Op re: FD

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:42 AM
To: Susan Burgess
Subject: fairness doctrine

7/18/78 NYT-ABS 317

7/18/78 N.Y. Times (Abstracts) 317
1978 WLNR 72907

New York Times Abstracts

July 18, 1978

Section: 3

Henry Geller, head of new Natl Telecommunications and Information Adm, int on his views on Fairness Doctrine (M).
BROWN, LES

---- INDEX REFERENCES ----

OTHER INDEXING: (BROWN, LES; GELLER, HENRY) (Henry Geller; Information Adm) (COMMUNICATIONS; FAIRNESS DOCTRINE; TELEVISION AND RADIO)

COMPANY TERMS: TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION NATIONAL

7/18/78 NYT-ABS 317
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 08:41:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	19
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Editorial re FD

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:40 AM
To: Susan Burgess
Subject: fairness doctrine

9/28/79 WSJ-ABS 22

9/28/79 Wall St. J. Abstracts (USA) 22
1979 WLNR 14823

Wall Street Journal Abstracts (USA)

September 28, 1979

Wall Street Journal editorial applauds FCC's proposal to eliminate some 'superfluous and bothersome' rules it has long imposed on radio stations. Holds FCC has correctly recognized minority interests are better served by current marketplace conditions than by regulatory paperwork. Asserts current marketplace also mandates elimination of ' Fairness Doctrine ' and 'equal time' provisions for election coverage (S).

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Entertainment (1EN08); Traditional Media (1TR30); Radio (1RA81); Radio Stations (1RA51))

OTHER INDEXING: (FCC; HOLDS FCC) (Asserts) (BUREAUCRATIC ENTANGLEMENT AND PAPERWORK; DEREGULATION OF INDUSTRY; EDITORIALS; EQUAL-TIME ISSUE; FAIRNESS DOCTRINE; LAW AND LEGISLATION (FEDERAL); MINORITIES (ETHNIC, RACIAL, RELIGIOUS); NEWS PROGRAMS; RADIO STATIONS AND PROGRAMS; REFORM AND REORGANIZATION (INSTITUTIONAL); STANDARDS AND STANDARDIZATION; TELEVISION AND RADIO) (ED.)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC)

9/28/79 WSJ-ABS 22
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 08:39:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	27
Documents:	1
Images:	0

Recipient(s): susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:54 AM
To: Susan Burgess
Subject: fairness doctrine

10/25/75 TVGUIDE A2

10/25/75 TV Guide A2
1975 WLNR 30022

TV Guide

October 25, 1975

As we see it; FCC fairness doctrine .

---- INDEX REFERENCES ----

OTHER INDEXING: (Television industry (Laws and regulations.)) (United States. Federal Communications Commission.; Television and state.)

10/25/75 TVGUIDE A2
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 08:53:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	15
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:54 AM
To: Susan Burgess
Subject: fairness doctrine

10/24/75 NYT-ABS 75

10/24/75 N.Y. Times (Abstracts) 75
1975 WLNR 55035

New York Times Abstracts

October 24, 1975

Sen communications subcom chmn John O Pastore tells FCC that he will hold oversight hearings on agency to examine why certain of its rules were modified to reduce regulation of radio and TV. Says 1 of 5 issues he is concerned with is FCC's decision to exempt news confs and pol debates between major candidates from provisions of equal-time provision of Communications Act. Says issues that will be focal in hearings are those that were recently raised by number of natl religious orgns in their requests to Cong coms for hearing on FCC. Will examine FCC proposals to exempt small stations from filing Equal Employment Opportunity repts and to experiment with suspension of fairness doctrine (M).
BROWN, LES

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Entertainment (1EN08); Radio (1RA81))

OTHER INDEXING: (BROWN, LES; PASTORE, JOHN O) (CONG; FCC; SEN; TV) (DEREGULATION OF INDUSTRY; EQUAL-TIME ISSUE; EQUAL EMPLOYMENT OPPORTUNITY ACT; FAIRNESS DOCTRINE; LABOR; NEWS PROGRAMS; NEWS AND NEWS MEDIA; POLITICS AND GOVERNMENT; PRESIDENTIAL ASPIRANTS AND PRE-CONVENTION CAMPAIGN; PRESIDENTIAL ELECTION OF 1976; PROGRAMS; RELIGION AND CHURCHES; ROMAN CATHOLIC CHURCH; TELEVISION AND RADIO)

