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THE OFFICE OF TELECOMMUNICATIONS POLICY AND BROADCAST  
ISSUES: A CASE STUDY OF MEDIA-STATE INTERACTION

*University of Pennsylvania*

Ph.D. 1981

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THE OFFICE OF TELECOMMUNICATIONS POLICY AND BROADCAST ISSUES:

A CASE STUDY OF MEDIA-STATE INTERACTION

JAMES ROBERT MILLER

A DISSERTATION

in

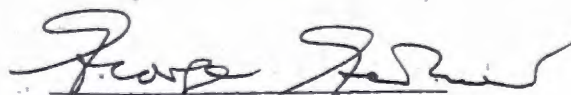
COMMUNICATIONS

Presented to the Graduate Faculties of the University of Pennsylvania  
in Partial Fulfillment of the Requirements for the Degree of Doctor  
of Philosophy.

1981



Supervisor of Dissertation



Graduate Group Chairperson

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1981



In memory of  
Frank Stiles and Don Marshall,  
student and teacher

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## CHAPTER I

### STUDYING THE OTP: THE PROBLEM AND ITS INVESTIGATION

This is a report of an investigation of the U.S. Office of Telecommunications Policy (OTP) in its roles as presidential adviser and advocate and national policy planner. The study examined the OTP's historical development, its performance during the 1970-1978 period, its abolition and the transfer of some of its authority to the National Telecommunications and Information Administration (NTIA). The study focused primarily upon the OTP's activities pertaining to broadcast-related telecommunications.

President Richard Nixon officially founded the Office of Telecommunications Policy by executive order in September 1970.<sup>1</sup> In 1978 President Jimmy Carter abolished the OTP and replaced it with the NTIA.<sup>2</sup> ~~Located in the Executive Office of the President, the OTP had~~ an initial staff of about 50 and an annual budget of some \$2 million.<sup>3</sup> The OTP would play three essential roles:

1. "It would serve as the President's principal adviser on telecommunications policy, helping to formulate governmental policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities... The new Office will enable the President and all governmental officials to share more fully in the experience, the insights, and the forecasts of government and nongovernment experts.
2. The Office of Telecommunications Policy would formulate policies and coordinate operations for the federal government's own vast communications systems...
3. Finally, the new Office would enable the executive branch to speak with a clear voice and to act as a more effective partner with both the Congress and the Federal Communications Commission..."<sup>4</sup>



The OTP thus centralized authority for executive branch management of federally owned telecommunications systems and assumed responsibility for the President's statutory telecommunications obligations. More importantly, the Office of Telecommunications Policy was both the first formal, fulltime representative of the President in federal telecommunications regulation and an initial step in the direction of, long-range planning of national positions on domestic and international telecommunications issues. In these two roles the OTP was heavily involved in matters concerning the regulation of broadcasting.

Broadcast regulation is an especially important locus of relations between telecommunications industries and the federal government, since it bears on the operation of the most ubiquitous and perhaps most influential media of mass communication, radio and television. Long characterized by stability, relations between such dominant broadcasters as the networks and certain regulatory authorities including the Congress and the Federal Communications Commission (FCC), had promoted conditions favorable to both powerful groups. At about the time the OTP was established, various forces, such as innovative technology, had begun to disrupt these relations. Concurrently, the growing complexity and socio-economic significance of telecommunications, including such broadcast-related forms as cable television, demanded ever more close and cooperative relations between elites in industry and government. The expert planning capability represented by the OTP and its prestigious location in the Executive Office of the President constitute an important instance of attempted cooperation. The OTP's involvement with policy related to broadcast regulation, however,



generated a great deal of controversy which may have actually constrained the OTP's effectiveness and contributed to its early demise. Although the OTP was abolished, there remained continued support for its mission as federal telecommunications manager, presidential adviser and advocate, and national policy planner. The National Telecommunications and Information Administration (NTIA) assumed these latter two roles after the OTP was terminated.

This is, therefore, a case study in relations between electronic mass media and the state in the arena where "public" policy is made and telecommunications regulation is carried out. The study presents an analytical approach to such policy interaction and applies it to the documented record of the OTP's involvement with broadcast-related issues. Study of the OTP is significant for at least two reasons. First there is the OTP's uniqueness as the first official presidential adviser and advocate for telecommunications regulation and as the first formal entity charged to plan long-term national telecommunications policy. Second, the OTP is significant as an indicator of power relations among established and emerging actors, because its founding partly responded to the rise in such factors as new technology capable of reordering industrial patterns in communications. The OTP experience can point to future trends in national policy interaction in the increasingly important area of telecommunications.

The design of this study has three general parts. First is the presentation of data collected on the historical development of the Office of Telecommunications Policy, its performance for major broad-

cast-related telecommunications issues between 1970 and 1978, and its abolition and the transfer of its policy planning authority to the NTIA. The second part synthesizes an analytical approach to the OTP from literature in communications, sociology and political economics, especially that bearing on the federal regulation of electronic mass media. Third is an assessment of the OTP's development, performance and abolition that determines the degree of its effectiveness, the reasons for its controversiality and brief life, and finally, what the OTP experience portends for the planning of future national telecommunications policy.

Documentary evidence was the principal data source for the study. Information was also collected through personal interviews. Four types of documents were gathered and studied. Published news stories, commentaries and editorials appearing in the trade and general press, mostly during the 1969-1978 period, were identified through the use of standard indices and citations. Broadcasting magazine, a publication of record for that industry, was reviewed for the entire period. Federal government publications, including hearings transcripts and special reports were found and examined. Publications of the Office of Telecommunications Policy itself, such as staff reports, presentations before Congress and press releases were obtained from the OTP. Finally, the academic, legal and quasi-popular research literature in the form of journal articles, pamphlets and books was searched.

A second source of information used in the study was interviews with knowledgeable informants. Four individuals who filled top-level



positions relevant to the OTP were interviewed. They are Werner Hartenberger, then legal counsel to FCC Chairman Richard Wiley, who was familiar with the FCC's actions concerning the deregulation of radio; Walter Hinchman, chief of the FCC's Common Carrier Bureau and formerly assistant OTP director for domestic communications; John Eger, then OTP acting director; and Dr. Clay T. Whitehead, founding director of the OTP. Whitehead's interview was the most extensive and is explicitly cited in the text. The others were most informative for background purposes. Notes were taken during the Hartenberger, Hinchman and Eger interviews. Most of Whitehead's was tape-recorded, and notes were taken on the remainder.

Contact was also made with other key individuals. For example, Bernard Balmoth and officials of the Screen Actors Guild (SAG) provided useful personal and documentary information on their role in the TV-reruns issue. A telephone discussion with the executive director of the Association of Maximum Service Telecasters (AMST) elicited legal documents and articulation of the lobby group's position on the VHF drop-in issue.

In constructing the record of OTP's performance, effort was made to check factual details with more than one source. A report in the trade press on an OTP encounter with Congress, for example, might be checked by reference to the public record available from a congressional office or by examining OTP material. Major published work on the OTP, reviewed in the following section, provided an empirical beginning for the study.

### Previous Research on the OTP

Most writing about the OTP appeared in the press. The main body of systematic research on the Office of Telecommunications Policy comprises nine publications, one article of which came out twice in nearly identical form.<sup>5</sup> All were published during the OTP's existence. Three are essentially descriptive accounts; two assess aspects of the OTP's performance or recommend operational changes better to meet policy objectives; and three are critical of either the idea of an Office of Telecommunications Policy or the actual organization.

Gumpert and Hahn's "Historical and Organizational Perspective of (six) OTP" appeared in the Educational Broadcasting Review roughly two years after the founding of the OTP.<sup>6</sup> This rather cursory article about OTP development and early performance draws heavily on another piece, "OTP Speaks for the President-And Hears Some Static," by Bruce E. Thorp, published in the 13 February 1971 issues of the National Journal.<sup>7</sup> Examining the first five months of the OTP's operation, Thorp provides useful information on high-level OTP executive personnel and offers insights into the OTP's mission as the organization's leaders then conceived it. His observations are presented around the notion that the OTP had "reached the stage of awkward adolescence and (was) struggling for acceptance as a mature member of the federal executive family."<sup>8</sup> In late 1977 Manny Lucoff's "Telecommunications Management and Policy: Who Governs?" was published as part of the Journalism Monograph series.<sup>9</sup> Lucoff provides a history of telecommuni-



cations growth in government and industry and reviews the search for a centralized federal agency for national telecommunications policy. Selecting events from the 8-year OTP experience, Lucoff concludes that the policy adviser and planner became "perverted politically"<sup>10</sup> by the Nixon White House. Lucoff offers the undeveloped assertion that no single organization can successfully plan national telecommunications policy; he urges such authorities as the White House, Commerce Department, the FCC and Congress to take the long-term view on telecommunications issues.

Three publications identify difficulties encountered by the OTP and put forward ways of easing them. Hearings were held in 1975 by the House of Representatives communications subcommittee on the proper role of the OTP in national policy planning. The resultant report questions whether the OTP is the optimal structure to fulfill its policy responsibilities.<sup>11</sup> Suggesting some explanations for the OTP's controversiality and by-then apparent lack of policy-planning success, the subcommittee report urges some rather simple remedies, such as appointment of a fulltime OTP director. The report acknowledges the need for a centralized policy planner for telecommunications in the executive branch, and proposes several possible future courses for the OTP. David Appleman authored two nearly identical articles that offer advice to the in-coming Carter administration. "The OTP and Regulatory Alternatives" was published in the January-February 1977 issue of Public Telecommunications Review, and "U.S. Telecommunications Policy in the Executive Branch" appeared in Telecommunications

Policy for June 1977. These articles are chiefly useful for their assessment of the OTP's historical legitimacy and their refutation of the charge that the FCC, prior to the OTP, was a politically independent agency in carrying out telecommunications regulation.

Other publications are critical of the OTP and especially its relationship with the Federal Communications Commission. Edwin A. Spievack's "Presidential Assault on Telecommunications,"<sup>12</sup> actually published before the OTP had been established, argues against the new policy planner and in favor of "a properly staffed and financed FCC."<sup>13</sup> Then legal assistant to an FCC commissioner, Spievack calls for protection of the historical prerogatives of the Commission. He warns against the "power, prestige and influence of the President"<sup>14</sup> which might overwhelm FCC administrative proceedings or simply evade them altogether in seeking presidential telecommunications policy objectives. Spievack also reviews historical and statutory aspects of executive branch involvement in telecommunications regulation and policy making. Critical of Nixon administration media politics and their manifestation in OTP activity are the Network Project's "Office of Telecommunications Policy: The White House in Domestic Communications"<sup>15</sup> and Roscoe L. Barrow's "OTP and FCC: Role of the Presidency and the Independent Agency in Communications."<sup>16</sup> The Network Project Notebook includes a short historical sketch of the executive branch in governmental and private-sector telecommunications, a brief profile of OTP policy action for three issues (domestic satellites, public broadcasting and CATV) and appendices on OTP personnel and organization. Like Spievack the Network Project argues that



the FCC is the true "public's representative"<sup>17</sup> in national telecommunications policy planning. Barrow, too, is concerned that by 1974 the OTP had "encroached upon or even pre-empted"<sup>18</sup> FCC regulatory authority, and that the OTP's advocacy of presidential positions on matters pertaining to the electronic mass media had created the spectre of executive-branch "thought control."<sup>19</sup> Preferable to the OTP for Barrow is an independent board to advise the President on telecommunications, one that would "assure objective discussion on the merits"<sup>20</sup> and reduce partisanship in national policy planning.

Literature on the Office of Telecommunications Policy lacks a comprehensive review of major policy issues on which the OTP acted. There is a particular need to examine major broadcast telecommunications issues, given their significance for the electronic media of mass communication and the extent of controversy stirred up by the OTP's involvement with them. This controversiality and its implications for the effectiveness of the OTP as policy adviser, advocate and planner have not been sufficiently analyzed, especially from a perspective sensitive to the historical and institutional dimensions of media-state relations for telecommunications policy. The absence of such investigations inhibits a clear understanding of the ramifications of the OTP case for future patterns of telecommunications policy interaction and the substantive policy that results. The present study attempts to fill these gaps.

The balance of this report is as follows. Chapter II traces the historical involvement of the executive branch in telecommunications

management and regulation. This involvement culminated, by 1970, in a series of studies recommending the establishment of an OTP-like organization. This chapter discusses these recommendations and the actual congressional hearings and other events immediately surrounding the founding of the Office of Telecommunications Policy. Chapter III documents the OTP's advocacy and planning performance for several major broadcast telecommunications issues between 1970 and 1978. Interaction with other actors, such as the FCC, Congress and the broadcast industry, is included in the presentation. The chapter concludes with a section on the OTP's abolition and the transfer of some of its authority to the new NTIA in the Department of Commerce. Chapter IV develops an analytical approach to studying the OTP as a key instance in media-state policy relations for telecommunications. Chapter V analyzes the OTP's effectiveness in advocating and planning policy, identifying constraints on its performance and suggesting how its organizational demise can be understood according to the analytical themes presented in Chapter IV. Chapter VI summarizes the report and offers concluding remarks on the ramifications of the OTP experience for future executive branch advocacy and national policy planning for telecommunications.



Footnotes

1. U.S., President, Executive Order 11556, "Assigning telecommunications functions," Federal Register 35, 9 September 1970, 14193-14196.
2. U.S., President, Executive Order 12048, "Relating to the transfer of telecommunications function," Federal Register 43, 27 March 1978, 13349-13358.
3. "OTP's agenda for fiscal '72," Broadcasting, 24 May 1971, p. 37.
4. U.S., President, "Message of the President of the United States transmitting Reorganization Plan No. 1 of 1970," in U.S., Congress, Senate Committee on Commerce, Nominations - 1970, Hearings before the Committee on Commerce, 91st Cong., 2nd Sess., 1970, pp. 22-23.
5. William Porter's Assault on the Media (Ann Arbor: University of Michigan Press, 1976), a book-length treatment of Nixon administration media politics, including the OTP, informs analysis in Chapter V. Vincent Mosco has written two useful articles that bear on aspects of the OTP. See M. Kent Sidel and Vincent Mosco, "U.S. communications policy making," Telecommunications Policy, September 1978: 211-217; and Vincent Mosco, "Leaving it to the market," Public Telecommunications Review, November/December 1978: 40-45.
6. Educational Broadcasting Review 6 (October 1972): 309-314.
7. National Journal 3 (13 February 1971): 338-349.
8. *Ibid.*, p. 338.
9. Journalism Monograph 51 (November 1977).
10. *Ibid.*, p. 26.
11. U.S., Congress, House, Committee on Interstate and Foreign Commerce, Interim Report and Recommended Courses of Action Resulting from the Hearings on Telecommunications Research and Policy Development. 94th Cong., 1st Sess., 1975.
12. Federal Communications Bar Journal 23 (September 1969): 156-181.
13. *Ibid.*, p. 176.
14. *Ibid.*, p. 157.

15. Notebook No. 4 (April 1973).
16. University of Cincinnati Law Review 43 (1974): 291-323.
17. "Office of Telecommunications Policy," Notebook No. 4, p. 24.
18. Roscoe L. Barrow, "OTP and FCC," p. 292.
19. *Ibid.*, p. 318.
20. *Ibid.*, p. 322.

## CHAPTER II

### DEVELOPMENT, ESTABLISHMENT AND DEMISE OF THE OTP

This chapter presents significant events in the historical development of an executive branch Office of Telecommunications Policy and the details of the OTP's actual establishment, demise and replacement by the National Telecommunications and Information Administration.

#### The Executive in Telecommunications

The OTP was integrally a part of the executive branch of the federal government. This is evident from its location in the Executive Office of the President and its mandate to serve as presidential adviser and advocate and to manage the federal telecommunications system. The OTP's close ties to the executive were no accident, but grew out of the presidency's long history of involvement with national telecommunications matters. This involvement spans much of the century, from the earliest days of telegraph regulation and the wireless through the post-World War II period when a succession of bureaucratic reorganizations in the White House affected telecommunications management and policy, to the time immediately preceding the founding of the OTP when several studies recommended such an office be set up in the executive branch. This section reviews this long series of events that gave rise to the OTP.

As early as 1910 an office of the President possessed authority over telecommunications. In that year the secretary of commerce and labor, a member of the presidential Cabinet, was entrusted by Congress to enforce the nation's first radio law, the Wireless Ship Act.<sup>1</sup>



The same year, by means of the Mann-Elkins Act, Congress assigned the regulation of interstate and foreign wireless transmission to the first independent regulatory agency, the Interstate Commerce Commission, whose members were nominated by the President.<sup>2</sup> The Radio Act of 1912 vested new authority in the secretary of commerce and labor. Those wishing to broadcast over this new medium were required to register with the secretary in order to obtain a radio frequency assignment and operator's license. The secretary could also suspend or revoke permission to broadcast, mostly on the basis of specified technical grounds.<sup>3</sup> Also under this law the President was first given direct telecommunications authority. So-called emergency powers provided that the President, "in time of war or public peril or disaster," could shut down any privately operated radio station or command its use by the federal government.<sup>4</sup>

Between 1922 and 1925 Secretary of Commerce Herbert Hoover hosted, under the direction of the President, four national radio conferences. These sessions, whose attendance jumped from 15 at the first to about 400 at the last, brought together federal officials, scientists and early broadcasters, and were decisive in shaping the course of U.S. radio broadcasting. The second meeting, for example, established AM radio. The third national conference recommended against monopoly practices in broadcasting. Out of Hoover's last conference came recommendations that were later introduced into Congress, and, in amended form, became the Federal Radio Act of 1927.<sup>5</sup> During the middle years of the 1920s, court rulings and other legal interpretations

of the 1912 Radio Act sharply reduced the discretion that had been assumed by the commerce secretary.<sup>6</sup> Going beyond merely registering broadcasters, issuing licenses and assigning frequencies, Secretary Hoover had taken on such additional duties as determining a station's optimum transmitting power, a step deemed necessary by this executive officer to keep order in the burgeoning radio field.

With the secretary's discretion under the 1912 Act curtailed and the failure of broadcasters to discipline themselves, uncontrolled radio signal interference resulted. President Calvin Coolidge envisioned a solution compatible with his preference for limited governmental activity: a board to be administered by the commerce secretary, but which would meet only when necessary.<sup>7</sup> He called for Congress to regulate broadcasting. In 1927 action quite different from the President's recommendation was taken, and the Federal Radio Act was passed.<sup>8</sup> Reflecting the spirit and in some places the letter of the 1910 Wireless Ship Act and the 1912 Radio Act, this new law went beyond Coolidge's vision. Setting up a temporary 5-member Federal Radio Commission meant to be abolished after just one year's operation, the Act called for radio regulatory authority to be lodged permanently in the executive branch, with the secretary of commerce. The Act also formalized the work of the Interdepartment Radio Advisory Committee (IRAC), which since 1922 had informally coordinated government-operated telecommunications. IRAC was delegated presidential authority to assign radio frequencies for government use, and continued to advise the President on related matters.<sup>9</sup>



Awash in the unprecedented technological and legal questions that characterized the early days of U.S. broadcasting, the "temporary" Federal Radio Commission persisted until 1934. At that time President Roosevelt called for a strengthened broadcast regulatory capability, much along the lines of other New Deal interventions in the fields of transportation and electrification.<sup>10</sup> The 1934 Federal Communications Act established a permanent, independent agency, the 7-member Federal Communications Commission.<sup>11</sup> Presidential authority to assign government radio frequencies and to exercise emergency powers over commercial stations was reaffirmed by the new Act. The President was also empowered to appoint the FCC chair and nominate Commission members.

