressman know how you feel, that you want to see American broadcasting maintained in the highest American tradition, and that's open competition. Thank you.

DUKAKIS: Thank you, Congressman. All right, Mr. Goldberg, your summary now, please.

GOLDBERG: We've heard a lot about standards this evening, but I think the worst standard to apply in license renewal is the double standard; and that is, you are in favor of government regulation for programs that you don't like, and you're not in favor of it for programs that you do like.

Well, the mission of our bill and the purpose of our bill is to take the tools of government censorship away from the FCC so that this double standard cannot be applied and to insulate the broadcaster so that he can criticize the government without fear of retaliation from the renewal process. We've argued for insulating the broadcaster from excessive government intervention. There's no reason at all and there's no reason that's been shown tonight by my opponent why the broadcast press should be any less free than the print medium. And the Administration bill takes an important step in this direction.

In our system, we forbid the government from dictating what the people should see and hear, and the opponents of our bill betray a fundamental lack of trust in your judgement to decide what you should see and hear free from government's heavy hand.

DUKAKIS: Thank you, Mr. Goldberg, and thank you, gentlemen. We've reached that point in our program this evening where we ask you those of you who are with us in Washington at the auditorium of the Department of Health, Education, and Welfare, and the many thousands of you watching us at home, to enter and participate in this debate with us. What do you think? Should Congress adopt the Administration plan for broadcast license renewal? Send us your "yes" or "no" vote on a letter or postcard, and mail it to THE ADVOCATES, Box 1973, Boston 02134. Your views are important. The proposal that we debated tonight is now in legislative form, and it will be under active consideration by the Congress in the weeks ahead. How do you want them to act? Write us and we will tabulate your views and make them known to the members of Congress, to the Federal Communications Commission, and to others concerned with this question. So, remember that address. It's THE ADVOCATES, Box 1973, Boston 02134.

We receive many requests for transcripts of our program. If you would like a complete transcript of tonight's debate, please send us \$2.00, and mail it to that same address. It's THE ADVOCATES, Box 1973, Boston 02134. Please allow three weeks for delivery, and be sure to give us your name and return address so that we can send it to you.

Recently, THE ADVOCATES debated the question, "Should Congress establish an independent Consumer Protection Agency?" Of the more than 3200 viewers who sent us their votes, 69 percent said, "Yes, Congress should establish a Consumer Protection Agency." And 31 percent said, "No, such an agency should not be created."

This program marks the beginning of our special summer season. Starting next week at this same time, the Public Broadcasting System will repeat the best of THE ADVOCATES shows of the recent season. So, let's look ahead to next week's program.

VIDEO TAPE:

DUKAKIS: And now, with special thanks to our advocates and to their very distinguished witnesses, we conclude tonight's debate.

ANNOUNCER: THE ADVOCATES, as a program, takes no position on the issues debated tonight. Our job is to help you understand both sides more clearly.

This program was recorded.