COMPANY TERMS: CHURCHES NATIONAL COUNCIL OF (NATIONAL COUNCIL OF CHURCHES OF CH; COMMUNICATIONS COMMISSION FEDERAL (FCC); UNDA USA

10/24/75 NYT-ABS 75
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 08:54:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	32

Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:56 AM
To: Susan Burgess
Subject: fairness doctrine

8/30/75 TVGUIDE 4

8/30/75 TV Guide 4
1975 WLNR 29770

TV Guide

August 30, 1975

Pros and cons of the fairness doctrine .
Welles, Chris.

---- INDEX REFERENCES ----

OTHER INDEXING: (Pros) (Television industry (Laws and regulations.); Television programs (News.); Television programs (Public affairs programs.)) (United States. Federal Communications Commission.)

8/30/75 TVGUIDE 4
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 08:55:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	17
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:02 AM
To: Susan Burgess
Subject: fairness doctrine

4/12/75 TVGUIDE 11

4/12/75 TV Guide 11
1975 WLNR 28364

TV Guide

April 12, 1975

Abandon the fairness doctrine .
Proxmire, William.

---- INDEX REFERENCES ----

OTHER INDEXING: (Abandon) (Television industry (Laws and regulations.)) (Television and state.)

4/12/75 TVGUIDE 11
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:01:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	16
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:03 AM
To: Susan Burgess
Subject: fairness doctrine

3/30/75 NYT-ABS 611

3/30/75 N.Y. Times (Abstracts) 611
1975 WLNR 122564

New York Times Abstracts

March 30, 1975

Section: 6

Fred W Friendly article on fairness doctrine in broadcasting. Discusses Red Lion case as landmark ct decision. Discusses abuse of doctrine for pol reasons during Adms of Kennedy, Johnson and Nixon. Discusses Dems' increased fairness - doctrine campaign against right wing when Sen B Goldwater ran for Pres in '64. Holds real lesson to be learned from studying cases of doctrine abuse is that Govt seems to have lost its sense of priorities in applying fairness doctrine . Says basic issue is whether Govt will encourage or discourage broadcasters from probing journalism that public interest demands. Discusses fairness doctrine with respect to NBC TV program entitled Pensions: The Broken Promise. Illus (L).
FRIENDLY, FRED W

---- INDEX REFERENCES ----

OTHER INDEXING: (FRIENDLY, FRED W; COOK, FRED J; NIXON, RICHARD MILHOUS) (HARGIS, BILLY JAMES; REV; JOHNSON, LYNDON BAINES; 1908-73; KENNEDY, JOHN FITZGERALD; 1917-63; GOLDWATER, BARRY MORRIS; SEN) (DISCUSSES; DISCUSSES RED LION; NBC) (Fred; Govt; Johnson; Nixon) (FAIRNESS DOCTRINE; NEWS AND NEWS MEDIA; PENSIONS AND RETIREMENT; POLITICS AND GOVERNMENT; FRINGE POLITICAL MOVEMENTS; GOVERNMENT NEWS POLICIES) (UNITED STATES)

3/30/75 NYT-ABS 611
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:03:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	30
Documents:	1
Images:	0

Recipient(s): susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:08 AM
To: Susan Burgess
Subject: fairness doctrine

8/10/74 TVGUIDE A3

8/10/74 TV Guide A3
1974 WLNR 29163

TV Guide

August 10, 1974

News watch; Fairness doctrine : a haven for lunatic fringes?
Roche, John P.

---- INDEX REFERENCES ----

OTHER INDEXING: (FAIRNESS) (News) (Television industry (Laws and regulations.); Television (Social aspects.)) (Television, public access.; United States. Federal Communications Commission.; Television and state.)