In 1950 President Harry Truman, concerned over the competing desires of government and industry users of the radio spectrum, set up the President's Communication Policy Board (PCPB).<sup>12</sup> Truman instructed the board to recommend plans and policies to be followed by the government in order to meet public interest requirements in the allocation of spectrum space. Shortly over a year later, the PCPB recommended the establishment in the Executive Office of the President either a 3-member Telecommunications Advisory Board, or a single Telecommunications Adviser, to assume the planning and administrative functions related to the President's emergency powers and telecommunications-management responsibilities.<sup>13</sup> Additional duties were proposed for the board or adviser, such as telecommunications promotion, research and development. The Federal Communications



Commission, State Department and other agencies were urged to improve their own telecommunications policy and performance capabilities. President Truman responded in the fall of 1951 by setting up a Telecommunications Adviser to the President. It was the adviser's task to administer the President's statutory telecommunications responsibilities, coordinate executive branch telecommunications development, manage executive branch telecommunications systems and direct IRAC.<sup>14</sup> In retrospect some analysts have concluded that Truman's primary intention in establishing the telecommunications adviser was "to improve the military communications systems."<sup>15</sup> Whatever his intention, however, this move to formalize in the Executive Office of the President an administrative unit concerned strictly with telecommunications began the contemporary chain of events which culminated in the 1970 establishment of the OTP.

The telecommunications adviser position was abolished by President Dwight Eisenhower in 1953.<sup>16</sup> Its functions were transferred to the Director of the Office of Defense Mobilization (ODM), who was to report on telecommunications matters to the National Security Council. Interdepartment coordination for government use of the radio spectrum continued to be a sensitive issue, due in part to the divided responsibility between the President and the FCC. The ODM director was instructed to improve spectrum management. In late 1954 President Eisenhower appointed a Cabinet Committee on Telecommunications Policy and Organization. Chaired by the director of the ODM and including the secretaries of state and defense, the committee was expected to complete a study in January 1955 covering "all forms of

electrical communications except domestic broadcasting." Failing in its assignment, the committee was finally disbanded in mid-1957.

Meanwhile, in 1956, the director of the ODM had set up a Telecommunications Advisory Board, principally to deal with problems of emergency mobilization.<sup>17</sup>

An executive reorganization in 1958, which merged the ODM and the Federal Civil Defense Administration into the Office of Civil and Defense Mobilization (OCDM), diminished the place of telecommunications management and planning in the executive branch.<sup>18</sup> The telecommunications group in OCDM was now three administrative levels removed from the director, and even more distant from the President. Shortly after this change, in November, the OCDM director set up a Special Advisory Committee on Telecommunications to review thoroughly the federal government's role in telecommunications management and allocation and control, including questions of nongovernment use. The conclusion of the committee was cautious-- to call for still another analysis before "sweeping changes" could be made in the control of U.S. telecommunications. The committee did reaffirm the desirability of presidential authority in telecommunications, declaring inappropriate any FCC authority in matters affecting executive agencies, national defense or foreign affairs. The discretionary powers of the President in these areas, the committee suggested, could best be assisted by delegation of authority to a 3-member National Telecommunications Board to be located in the executive branch. Eisenhower acted on the proposal in 1959 by recommending a 5-member Special Commission on Telecommunications. But with his term running



out, the bill died in a House of Representatives committee. About the same time the Office of Emergency Preparedness (OEP) was established to succeed OCDM.<sup>19</sup>

Despite organizational reshuffling during the Eisenhower administration, two analysts have commented that "in effect from 1953 to 1962, there was no official Telecommunications Adviser, although the function of the office was carried out by the directors of various defense organizations."<sup>20</sup> It seems apparent that while the significance of telecommunications management and policy planning was becoming recognized, there was uncertainty in the executive branch as to how such activities could best be handled. Perhaps Eisenhower's military background and the Cold War tenor of the times influenced the placement of telecommunications offices within larger entities concerned primarily with national defense.

This uncertain mood and the reliance upon quasi-military solutions to the growing presence of telecommunications in modern society changed as the country moved into the next decade. Prior to his inauguration, President John Kennedy commissioned Harvard Law School Dean James M. Landis, an acknowledged expert in the field, to study federal regulatory agencies. Landis' report criticized the general lack of policy coordination by the government, in particular the Federal Communications Commission, for both national and international telecommunications.<sup>21</sup> Like Eisenhower's study group of two years before, Landis recommended the creation of a centralized office for the Coordination and Development of Communications Policy to replace



OCDM and expand upon its responsibilities. The new office was to be located in the Executive Office of the President so as to give it higher priority and greater authority than either the State Department or OCDM was prepared at that time to do. Kennedy established the position of Director of Telecommunications Management (DTM) as one of the assistant directorships in the Office of Emergency Preparedness in February 1962.<sup>22</sup> Presidential authority for allocation of government frequency use was later vested in the director of OEP, who in turn delegated it to the DTM and his office (ODTM). This restrained response to recommendations of the Landis Report has been characterized as being limited "primarily to the management of government telecommunications."<sup>23</sup> Although administration of presidential responsibilities had been returned to the White House from the Defense Department, the executive presence in telecommunications policy making remained similar to Eisenhower's OCDM and Truman's Communications Policy Adviser. However, just six months after its creation, ODTM was saddled with new authority which had been assigned the President under the Communications Satellite Act. Some observers believe Kennedy's ODTM was ill-equipped to handle this additional responsibility, lacking both the financial resources and technical policy expertise. Perhaps as a supplement to the overburdened ODTM, an ad hoc Communications Satellite Group, cochaired by the deputy attorney general and the President's science adviser, began meeting later that summer "to provide a forum for the several government agencies concerned with satellite communications and to provide information coordination."<sup>24</sup>

By the mid-sixties, then, the executive branch of the federal government was playing multiple telecommunications policy roles. The President, or those in his executive office, was responsible for telecommunications planning in case of national emergency and for the allocation of spectrum space for government use. He had also<sup>4</sup> acquired primary authority for matters of international telecommunications, and the Communications Satellite Act had assigned him other duties to insure the development of COMSAT and INTELSAT. Yet in no official way was the President directly or regularly involved in policy planning affecting domestic, private sector telecommunications, such as radio and television - except through the nomination of FCC members and as he might influence the Commission or Congress. This final, most significant presidential role was to come about largely as the result of congressional and executive studies conducted between 1965 and 1969. In the five years preceding its establishment, at least seven separate federal reports, resulting from study groups and formal hearings, reached similar conclusions recommending an OTP-like organization.

In March 1965 a committee of the House of Representatives published a review of six years of government satellite activities.<sup>25</sup> The sixth of its seven recommendations to improve governmental (essentially military) use of satellites called for the creation of a new executive branch office to conduct government-wide studies of communications hardware and policies. This new entity, meant to replace ODTM, was to be "a separate office in the Executive Office of



the President," with increased staffing and presumably greater influence than its predecessor in telecommunications policy. The congressional report expressed a sense of urgency in its recommendation - "at the earliest possible date" - and suggested that the new office be established by means of a reorganization plan, submitted by the President to Congress for its approval.<sup>26</sup> During the second session of the same 89th Congress, the committee issued another report which elaborated on the earlier recommendation for a separate, more powerful executive telecommunications office. Congressional rationale for such an office was explained in terms of a concern for cooperative relations between the President and Congress in making and administering national policy. With separate status, co-equal with the

"executive office units for national security, economic, scientific, emergency mobilization, and budgetary affairs, (the proposed new office) will have the added advantage of (having) a statutory base for (its) director in dealing with Congress. At present (DTM's) nonstatutory role of presidential adviser makes relationships with the Congress a sensitive issue and creates uncertainties as to what he can convey to the Congress in the way of information."<sup>27</sup>

In other words Congress desired a strong centralized executive representative with which the legislative branch could work in shaping national telecommunications policy. Less than a year later, still another report by the same committee took notice that even the DTM himself foresaw the next five years - a period encompassing the OTP's actual establishment - as a time for restructuring the "legislative groundwork for telecommunications of the future."<sup>28</sup>

At about the same time as this report, in August 1967,



President Lyndon Johnson sent a communications policy message to Congress announcing the appointment of two special groups to study government and telecommunications.<sup>29</sup> Under-secretary of State Eugene W. Rostow was chosen to head a Task Force on Communications Policy whose broad mandate covered the investigation of spectrum-use problems and a review of the 1934 Federal Communications Act and the Communications Satellite Act of 1962. The Bureau of the Budget was charged to examine government communications organizations, and propose any needed modifications. Both studies were published in December 1968. As different in purpose and composition as these two groups were, they reached a remarkably similar conclusion regarding the need for an OTP-like organization.

The Rostow Report claimed that a "new government telecommunications capability is urgently needed." Specifically, it called for an

"adequately funded focus for the centralized responsibility for spectrum management...capable of coordinating government research and development in spectrum problems... capable of responding to requests for technical assistance and the development of new concepts and procedures in connection with regulatory policy. The overall need, then, is for a long-range planning, policy-formulating and -coordinating, and mission-support capability which can serve to integrate the various roles in which the executive is presently engaged."<sup>30</sup>

The suggestion that the new unit should be involved in regulatory matters was novel and important. To support this recommendation, the report pointed to a similar situation in a non-telecommunications area, the executive branch Department of Transportation's participation in regulatory proceedings of the Interstate Commerce Commission. The

participatory role of the new organization in telecommunications regulation derived logically, the report concluded, from what would be its "constant collection of updated operational knowledge" and ability for "communications system analysis and longer-range economic and technological forecasting."<sup>31</sup> Both qualities were said to be valuable and much needed in the regulatory policy-making process.

One of the recommendations of the Bureau of the Budget report was that

"a new and strengthened central policy and long-range planning organization should be established in the executive branch. The nucleus for this organization should be created using as a base the Office of the Director of Telecommunications Management (ODTM) now in the Office of Emergency Preparedness (OEP)."<sup>32</sup>

The Budget Bureau's report called for locating the new office in either the Commerce or Transportation Departments, and, emphasizing the timeliness and importance of the new office, recommended that the process of its establishment be begun even before President-elect Richard Nixon took office.

The Comptroller General, concerned with the status and development of the government's own telecommunications system, reported in July 1969 that

"an organization or entity at the highest level of the executive branch of government, free of any conflict of roles, should be put in charge of the government's telecommunications activities. We believe that the organization or entity should be given sufficient resources and stature to enable it to provide the President and the government with a strong central telecommunications authority and serve as the government's focal point for telecommunications policy and planning."<sup>33</sup>

The final contribution to the series of reports leading to the



OTP was made by the White House itself. Nixon advisers Peter Flanigan and Clay T. Whitehead wrote a report entitled, "Executive Branch Organization for Telecommunications," dated December 1969. In it they noted that "there is now no office in the executive branch with the responsibility or the capability to review the whole range of national telecommunications policies as expressed in legislation and in FCC policies." Reviewing the work of some agencies engaged in various aspects of telecommunications policy, they judged that none was "equipped to address the fundamental economic and institutional problems of the communications industry and its regulation by the FCC, or the problems of the government's own telecommunications."<sup>34</sup> Their report called for an

"Office of Telecommunications Policy to be established as an independent entity in the Executive Office of the President. The director of this office, appointed by the President, would have primary executive branch responsibility for both national and international telecommunications policies and federal administrative telecommunications operations."<sup>35</sup>

#### Establishing the OTP


Action by the Nixon administration to restructure federal telecommunications policy machinery appears to have occurred early in Richard Nixon's first term. Within a year after the Nixon inaugural, it seemed clear that an Office of Telecommunications would be established. Nixon's receptivity to the December 1968 recommendations by both President Johnson's task force and the Bureau of the Budget may even have encouraged a member of his Cabinet to attempt what seems to have been bureaucratic empire-building in the name of telecommunications



reform. Secretary of Commerce Maurice Stans circulated three letters - in February, June and September 1969 - proposing the creation of an assistant secretariat of commerce for telecommunications. Stans' proposals in each letter, which came to light in October 1969, were slightly different, running the gamut from usurping all FCC spectrum management functions to merely subsuming ODTM and adding research and agency-coordination duties.<sup>36</sup> However, according to press reports, Stans had only the support of the Transportation Department and met the unyielding opposition of the Department of Defense. Defense Secretary Melvin Laird argued that interstate telecommunications responsibilities had been delegated to the FCC by Congress, whose constitutional prerogative it was; such matters were clearly beyond the realm of Commerce. Laird also claimed national security requirements made the Executive Office of the President the only acceptable location for frequency-allocation decision making, and urged an alternative reform, that ODTM and the FCC be strengthened.

About the time of Stans' last letter in September 1969, outgoing FCC chairman Rosel Hyde, a Democrat who had served on the Commission since 1946, made his<sup>36</sup> valedictory speech before a New York broadcast industry group. Reportedly aware of Stans' proposals, Hyde went on to make the radical recommendation that all telecommunications-related functions be taken away from the FCC and assigned to a new executive branch secretary of telecommunications.<sup>37</sup>

Well-placed observers were reported confident that the Nixon administration would soon overhaul the federal telecommunications



policy apparatus, especially that portion concerned with spectrum-management. Some new, "larger organization with more presidential clout"<sup>38</sup> was expected to be the vehicle. In this regard Stans' maneuvering may have reflected the administration's resolve to centralize and streamline presidential participation in telecommunications policy matters. Stans' proposals, then, may have been meant to serve as a trial balloon to test the telecommunications community's receptivity to shake-ups in policy organization.

Public disclosure of the Nixon administration's intention to establish the Office of Telecommunications Policy seems to have occurred prematurely. On 19 December 1969, during hearings on domestic communications satellites, Rep. Joseph Karth (D-Minn.) unexpectedly revealed a White House memo recommending the creation of the OTP. In an exchange with Acting OTM Director William Plummer, it became evident that the memo was in circulation for comments from affected government agencies. Plummer said that he and his office had not been asked for their opinion.<sup>39</sup> Commenting on this revelation, the trade press wrote that "ever since the Nixon administration came into office, White House aides have been pondering ways in which national telecommunications policy making could be strengthened." Assessing the significance of these events, Broadcasting magazine editorialized that even if the Nixon administration did not attempt to consolidate all spectrum-allocation decision making in the White House, the FCC would nevertheless "clearly feel the influence of the White House in its strengthened role in telecommunications."<sup>40</sup>

The final draft of the White House document differed little



from the version revealed by Rep. Karth. Prepared by Flanigan and Whitehead with the assistance of the Bureau of the Budget and the President's Advisory Council on Executive Organization, the report prefaces its recommendation with more general observations. For example, the points are made that despite the growing importance of telecommunications in society, the executive branch lacks an "effective policy making capability"; that the administration, while "vulnerable to criticism for FCC policies," is "largely unable to exert leadership or take initiative" over them, and that government "coordination of its own telecommunications activities has not been adequate."<sup>41</sup> From these observations derive the OTP's three major duties: chief presidential adviser and advocate before the FCC and other telecommunications policy agencies, national telecommunications policy planner and centralized administrator of the federal government's telecommunications systems.

The OTP's future participation in broadcast policy debates is foreshadowed in Flanigan and Whitehead's citing of several examples of "domestic telecommunications issues" caught in policy making bottlenecks, including such broadcast-related matters as cable television, pay-TV and domestic satellites. Moreover, in their report Flanigan and Whitehead go on to explain why such situations arise, and suggest the way the OTP might help to set things right.

"There is a current tendency to resolve such issues by past precedents and by compromises between the FCC and various agencies in the executive branch, but the increasingly rapid rate of technological change and introduction of new services makes policy by precedent increasingly less relevant, more restrictive, or counter-productive. Neither the FCC nor the executive branch has a significant capability



for systematic economic and technical analysis."<sup>42</sup>

The Office of the Director of Telecommunications Management had been ineffectual, they claimed, for such reasons as poor organizational location, inadequate staff, and lack of clear authority. Within the executive branch, they concluded, there was no office "with the responsibility or the capacity to review the whole range of national telecommunications policies as expressed in legislation or in FCC policies." Nor were existing executive branch departments, offices or councils "equipped to address the fundamental economic and institutional problems of the communications industry and its regulation by the FCC, or the problems of the government's own telecommunications."<sup>43</sup> In support of its observations, the report summarizes the reactions of major government agencies to the conclusions of the Bureau of the Budget study regarding federal telecommunications organizations:

"(1) Stronger coordination from the top is required in establishing government policy for its own telecommunications requirements, and (2)...the federal government should take a stronger role in the evolution of national telecommunications to deal with the increasingly rapid rate of technological change and industry growth. There is also agreement that a much stronger analytic capability within the executive branch is needed to achieve these goals."<sup>44</sup>

Acting on the Flanigan-Whitehead recommendation, President Nixon sent to Congress on 9 February 1970, Reorganization Plan No. 1 of 1970, accompanied by a presidential message, or cover letter. The message cites three "essential roles" to be played by the new OTP:

"1. It would serve as the President's principal adviser on telecommunications policy, helping to formulate government policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities.

2. The Office of Telecommunications Policy would help formulate policies and coordinate operations for the federal government's own vast communications systems.