8/10/74 TVGUIDE A3
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:07:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	17
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:09 AM
To: Susan Burgess
Subject: fairness doctrine

7/6/74 NYT-ABS 17

7/6/74 N.Y. Times (Abstracts) 17
1974 WLNR 105982

New York Times Abstracts

July 6, 1974

CBS Inc chmn William S Paley article on possibilities of eliminating broadcasting's fairness doctrine . Says that struggle has centered largely on whether problems of fairness should be left, under 1st Amendment principles, to broadcasters, answerable to their audiences, vulnerable to their competitors and exposed to constant public criticism, or whether under doctrine problems should be left to FCC. Holds that danger implicit in latter course lies in giving Govt agency power to judge news orgn's performance.
PALEY, WILLIAM S

---- INDEX REFERENCES ----

COMPANY: CBS INC

OTHER INDEXING: (PALEY, WILLIAM S) (CBS INC; FCC) (Holds) (CONSTITUTIONS AND CHARTERS; FAIRNESS DOCTRINE; FIRST AMENDMENT (US CONSTITUTION); NEWS AND NEWS MEDIA; PROGRAMS; TELEVISION AND RADIO) (Editorial Column)

COMPANY TERMS: CBS INC; COMMUNICATIONS COMMISSION FEDERAL (FCC)

7/6/74 NYT-ABS 17
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:08:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	25
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:10 AM
To: Susan Burgess
Subject: fairness doctrine

6/3/74 WSJ-ABS 4

6/3/74 Wall St. J. Abstracts (USA) 4
1974 WLNR 7323

Wall Street Journal Abstracts (USA)

June 3, 1974

CBS chmn W S Paley, speech in Syracuse, NY, scores FCC's fairness doctrine as tool of govt used to influence news content and calls for its repeal (M).

---- INDEX REFERENCES ----

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); New York (1NE72))

OTHER INDEXING: (PALEY, WILLIAM S) (CBS; FCC) (FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; NEWS AND NEWS MEDIA) (UNITED STATES)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC)

6/3/74 WSJ-ABS 4
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:09:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	19
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:21 AM
To: Susan Burgess
Subject: fairness doctrine

12/23/73 NYT-ABS 411

12/23/73 N.Y. Times (Abstracts) 411
1973 WLNR 92280

New York Times Abstracts

December 23, 1973

Section: 4

T Wicker article comments on FCC's ruling that NBC's documentary program Pensions: The Broken Promise does not present fair view of Amer pension system and therefore had to be 'balanced' with additional programming; holds that comm's action is unconst violation of press freedom guaranteed in 1st Amendment, improper restriction on investigative journalism, impermissible invasion of editorial judgement and direct act of Fed censorship; says that if comm's position stands up in ct it may preclude TV from forceful investigative repts and exposes on anything controversial; says that priciple of 'fairness' is at stake, which ought to mean honest, informed, disinterested and undistorted view

---- INDEX REFERENCES ----

INDUSTRY: (Financial Services (1FI37))

OTHER INDEXING: (WICKER, TOM) (FCC; FED; NBC; TV; WICKER) (CONSTITUTIONS AND CHARTERS; FAIRNESS DOCTRINE; FIRST AMENDMENT (US CONSTITUTION); NEWS AND NEWS MEDIA; PENSIONS AND RETIREMENT)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC); NATIONAL BROADCASTING CO INC (NBC)

12/23/73 NYT-ABS 411
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:20:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	28
Documents:	1
Images:	0

Recipient(s): susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:25 AM
To: Susan Burgess
Subject: fairness doctrine

9/4/73 WSJ-ABS 8

9/4/73 Wall St. J. Abstracts (USA) 8
1973 WLNR 5689

Wall Street Journal Abstracts (USA)

September 4, 1973

Wall St Journal ed adversely criticizes shortcomings and FCC's implementation of Fairness Doctrine in connection with TV and radio broadcasts

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

OTHER INDEXING: (TV; WALL ST JOURNAL) (EDITORIALS; TELEVISION AND RADIO) (UNITED STATES (1973 PART 1))

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC)

9/4/73 WSJ-ABS 8
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:25:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	18
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:02 AM
To: Susan Burgess
Subject: fairness doctrine

3/28/72 NYT-ABS 87

3/28/72 N.Y. Times (Abstracts) 87
1972 WLNR 109638

New York Times Abstracts

March 28, 1972

FCC opens week of hearings on fairness doctrine ; E Sevareid (CBS) says he opposes any expansion of govt regulation of media; questions how Govt can 'sit in judgment' on what is broadcast; says nature of broadcast journalism's 'search for truth' almost guarantees airing of differing views; R L Shayon of Penna Univ Annenberg School of Communications urges more specific broadcast standards and easier public access to airwaves; NBC chmn D C Adams says he does not question validity of fairness doctrine but asks restraint by FCC; CBS vp R W Jencks contends that idea of public access to TV time 'seems to exalt free speech at the expense of free press'; maintains that surveillance of TV under fairness doctrine could hinder free discussion on TV; others testifying include A H Kramer, exec dir of Citizens Communications Center, T A Westen, former FCC chmn F W Ford and former FCC member K A Cox

---- INDEX REFERENCES ----

COMPANY: CBS INC

NEWS SUBJECT: (Economics & Trade (1EC26))

OTHER INDEXING: (ADAMS, DAVIS C; FORD, FREDERICK W; JENCKS, RICHARD W; KRAMER, ALBERT H; SEVAREID, ERIC; WESTEN, TRACY A) (COX, KENNETH A; MCI COMMUNICATIONS; SHAYON, ROBERT LEWIS; PROF) (CBS; CITIZENS COMMUNICATIONS CENTER; FCC; JENCKS; NBC; PENNA UNIV ANNENBERG SCHOOL OF COMMUNICATIONS; TV) (FAIRNESS DOCTRINE; NEWS AND NEWS MEDIA) (UNITED STATES (1972 PART 1))

COMPANY TERMS: CBS INC; COMMUNICATIONS CENTER CITIZENS; NATIONAL BROADCASTING CO INC (NBC)

3/28/72 NYT-ABS 87
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search: "FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)

Date/Time of Request: Monday, February 05, 2007 10:02:00 Central

Client Identifier: CLAY WHITEHEAD

Database:	ALLNEWS
Lines:	33
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:24 AM
To: Susan Burgess
Subject: fairness doctrine

4/14/71 NYT-ABS 45

4/14/71 N.Y. Times (Abstracts) 45
1971 WLNR 27326

New York Times Abstracts

April 14, 1971

James Reston discusses Govt pressures on newsmen and radio and TV eds and reporters and additional threat that stations and networks face because of Govt power to withdraw station licenses and because they are subject to FCC's fairness doctrine ; says newsmen attending ASNE conv should examine this double standard of newspapers' greater freedom to defy Govt interference

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

OTHER INDEXING: (RESTON, JAMES BARRETT) (ASNE; FCC; TV) (James Reston) (FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; LICENSES; NEWS AND NEWS MEDIA) (UNITED STATES (1971))

COMPANY TERMS: NEWSPAPER EDITORS AMERICAN SOCIETY OF (ASNE)

4/14/71 NYT-ABS 45
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:23:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	22
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:25 AM
To: Susan Burgess
Subject: fairness doctrine

3/29/71 NYT-ABS 67

3/29/71 N.Y. Times (Abstracts) 67
1971 WLNR 3275

New York Times Abstracts

March 29, 1971

NBC gen counsel C B Dunham charges ' fairness doctrine ' has made FCC the ultimate editor of news on TV; says doctrine has failed in its purpose and has thwarted TV inquiry into soc change, vested interest, minorities and errors in govt, s, Natl Assn of Broadcasters conv; cites view of NBC newsman B Monroe that FCC is not an ind bd of journalists but has acquired a pol tone as result of dominance by whatever pol party is in power; calls for modification of fairness doctrine and weighing of alleged instances of news imbalance or unfairness only against a station's record of balanced journalism (J Gould rept); Foote Cone & Belding pres J E O'Toole, in lr to Chmn Burch, accuses FCC of stimulating addition of mediocrity to TV by forcing networks to return control of 4 hrs a wk of evening time to affiliated stations

---- INDEX REFERENCES ----

NEWS SUBJECT: (Social Issues (1SO05); Minority & Ethnic Groups (1MI43); Economics & Trade (1EC26))

INDUSTRY: (Internet Regulatory (1IN49); Internet (1IN27); Internet Infrastructure (1IN95); Internet Infrastructure Policy (1IN62))