3. The new Office would enable the executive branch to speak with a clearer voice and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission."<sup>45</sup>

Congressional hearings on the proposed OTP were held by the House of Representatives' Executive and Legislative Reorganization Subcommittee just one month after President Nixon sent his reorganization plan to Capitol Hill. The hearings, which took approximately four hours on 9 and 10 March, were remarkable only for their decided lack of opposition toward the OTP. Indeed, Broadcasting magazine characterized the plan's congressional reception as "clear sailing."<sup>46</sup> The only significant reservation voiced at the hearings concerned the OTP's relationship with the FCC. In Broadcasting's words, some committee members wished to "get assurances that the communications tiller won't be yanked from FCC hands."<sup>47</sup> Any potential threat to FCC influence derived from the OTP's function to act as executive branch advocate in matters of telecommunications policy planning. Thus, questions were raised at the hearings as to whether the OTP might intervene in FCC adjudicatory proceedings. The answer was that it would not, but that the FCC could expect to feel the OTP's presence in other legal ways, formally and informally. Would the OTP's research capacity "overwhelm" the Commission with unassailable expert information? The answer was that perhaps the OTP's analytic capability might outshine the FCC's, but that the regulator would actually benefit from it. Would the OTP's centralized authority for government



spectrum allocation give it a commanding influence over FCC activities in the difficult area of general spectrum policy? The answer was not necessarily; government and nongovernment spectrum use were historically two separate problems, and that in fact, the FCC and the OTP might cooperate on spectrum management to their mutual benefit.<sup>48</sup>

These and similar questions were pressed by only one hearing participant, Rep. Clarence Brown (R-Ohio), who also sat on the House communications subcommittee. The major source of his concern came not from testimony at the hearings, or the wording of the reorganization plan, but from comments attributed in the press to then-presidential aide Clay T. Whitehead about potential OTP influence on the FCC. Whitehead was quoted in Broadcasting magazine as making clear that "the White House has no qualms about seeking to influence the Commission or other independent agencies."<sup>49</sup> The same article quoted FCC Chairman Dean Burch and Commissioner Kenneth Cox - one a conservative Republican, the other a moderately liberal Democrat and former Broadcast Bureau chief - as being unworried about any potential undue influence by the OTP on the FCC. They even welcomed the fresh point of view on national telecommunications policy promised by the OTP. However, on the first day of the hearings, Congressman Brown read Whitehead's comments into the record and demanded to know what sort of FCC-OTP relationship the White House envisioned. He feared future OTP dominance, saying,

"I just do not want us to be doing something here by approving the reorganization plan and then wake up to



discover two or three years from now that everybody in the administration will say, 'That is precisely what we had in mind,' and everybody on the committee will say, 'We did not know you were doing that.'"<sup>50</sup>

The next day's hearing brought a letter from Whitehead in which he denied "that the White House intended any undesirable or improper influence on the FCC." Whitehead also drew a distinction between "general policy issues which may be before regulatory commissions and particular cases in which those commissions are exercising their quasi-judicial responsibilities." Influence upon the latter would be improper for the OTP. In the former case "open expressions of viewpoint are not influence in the negative connotation sometimes used, but rather part of general policy-making dialogue with the FCC, the Congress and the executive branch."<sup>51</sup> Concurring, FCC Chairman Burch told the subcommittee,

"The Commission supports the reorganization plan. We have consistently favored a strong, centralized entity to deal with telecommunications issues within the executive...I have absolutely no fear of either an actual or possible undue influence by the White House on the Commission by virtue of this office."<sup>52</sup>

Besides Dean Burch, who appeared on behalf of the FCC, the executive branch was well represented before the subcommittee by high-level officers from the General Accounting Office, Bureau of the Budget, General Services Administration, and Departments of Commerce and Defense. Letters of support for the OTP came from the House chairman of the Interstate and Foreign Commerce Committee, which oversaw the FCC, and from presidents of the Communications Workers of America and the Corporation for Public Broadcasting.<sup>53</sup> With the exception of the questions posed by Rep. Brown, the hearing was obviously

supportive of the OTP proposal. Much discussion was predicted on the assumption, sometimes made explicit, that historical events seemed to lead to the establishment of an Office of Telecommunications Policy. The final committee report, issued on 19 March, cited a "remarkable consensus...that a reorganization of telecommunications functions is needed and should be made."<sup>54</sup> As one witness put it, "There have been a number of studies...I would agree that we spent too much time studying it...and the step is overdue."<sup>55</sup>

At about the time the reorganization plan went into effect, Dr. William Niskanen, an economist with the Institute for Defense Analysis and a former Rand employee, was mentioned in the press as the leading candidate for the OTP directorship. There was a report,<sup>56</sup> however, that the telecommunications industries were sufficiently upset with his lack of experience in telecommunications policy to begin maneuvering to stop the nomination in Congress.<sup>56</sup> Two months later, toward the end of June, Niskanen was regarded as out of the running. Speculation favored Dr. Clay T. Whitehead, principal architect of the OTP.<sup>57</sup> One 26 June, President Nixon announced that Whitehead would indeed be nominated as OTP's first director. His Senate nomination hearing was held on 16 July 1970.<sup>58</sup>

Broadcasting headlined its coverage of Whitehead's congressional appearance, "all's quiet at Whitehead hearing,"<sup>59</sup> and one telecommunications policy maker was later moved to describe that event as a "love feast." Subcommittee Chairman John Pastore spoke at some length about the long-standing need "to formulate an overall telecommunications policy."<sup>60</sup> Then, turning to Whitehead, Pastore began



the "love feast." Linking Whitehead's talents to the resolution of telecommunications policy problems, Pastore said,

"I think you are one of the most brilliant young persons who has come to government in a long, long time, I have had informal talks with you. I think you know this business. I think you know your problems. And I think you are one man that can do something about it provided that your recommendations receive the approbation and the attention of the President...I don't know of any man who could do it better; and I want to welcome you here, I want to congratulate the President for appointing you."<sup>61</sup>

Whitehead responded with a big more realism, reminding the senator that his wish for a single comprehensive national telecommunications policy might be utopian:

"I think it is important to realize, though, as I am sure you do, that in such a fast-moving field, a field with such broad impact, that it is not feasible to sit down and come up with a piece of paper that says this is our policy. What we will be trying to do, therefore, is to spend as much time developing a policy process that can respond to the changes in economy, in the industry, and society, so that we can deal with the issues as they arise, so that the government can make a sensible position, and so that the industry can then go forward to make available to the public the benefits that we have all been talking about."<sup>62</sup>

The President has said that the purpose of this reorganization is to make the executive branch a better partner in the policy dialogue with the Congress, the FCC, the industry, and the public. That is the goal I seek for myself and for the office, and I am hopeful that we can make some decisions, make some changes that will be constructive and fulfill the objectives you have set forth."<sup>63</sup>

The Chairman of the Senate Subcommittee on Communications next invited OTP to seek out congressional assistance in future telecommunications-policy planning activities. "I want you to know, Mr. Whitehead, if you ever feel that you need the help of this committee, whether it be a matter of consultation or legislative



help, that you are going to find us very willing and very obliging."<sup>64</sup> In a slightly critical vein, Pastore raised the charge made in Edwin Spievack's article, "Presidential Assault on Telecommunications," that "certain of the tasks assigned to your office threatened improper political encroachment upon the independence of regulatory responsibility."<sup>65</sup> Whitehead's two-sentence reply was that he recognized and sympathized with the potential problem, but that it could be avoided. This evidently satisfied Pastore, for nothing more was said about it. Thirty-five minutes after it began, Whitehead's visit to Congress was over.

By the end of August Dr. George Mansur was reported as the OTP's likely deputy director, and when on 9 September 1970 President Nixon signed Executive Order 11556, putting OTP into operation, he formally nominated Mansur.<sup>66</sup> Both Whitehead, sworn in the day before, and Mansur, awaiting Senate confirmation hearings, met the press on 23 September 1970 to introduce themselves and their organization.<sup>67</sup> Whitehead promised, according to one report, the OTP's involvement in "policy governing spectrum users regulated by an 'independent' agency, the FCC." The reference clearly included broadcasters. Furthermore, Whitehead mentioned "voluntarily" that among issues that might interest the OTP were "the future of cable television, and rights of access to broadcasting facilities." Whitehead predicted that the "OTP might not wait for the FCC to raise an issue, 'If we feel it's important, we'll raise it ourselves.'" Identifying what he saw as the OTP's special contribution to telecommunications-policy

making, Whitehead said, "We can select particular issues and dig deeply into them. We'll be effective only to the extent we say something reasonable." Broadcasting summed up its impression of the OTP in the regulatory process by observing, "Here was a new man, ready to entertain fresh - some might say heretical - thoughts on fundamental and delicate telecommunications policy matters."<sup>68</sup>

A week after appearing before reporters, Mansur went to the Hill for a hearing of his own. He met no difficulties, and was in and out in just ten minutes. Pastore did offer advice on how to get the Congress' ear, and then its pocketbook:

"I think if you people come up with an affirmative program with recommendations that are good and begin to dramatize what you are trying to do...I don't think you will have the same reluctance as previous executive telecommunications entities experienced on the part of the Congress to appropriate money."<sup>69</sup>

At Pastore's request for "a detailed outline of the manner in which the Office of Telecommunications Policy intends to implement the executive order,"<sup>70</sup> Whitehead responded with a lengthy letter, dated 23 November 1970. Whitehead wrote that "the office will be concerned with a wide range of issues reflecting the broad impact of telecommunications on government, the economy, and our society." This would include two categories of policy issues, the federal government's own use of telecommunications and "national communications policy." Among the issues in the second category was "the general problem of mass communications media, including industry structure, access to the media and cable TV and its relation to over-the-air broadcasting," "funding of public broadcasting," and "a more general



awareness of the impact of communications on our society and our economy." Whitehead promised "a cooperative and complementary relationship with the Federal Communications Commission," and expressed his intention "to keep the Commission well informed of our progress and plans."<sup>71</sup>

#### Demise of the OTP

The most active period of the OTP's short life occurred roughly during its first three and a half years. Events from this period pertinent to the OTP's participation in national policy for broadcast-related issues can be found in Chapter III. By late 1973 or early 1974, however, the organization had gone into a decline and was less involved in policy debates. The final years of the Office of Telecommunications Policy, from about September 1974 until March 1978, were characterized by lassitude and uncertainty. The OTP was very nearly disbanded and a search for a regular director to succeed Clay T. Whitehead dragged on for almost two years. Policy activity for broadcast-related issues ground almost to a complete halt. This section documents these events.

When the OTP's founding director, Clay T. Whitehead, resigned his post in September 1974, Deputy Director John Eger was promoted to acting director. A lawyer with FCC experience as former Chairman Dean Burch's legal assistant, Eger confronted in January 1975 an executive branch recommendation to abolish the OTP. It became known that President Gerald Ford had tentatively accepted OMB Director Roy Ash's recommendation to do away with the OTP, a move apparently motivated



TABLE 1

SIGNIFICANT EVENTS IN THE ESTABLISHMENT  
AND ABOLITION OF THE OTP

December 1969	White House report calls for establishment of the OTP
February 1970	Reorganization Plan No. 1 of 1970 sent to Congress
March 1970	Congressional hearings held on proposed OTP
June 1970	Clay T. Whitehead nominated as OTP director
September 1974	Clay T. Whitehead resigns as OTP director
January 1975	OMB recommends to the Ford administration dismantling of the OTP
January 1976	Thomas Houser appointed OTP director, replacing Acting Director John Eger
March 1976	Houser disowns past OTP controversies, proclaims new policy objectives, seeks cooperation with FCC and Congress
January 1977	As inauguration of President-elect Jimmy Carter approaches, OTP Director Houser resigns; staff scientist William Thaler appointed acting director
July 1977	President Carter announces reorganization plan abolishing the OTP, shifting most policy-planning functions to new assistant secretary of commerce for communications and information

in part by the economic savings said to be gained by eliminating some 50 OTP positions. Ford intended, it was reported, to transfer the OTP's frequency management functions to the Commerce Department, and to absorb OTP policy formulation duties into the White House staff. Within a week, however, Eger responded to Ash's recommendation with a critical memorandum and enlisted key members of Congress, including figures on the communications subcommittees, in the fight to save the OTP. Ford quickly changed his mind, and the OTP was given a reprieve.<sup>72</sup>

During the next several months, from February through October, the Ford administration publicly considered several people to fill the job of regular OTP director. Initially, Eger was reported to be the leading candidate: then, apparently due to animosities created in blocking Ford's attempted termination of OTP, his chances diminished.<sup>73</sup> In March the nomination of Alexander Horley, director of HEW's Office of Telecommunications Policy, was said to be imminent.<sup>74</sup> The most controversial candidate appeared as front runner in June.<sup>75</sup> Robert Wells, a conservative Kansas broadcaster with ties to the Republican Party and an FCC commissioner from 1969 to 1971, was said to be the administration's top choice for OTP director.<sup>76</sup> Over the summer, the Wells candidacy drew heavy criticism. Torbert Macdonald, influential chairman of the House communications subcommittee, lambasted Wells in a speech as someone "who totally lacks the credentials to fill this important position."<sup>77</sup> Citizens' groups, led by the National Citizens Committee for Broadcasting (NCCB), lobbied against Wells, preparing a

report that documented Wells' alleged industry bias during his service on the FCC.<sup>78</sup> By November 1975, when Wells' name had been withdrawn by the Ford administration from its informal candidacy, Eger let it be known that if he could not be OTP director, then he preferred to leave the organization.<sup>79</sup>

In the same address where Macdonald had lamented the administration's choice of Wells for OTP director, Macdonald had expressed a greater disappointment, namely his frustration with "the apparent inability of the federal government to make any clear policy decisions in the telecommunications area." One reason for this paralysis, Macdonald suggested, was that the OTP "has been leaderless for over 12 months." The OTP's policy inactivity, its near termination and its evident lack of leadership led Macdonald "to wonder whether or not the office is worth continuing."<sup>80</sup> Senator Howard Baker (R-Tenn.), ranking minority member of the Senate communications subcommittee, wrote to the President about the time Macdonald raised his question, expressing his concern that the OTP might be eliminated. In November - despite the Macdonald speech, the failed Wells' candidacy and Acting Director Eger's public complaints - Gerald Ford responded to Baker's letter, stating that the OTP still enjoyed his support.<sup>81</sup> This brought an editorial comment by Broadcasting magazine on the OTP's "nine lives" and its ability to live on regardless of an alleged record of little accomplishment. The OTP, the industry publication judged, should be "terminated."<sup>82</sup>

In April 1976 word leaked to the press that the Ford adminis-



tration now favored Thomas Houser for OTP director.<sup>83</sup> An FCC commissioner for 10 months in 1971, Houser had previously served as the first deputy director of the Peace Corps. Well connected politically, Houser had managed Senator Charles Percy's (R-Ill.) election campaigns, and had headed up the Illinois Nixon-Agnew organization. A law partner of former FCC chairman Newton Minnow in Chicago, and friendly with then FCC Chairman Richard Wiley, Houser also owned stock in broadcast properties and had represented broadcast industry clients before the Commission.<sup>84</sup>

Houser was formally nominated in June.<sup>85</sup> In July, some 21 months after Clay T. Whitehead's departure, his appointment was confirmed by the Senate.<sup>86</sup> In August Houser held his inaugural press conference. There Houser implicitly criticized Whitehead's leadership of the OTP, and announced that the "OTP is moving away from the role of a critic of the FCC to one of long-range planner, proportionately spending less time with the FCC." He promised a "national telecommunications policy document" by mid-November that would spell out OTP principles, its future course and positions on such broadcast-related issues as television and domestic satellites. Houser stated two basic OTP goals: "(1) to make OTP an efficient, credible player in the formulation and implementation of telecommunications policy, and (2) to press always for deregulation, a necessary effort to get the collective weight of government off of the backs of industry." Houser also announced the appointment of six major staff members, two of them from the FCC, and the reorganization of the OTP. Set up were

a new information policy office, an outreach office, an office of planning and policy for common-carrier issues, and a research office. The major objective of these changes, it was explained, was closer relations with the FCC, the State Department and Congress.<sup>87</sup> Shortly after Houser's appointment, a consulting firm released a draft report to the OMB, the White House, Domestic Council, National Security Council and the OTP itself on possible future options for the OTP. Contracted about the time when President Ford decided not to scuttle the OTP, the study recommended increased emphasis on policy analysis and a lessening of government-resource management activities for the OTP.<sup>88</sup> There is no evidence that the document played a significant part in revitalizing the OTP under Houser's directorship. Thomas Houser served as the second fulltime OTP director for half a year. Following Gerald Ford's defeat at the polls, Houser resigned effective January 1977 to become a Washington communications attorney. Succeeding him as acting director was Acting Chief Scientist and Acting Deputy Director, Dr. William Thaler.<sup>89</sup>

Reports that the in-coming Carter administration was considering alternative structures of the OTP stirred congressional opposition. Two leading Senate Republicans on the communications subcommittee wrote to President Carter that telecommunications-policy planning and management ought to be located in a single place, like the OTP, "visible and accessible to public view...independent of individual department pressures inconsistent with the overall telecommunications interests of the nation." Rumors were that Carter would either move the OTP's



spectrum-management and government-telecommunications duties to OMB, while locating policy-planning functions in the White House Office of Science and Technology, or simply reposition the OTP in the Department of Commerce.<sup>90</sup> Meanwhile, in March of 1977 Acting Director Thaler presented a budget request to Congress level with the previous year's, intended to fund the study of certain broadcast-related policy issues begun during the Ford administration. The budget also called for a reduction in OTP staff from 45 to 41, with a later drop to 37.<sup>91</sup>

#### Transition to the NTIA

In July 1977 the Carter administration presented Reorganization Plan No. 1 to the Congress. This plan reallocated authority in the Executive Office of the President, having the effect of abolishing the Domestic Council, the Office of Drug Abuse and the Economic Opportunity Council, as well as doing away with the Office of Telecommunications Policy. The plan also instituted a new assistant secretariat in the Department of Commerce for communications and information. The purpose of the proposed reorganization, it was claimed, was to "reduce staff, reduce waste and cost, and improve service to the President."<sup>92</sup> The functions relating to broadcasting that had been the OTP's were distributed among the Office of Management and Budget, a new White House Domestic Policy Staff and the newly established assistant commerce secretary's office. OMB Director Bert Lance testified that "the functions of OTP are important, but, as presently performed, do not require presidential attention."<sup>93</sup> He explained that under the proposed reorganization, OMB would assume responsibility



TABLE 2

## SIGNIFICANT EVENTS IN THE ESTABLISHMENT OF NTIA

September 1977	Congressional hearings on reorganization plan; Aspen Institute recommends complete redrafting of responsibilities for new policy-planning entity
October 1977	Former FCC General Counsel Henry Geller named to head new NTIA
January 1978	Geller presents NTIA budget request, plus list of likely telecommunications issues and organizational chart, to Congress
March 1978	President Carter issues executive order, based on the OTP mandate, detailing NTIA responsibilities
June 1978	Henry Geller is confirmed by Congress as assistant secretary of commerce for communications and information

for "establishing policy for the federal government's procurement of telecommunications facilities and services."<sup>94</sup> The Department of Commerce would obtain new authority, "consistent with the Carter administration's commitment to strengthening Cabinet government," to develop national telecommunications policy and to oversee frequency allocations used by the federal government. The new assistant secretary would "serve as spokesman for the administration on telecommunications issues and assume responsibility for the functions transferred from OTP and those of the Office of Telecommunications in Commerce." This department was chosen to house the new subcabinet-level telecommunications office because "Commerce already has a large telecommunications staff...(and) would further consolidate the treatment of telecommunications issues within one agency."<sup>95</sup> The reorganization plan also called for OMB to hold appeal authority over frequency-allocation decisions made by the new assistant secretary, and for the new Domestic Policy Staff to "review telecommunications policy options requiring presidential decisions."<sup>96</sup>

Hearings were held by the House Subcommittee on Government Operations on 3 August and 8 September 1977, for about three hours total. Most concern expressed by subcommittee members and witnesses pertained to the abolition of the Drug Abuse Office. Regarding the OTP's abolition, the president of the Information Industry Association urged a new course, arguing that "information has been recognized as a commodity. There is a marketplace developing for the marketing of information...The Commerce Department's traditional concern with marketplace forces make it an appropriate focal point" for the

relocated national telecommunications policy planner.<sup>97</sup>

Two representatives of the Aspen Institute's Program on Communications and Society did complain that the "mandate" expressed in the technical documents of the reorganization plan was "muddled... unclear...ambiguous." Former FCC Commissioner Glen Robinson and economist Marc Porat wished "to take this opportunity to move positively in the direction of establishing a strong executive leadership role in the field of communication and information policy."<sup>98</sup> One report said that Robinson and Porat had the support of both the OTP and the Commerce Department in making their comments. Their move was described as a matter of "whether to settle for old wine in new bottles or to concoct a new vintage."<sup>99</sup>

Robinson and Porat's comments were, they said, intended to be heard by the White House, for it was there that any redrafting of the technical documents would occur. But OMB, charged with directing the reorganization, was unpersuaded. It was later reported that OMB had dissuaded the Department of Commerce from remaining an "Aspen ally" by OMB's promising to "make clear Commerce would be the President's chief spokesman on telecommunications policy matters."<sup>100</sup> Only minor changes were made for the sake of clarification in the final draft of the executive order.<sup>101</sup>

In October the subcommittee reported favorably to the Congress on President Carter's reorganization plan.<sup>102</sup> During the same month, Henry Geller was announced as the President's choice to become the first assistant secretary for communications and information in the



Department of Commerce. Geller had served at the FCC first as a Bureau of Broadcasting lawyer, and later, from 1964-1970, as general counsel and from 1971-1973 as policy assistant to the FCC chairman. Between 1973 and 1977 Geller had been associated with the Rand Corporation and the Aspen Institute's Program on Communications and Society. A recognized expert in communications law, he had also taught at law schools affiliated with the University of Pennsylvania and Georgetown University. The choice of Geller was explained primarily in terms of his longevity in the Washington communications-policy arena. As one Commerce Department official said, "We made the decision on the basis of maximum experience."<sup>103</sup> Pending his formal nomination as assistant commerce secretary, Geller was retained as a consultant in order to

"work on the 1979 budget of the new office, to begin shaping a table or organization and to help draft the departmental order that will translate the reorganization plan and the order implementing it into more detailed plans for the operation of the unit."<sup>104</sup>

The selection of Geller, a popular and respected figure in Washington communications-policy circles, even merited the cautious editorial approval of Broadcasting magazine.<sup>105</sup>

At the beginning of the new year, Broadcasting examined NTIA's emergence in light of other communications policy-related developments in the young Carter administration.<sup>106</sup> These included the appointment of Charles Ferris, a former Democratic party attorney, as FCC chairman, and Tyrone Brown, a corporate communications lawyer, to fill Commissioner Benjamin Hooks' seat. Discussing the structural ramifica-

tions for telecommunications policy making brought about through the executive reorganization, Broadcasting explained the new relationship between NTIA and the White House: "Mr. Geller will be the administration's spokesman." In addition, certain policy actions

"will be reviewed by members of the White House Domestic Policy Staff who are concerned with communications matters. And those issues they feel require presidential attention will be staffed up through Stuart Eisenstat, the President's assistant for domestic affairs and policy."<sup>108</sup>

This three-tiered policy apparatus thus replaced the OTP's direct formal tie to the President. Finally the magazine's analysis explained the delay in drafting the necessary documents to implement Carter's reorganization plan as the result of executive branch rivalry for influence on communications policy.