OTHER INDEXING: (BURCH, DEAN; DUNHAM, DORYDON B; GOULD, JACK; O'TOOLE, JOHN E) (MONROE, BILL; NEWSMAN) (FCC; GOULD; NBC; TV) (Chmn Burch; Foote Cone Belding; O'Toole) (FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; NEWS AND NEWS MEDIA; PROGRAMS; TELEVISION AND RADIO)

COMPANY TERMS: BROADCASTERS NATIONAL ASSN OF (NAB); FOOTE CONE AND BELDING COMMUNICATIONS INC; NATIONAL BROADCASTING CO INC (NBC)

3/29/71 NYT-ABS 67
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:24:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS

Lines:	33
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:25 AM
To: Susan Burgess
Subject: fairness doctrine

3/28/71 NYT-ABS 43

3/28/71 N.Y. Times (Abstracts) 43
1971 WLNR 2531

New York Times Abstracts

March 28, 1971

Section: 4

J Gould on White House (and Cong) as being in state of crucial and paradoxical confrontation with TV; says Nixon uses TV to seek support for his policies and 'humanize' his pub image while at same time Adm and its backers in Cong are challenging TV's credibility and subjecting 1 or more networks to barrage of criticism; revs recent developments; cartoon; comment on Adm criticism of TV coverage of Laotian invasion

---- INDEX REFERENCES ----

COMPANY: CBS INC

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (AGNEW, SPIRO THEODORE; GOULD, JACK; NIXON, RICHARD MILHOUS) (J GOULD; TV; WHITE HOUSE) (Nixon) (DOCUMENTARY SHOWS; FAIRNESS DOCTRINE; INTERNATIONAL RELATIONS; MILITARY ACTION; NEWS AND NEWS MEDIA; NIXON ADMINISTRATION (1969-74); POLITICS AND GOVERNMENT (1969-1971); PROGRAMS; TELEVISION AND RADIO; UNITED STATES ARMAMENT AND DEFENSE) (Advertisement) (LAOS; VIETNAM)

COMPANY TERMS: CBS INC

3/28/71 NYT-ABS 43
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:25:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	29

Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Nixon Aide Explains TV License Challenges
By Lou Cannon Washington Post Staff Writer
The Washington Post, Times Herald (1959-1973); Mar 9, 1973; ProQuest Historical Newspapers The Washington Post
pg. A17

Nixon Aide Explains TV License Challenges

By Lou Cannon
Washington Post Staff Writer

The Nixon administration's chief television spokesman yesterday described the license renewal challenges to two Florida television stations as a "very blunderbuss approach" to the issues of fairness and responsibility in broadcasting.

Clay T. Whitehead, 34, director of the White House Office of Telecommunications Policy, made his comment during a lengthy defense of the administration's television policies in which he described his own use of the words "ideological plugola" as "exceedingly descriptive, colorful and masterfully vague."

The two Florida television stations, in Jacksonville and Miami, are owned by the Post-Newsweek Stations, Florida, Inc., a subsidiary of The Washington Post Co.

At an hour-long breakfast session with reporters, Whitehead said that the administration's upcoming legislative proposals on license renewals will give the federal government less of a "finely honed club" to use against license holders. He was then asked whether he considered the four challenges to the Post-Newsweek stations as "finely honed."

"No challenge is ever finely honed," Whitehead replied. "It's a very blunderbuss approach. You're talking about putting some man out of business."

Without specifically relating his statement to the Florida challenges, Whitehead said that "if a challenge is brought with the purpose of harrassing a station . . . I think that's an abuse of the licensing procedure."

He was asked if this is the case in the Florida challenges.

"It would be highly improper, if not downright illegal, for me to comment on any specific license situation," Whitehead said.

The Florida challenges are based on the argument that local ownership would better serve the communities. Many of the participants in the three challenges to the Jacksonville license and the single challenge in Miami have close ties to the Nixon administration.

The Jacksonville station is widely considered as an aggressive investigator of local irregularities with a politically liberal orientation. However, all of the challengers have denied that their license applications, now pending before the Federal Communications Commission, are politically inspired.

Whitehead said that complaints about a purported desire of the Nixon administration to censor critical stations are "poppycock." At one point, he also suggested that the implied threat of a license removal is far more effective than actually removing a license.