"The Department of Defense is jealously guarding its prerogatives in telecommunications matters involving security, and the State Department is seeking to retain authority in international telecommunications matters captured by OTP seven years ago. There is even a problem in dividing functions between the new Commerce Department unit and OMB, with Rep. Jack Brooks (D-Tex.), chairman of the House Government Operations Committee, intervening to urge a larger role for OMB in procurement and information policy matters and a lesser one for Commerce."<sup>109</sup>

Geller appeared before a congressional appropriations subcommittee in March 1978, and requested approximately \$12 million.<sup>110</sup> This was more than a \$2 million increase over the previous year's combined budgets of NTIA's two predecessors, the OTP and the Department of Commerce's Office of Telecommunications. Geller testified that the bulk of this increase was to be spent hiring new policy personnel, mostly for common-carrier related issues.<sup>111</sup> Geller also



identified three telecommunications-issue areas that would receive NTIA attention in the coming fiscal year. They were common carrier, information policy and "other regulatory policy" questions.<sup>112</sup> This latter category included such broadcast-related concerns as funding public broadcasting, minority group ownership of broadcast outlets and deregulation of broadcasting and cable television.<sup>113</sup> Participation in international telecommunications negotiations was also promised for NTIA.<sup>114</sup>

In March, the National Telecommunications and Information Agency, "an agency that has had an unusually difficult gestation period,"<sup>115</sup> was officially established. President Carter signed an executive order implementing his earlier reorganization plan, and nominated Geller to head NTIA, claiming that "now, for the first time, communications policy will be handled at the Cabinet level."<sup>116</sup> Geller's nomination hearings before the Senate commerce committee took place on 14 April 1978, lasting for about an hour and a half. There he again emphasized the pre-eminence of common-carrier issues for the new policy planner.<sup>117</sup> Committee members were most concerned that the roles of presidential confidante on media politics and telecommunications policy analyst be kept separate - unlike "happenings during the Nixon administration, when the media adviser had become confused to the point where the media adviser was also the policy adviser."<sup>118</sup> This worry was also spurred by the recent revelation that Carter media tactician Barry Jagoda had participated in two cases of White House telecommunications policy decision making, one affecting public television.<sup>119</sup>



Reminding Geller of the special implications of locating NTIA in the Department of Commerce, the committee chairman asked, "Can you get three hard-headed businessmen in this field and put them on your staff and let them do some scheming and planning and studying? You are Commerce. That is supposed to be there for American business."<sup>120</sup>

Geller's nomination was held up until July, when a clarification was reached regarding the separation of duties of the White House public-relations official and executive telecommunications policy planner.<sup>121</sup> NTIA, and Henry Geller, then assumed the functions of the Office of Telecommunications Policy.

## Footnotes

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2. See I. L. Sharfman, The Interstate Commerce Commission: A Study in Administrative Law and Procedure. (New York: The Commonwealth Fund, 1931), p. 53.
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4. Ibid., Radio Act of 1912, Section 2, pp. 8.
5. Sydney W. Head, Broadcasting in America, 3rd ed. (Boston: Houghton Mifflin, 1976), pp. 130-132.
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### CHAPTER III

#### THE OTP AND BROADCAST ISSUES, 1970-1978

This chapter presents a record of OTP involvement with seven major broadcast-related issues during the period 1970-1978. The issues, in chronological order are: (1) determination of policies for the ownership and operation of domestic satellite systems; (2) long-term funding and assessment of program production practices for public broadcasting; (3) development of cable television regulation; (4) changes in commercial station license-renewal policy and procedures; (5) proposed deregulation of AM and FM radio; (6) reduction of network television program reruns; and (7) the "drop in" of additional VHF television stations. Documented for each issue are the substantive policy questions that were debated, the OTP's position on the issues, and the OTP's interaction with other important policy actors.

#### Domestic Satellites

The policy issue of who shall own and operate domestic satellites came before the Federal Communications Commission in 1965, when the American Broadcasting Companies (ABC) requested permission to launch their own five-channel TV satellite.<sup>1</sup> Earlier that year, the first communications satellite, Early Bird, had been placed in orbit.<sup>2</sup> Operated by COMSAT, a quasi-government corporation whose largest stockholder was AT&T, Early Bird was used primarily for trans-Atlantic broadcasting. ABC's proposal was intended in part to eliminate its estimated \$50 million-a-year reliance on domestic AT&T microwaves and long-distance telephone lines, which carried network-produced television



TABLE 3

## THE OTP AND THE DOMESTIC SATELLITES

## POLICY DEBATE

January 1970	Special White House committee chaired by Whitehead recommends a "blue-sky" open entry policy for domestic satellite operation
March 1970	FCC invites comments on the White House policy and applications for operation of satellite systems based on such a policy
November 1971	Whitehead writes FCC Chairman Burch urging acceptance of White House policy, based on OTP analyses of comments and applications before Commission
March 1972	FCC Common Carrier Bureau staff recommends a modified entry or "limited open-entry" policy for domestic satellites
June 1972	FCC announces tentative acceptance of "open-skies"
December 1972	FCC issues final order based on compromise position between Commission staff and OTP recommendations, though favoring certain key staff proposals

programming from Los Angeles and New York to affiliated stations scattered across the country. Anticipated Early Bird rates were also expected to be expensive; and ABC's move was meant to reduce costs incurred in transcontinental networking.<sup>3</sup> Any such step posed an obvious challenge to both COMSAT and AT&T's interests.<sup>4</sup> ABC also announced its desire to use the satellite to carry 24-hour a day radio broadcasts.<sup>5</sup> In the eight years the Commission took to decide who would (and would not) be permitted to own and operate this particular type of domestic satellite, its potential for television communications became less salient, while the implications grew for satellite-relaying of telephone and other forms of telecommunications.

About mid-way through the FCC's lengthy policy deliberations, the Nixon administration became involved in the issue. Then presidential aide Clay T. Whitehead was named chairman, in August 1969, of a special White House committee on satellites. In January 1970 the committee released a report urging the Commission to adopt a policy of "open-skies," or one which permitted any qualified applicant to own and operate a domestic satellite system.<sup>6</sup> The broadcast networks, perhaps seeing the report as a way to conclude FCC proceedings, immediately announced their support of the OTP plan, and began their own feasibility study for a jointly owned satellite.<sup>7</sup>

In November 1971, Whitehead, now OTP director, wrote FCC Chairman Dean Burch and reiterated the policy position of the White House report. Whitehead claimed that the viability of this approach was clearly demonstrated by the calibre of respondents to a March 1970



report and order inviting potential satellite operators to apply to the Commission. Whitehead's letter, one press report said, was motivated by Nixon administration "impatience" over FCC delays in resolving the satellite issue.<sup>8</sup>

Five months later, in March 1972, the staff of the Commission's Common Carrier Bureau recommended another approach, a so-called limited-entry policy.<sup>9</sup> Their lengthy analysis urged that the OTP's unrestricted-entry policy would offer insufficient protection against an oligopolistic situation resulting from dominance by already established actors in the telecommunications marketplace. Specifically, AT&T and COMSAT were thought to possess capital and other forms of influence which would take advantage of the easy-access policy favored by the Nixon administration. Diversity of satellite ownership and other public-interest goals would be better served, the staff claimed, through special restrictions on AT&T and COMSAT.

Two days after the staff recommendation, the OTP reasserted its position, this time supported by three contracted research studies.<sup>10</sup> A month later, before the annual convention of the National Association of Broadcasters, Whitehead warned that should the Commission accept its staff's proposal, the OTP might turn to Congress for legislation favoring the administration's preference.<sup>11</sup> However, about the same time, in April 1972, the OTP filed a formal comment with the FCC urging a slight compromise, calling for a policy of "phased open-entry." This was said to fall between the OTP's initial laissez-faire recommendation and the limited-entry plan of the Commission's staff.<sup>12</sup> The Justice Department also criticized some of the limitations proposed in

the staff approach. And, reflecting the tendency of an open-skies policy to favor powerful telecommunications firms and a limited-entry approach to protect newcomers, the eight applicants for satellite ownership were evenly split, four established firms to four newcomers, in their support of the OTP and FCC staff proposals,<sup>13</sup> respectively.

In June 1972 the Commission announced a tentative decision. On a split vote, the FCC rejected both its staff's and the OTP's plans, turning instead to a "multiple-entry" policy. It was reported that by this act, the "Commission moved closer to the open-entry systems long advocated by the administration," but still retained some of the staff-recommended limitations on AT&T and COMSAT participation.<sup>14</sup> News reports predicted network operation of domestic satellites in the foreseeable future.<sup>15</sup>

The FCC released its final order in December 1972. Echoing the tentative decision of the previous summer, the order moved more strongly to restrict AT&T's influence on satellites, going so far as to reduce AT&T's internal control as stockholder and dominant industry board member of COMSAT. COMSAT was made the common carriers' common carrier, acting as an intermediary for AT&T's use of satellites. All other qualified applicants for domestic satellite ownership and operation, such as the broadcast networks, were invited to apply to the Commission.<sup>16</sup>

The debate over satellite ownership did not directly raise policy questions concerning the broadcast networks; instead it focused on common-carrier monopolists. Beginning with an ABC request for its



own domestic satellite, debate of the issue eventually revolved around matters of non-broadcast telecommunications.<sup>17</sup> But the OTP-instigated resolution of this issue did hold potential implications for future practices of network program distribution. And this first public-policy "victory" for the new OTP was important in establishing its presence in the telecommunications arena.

#### Public Broadcasting

Unlike most other nations, the United States relies primarily upon a broadcasting system that is privately operated and commercially based.<sup>18</sup> In the earliest days of AM radio broadcasting, there were numerous noncommercial stations. Later, in the 1930's and 1940's, there was practically none. Noncommercial space was reserved after World War II, however, when television and FM radio were established. Then termed educational broadcasting, noncommercial stations were largely used for explicitly instructional, even classroom purposes.<sup>19</sup> It was not until 1967 when the Carnegie Commission renamed educational broadcasting public broadcasting, that a policy commitment was made to furnish programming of a more generally appealing type.<sup>20</sup> To this day the identity, goals and operating characteristics of public broadcasting, especially public television, remain less than certain, and as such, are the subject for debate. Chief among these policy problems is the proper method for funding noncommercial broadcasting.

The Corporation for Public Broadcasting (CPB) is a quasi-governmental organization, established by law, funded through legislation passed by Congress, and overseen by a board appointed by the President.<sup>21</sup> The majority of licenses for public television stations are

TABLE 4

## OTP AND THE PUBLIC BROADCASTING

## POLICY DEBATE

March 1971	The OTP announces agreement with Corporation for Public Broadcasting (CPB) on long-term funding
August 1971	The OTP withdraws legislative draft in dispute with CPB
November 1971	Whitehead makes critical speech before convention of National Association of Educational Broadcasters (NAEB) in Miami
February 1972	Whitehead testifies in support of OTP bill for one-year funding of CPB before House Communications Subcommittee
July 1972	President Nixon vetoes two-year funding bill approved by Congress
April 1973	Public Broadcasting System (PBS) chairman resigns to protest White House-OTP meddling in PBS-CPB relations
	Whitehead testifies in support of OTP bill for one-year funding for CPB before Senate Communications Subcommittee
August 1973	President Nixon signs two-year CPB funding bill
June 1974	President Nixon reportedly refused to support OTP bill for long-range CPB funding
August 1974	Whitehead testifies in support of OTP bill for long-range funding of CPB before Senate Communications Subcommittee
	OTP-CPB announce co-operative effort to speed bill through Congress before adjournment
December 1974	House fails to act on bill, killing it
April 1975	Acting Director John Eger testifies in favor of new bill
January 1976	President Ford signs 5-year funding bill



held by local school boards and universities.<sup>22</sup> While the regulatory issues affecting noncommercial broadcasting differ from those that touch commercial broadcasters - service in the "public interest" tends to be assumed, for example - the question of funding from federal sources and its implications for potential government censorship are indeed matters for national policy consideration.<sup>23</sup> It is also the case that any policy decision to strengthen public broadcasting may post a threat to the commercial system, so the nature of the relationship between the two is also a national-level policy problem.

The OTP entered this policy thicket by addressing the specific question of how best to design long-term funding for public broadcasting. Major corollary questions raised by the OTP included, first, the propriety of using public money channelled through the Congress to fund so-called public affairs programming critical of the government. Secondly, the OTP asked whether public broadcasting should structure its program-production and distribution techniques along the network model; that is, whether it is appropriate to centralize in Washington and New York most program-related decision-making activities, and reduce the role of local public stations to that of passive affiliates who mostly retransmit national programming.

Among the OTP's first publicly announced policy accomplishments was its March 1971 accord with the Corporation for Public Broadcasting's board of directors providing long-range funding for the noncommercial system. The proposed legislation was reported to provide money by matching congressional and other federal funds to contributions collected

by local broadcasters. Before making its way to Congress, the bill was routinely referred to the Office of Management and Budget (OMB) for final clearance. Early reports predicted no difficulties in securing this first long-term funding source.<sup>24</sup> However, in August OTP General Counsel Antonin Scalia unexpectedly announced that the OTP was withdrawing the bill from OMB and would not submit it to Congress. The reasons, according to one report, were CPB criticisms of the bill's particulars plus the general complaint that CPB had not actually "agreed to the language or substance of the OTP bill" earlier in the year.<sup>25</sup> Most importantly, CPB took issue with the provision for allocating certain moneys directly to local public broadcasters, saying that plan violated the intent of the 1967 Public Broadcasting Act by distinguishing between the corporation and local stations. CPB evidently wished to protect its discretion in distributing the limited, all-important money for program production and transmission.

Clearly, there was substantial disagreement between the OTP and CPB. Despite their earlier claims of harmony and, although both parties were said to be eager to renegotiate the bill, President Nixon's commitment to long-term financing for America's noncommercial broadcast system seemed unlikely to be fulfilled.<sup>26</sup>

OTP's most dramatic move in the policy debate over funding public broadcasting took the form of a speech by Clay T. Whitehead before the annual convention of the National Association of Educational broadcasters (NAEB) in Miami in October 1971. There Whitehead put aside the funding question, and launched into a fundamental critique of the CPB operating structure.<sup>27</sup> Expounding on OTP's previously



stated preference for directly funding local stations, Whitehead charged that CPB programming practices had become centralized in the Washington headquarters, suggested that CPB aspired to become a fourth national network, and lamented the lack of autonomy at the local station level. Speaking for an administration that appeared to have grown increasingly uncomfortable politically with recent efforts in public affairs and news programming by the National Public Affairs Center for Television (NPACT), a newly established arm of the Public Broadcasting Service (PBS), the producer of much CPB programming, Whitehead excoriated the assembled public broadcasters. On the one hand, he accused them of selling out to commercial broadcast-style measures of success - such as audience ratings and mass-appeal shows. On the other hand he criticized them for hiring highly paid, glamorous, personally liberal network commentators to do political journalism. This second point, Whitehead said, raised questions about the propriety of using public money for certain kinds of controversial political programming. This sharp critique was widely interpreted as having received the blessing of the Nixon White House. But Whitehead's primary tactic of appealing to the "lost" independence and lessened programming influence of local public broadcasting station managers seemed to have struck a responsive chord, pleasing, it was said, a large portion of his listeners at the convention.<sup>28</sup>

Broadcasting magazine, whose editorial page is a recognized forum for the expression of dominant opinions held within the commercial broadcast industry, admired Whitehead for his "candor" in discussing important "principles" of public broadcasting. The magazine's editors

noted that the Nixon administration perceived a "tilt to the left" among recently hired newspeople, and that the speech was "a nice way of saying that" public broadcasting "can expect little help from this administration in its search for federal funds."<sup>29</sup> The tone of the editorial seemed to capitalize on commercial broadcasters' fear of competition for audiences with the noncommercial system, and seemed to bestow at least its tacit support on the OTP's efforts. The next few months were filled with reactions to Whitehead's speech. Under pressure of the expiration of CPB's funding legislation on 30 June 1972, a number of exchanges took place. The CPB board complained that they had "promised the (public) broadcasters a (funding) bill," and that by avoiding a direct discussion of funding alternatives in his speech, "Whitehead just left us hanging."<sup>30</sup> Taking what was characterized as a "tough" stand, the board sent documents to affiliate stations refuting Whitehead's fourth-network criticism, and the general manager of NPACT sent information to stations and a letter to the OTP expressing the same view.<sup>31</sup>

House communications subcommittee Chairman Torbert Macdonald (D-Mass.) was the first in Congress to respond formally to the OTP challenge.<sup>32</sup> Macdonald, the principal sponsor of the 1967 Public Broadcasting Act, submitted a long-range funding bill toward the end of November providing for all funding to go directly to CPB for distribution to local stations. In remarks introducing his bill he charged that Whitehead's speech was an example of "intimidation by raised eyebrow," and set the blame squarely on the OTP for whatever uncertainty surrounded public broadcasting's future.<sup>33</sup> Shortly



before this, the Washington Post published a page-one story based on an internal CPB memo which accused Director Whitehead of "injecting political considerations into broadcasting affairs." The story appeared the day after Whitehead and a CPB representative had met and agreed to try to keep the issue from becoming a "public controversy."<sup>34</sup>

In Congress there was growing unrest over the administration's failure to propose a funding bill, and Senators Warren Magnuson (D-Wash.) and John Pastore (D-R.I.), chairmen respectively of the parent Senate commerce committee and its communications subcommittee, introduced a one-year extension of existing CPB funding provisions beyond the June 30th expiration date. Reports circulated that hearings would be held in the spring on both the Macdonald and Magnuson-Pastore bills.<sup>35</sup> Whitehead judged that Congress as a whole would be unwilling to pass any funding bill covering a period greater than three years; Macdonald's was for five, and he and CPB officials disputed Whitehead's analysis of the congressional mood.<sup>36</sup>

Hearings took place before Macdonald's communications subcommittee for three days during the first week of February 1972. Four bills were considered: Macdonald's; a similar bill sponsored by committee member Robert Tiernan (D-R.I.); an administration bill submitted by OTP; and a bill sponsored by a Republican committee member, Clarence Brown, which would, in the words of a news report, "drastically overhaul" the law under which public broadcasting functions.<sup>37</sup> The issues of localism, freedom from government intervention, and the propriety of carrying public affairs and news

programming on a publicly supported system were repeatedly raised. Sharpest questions of the hearings were aimed by Chairman Macdonald at witness Clay T. Whitehead. Ironically, the CPB board chairman assured the subcommittee that Whitehead's by-now infamous NAEB speech was, as one report put it, "cause for reflection but not a form of intimidation."<sup>38</sup>

Following the hearings, other critics joined in the fray, including FCC Commissioner Nicholas Johnson who, speaking at the Harvard Law School Forum, endorsed the Macdonald bill and charged that existing short-term funding methods allowed "congressmen, senators and the White House to hold blackmail power over public broadcasting - do it our way or you don't get your money."<sup>39</sup> And the National Programming Council for Public Television issued a policy statement stressing the importance of news and public affairs programming for public broadcasting.<sup>40</sup>

A confrontation of sorts developed at a San Francisco meeting of the Western Educational Society for Television in early March, when public broadcasting spokespeople criticized the OTP position on funding, programming and local station independence, calling them "patently ridiculous," and referring sarcastically to Clay T. Whitehead as a "new, young Socrates."<sup>41</sup> Rebuttal from the OTP side came from General Counsel Antonin Scalia, whose role as Whitehead's surrogate was repeated two weeks later at an international symposium on communications where the OTP director had been the announced speaker. This prompted speculation that four months of intense reaction to his NAEB speech had caused Whitehead to assume a low personal profile.<sup>42</sup>



About this time, Broadcasting magazine once again editorially praised the OTP position from the commercial broadcasting perspective.<sup>43</sup>

Meanwhile Torbert Macdonald's funding bill had been reduced to a two-year measure in its passage through the House.<sup>44</sup> The Senate gave its approval to the same bill toward the end of June. But on the last day of FY 1972, June 30th, President Nixon unexpectedly vetoed the legislation, reportedly on the advice of Clay T. Whitehead. The administration preferred what White House Press Secretary Ron Ziegler described as "year-by-year funding of CPB until organizational structure has been created that meets administration approval."<sup>45</sup> Congressional response was surprised and angry. Interim financing continued at the same level as the year before.

PBS and CPB were locked in conflict from January until June 1973 over the question of CPB's centralized control of programming, networking practices and the retention of a few controversial public affairs shows. The PBS board issued a statement early in January criticizing CPB for moving toward absolute control of public broadcasting, "contrary to the intent of Congress."<sup>46</sup> PBS voted to renew production for the coming year for five public affairs programs which CPB had, in effect, already dropped. CPB pleaded its case on the grounds that its expected budget would be down from the current year's. In mid-April CPB-PBS tension, apparently exacerbated by OTP intervention, came to a head. The CPB board chairman, Thomas B. Curtis, resigned amidst charges that a compromise agreement settling the CPB-PBS problem had been sabotaged by several White House telephone calls, calls said to have been made to key board members by Whitehead

and presidential adviser Patrick Buchanan. After his resignation, Curtis, a former Republican congressman from Missouri and a Nixon appointee who had been on the job barely seven months, demanded that the White House and the OTP publicly recognize the "independence" of public broadcasting, and especially the "integrity of the (CPB) board."<sup>47</sup> Curtis claimed that the unresolved differences between PBS and CPB had soon to be settled, or the very future of the system would be in jeopardy.

In mid-May a new CPB board chairman was chosen to replace Curtis. He was James R. Killian, formerly vice chairman of the board, a distinguished scholar who had been president of MIT for ten years and the former chairman of influential Carnegie Commission on Educational Television whose 1967 recommendations led to the Public Broadcasting Act. Killian quickly announced agreement with PBS, following almost to the letter the previously rejected compromise. One headline of the period read, "conciliation is in the air."<sup>48</sup>

The funding issue continued unresolved. In April Senator Pastore's subcommittee held hearings to consider an administration bill, which authorized funding for a single year, and on the Magnuson-Pastore bill, good for a two-year period. CPB testified that the longer period was necessary for stability and planning purposes, while Clay T. Whitehead again raised the question of "fourth network" and controversial public affairs programming as requiring further debate before a commitment for a period longer than one year could be made.<sup>49</sup> The Magnuson-Pastore bill cleared the Senate within a month, and after committee hearings in mid-June, passed scrutiny in the House.



In early August the President signed a two-year measure to fund CPB for FY 1974 and FY 1975.<sup>50</sup>

Reports began circulating in early February 1974 about a new long-term financing bill for public broadcasting from the Nixon administration. The OTP draft was said to be countered by a public broadcasting-generated bill, and representatives of the OTP and the noncommercial system met to iron out their differences.<sup>51</sup> Meanwhile the FY 1975 budget released by the Nixon administration cut facilities funds for CPB some 50 percent below the previous year's allocation. CPB officials attempted to lessen this reduction through appeals to congressional appropriations committees.<sup>52</sup>

Indications were that an OTP bill, which reflected accommodations worked out between public broadcasters and the White House over the two years since Nixon's 1972 veto, would appear in early summer. However, a dramatic break between the OTP and the White House suddenly emerged. Unexpectedly, Richard Nixon withheld his approval from a long-term funding bill, despite a series of CPB actions designed to meet his administration's criticisms over centralized program control and the like. There were speculations that Whitehead might resign to protest his President's hesitancy. Whitehead was known to desire the introduction of bills on CPB funding and CATV as a final gesture of his leadership at the OTP, which was expected to end soon.<sup>53</sup> The Presidential reluctance had been overcome by August when Senator Pastore held hearings on the OTP bill, which was supported by a wide range of witnesses, from Whitehead to the National Organization for Women, CPB and PBS, and the FCC.<sup>54</sup> After successfully clearing the

committe, CPB and OTP announced a joint campaign to pressure the House into hearings, and to speed up the Senate and later House floor actions on the bill. The bill's status was uncertain at the time of Clay T. Whitehead's resignation.<sup>55</sup>

By October 1974 the full Senate Commerce Committee had approved a 5-year funding bill, which had enjoyed Director Whitehead's active support. The House, however, moved much more slowly on the issue. Despite Chairman Macdonald's suggestion that perhaps his communications subcommittee might hold hearings after the November elections,<sup>56</sup> it did not, and long-range funding died at the end of that Congress in December. Similar bills were revived in April 1975, when both House and Senate held hearings on the Public Broadcasting Act of 1975. Acting Director John Eger appeared before the appropriate committees, voicing OTP support for the concept of long-term funding and for the particulars of the House version.<sup>58</sup> In the early fall a bill which the OTP opposed emerged from the House appropriations committee, the last congressional hurdle. The bill merely authorized a 5-year funding schedule without allocating any money. Allocation would occur annually, when public broadcasting officials would request the release of a pre-arranged dollar amount. The OTP argued this did injustice to the basic motivation behind long-range funding, namely insulating public broadcasting from regular (and unavoidably political) intrusion by Congress.<sup>59</sup> Still, the bill passed the full House in November and was signed into law by President Ford in January 1976.<sup>60</sup>



### Cable Television

Community antenna television (CATV), or simply cable television, is a form of telecommunications technology that has been available since the early 1950s.<sup>61</sup> For the most part, it has been used for picking up distant or otherwise difficult to receive over-the-air TV signals, and retransmitting them by means of coaxial cables to conventional television sets. This use has largely confined CATV to areas of the country with peculiar geography, such as population centers located in valleys that are surrounded by high mountains. For this reason, cable television has served a relatively small proportion of the TV audience.<sup>62</sup> In the late sixties and early seventies, however, professional savants began predicting a wired nation, based upon coaxial cable, capable of two-way exchanges between the home and other points. This would, among other things, eventually make contemporary transportation practices obsolete, permit the printing of newspapers in the home, and generally contribute to a fundamental reorganization of social life.<sup>63</sup>

The steps between CATV and the wired nation, which would probably include the abolition of network television, were rarely treated by futurists, but were instead left for practical policy makers. When the FCC began to consider, in 1971, the questions of how best to help promote the growth of the nascent cable television industry without unduly threatening existing telecommunications industries, such as broadcasting, the OTP quickly joined in.

Clay T. Whitehead's public interest in CATV traces back at least as far as April 1970, when the then-presidential aide told a

TABLE 5

## THE OTP AND THE CABLE TELEVISION

## POLICY DEBATE

January 1971	Whitehead, speaking before the Federal Communications Bar Association (FCBA), expresses the OTP's interest in CATV policy
June 1971	<p>Appearing before the House appropriations committee, Whitehead calls cable the most important matter being considered by OTP</p> <p>Creation of a special Cabinet Committee on Cable Communications announced by the White House. Report on CATV regulatory policy framework expected within few months</p> <p>FCC announces a tentative plan to begin CATV growth in major markets in testimony before Senate communications subcommittee</p>
July 1971	Whitehead attempts to reach a compromise on thorny cable issues between broadcast and CATV industries as prerequisite to any specific FCC or OTP policy proposal or legislative action
August 1971	Whitehead publicly abandons compromise efforts
November 1971	Whitehead resumes his role as mediator in cable problems. General accord is announced.
January 1974	Long-delayed Cabinet Report released after several missed deadlines. Critical reception is mixed, seen as Whitehead's attempt at "legacy" before leaving the OTP
April 1974	First draft of OTP bill for national CATV regulatory policy released
August 1974	OTP-FCC dispute grows over merits of OTP cable bill
October 1974	OTP draft cable legislation criticized by FCC Commissioner Glen Robinson
December 1974- July 1975	Acting Director John Eger attempts to maintain copyright compromise
June 1976	Eger sends draft legislation to House communications subcommittee



National Cable Television Association (NCTA) meeting in Chicago that cable's promise lay in increasing "diverse sources of programming." Whitehead also suggested in that early speech that the embryonic OTP might someday examine the "broad issues" surrounding CATV. The tone of his remarks as reported in Broadcasting magazine was pro-cable, and he went so far as to claim that a "truly innovative" cable television industry" would probably stop the FCC from arbitrarily foster (ing) marginal UHF stations, or protect (ing) the revenues of any TV station," in favor of the new medium.<sup>64</sup>

At the end of January Whitehead spoke before a Federal Communications Bar Association (FCBA) luncheon and promised that the "OTP is 'going deep' into the policy question of how cable relates to over-the-air television. We are very much interested in talking to people on this." Elaborating on the OTP's cable interest before a workshop for black elected officials from across the country, Whitehead said the OTP foresaw limited government regulation as a wise future course, and promoted access to the system as the primary future policy goal.<sup>65</sup>

A report in mid-April indicated that after conferring with White House staff and broadcasters, and conducting "several studies" of its own on "long-range" aspects of cable, the OTP was about ready to speak out - if not yet on explicit policy recommendations, then in more general terms.<sup>66</sup> The opportunity to do so arose when on May 13th Clay T. Whitehead appeared before the House appropriations committee and called cable the "most important matter confronting this agency."<sup>67</sup> Early in June the White House announced a Cabinet Committee on Cable

Communications, chaired by Director Whitehead, and including the secretaries of housing and urban development, and health, education and welfare; and three top White House aides, Robert Finch, Leonard Garment and Herbert Klein.<sup>68</sup> The FCC, meanwhile, announced at a Senate Communications subcommittee meeting in mid-June a tentative plan to encourage CATV growth in top-100 markets. Published reports wondered whether there would be in fact two administration policy proposals for cable, one from the FCC, the other from the newly established Cabinet committee chaired by Whitehead.<sup>69</sup>

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Speaking before the NCTA convention in July 1971, Whitehead stressed that the Cabinet committee was meant to "accelerate the development of policy and not hinder cable's growth or frustrate similar FCC efforts." Whitehead explained that the committee intended to establish "the policy framework" for future decision making by the Commission, and courts and state regulatory commissions.<sup>70</sup> On July 17th Whitehead met with representatives from the broadcast and cable industries in an effort to reach some accord over issues then dividing them on future cable growth. Disagreements included differing interpretations of who owned the rights to broadcast programming also carried on cable systems. The presence of presidential assistant Peter G. Peterson underscored the White House concern for the issue. A report said that compromise on copyright legislation and regulation could be reached within thirty days. The Cabinet committee was claimed to have its report ready before congressional recess on August 6th.<sup>71</sup>

By this time the cable policy situation had become confusing.



The White House, through the Cabinet committee, seemed to be stealing the FCC's thunder by planning the future of regulatory framework for cable, while the OTP, also a presidential instrument, intervened in the more mundane details of present-day cable regulation. Both were occurring just as the FCC was about to adopt new rules. Yet Congress and FCC both recognized the necessity for certain crucial regulatory actors - the broadcast industry, the cable industry and copy-right holders - to reconcile their conflicting interests prior to the FCC's formal submission of cable regulation rules to the Congress.

Thus the OTP's self-appointment as negotiator was generally welcomed. However, Whitehead was reportedly reluctant to take on this new task in addition to his chairmanship of the Cabinet committee, and the FCC was said to feel that its expertise on cable was somehow being threatened by the OTP action. One report described the Commission's attitude toward what it desired in cable legislation as being "set in concrete." The Commission apparently was wary of OTP dominance.<sup>72</sup>

During the last two weeks of August the OTP met with a number of parties - the NCTA, NAB, Association for Maximum Service Telecasting (AMST), a long-time cable foe, copy-right holders and public-interest organizations - in its intensive search for policy solution acceptable to all.<sup>73</sup> By the end of the month the search had been abandoned. The cable industry claimed it could not "negotiate downward" from the moderately favorable provisions offered initially in the FCC proposal.<sup>74</sup> The Cabinet committee report, meanwhile, was expected about the middle of October, at the latest.<sup>75</sup> FCC Chairman

Dean Burch spent the middle part of that month trying to revive the stalled negotiations, but also failed. This time it was the broadcast industry that was said to have "bailed out."<sup>76</sup>

What was characterized as the shared intense desire of both the administration and Congress, and presumably the FCC, to avoid a battle on Capitol Hill, propelled Whitehead once again into the negotiator role, and he imposed a November 11th deadline for compromise.<sup>77</sup> Whitehead did succeed, getting the NCTA, NAB, AMST and eight major motion picture companies, who hold the most directly affected copyrights, to agree. This meant that there was "virtually no chance" that Congress would hold hearings on the FCC's proposal submitted August 5th, for it had been made obsolete by the decisive OTP intervention.<sup>78</sup>

In December working papers of the Cabinet committee circulated, and certain features of the likely final report became apparent: cable systems' ownership and program production ought to be kept separate (the committee was believed to favor treating cable as a common carrier); cable would be permitted to carry any and all broadcast signals, while being liable for all copyright provisions; there would be no ban on cross-media ownership of cable; and constraints would be imposed to prevent "serious harm to the broadcast industry, if not to individual stations."<sup>79</sup> In a speech before the Hollywood Television and Radio Society, Whitehead explained his hope that this approach to cable would promote diversified programming, serving neglected minority interests that over-the-air broadcasting had historically ignored.<sup>80</sup>



The FCC adopted its cable rules in February 1972. Commissioner Nicholas Johnson vociferously criticized the OTP's influence on the final form taken by the rules, charging that White House pressure on the broadcast and cable industries and copyright holders had forced the Commission to reconsider its position - after presenting it to the Congress - in a way that was, to Johnson, undesirable and perhaps illegitimate. Senator Pastore urged Chairman Burch to provide the specifics needed to implement the rules, and wondered whether a long-range policy statement on cable could be expected in the near future from Whitehead. There was fear that the Cabinet report, now now expected until after the FCC rules took effect on March 31st, might include provisions that would conflict with the FCC's more short-term application of the new regulatory rules.<sup>81</sup>

In June the Cabinet committee held its first meeting since the previous October. There was speculation that its report would appear no later than the end of September.<sup>82</sup> The press reported that the FCC and Cabinet committee viewed cable in two fundamentally different ways. The Commission saw it merely as a variation on broadcasting, while the committee perceived it as a new technology whose use was unbounded by traditional constraints, and therefore was susceptible to innovative ground-up planning.<sup>83</sup>

Whitehead spoke in November before the California Cable Television Association and called for mixed funding of cable - from advertising and subscription - as an incentive to provide specialized programming. He also suggested that Congress ought to permit cable to

evolve unencumbered by specific legislative constraints, while at the same time giving it a general framework and direction that only a comprehensive legislative package could provide, and which would guard against future policy making by case-by-case consideration.<sup>84</sup>

It was not until February 1973 that Whitehead again spoke on the cable issue, when he appeared on conservative William F. Buckley's television program, "Firing Line." There Whitehead promoted pay-cable as a vehicle for specialized programming, criticized the cable industry for a lack of imagination, and clearly stated his support of cable as a genuine form of competition for the established broadcast industry.<sup>85</sup> In April OTP general counsel Henry Goldberg and Brian Lamb, OTP congressional and media relations assistant, presented the OTP-Cabinet committee position on cable to a select audience of Wall Street brokers in New York.<sup>86</sup> In June Goldberg spoke before the NCTA convention, restating the by-now consistent OTP preferences for the growth of cable.<sup>87</sup>

There was virtually no public movement in the policy exchange over cable until December when Broadcasting magazine pessimistically reported that the Cabinet committee report had been "taken off the back burner and put into the freezer," and could not be expected for at least six months.<sup>88</sup> The magazine also observed that Whitehead and Leonard Garment were the only two committee members left - the others having left Richard Nixon's administration as Watergate took its steady toll. Almost immediately following the story, Whitehead told the Hollywood Television and Radio News Director Association that the



report would indeed soon appear, largely because he intended to leave the OTP early in the new year and wished to see the study through to its completion.<sup>89</sup>

When the Cabinet Committee on Cable Communications' Report finally came out in January 1974, it was termed "Whitehead's last hurrah" and described as being "long-awaited, nearly forgotten."<sup>90</sup> Immediately reviewed by a panel of experts assembled by the Aspen Institute Program on Communications and Society, it received a friendly reception. There were some criticisms. For example, the less than total separation between cable systems owners and program producers (owners would be permitted to program one or two channels in their own systems) displeased some. Allowing cross-ownership by newspapers and broadcasters was also criticized. Another shortcoming was a lack of details on a crucial transition period, one which an analyst estimated as not culminating until 1985 or 1990, when cable would grow to 50 percent national penetration. Finally, decentralization of cable regulation, delegating authority now held by the FCC to state and local agencies, was generally thought unnecessarily cumbersome. Overall, however, the cable industry was pleased with the report.<sup>91</sup> The editors of Broadcasting magazine were less happy, judging the report, under the editorial headline "out of this world," to be the "gospel according to Clay Whitehead" which "faces the reality of united broadcast industry opposition."<sup>92</sup>

But in general the report seemed to have produced a new, positive image for Director Whitehead and for the OTP. In interviews

Whitehead stressed how his personal philosophy of telecommunications freed from regulatory constraint was as evident in the OTP's early venture into domestic satellite policy or the intentions behind his Indianapolis speech on network news and license renewal (see below), as in the cable report. It was also revealed that the Cabinet report had been complete for some time. Whitehead had been waiting for Richard Nixon to become less distracted by his growing Watergate difficulties. When that failed, Whitehead decided to release the report publicly as being presented to, not by, the President.<sup>93</sup> By April the OTP was circulating a legislative proposal meant to implement the recommendations of the Cabinet committee. It was scrutinized by NCTA and the FCC's cable bureau chief, and later by OMB.<sup>94</sup> In May Whitehead appeared before an FCBA luncheon, where four years previously he had first indicated the administration's and the OTP's interest in the cable issue. Whitehead announced that he did not expect enabling legislation for his proposed cable policies to be passed soon. The debate, he said, would probably go on for two or three more years.<sup>95</sup> Somewhat altered from its original form, the OTP's legislation was submitted to OMB at the end of May 1974, and when over the summer both the FCC and the Justice Department objected to certain provisions, it was returned in August to the OTP for redrafting.<sup>96</sup> Final legislative action on the complex question of cable regulation seemed distant, but the OTP's prominent role in determining that policy was undeniable.