"The main value of the sword of Damocles is that it hangs, not that it drops," Whitehead said. "Once you take a guy's license away, you no longer have any leverage against him."

Whitehead said the administration's license-renewal legislation will be introduced in the House today or Monday by Reps. Harley O. Staggers (D-W.Va.) and Samuel L. Devine (R-Ohio).

The measure would extend license renewal periods from three to five years while making local stations responsible for what Whitehead has called "the totality of broadcast programming."

This would make local stations accountable, among other things, for the content of network news shows.

Whitehead contends that the result of this policy will be to encourage a greater diversity of opinion at the local level. Presently, he said, the three major networks have "an extensive amount of dominance over the totality of news from television."

Critics within the industry have expressed fears that local stations will shun controversy to avoid having their licenses challenged.

Only Tuesday the CBS television network, in a move it said was "virtually unprecedented," canceled the showing of an anti-Vietnam war drama, "Sticks and Bones," which had been scheduled for tonight.

The network acted after 70 or more of its 197 affiliates had canceled out on the prime-time drama. Whitehead said he approved of the network being responsive of its affiliates.

"This is a good example of how the process ought to work," he said.

Nixon's Top Radio-TV Adviser Would Drop Fairness Doctrine
The Washington Post, Times Herald (1959-1973); Mar 5, 1972; ProQuest Historical Newspapers The Washington I
pg. A3

Nixon's Top Radio-TV Adviser Would Drop Fairness Doctrine

Associated Press

President Nixon's top adviser on the radio-television industry says the fairness doctrine has caused so much chaos and confusion that it should be abolished.

Clay T. Whitehead, director of the White House Office of Telecommunications Policy, said the requirement that all sides in controversial issues be given equal air time also intimidates broadcasters.

In an interview, Whitehead suggestead that a broader approach linked with license renewal should replace the present enforcement of the fairness doctrine.

Asked for his reasons for proposing an end to the fairness doctrine, Whitehead said:

"Let me say that that proposal was part of a package of proposals. It was made for the purpose of getting the industry and the public and government to start discussing some of the problems we have in radio and television regulation

"What we felt was needed was some specific proposal for people to focus on as an alternative to the way things are being done now. It's worked out pretty well. We have been getting a lot of discussion.

"The reason we proposed abolishing the fairness doctrine was not that we felt fairness was not important, because, of course, we do, but rather that the fairness doctrine, as it has come to be administered, is so confusing, so chaotic and so highly detailed and complex that it really is not a doctrine at all. Nobody knows what it means, no one knows how it would apply in various cases.

"I think it is safe to say it intimidates the broadcaster, who is constantly worried what Washington is going to do if he opens his mouth about anything or puts anyone on his television station. In short, it's just not producing the intended result of the broad, over-all fairness that we want to get.

"So we proposed that we do away with the fairness obligation of the broadcaster, but rather than enforce it on a case-by-case, day-by-day basis here in Washington, that we enforce it as originally intended—at the time we renew the broadcaster's license.

"In his coverage of controversial affairs, has he been fair in covering all sides of all the important issues in his community?

'So you see it was a proposal to get rid of this very complex doctrine as it has come to be applied and move to a more sensible way of enforcing the fundamental fairness obligation."

It was put to Whitehead that there have been indications that he doesn't think public television should be offering public affairs or national news programs. He replied, "That's not correct at all. Public television stations do have a responsibility to supply news and public affairs. What we have been concerned about is the tendency of the Corporation for Public Broadcasting, the organization that receives the federal dollars, to focus so much of their money and attention on things that the commercial networks already are doing."

FAIRNESS

OTP Position

- Fairness obligation will always remain.

- But, Fairness Doctrine--relatively recent shift to enforcement of obligation on case-by-case and issue-by-issue basis--should ultimately be replaced, when reasons for its existence (scarcity, myopia, concentration) change because of technology (domsats, cable).

- Ultimately fairness should be enforced through obligation during overall programming time, reviewed at license time, and through right of access by individuals during ad time. (Two separate claims or kinds of legitimate interests, therefore two sets of mechanisms).

- Exception: perhaps case-by-case enforcement for timely issues and ballot box issues; candidates for public office already specified by Congress.