The OTP was involved with the policy issue of cable television



regulation on two fronts after Whitehead's departure. The first concerned the question of copyright protection for program material initially broadcast over the air and then carried over wired systems. Should cable operators be required to pay substantial fees for the use of such programming, the economic incentive for installing and operating cable-television systems might be greatly diminished. The OTP had, of course, played a crucial role negotiating interim cable rules in 1972 that were acceptable to broadcasters and cable operators alike. But those FCC rules were timed to expire at the end of March 1977, and the copyright question, among others, would have to be reviewed for longer-range rulemaking. The possible breakdown of the OTP-mediated compromise on copyright concerned Acting Director Eger from December 1974 until July 1975, when the Commission cancelled the 1977 termination date of the interim rules.<sup>97</sup>

The second cable matter that involved the OTP was the policy planner's own draft legislation for overall U.S. cable regulation. Prepared during Whitehead's last months at the OTP and based on his Cabinet Committee's cable report, the draft bill was roundly criticized by FCC Commissioner Glen Robinson in October 1974.<sup>98</sup> These criticisms and others encouraged a second draft, very much like the first, which was sent in January 1975 to the Office of Management and Budget for its review.<sup>99</sup> In October it was reported that the legislation had been altered to incorporate two Justice Department recommendations concerning the carriage of broadcast programming and cross-media and multiple ownership.<sup>100</sup> There was little other public OTP activity on the draft legislation until John Eger, who was to resign the

following month, sent proposed legislation to the House communications subcommittee in June 1976. Much like the draft first released in May 1974, it emphasized deregulation by federal-level agencies. Eger, however, reported that the bill "did not represent the administration's position," but merely sought to implement the Report in legislative terms. The White House Domestic Council was said to be working on general regulatory reform, and would at some future time release the administration's position on cable television.<sup>101</sup> After Eger's departure it does not appear that the OTP continued to support actively any legislation for cable television regulation.

#### License Renewal

The license to operate a radio or television station is a contract reflecting the fiduciary relationship between broadcasters and the Federal Communications Commission. The terms and conditions of the license determine how a private entrepreneur will be judged in his performance as a public trustee. Should he fail to fulfill specified obligations, the Commission is empowered to revoke or not renew the operating license, and the opportunity to broadcast will be given to another. Every three years the broadcaster faces such a review.

In actual practice, few broadcast licenses have been revoked or not renewed for reasons other than fraud in advertising or consistent engineering incompetence. The FCC processes many hundreds of license renewals every year, and rarely scrutinizes in detail the 3-year record of individual broadcasters.<sup>102</sup> During the last decade, however, the Commission or the courts have decided against license



TABLE 6

## THE OTP AND THE LICENSE RENEWAL

## POLICY DEBATE

October 1971	Whitehead proposes changes in broadcast licensing in speech before the International Radio and Television Society (IRTS) meeting in New York
December 1972	Whitehead's most controversial speech, before the Indianapolis chapter of Sigma Delta Chi, seems to propose a pro-industry license-renewal bill in return for local station pressure on television network news
January 1973	Speaking before the National Academy of Television Arts and Sciences at the Americana Hotel in New York, Whitehead softens his Indianapolis rhetoric, promotes bill
February 1973	Senate communications subcommittee turns OTP oversight hearing into sharp criticism of Indianapolis speech, enters into public record 70 pages of negative editorial reaction from the nation's press
April 1973	Whitehead testifies in support of OTP bill before House Communications Subcommittee
June 1974	Whitehead testifies in support of OTP bill before Senate Communications Subcommittee
December 1974	Renewal bill dies for want of a congressional conference committee

renewal in a few important cases. The central factor in these instances has been changing criteria used in assessing competing applicants for the license. Non-ownership of other media in the same market has sometimes been preferred, working against multi-media license holders. Also, it has been unclear whether the licensee's past record or the promises of the challenger should be more decisive. Further, there is the question whether a merely acceptable performance record is sufficient to keep the license - or must it be clearly superlative?<sup>103</sup>

As the amount of risk at license renewal time has increased, broadcasters have clamored for greater protection from successful challenges. Being profit-seeking business people, broadcasters wish to ensure predictability and continuity in their industry to the extent possible. With growing sophistication, citizens' groups have come to use the license-renewal process not always as a device for the seizure of licenses themselves, but as a means of influencing station programming practices. Broadcasters have resented even this more moderate introduction of risk.<sup>104</sup>

Nearly every Congress that has met in recent years has considered at least one bill to alter the license-renewal process in favor of the incumbent license holder. Leveling charges of First Amendment violations, broadcasters have sought to reduce or eliminate FCC-enforced standards for program types, including the political Equal Time provision of the Communications Act, and the Supreme Court-supported Fairness Doctrine.<sup>105</sup> Broadcasters have most consistently desired lengthening the license term, usually from three



years to five. The terms of the broadcast license and the procedure of the license-renewal process have obvious implications for determining who shall broadcast and what shall be programmed. Changes in licensing policy, therefore, are of acute interest to broadcasters and would-be reformers alike.

The OTP joined the fray over possible changes in license renewal when Director Whitehead made a wide-ranging speech on 11 October 1971 before the International Radio and Television Society (IRTS) in New York. Claiming that "we need a fundamental revision of the framework of relationships in which (the broadcaster), the government and the public interact," Whitehead suggested three major changes, including altering the "license-renewal process to get the government out of programming." He also called for a related policy change "to eliminate the Fairness Doctrine and replace it with a statutory right of (paid) access" to radio and television for those wishing and able to buy time in order to express a point of view.<sup>106</sup> Whitehead's proposal for altering license renewal had three parts. First the FCC would accept competing applications for a broadcast license only when the license had first been revoked or not renewed. This would give substantial protection to license holders, defusing the license challenge as a frequently used weapon of the broadcast reform movement. It would also make the transfer of licenses - except by station sales - an unlikely occurrence. The other two points were less clear. A "licensee would be obliged to make...(his) programming... responsive to the interests and concerns of his community," though

presumably without the formal, existing mechanism of "community ascertainment" which Whitehead derided in the same speech. And "the criterion for renewal would be whether the broadcaster has... made a good faith effort" in determining those interests and concerns. This seemed to mean that a licensee would be held accountable more for his intentions than for his performance.<sup>107</sup> The vagueness of these latter two points may have reflected an unsureness on Whitehead's part about existing policies. However, it was the friendly tone of the entire speech, and the promise of administration support for longer license terms that excited Whitehead's industry audience. Broadcasting magazine concluded that "in effect, (Whitehead) would revive the broadcaster-supported licensee-protection bill that Senator John O. Pastore championed in the last session of Congress, then dropped when he ran into sharp criticism from citizen groups,"<sup>108</sup>

Immediate reaction to the OTP proposal followed predictable patterns. The networks, the broadcast industry's power center, liked it - the CBS Washington vice president called it "stimulating." The NAB, chief industry lobbyist, liked it - the NAB president used the words "creative and positive." Citizens' groups' representatives called it a "disaster" and "naive." One anonymous observer reportedly said that, in any case, no legislative change in the Fairness Doctrine, which would evidently be scuttled in Whitehead's plan, could be considered a political likelihood in an election year.<sup>109</sup>

Whitehead made himself available for a press interview soon after delivering the speech, and emphasized his purpose was to



"stimulate discussion" of a "new direction" in broadcast regulation, not to make "specific legislative proposals," which would be "pre-mature."<sup>110</sup> Appearing later on a Washington television program, Whitehead said that the OTP "was not completely clear" about a replacement for the Fairness Doctrine, and denied once more that he had a ready legislative proposal to implement the policy recommendations in his speech, saying that the OTP "threw this out to get people's reaction."<sup>111</sup> In a follow-up speech in early December before the Arizona Broadcasters Association meant to "fine tune" his earlier address, Whitehead re-emphasized that lengthened and protected licenses were coupled directly to his proposed elimination of the Fairness Doctrine.<sup>112</sup> After this presentation, the OTP remained quiet for several months on the license-renewal issue. One bill was introduced in Congress with a similar treatment of licensee "good faith," but key members of Congress seemed to be cool toward it, and the OTP did not act. Senator Pastore was said to be waiting for a bill backed by the FCC or the administration before holding hearings.<sup>113</sup>

The White House-supported license renewal legislation was introduced by a Whitehead speech before the Indianapolis chapter of Sigma Delta Chi, the professional journalism organization, on 18 December 1972. A prespeech press report stressed the significance of the occasion, saying that OTP "was billing (it) as the administration's 'keynote' speech on broadcast matters as Richard Nixon enters his second term." Predictions were that the OTP bill would "give broadcasters what they have long sought - longer licenses, probably five years, and stronger protection against challengers at license-

renewal time." But speculation was also that Whitehead would urge local station affiliates of the TV networks to be critical of network-produced material, especially news and public affairs. The report went on to say that the "degree of enthusiasm with which the White House backs license-renewal legislation may depend on how seriously affiliates heed Whitehead's call to greater independence from networks."<sup>114</sup>

The press prediction turned out to be generally accurate. Whitehead's Indianapolis speech is probably the best known, most controversial public move the OTP ever made in broadcast-related matters (or perhaps in any other). Whitehead proposed an extended license term, and stressed that for renewal, a broadcaster must demonstrate that he has been "substantially attuned to the needs and interests of the communities he serves," and have made a good faith effort to respond to those needs and interests. It was unclear how these renewal standards differed from existing conditions, except for the abolition of such measures as program-content categories. Surprisingly, the Fairness Doctrine was retained as an "unfortunate necessity." Trouble came when Whitehead seemed to suggest that local stations "take action" against the "ideological plugola" (a term he refused to clarify in succeeding weeks) of network news in order to merit the new bill, which he characterized as "an important first step...to increase freedom and responsibility in broadcasting."<sup>115</sup> In the context of Nixon media politics, including Vice President Spiro Agnew's speech making, Whitehead's address, with its unmistakable quid pro quo, provoked a hostile response, most directed at the OTP.



Broadcasting industry pragmatism, however, quickly made sense of what had been offered and separated the speech from the license-renewal bill. Broadcasting editorialized that "the bill could be a good broadcaster's shield. The broadcasters would be well advised to forget the Whitehead jawboning and get down to legislative business."<sup>116</sup> The President appeared to have made good on his promise of the previous June to support legislation friendly to the industry on license renewal, and it was an opportunity to be seized. Soon Whitehead was on the stump, appearing in various media in support - and in defense - of his speech and the administration bill. On January 11th he addressed an overflow crowd at the New York chapter of the National Academy of Television Arts and Sciences meeting at the Americana Hotel. There he tried to blunt some of his earlier language.<sup>117</sup> Despite Whitehead's efforts, the bill and the speech had "gotten hopelessly mixed up," and therefore, as Broadcasting's editorial writers put it, "the bill is doomed." The "Whitehead curse" had jeopardized "plenty of good bills already on the Hill."<sup>118</sup> The broadcast industry seemed torn between the contradictory interests of its two roles: as journalists claiming a violation in Whitehead's speech of First Amendment press rights, and businesspeople seeking favorable protective legislation.

Whitehead continued to prostelitize over the following weeks, writing to the NAB in a "more moderate tone" and posing "not so dark a threat" to the industry's interests.<sup>119</sup> Whitehead hoped to salvage the OTP's bill. The infamous Indianapolis speech, meanwhile, was reported to have been inspired in part by Nixon advisers Charles Colson

and Patrick Buchanan.<sup>120</sup>

The tension between Congress and the OTP in the person of Clay T. Whitehead reached its crescendo at oversight hearings held by Senator Pastore's Communications Subcommittee toward the end of February. In a lengthy introduction, Pastore invited Whitehead to "explain yourself so that we can all understand you" regarding the Indianapolis speech.<sup>121</sup> Pastore asked Whitehead to clarify the administration's intentions and their implications, and to illuminate any connections between the speech and the bill. Pastore also criticized what he saw as a more general weakness of the OTP's first two and-a-half years, the failure to live up to his expectation that the OTP might fashion an "overall telecommunications policy for the country."<sup>122</sup> Half the published transcript of Pastore's hearings, some seventy pages worth, was devoted not to testimony, but to editorial reactions from publications all over the country critical of the OTP. Whitehead was severely chastised.

Perhaps sensing how badly damaged would be the chances of any favorable license-renewal legislation if it continued to be identified with the OTP, Broadcasting editorialized that "Whitehead's insistence on linking administration criticism of network news with the still-unsubmitted draft of license-renewal legislation is proving unacceptable to influential senators." The magazine recommended the most expedient strategy for the broadcast industry: "Emphasis must be put in bills already submitted by many members of both Houses, who are detached from the White House obsession with network journalism."<sup>123</sup> Many other alternate bills there were. So popular a political



issue was license renewal that some 200 members of Congress were then sponsoring at least a dozen major pieces of legislation.<sup>124</sup>

At mid-March the House communications subcommittee held hearings on the White House bill, the NAB-sponsored license renewal bill, an FCC-proposed bill, and others.<sup>125</sup> One analysis complained that while "the White House did broadcasters no favors when Mr. Whitehead linked license-renewal relief to bias in network news." And furthermore, the OTP's legislative proposal was no better than existing policy, since it retained the Fairness Doctrine, which Whitehead had in earlier public statements criticized as an untenable governmental intrusion into broadcast content. The FCC bill, based on a 1970 policy statement overturned by the courts, was preferable, said Broadcasting, but best of all for the industry was the NAB's "model bill."<sup>126</sup> In the midst of the hearings, which lasted nearly 20 days scattered over a period of several months, the NAB president reminded his members meeting at their annual convention that the OTP bill "is a good bill," though the timing and rhetoric which introduced the bill were unfortunate and had "confused the issue of license renewal."<sup>127</sup> Presumably, the passage of a few months and the prospect of getting favorable legislation approved had tempered broadcast industry attitudes toward the OTP.

Whitehead's congressional appearance in support of the OTP bill was marked by an agitated exchange with subcommittee chairman Torbert Macdonald, with the chairman claiming that perhaps "you gave the (Indianapolis) speech because you did not want any (license-renewal) bill." Whitehead, for his part, announced that "anyone who

would couple this bill...to short-term political vicissitudes of the administration is drawing a connection that cannot be reasonably made." Macdonald answered with a question of his own, "Isn't it strange that everybody drew that connection?"<sup>128</sup>

By the time the subcommittee voted its approval to license renewal legislation in October, the bill had become the object of intra-committee politics, and was a patchwork of conflicting amendments. The final product unexpectedly favored license challengers who promised "superior service" to that previously provided by the license holder.<sup>129</sup> Spokespeople for the broadcast industry objected, and the subcommittee seemed eager to undo its action. Eventually, after months of fussing over the form of the bill, the subcommittee reported out in February 1974 license-renewal legislation which, on the whole, was considered favorable to industry interests.<sup>130</sup> Approval by the full House came quickly.<sup>131</sup> As Senate hearings on the bill loomed, Broadcasting asked, with regard to the Nixon administration's position on the bill, "which spokesman d'ya believe?" For the Justice Department had announced it would not support the legislation, while the OTP said it would.<sup>132</sup>

Senate hearings ran through the month of June, with Whitehead supporting a slightly different version from the House-approved bill, one drawn up by the OTP and incorporating stricter conditions on license challengers.<sup>133</sup> An extensive lobby effort to defeat the House-approved bill and others like it, including the OTP's, was mounted by citizens groups. One, the Citizens Information Project (CIP), submitted its own bill which drew criticism from Whitehead.<sup>134</sup>



A crucial stumbling block to passage of the House bill came from Senator Philip Hart (D-Mich.), who threatened to kill it by referral to his antitrust subcommittee if it or any other bill should prohibit case-by-case consideration of broadcast ownership patterns.<sup>135</sup>

By the time of Whitehead's departure from the OTP in mid-September 1974, a bill appeared to be on its way out of the full commerce committee and onto the Senate floor where the entire chamber seemed ready to approve it. This bill did not incorporate multi-media ownership as a negative factor in renewal, and stressed licensee performance, not challengers' promises, as the determining criterion, both points desired by the industry. One month after Whitehead left the OTP, the House and Senate had passed bills providing for longer-term licensing periods and other conditions generally considered favorable to the broadcast industry.<sup>136</sup> The OTP had been an active supporter of such legislative change during earlier committee debates in both chambers. But it could play little role at the stage of congressional conference committee, where representatives from House and Senate meet to resolve differences separating their otherwise similar versions of a bill, so as to shape a compromise form into legislation. No such compromise, however, was reached in broadcast license-renewal legislation. For reasons apparently having nothing to do with this issue, Rep. Harley Staggers refused to appoint a conference committee. This effectively killed the bill in December, at the end of that Congress.<sup>137</sup>

Loosening the regulations surrounding FCC license-renewal

practices had long been a popular cause in Congress prior to the OTP's involvement with the issue, and it continued to be after December 1974. By the middle of the following year, there were some 50 such bills before Congress; one bill in the House had the endorsement of 100 representatives and the National Association of Broadcasters.<sup>138</sup> Chairman Macdonald promised hearings and Rep. Staggers announced his support of a 4-year licensing period.<sup>139</sup> However, Macdonald died early in 1976.<sup>140</sup> Despite hopes of his successor - Lionel Van Deerlin - to hold hearings, 1976 was an election year, and some judged that no such license-renewal bill could pass Congress.<sup>141</sup> In the end Van Deerlin decided to collapse consideration of specific licensing policy changes into his larger attempts to rewrite the 1934 Federal Communications Act.<sup>142</sup> By the time of the OTP's demise, license renewal was no longer a discrete issue, and the OTP's voice on the matter had been nearly mute for almost three years.

#### Radio Deregulation

There are roughly ten times more commercial AM and FM radio stations than commercial television stations in this country.<sup>143</sup> Because of its greater numbers, some analysts have concluded that radio may have achieved at least one of the basic goals of broadcast regulation, namely content diversity. Despite such standardized programming practices as networking, automation and formatted content packages, radio, these analysts claim, ought to be freed of most non-engineering governmental oversight. Any such test of lessened radio regulation also carries with it potential ramifications for similar alterations in television's regulatory scheme.



TABLE 7

## THE OTP AND THE RADIO DEREGULATION

## POLICY DEBATE

December 1971	The OTP releases a staff report in support of an experiment in lessening existing regulatory rules and regulations that apply to commercial radio stations
April 1972	FCC announces the establishment of a "reregulation" task force headed by Commissioner Wiley to examine all FCC radio and television rules
December 1972	FCC implements its first deregulation changes for commercial radio, which are mostly technical in nature
October 1973	In a speech before the International Radio and Television Society (IRTS) in New York, Whitehead proposes the deregulation of commercial radio, announcing he has written FCC Chairman Burch to suggest a joint OTP-FCC experiment in deregulation
March 1976	FCC votes down limited experiment in radio deregulation
June 1976	Acting Director John Eger proposes legislation that would set up experiments in major markets eliminating Fairness Doctrine and consideration of program formats

In the same October 1971 address before the New York chapter of the International Radio and Television Society in which he proposed changes in television station licensing policy and abandoning the Fairness Doctrine for TV, Whitehead suggested a third reform. He called for the "deregulation" of commercial radio, or a reduction in certain regulatory constraints on the medium so as to "ultimately treat radio as we now treat magazines." Whitehead announced that he had earlier sent a letter to FCC Chairman Dean Burch proposing a joining OTP-FCC experiment. A "first step," this experiment would in one or more large cities grant pro forma frequency assignments and transfers, and would drop consideration of programming or commercial practices and Fairness Doctrine requirements as criteria for license renewal. Whitehead's letter to Burch said that the experiment could be conducted under a provision of the Communications Act authorizing the Commission "to study new uses for radio...and generally encourage the larger and more effective use of radio in the public interest."<sup>144</sup>

The OTP director's concern seemed, on the basis of comments to the press both before and after the speech, to reflect the general "free-market" philosophy of the early Nixon administration. Whitehead's letter to Burch observed that radio "more closely approaches the free enterprise system than any other segment of the broadcasting industry," presumably because of the larger station number.<sup>145</sup> There was also the suggestion that many of commercial radio's regulatory rules had been inappropriately derived from television's, which as a medium and an industry had significantly different characteristics. With the IRTS speech's two proposals for change in television policy,



radio deregulation seemed to share the conviction that government regulation should not consider any aspect of its program content, and the extent possible, government regulators ought to revert to their original role as traffic cop of the airwaves.<sup>146</sup>

The deregulation idea was overshadowed by the publicity given to the other two "daring proposals," but Broadcasting magazine reported that deregulation was the most easily attainable. There was a good "prospect of swift action by the FCC to 'de-regulate' radio," "the only major part of the Whitehead plan that can be put into action without extensive legislation." It was reported that the four Republican members of the Commission "could be counted on" to support it. The same story claimed the deregulation idea was Whitehead's alone, and White House sources described it as his "individual effort."<sup>147</sup>

Chairman Burch had "no comment" on the OTP proposal, but the NAB responded quickly and enthusiastically, sending a delegation of officials to suggest to Whitehead an even broader experiment which would encompass both large and small markets in various regions of the country.<sup>148</sup>

In December the OTP released a 26-page staff report to buttress Whitehead's contentions that commercial radio no longer required what had become traditional regulatory practices. The study argued that radio did not suffer from "any scarcity of voices, lack of diversity, or difficulty of access," and proposed a variety of approaches to deregulation, some of which would entail a fundamental shift in the concept of broadcast regulation, such as selling licenses to highest bidders or recognizing commercial radio as a common carrier.<sup>149</sup>

Burch was again reported to be cautious in his attitude toward the idea, saying, "I don't know what it means. It involves a lot of things. I don't think we'd have a deregulation package as such. It would probably be an incremental thing."<sup>150</sup> The OTP staff report recommended the experiment take place over "several years," through at least one license-renewal cycle.

There was little public discussion of the issue until April, when the FCC announced the establishment of a Re-regulation Task Force, to be headed up by a Republican commissioner, former general counsel and later chairman, Richard Wiley. Its task was to analyze "each rule in Part 73 of the Rules and Regulations, which contains all of the rules pertaining to radio and television broadcast services." "Simpler" rules, especially those applicable to radio, were a goal.<sup>151</sup> In something of a kick-off speech for his project, Wiley received frequent applause from the radio session of the NAB's annual convention when he made several broad comments clearly sympathetic to, as he put it, the "small guy" broadcaster. He also chose to dub the project "re-regulation," perhaps a more positive sounding term.<sup>152</sup> Neither Wiley's speech nor the FCC Public Notice seemed, however, to envision the possibility of an experiment in the deregulation issue on the scale proposed by the OTP.

The Commission made its first changes in radio's regulatory rules in December 1972. These and other changes that followed were largely directed to technical, engineering or administrative matters, and hardly seemed to be building toward the kind of sweeping changes suggested in either Whitehead's speech - treating radio as an elect-



ronic magazine - or in the follow-up staff report - field experiments with basically different regulatory approaches. Still, it appeared as though the FCC action had been at least in part a response to the OTP's public proding.

After Whitehead's departure the OTP acted in only two prominent instances regarding radio deregulation. Just prior to his resignation, Acting Director John Eger sent to the OBM proposed legislation that would provide for an experiment in dropping Fairness Doctrine requirements for major markets and prohibit the FCC from considering changes in station programming formats.<sup>153</sup> At that time the bill was given little hope for passage. The second instance followed shortly after, when new OTP Director Thomas Houser expressed his qualified support of Eger's bill and for radio deregulation generally.<sup>154</sup> Wiley, on the other hand, continued to press the issue actively. Perhaps spurred on by the "anti-regulation" tenor of the Ford administration and by predictions by policy futurists of reduced regulation for broadcasting, Wiley's zealous support of the issue even lead him to make the public blunder of identifying Chairman Macdonald as his ally on this issue, when actually Macdonald was opposed.<sup>155</sup> In any case, Wiley lost a Commission vote (4-3) in March 1976 that would have permitted a limited experiment in radio deregulation.<sup>156</sup> He left office still claiming that such radio deregulation was a policy issue whose time had come, though by then he no longer had the visible support of the OTP.

## Network Reruns

Hollywood production houses provide prime-time TV programming for American audiences.<sup>157</sup> In recent years the number of episodes per program series has been steadily reduced, and each episode is shown twice or more during the September-May network season. This may have lowered network production expenses, but, it is claimed, may also have contributed to economic hard times in the production industry. If the networks were to change their prime-time rerun policy so as to increase the number of new shows for each series, the production industry and its employees would probably be the most direct beneficiaries. As long ago as March 1971 an unemployed Hollywood film editor, Bernard A. Balmuth, began complaining publicly that the increasing number of reruns being shown on prime-time network television meant less work for him personally, and for the production industry as a whole.<sup>158</sup> Evidently Balmuth's letter-writing campaign, which included letters sent to FCC Chairman Dean Burch and consumer advocate Ralph Nader, provoked no response until September 1971, when the Citizens Communications Center wrote back suggesting that Balmuth file a formal petition for FCC rule-making. This same suggestion also came from Chairman Burch's legal assistant and later OTP Acting Director, John Eger.

It was not until February 1972 that Balmuth's efforts were even publicized by his local trade press. The following month Balmuth says he was pessimistically advised by Brian Lamb, assistant to the OTP director, that the FCC was not empowered to regulate networks



TABLE 8

## THE OTP AND THE NETWORK RERUNS

## POLICY DEBATE

May 1972	Bernard A. Balmuth, a Hollywood film editor, files a petition for FCC formal inquiry into the growing number of prime-time network TV reruns
September 1972	President Nixon meets with representatives of a coalition of 17 Hollywood unions, promises that the OTP will look into problem  Whitehead addressed the Hollywood Radio and Television Society and announces that OTP will research rerun issue and pressure networks for policy changes, in support of union position
December 1972	Amidst reports that the networks balk at making rerun policy changes, OTP General Counsel Henry Goldberg says in New York that anti-trust action may be necessary
February 1973	OTP releases economic staff study on reruns, includes no policy recommendations. Quickly criticized by FCC economist
October 1974	FCC announces notice of inquiry into rerun issue
July 1976	FCC terminates inquiry without action

and that the government could not in any case get involved in programming questions. As an alternative strategy Lamb suggested that Balmuth contact local network affiliates which might be responsive to audience opinions.<sup>159</sup>

In May 1972 Balmuth filed a 5-page petition for rule-making requesting that the FCC restrict network reruns to a maximum of 25 percent of all prime-time hours during a single season.<sup>160</sup> By the end of the month the Hollywood production unions and guilds had joined him on the issue. In August the Film and Television Coordinating Committee, representing 17 Hollywood unions, filed a pleading with the Commission in support of Balmuth's original petition.<sup>161</sup> At the same time CBS and the corporate owner of two independent television stations filed their own analysis of the rerun problem which reached conclusions at odds with Balmuth's.<sup>162</sup>

Representatives of the Screen Actors Guild (SAG), which seemed to be emerging as the leading organized Hollywood spokesman on the rerun issue, met with President Nixon in September. In a letter dated 12 September, Nixon assured SAG that he had assigned OTP Director Whitehead to look into the problem, and that Whitehead would address the issue in a speech before the Hollywood Radio and Television Society two days later.<sup>163</sup> An OTP spokesman was left to reconcile the OTP's earlier letter to Balmuth with the OTP's new involvement in the issue. Brian Lamb had written: "We don't feel that in a free society it is the government's job to tell the media how to run their business." Lamb now explained that the reason for OTP's present involvement was because the President had redefined it



as an "employment issue."<sup>164</sup> Prior to Whitehead's speech, the same audience heard CBS President Robert Wood claim that Balmuth's proposal was a "cockeyed idea" which would be an "economic calamity" for the TV industry. Meanwhile, the CBS vice president in Washington contacted 23 members of the California congressional delegation who had written the FCC in support of the Balmuth petition.<sup>165</sup>

In his speech Whitehead said that the OTP would examine the problem, advise the FCC, and directly urge the networks themselves to take remedial action.<sup>166</sup> By the end of the month, OTP General Counsel Henry Goldberg and Chief Economist Bruce Owen had met with network representatives and with West Coast union people, and the OTP was reportedly hopeful of submitting its recommendation on the issue in just "two or three months."<sup>167</sup> By the end of the year network resistance led General Counsel Goldberg to threaten anti-trust action in a New York speech. At the same time the OTP was said to be contracting out for a "number of independent economic studies of the reruns question."<sup>168</sup> Its report was expected to be complete in two or three weeks' time,

The OTP reruns study was released in February 1973 and concluded that certain characteristics of network programming lead directly to a high number of program reruns during prime-time.<sup>170</sup> Although it contained no policy recommendations, the OTP analysis quickly came under fire from an FCC economist working in the Commission's Office of Plans and Policy.<sup>171</sup> Toward the end of March Whitehead wrote to Chairman Dean Burch and requested a full FCC inquiry into the re-

run issue, apparently abandoning hopes of reaching a voluntary accord with the networks.<sup>172</sup> Almost two months later the Chief of the FCC's Office of Network Study told the National Conference of Motion Pictures and Television that he had drafted a notice of inquiry into the problem.<sup>173</sup> This later appeared, "with obvious reluctance," in October 1974, shortly after Whitehead left the OTP.<sup>174</sup> By March of the following year, at least two public-interest groups had expressed their desire to see such a limit imposed.<sup>175</sup> In July 1976 the FCC terminated without action its inquiry.<sup>176</sup> The OTP appears to have abandoned its involvement with this issue after releasing its 1973 study.

#### VHF Drop-Ins

U.S. television stations broadcast on two discrete portions of the electromagnetic spectrum. Channels 2-13 are on the Very High Frequency (VHF) band, and channels 14-83 broadcast on the Ultra High Frequency (UHF) band. Both VHF and UHF stations are often found in a single market.<sup>177</sup> For many years, however, the number of potential television stations was greater than the actual operating number because few home TV sets could receive UHF signals. This was rectified only in 1964 by the All Channel Receiver Bill, which required manufacturers to produce sets capable of receiving the signals of UHF as well as VHF stations.<sup>178</sup> But UHF television faced another problem, this one economic. Lucrative network affiliations had been snapped up early in the post-World War II era by established VHF broadcasters. This left UHF stations without a source for attractive, competitive programming. Today, with better technology and an improved supply



TABLE 9

## THE OTP AND THE VHF DROP-INS

## POLICY DEBATE

September 1973	In an interview marking his third anniversary as OTP director, Whitehead suggests the feasibility of increasing the number of very-high frequency (VHF) TV stations to promote content diversity
October 1973	The OTP releases an engineering staff study in support of Whitehead's contention, proposing an increase of some 60 stations
November 1973	Association for Maximum Service Telecasting (AMST), a broadcast industry lobby group, offers a counter-study to the OTP analysis, reducing the number of potential new stations to merely 10, on technical grounds
March 1974	A major citizens' or public interest group, the United Church of Christ's Office of Communication, files a petition for formal FCC inquiry into VHF drop-ins, citing it as an opportunity to increase noncommercial stations and ethnic and racial minority ownership of TV outlets
May 1974	The OTP releases a second staff study, claiming the possibility of 30 to 60 new stations
August 1974	Soon-to-be Acting Director John Eger announces that even with Whitehead's departure imminent, the OTP will continue to support VHF drop-ins
March 1977	FCC announces notice of rule-making to increase outlets by one in each of four markets

of programming from syndicators and other sources, many UHF stations are at least marginally profitable enterprises.

One way of achieving the twin regulatory objectives of content diversity and media access for groups with divergent opinions, would be to create new TV stations, in addition to existing VHF and UHF outlets. The engineering and economic aspects of any such move are complex, but the prospect of new stations with innovative, diverse programming ideas responsive to minority audiences is an attractive policy option - at least in theory. A major practical concern would be its impact upon operating broadcasters.

In an Associated Press interview published at the end of September 1973, marking his completion of three years as OTP director, Clay T. Whitehead suggested the possibility of increasing the number of TV channels available in the United States through the addition of new stations broadcasting over the VHF band, traditionally the most heavily watched and most profitable channels. Whitehead's office later explained that the idea was based on a recently completed technical study conducted by the OTP. However, during the interview Whitehead conceded that the political power of established broadcasters could effectively block any attempts at increased program diversity - his stated goal - through the creation of new stations or additional networks. This was a policy strategy that would directly threaten existing economic and technological arrangements. Finally, he added that the OTP would do little more than perhaps circulate its study among interested parties, and in any case did not intend to champion the



issue, though it might be a "good one."<sup>179</sup>

Whitehead's comments on what came to be known as "VHF drop-ins" brought immediate reaction from broadcasters and other members of the regulatory community. With few exceptions, the response was, as Whitehead predicted, a negative one. The first and leading critic was a broadcast industry lobby group, the Association for Maximum Service Telecasting (AMST). AMST leveled several charges against the technical competence of the OTP's study, questioned Whitehead's motives, and implied that the OTP was, once again, out of step with mainstream regulatory thinking on an issue - this time concerning ways to achieve program diversity.<sup>180</sup> Soon members of Congress, the FCC and industry spokespeople were demanding release of the OTP study for their examination.<sup>181</sup> Broadcasting editorialized that if the OTP study "will stand public scrutiny," the OTP must make it public. The magazine expressed skepticism about the validity of the research, asserting that "it contradicts all scientific evidence on which the existing allocations are based."<sup>182</sup> When the OTP finally released it, the UHF-TV lobby was critical, an important congressman said hearings on the issue were a possibility, the FCC voiced concern with the economic and political ramifications of such a move, and AMST promised its own analysis.<sup>183</sup>

At the first sign that regulators might be taking the OTP study seriously - a remark by FCC Chairman Burch<sup>184</sup> - Broadcasting's editorial page demanded a "formal inquiry" by the Commission to determine whether the additional stations could be added without

"technical disruption." The inquiry, implied the editorial, ought to consider not just the OTP report and any FCC analysis, but also the anticipated criticism of the forthcoming AMST study.<sup>185</sup> AMST's report appeared in November, drastically reducing the potential number of new VHF stations from approximately the 60 recommended by the OTP to a mere 10 by this new analysis.<sup>186</sup> The issue lay quietly during the winter months, but in March the debate took on new coloration as the result of the entry of new policy-making participants. Two citizens' groups filed a petition for formal FCC inquiry into VHF drop-ins as a way of promoting racial and ethnic minority ownership and operation of TV stations, and as a possible mechanism for enlarging the number of noncommercial outlets.<sup>187</sup>

In May the OTP responded to AMST criticism by releasing a second, revised study that claimed anywhere from 30 to 60 new stations could be added nationwide, depending on the technical criteria used to locate them.<sup>188</sup> Still another citizens' group announced its support for the petition before the Commission, while the FCC postponed indefinitely from an original mid-June cut off its deadline for comments on the proposed inquiry. More studies and requests for data by a variety of groups were reported in the trade press.<sup>189</sup>

Broadcasting magazine's editorial page spoke again in August, when the soon-to-be Acting Director John Eger announced his intention to pursue the issue. The editorial seemed to express industry fears regarding the OTP's possible influence on the Commission for this particular issue, warning that "the OTP calculations and proposals should count



for no more than those of anybody else who wanted to be heard."<sup>190</sup>

At the time of Whitehead's departure from the OTP, the original petitioner for the FCC inquiry, the United Church of Christ, was again in the news, demanding that the Commission release certain information used in a staff analysis of VHF drop-ins.<sup>191</sup> Deadline for comments was twice extended until December 1975.<sup>192</sup> During the next several months FCC Commissioner Robert E. Lee, known for his special protective interest in UHF television, warned that the higher frequency stations would suffer from any increase in the number of VHF outlets.<sup>193</sup> During the same period Chairman Richard Wiley spoke of the inevitability of establishing at least a few additional VHF stations.<sup>194</sup> In March 1977 a notice of rulemaking solicing comments by August was announced. Four markets, under the proposed rules, would increase the number of their VHF stations by one.<sup>195</sup> Thus by the time President Carter released his reorganization plan abolishing the OTP, the policy planner's 4-year old suggestion that VHF television stations be enlarged by some 60 appeared to be on the way to a very much smaller application, though without the OTP's continued participation.<sup>196</sup>

## Footnotes

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2. "Early bird is off and winging," Broadcasting, 10 May 1965, pp. 68-70.
3. "ABC bids for its own satellite," p. 56.
4. "No pie in the sky," Broadcasting, Editorial, 27 September 1965, p. 92.
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6. "Wide-open domestic satellite policy recommended," Broadcasting, 26 January 1970, p. 9.
7. "Everybody to cut the pie in the sky?" Broadcasting, 2 February 1970, p. 23.
8. "Whitehead prods FCC on satellites," Broadcasting, 1 November 1971, p. 38.
9. "FCC staff splits with OTP over satellites," Broadcasting, 20 March 1972, pp. 37-38.
10. "OTP cites three studies to support open-entry," Broadcasting, 20 March 1972, p. 8.
11. "Whitehead flexes OTP's muscle," Broadcasting, 17 April 1972, pp. 23-24.
12. "OTP explains position on satellite policy," Broadcasting, 24 April 1972, p. 12.
13. "They're still far apart on satellites," Broadcasting, 24 April 1972, pp. 46 and 48.
14. "Is FCC moving to advocacy of open-entry satellite plan?" Broadcasting, 8 May 1972, pp. 52-53; "FCC near decision on domestic satellites," Broadcasting, 12 June 1972, p. 3; "'Multiple entry' is FCC's choice for satellites," Broadcasting, 19 June 1972, p. 8.
15. "Now it's when, not whether, for networks' satellite system," Broadcasting, 26 June 1972, pp. 22 and 24.
16. "Comsat given key role in finalized order," Broadcasting, 1 January 1973, p. 52.



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24. "CPB endorses Whitehead bill," Broadcasting, 22 March 1971, p. 10.
25. "OTP, CPB clash over funding bill," Broadcasting, 23 August 1971, p. 38.
26. "OTP, CPB rift over bill widens," Broadcasting, 22 November 1971, p. 6.
27. "Collision of politics and public broadcasting," Broadcasting, 25 October 1971, pp. 14-16.
28. "From the mount," Broadcasting, 25 October 1971, p. 7.
29. "Wrong-way ETV?" Broadcasting, Editorial, 25 October 1971, p. 76.
30. "No retreat," Broadcasting, 1 November 1971, p. 7.
31. "CPB volleys back at Whitehead," Broadcasting, 8 November 1971, p. 9.
32. "Public servant," Broadcasting, 15 November 1971, p. 7.
33. "Macdonald to the rescue," Broadcasting, 22 November 1971, p. 38.

34. "For all to see: The CPB-OTP dispute," Broadcasting, 15 November 1971, pp. 36 and 40.
35. "Macdonald to the rescue," p. 38.
36. "Whitehead paints a gloomy picture," Broadcasting, 6 December 1971, pp. 29-30.
37. "Showdown begins on public broadcasting," Broadcasting, 7 February 1972, pp. 62 and 64 and 66.
38. Ibid., p. 66.
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40. "PTVers against Whitehead," Broadcasting, 1 May 1972, p.55.
41. "PTV rivals find common target," Broadcasting, 6 March 1972, pp. 46-47.
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44. "CPB funding takes one hurdle easily," Broadcasting, 27 March 1972, p. 42.
45. "CPB authorization bill shot down," Broadcasting, 3 July 1972, p. 6.
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48. "Killian picked to replace Curtis," Broadcasting, 14 May 1973, pp. 32-33.
49. "Whitehead bucks Pastore, Magnuson on CPB funding," Broadcasting, 2 April 1973, p. 72.



50. See "Senate passes CPB funds," Broadcasting, 14 May 1973, p. 33; "Killian, Loomis promise no end to CPB funds for public affairs," Broadcasting, 21 May 1973, pp. 36-37; "Peace settles over public TV as CPB and PBS center 'partnership,'" Broadcasting, 4 June 1973, p. 45.

51. "Funding news bad for CPB," Broadcasting, 4 February 1974, p. 9; "CPB funding bill due for rough sledding," Broadcasting, 11 March 1974, p. 37.

52. "PBS says Nixon budget cuts could sap life from public TV," Broadcasting, 20 May 1974, p. 37.

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68. "Who's to write that cable regulation?" Broadcasting, 21 June, 1971, pp. 19-22.
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## CHAPTER IV

### UNDERSTANDING THE OTP:

#### AN ANALYTICAL PERSPECTIVE ON ITS PURPOSE

This chapter casts the Office of Telecommunications Policy in analytical terms suggested by the research problem statement in Chapter I. That is, the OTP was founded largely to return stability to newly uncertain relations between telecommunications industries and federal authorities, especially in the regulation of broadcast telecommunications. The OTP was expected to accomplish this task through the planning and advocacy of national policies. In presenting this perspective there is first a discussion of the general problem of national telecommunications management and the principles behind broadcast regulation. This discussion emphasizes the unique social significance that attaches to government policies toward radio and television, the era's foremost media of mass communication. The distribution of political authority among federal regulatory policy actors, including the OTP, is also presented. Next historical tendencies of the actual regulation of broadcasting, prior to the OTP, are critically assessed. Stressed are trends in decision making and policy relations that favor powerful actors. The stable pattern of these past trends is then contrasted with the recent introduction of uncertainties for which previous strategies of regulatory policy interaction are no longer adequate. The OTP is seen as a new strategic response by governmental and industrial elites. This response is characterized by long-range policy planning carried out by technocratic

experts employed by the executive branch and working "in the national interest." The OTP, from this point of view, was meant to reassert past patterns of dominance and to protect the interests of powerful actors in telecommunications industries and the federal government.

#### Telecommunications Management and Broadcast Regulation

Chapter II traced the historical involvement of the executive branch in telecommunications that culminated in the establishment of Office of Telecommunications Policy. It was suggested that the increasing concern to manage efficiently a publicly owned scarce natural resource, the electromagnetic spectrum or airwaves, in an era of rapidly changing telecommunications technology, was an element in calls for an OTP. This may have been especially the case in the regulation of broadcast-related telecommunications that are also mass media.

All forms of telecommunications technologies use the spectrum, and there are many. Over 40 pages of the Federal Communications Commission's Rules are filled with charts that plot these services and the frequency bands they use.<sup>1</sup> There has long been a tension between demands on the spectrum and the inherent scarcity of its frequencies. Howkins suggests a parallel: "the spectrum can be compared to the world's water resources. Although they are constantly replenished, all the intending users...must coordinate their exploitation of the natural resource to avoid disaster."<sup>2</sup> Disastrous mismanagement of water resources might result in pollution; for telecommunications, an equivalent disaster is chaotic signal interference. Government authorities function in part as "traffic cops of the airwaves," res-



possible to insure interference-free telecommunications traffic. A growing difficulty in spectrum management is that

"today's increased traffic and new services need more frequency space or bandwidth. For telegraphy, some few cycles per second might be sufficient - for telephony, much more is needed, while one television channel generally requires the space occupied by one or two thousand telephone circuits."<sup>5</sup>

A further complication in the U.S. is that some 50 to 70 percent of the spectrum is reserved for use by the government, much of that for the military.<sup>4</sup> Internationally, spectrum management is also an increasingly complex matter.

"The use of the radio spectrum has gradually opened up a new and extremely complex set of political questions concerning how this resource is to be shared among different societies, between governments and citizens and between different kinds of services."<sup>5</sup>

The 1979 World Administrative Radio Conference (WARC), sponsored by a United Nations affiliate, the International Telecommunications Union (ITU), addressed the issue of global spectrum management.<sup>6</sup>

For all nongovernmental telecommunications in the United States, the Federal Communications Commission possesses authority "to encourage the most efficient use" of the spectrum.<sup>7</sup> In FY 1977 along the Commission was responsible for approximately 750,000 telecommunications assignments of various types, excluding amateur radio operators; 135,000 of these assignments were processed during that single year.<sup>8</sup> The FCC's spectrum management authority directly affects broadcasting. In the 1940s the Commission moved FM radio from one frequency band to another.<sup>9</sup> More recently the FCC reassigned vacant UHF-TV space to land mobile radio use.<sup>10</sup> Recently considered was reduced spacing between current AM and FM stations so as to permit

an increased number of radio outlets.<sup>11</sup> Governmental authority over telecommunications technology and industries, however, extends significantly beyond strictly engineering considerations of traffic control. Point-to-point and broadcast-related telecommunications are regulated by the federal government.

For point-to-point common carrier telecommunications, like the telephone, federal regulation is essentially an economic activity, and the government is charged to set prices for telecommunications services.<sup>12</sup> Broadcast regulation is basically different. Rather than determine industry prices, aspects of the production and distribution of radio and television content are regulated. In addition to the obvious desire to eliminate signal interference, legal scholars have identified two fundamental policy objectives that have developed over the half-century of broadcast regulation. These are diversity of content and relative ease of access by content consumers to participation in the process of content production.<sup>13</sup> By virtue of the finite nature of the electromagnetic spectrum, there can be only a limited number of radio and television stations, far fewer than the number of citizens who might wish to use them for self-expression. The extremely high costs associated with operating broadcast facilities also constrains their use. Over-the-air broadcast technology thus tends to draw a sharp distinction between producers and distributors of public communications, on the one hand, and consumers on the other. Metaphorically, barriers were erected to the historic "marketplace of ideas" in the age of broadcast telecommunications. As Melody points out, today



"the greatest threat to freedom of speech in the United States resides in the possibility that private entrepreneurs will tend to monopolize the marketplace of ideas in the name of economic efficiency and private profit."<sup>14</sup>

This tendency toward monopoly is resisted primarily through the regulatory licensing of stations for 3-year periods. Federal authorities supposedly weigh broadcasters' performance according to such public-interest standards as the Fairness Doctrine, the political Equal Time provision of the Federal Communications Act, equal employment practices, cross-media ownership and "localism," the general policy preference for stations owned and operated by members of the local community. It is the enforcement of these and other standards, through license revocation, for instance, that in theory compensates for the technological, spectrum-related barriers and the economic barriers to free expression in broadcast telecommunications.<sup>15</sup> Thus broadcast regulation, in principle, is an affirmative interpretation of the First Amendment: freedom of broadcast speech and press is sought for both broadcasters and the citizenry-audience through active intervention by the federal government. To refrain from intervention, in light of these obstacles, would be to condone restrictions on expression in broadcast telecommunications.

Radio and television were not, of course, the only form of telecommunications that concerned the OTP in its policy planning and advocacy activities. But they may have been, as electronic media of mass communication, the most significant. This is due to the historical uniqueness of the media and the potential consequences of their control through national policy. Mass communication, whether based on

telecommunications or the earlier technologies of print and film, has identifiable features. Fundamentally, it is recognized as the industrial production (and reproduction) of culture.<sup>16</sup> Having aspects of manufacturing, mass communication has been termed the application of mass production and mass distribution techniques of cultural forms and artifacts, how frequently commercial commodities.<sup>17</sup> A direct outgrowth of the Industrial Revolution, mass communication involves the use of certain modern technologies, a complex division of labor, centralized authority in content-related decision making, capital-intensive investment, high volume output and standardized units of production. Dissemination of an image or idea becomes possible on a scale previously impossible. Conceptually, mass communication is distinguishable from other forms of human symbolic interaction by several factors. The mass communication audience is said to be large, demographically heterogeneous in composition and personally anonymous to its members and to the originating source. The "mass communicator" is no single person, but a bureaucratic organization, coordinating various occupations and professions in content production work. The mass communication experience is said to be a public one, whose shared messages often deal with ephemeral subjects and are recognized as expendable by both producer and consumer.<sup>18</sup>

The impacts of mass communication upon social life have been many. One profound consequence of industrially produced culture is suggested by the social-construction of reality thesis: The historical rise of mass communication has relocated sectors of authority and



power responsible for giving meaning to everyday life.<sup>19</sup> There has been a move away from institutions like the family and organized religion to the perhaps less overtly socializing realms of mass entertainment, public leisure and "the news." Centralized manufacture of standardized cultural artifacts, made in great number and widely distributed, raises basic questions of social control. Mass communication and its "popular culture" have within them a capacity for a powerful few to decide the terms of public and private realities.<sup>20</sup> It is thus reasonable to expect that influence over the media of mass communication, especially radio and television, becomes an objective for societal elites seeking a means to institute, maintain or extend their domination over others. Broadcast telecommunications present a particular problem in this regard. During 1979-1980 in the U.S., 98 percent of all households owned at least one TV set and the average household used its television receiver more than six and a half hours each day.<sup>21</sup> Yet conventional over-the-air television, partly due to its technology, minimizes audience influence over production of content and centralizes programming authority in the hands of network officials, stations operators and others.<sup>22</sup> The link between findings of research on content production, portrayal and media effect is striking: Dominant elements of the societal status quo tend to be supported by the mass media.<sup>23</sup> This may be especially the case for television.

Thus federal regulation of broadcasting has serious and widespread potential ramifications for such fundamental matters as change

and order in existing political-economic and cultural conditions. Authority to decide who shall broadcast what sorts of content and the manner of its transmission and reception constitutes a major source of power in contemporary society.

The authority to institute laws, administratively interpret them, develop regulatory rules, and review such laws and rules judicially in view of national telecommunications policy and precedent, is distributed among the three federal branches and numerous agencies and offices. It was among these authorities, connected by official relations and relationships of informal power, that the OTP was to function. The official authority and structural relations of principal governmental actors in broadcast regulation are discussed below.

#### Congress

Although the Federal Communications Commission can be construed as being in the center of broadcast regulation activities, the source of all regulatory authority is the Congress, which possesses the capacity to make and amend law. The present-day structure of broadcast regulation results from the Federal Communications Act, passed by Congress in 1934 and modeled after its 1927 Federal Radio Act. The 1934 Act established the FCC.

Not all of the 435 members of the two chambers of Congress are, of course, engaged in legislative actions related to broadcasting. Rather, there are standing committees and subcommittees in both the House of Representatives and the Senate whose purview encompasses broadcast regulatory matters. These bodies include House and Senate commerce committees, and their communications subcommittees; appro-



priations committees; an antitrust and monopoly subcommittee of the Senate judiciary committee; and the House oversight and investigations subcommittee of the government operations committee. The formal realms of responsibility of these committees and subcommittees are not the only factors in determining their involvement in broadcast issues, practices and policies. The personalities of individuals in key positions of power - chairmen, for example - are an important, even decisive variable. "Congressional interest may actually be limited to only a few chairmen who gain their impact in the FCC policymaking process because of their seniority or their influential standing in a committee."<sup>24</sup>

"The two commerce committees," according to Krasnow and Longley, "undoubtedly are the center of congressional interest and activity in the field of broadcasting."<sup>25</sup> Proposed legislation affecting broadcast regulation is most apt to be considered by these committees. Hearings are a common means of providing a forum in such instances. Hearing transcripts and staff reports are also published. These committees and subcommittees conduct reviews of FCC performance in the regulation of broadcast telecommunications, passing public judgement as to whether the Commission has fulfilled its public-interest mandate. Nomination hearings on persons selected by the President to serve on the FCC are held by the communications subcommittees. Appropriations committees consider the annual FCC budget request. The senate antitrust subcommittee examines aspects of ownership and corporate control in the broadcast industry. And the House oversight and investigations subcommittee periodically reviews the operating aspects of the FCC.

For the Federal Communications Commission, relations with Congress are a significant influence. Many forms of pressure are brought to bear on regulation by the legislative branch, such as

"control by statute, the powers of the purse, the spur of investigations, the power of advice and consent, the continuing watchfulness of standing committees, supervision by multiple committees, pressure of individual congressmen and staff, and congressional control by legislative inaction."<sup>26</sup>

#### Federal Communications Commission

If Congress possesses the ultimate legal authority for broadcast regulation, it is the Federal Communications Commission that actually administers it. The Commission comprises seven commissioners, only four of whom may be from one political party. All seven, including the chairman, serve staggered, renewable 7-year terms. The burden of the daily regulatory routine is a weighty one, for the FCC operates according to a formal mandate written nearly fifty years ago. "Since then the technology of communications has galumphed along at a rate that makes the 1934 Act simplistic, and yet the FCC must regulate complex modes of communications that were totally unforeseen in 1934."<sup>27</sup>

Broadcasting is only one form of telecommunications regulated by the FCC, and its other responsibilities are evident in the organization of the Commission. Also regulated are

"international communications by satellite and undersea cable, emission standards for microwave ovens and garage-door openers, citizen band radios, amateur radio, maritime communications, police and fire department communications, cable television, pay television on air or by cable (and) data transmission services..."<sup>28</sup>



There are some 2000 employees at the FCC, working in 13 various offices, boards and bureaus. Two of the divisions, the Broadcast Bureau and the Cable Television Bureau, are perhaps most directly related to radio and television regulation. Other units, like the Office of Plans and Policy, which reports to the chairman, and the Office of Administrative Law Judges, which runs hearings on challenged station licenses, also impinge directly on broadcast telecommunications.

In regulating broadcasting the FCC works with other federal agencies, like the U.S. Commission on Civil Rights and the Federal Trade Commission (FTC). The civil rights commission has studied discriminatory employment patterns in the broadcast industry and recommended policy actions to the FCC.<sup>29</sup> The FTC has recently been involved in such issues as advertising to the child audience.<sup>30</sup> While none of these independent agencies has the authority to order another to take action, their spheres of influence do overlap, and action taken by one agency may have the effect of altering the behavior of industries primarily regulated by another.

#### Executive Branch

The President chooses commissioners for the FCC and the FCC chairman serves at the pleasure of the President. Since the chairman is generally regarded as potentially significant in setting a policy course or in affecting the daily routine of business at the FCC, this is a key appointment. The President also possesses informal power to pass on high-level staff appointments at the Commission, such as the general counsel. Richard Nixon had the unique experience of appointing all seven members of the Commission, whose

staggered terms happened to require filling during his administration.<sup>31</sup> Before the FCC annual budget reaches Congress, it has been scrutinized by the executive-branch Office of Management and Budget (OMB). The President also appoints judges to serve on federal appeals courts and on the U.S. Supreme Court, which may review FCC decisions. The Justice Department is sometimes active in broadcast issues, as when it brings antitrust suits against telecommunications firms. The Commerce Department had, during the period of the OTP, its own technological Office of Telecommunications (OT), which supplied research assistance to the OTP. Less tangible is administration power to create a "hospitable political climate" or "favorable mood" supportive of FCC regulatory actions.<sup>32</sup>

#### U.S. Courts

Decisions by the Federal Communications Commission can be appealed to the federal appellate court. This court's decisions can in turn be taken to the U.S. Supreme Court. In the past "much of the influence of the judiciary on broadcast regulation came through the powers of statutory interpretation."<sup>33</sup> This has changed. In recent years a number of important cases have been heard by the courts, and regulatory policy directly affected by their judgements. This has been especially the case with the appeals court for the District of Columbia, under the leadership of Chief Judge David Bazelon. Bazelon envisioned a more activist role for the courts. As he said, "We stand on the threshold of a new era in the history of the long and fruitful collaboration of administrative agencies and reviewing courts."<sup>34</sup> Judicial review has become potent enough that it may