Reaction

- Industry: interprets IRTS and Indianapolis speeches as inconsistent; favors former and confused by the latter. Endorsed by Broadcasting, however, plus NAB and all networks.

- Congress: unfavorable: Tiernan, McDonald against IRTS proposals, as was Nicholas Johnson.

- Public: Public interest groups especially United Church of Christ concerned about minority access rights and about their ability to exert leverage on broadcaster. Feel threatened by inability to use program category.

- Nick Johnson: "My enthusiasm for the FD has never been unqualified. I don't like the government being involved in that kind of programming detail." (New Republic 1/15/72)

Remember

- FCC 1949 Editorializing Report: fairness obligation an issue-oriented, not person-oriented mechanism. Serves public's right to be influenced, not person's right to be heard.

- Senator Hart was co-sponsor of the 1959 amendment to Section 315 which gave rise to the Fairness Doctrine.

B

- FCC 1960 Programming Inquiry: "This responsibility [§315 fairness] usually is of the generic kind and thus, in the absence of unusual circumstances, is not exercised with regard to particular situations, but rather in terms of operating policies of stations as viewed over a reasonable period of time." (20 RR 1910)

- Supreme Court Red Lion (1969) affirmed general propriety of Fairness Doctrine within CA 34 and First Amendment.

- Pending FCC Fairness Doctrine Inquiry, Docket 19260 has four parts:

  -- generally (personal attack and editorializing rules; Cullman rule)

  -- product commercials

  -- individual access

  -- political broadcasts

- Problems with case-by-case enforcement:

  -- "Threat of escalation" of Commission surveillance

  -- e.g. rise in # Fairness Doctrine complaints from 409 in 1962 to 60,000+ in 1970.

- Sen Erwin (2/3/72) compared FCC and ct FD rulings with government censorship of books, to which CTW agreed (FA hearings).

B1

The lineup for this afternoon (in alphabetical order) is as follows:

Mr. John F. Banzhaf, III
Executive Director of Action on Smoking & Health;
Professor of Law, George Washington University

Mr. Thomas Harris
Associate General Counsel, AFL-CIO

Mr. Earl W. Kintner
Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.

Mr. Harvey J. Levin
Augusta B. Weller
Professor of Economics
Hofstra University

Mr. James A. McKenna, Jr.
McKenna, Wilkinson & Kittner, Washington, D.C.

Mr. Richard A.R. Pinkham
Senior Vice President
Ted Bates & Company

Mr. Robert Pitofsky
Director, Bureau of Consumer Protection
Federal Trade Commission

Mr. Antonin Scalia
General Counsel, Office of Telecommunications Policy

Mr. Theodore C. Sorensen
Counsel, Television Bureau of Advertising

I've said there will be no opening statements -- but we have to start somewhere, and with someone. So I'll propound a rather basic question and ask Bob Pitofsky to kick it off. The question is this:

FAIRNESS DOCTRINE 9/2/70 - 6/3/72

Chron List Typed ✓

Copies Xeroxed for CTW _____

(((Files in safe ------

copies need to be xeroxed;

also check for White House chron, etc.)))

FAIRNESS DOCTRINE

9/2/70 - Memo from Dr.Lyons re NET's effort at "fairness."

9/3/70 - Memo from Dr. Lyons further detailing previous memo and listing the 14 Senators to whom James Day's offer for free time was directed.

9/11/70 - Another memo from Dr. Lyons on "Fairness."

9/14/70 - Memo from Dr. Lyons advising CPB was not involved and not aware of what happened.

1/13/72 - Memo from Hank Goldberg re FTC's new activism in the "truth in advertising"field.

1/13/72 - Memo for Gerry Warren responding to his query on whether "equal time" privileges of the FCC would be applicable to Presidential news conferences now that he is an announced candidate; attaches 12/13/71 memo from Mr. Scalia re FCC Section 315 and two memos prepared earlier on equal time and the Fairness Doctrine.

1/22/72 - Memo for James Loken from Antonin Scalia re FTC fairness doctrine filing before FCC to propose a concept of "counter-advertising," which would provide a right of broadcast access for the presentation of views contrary to those raised explicitly and implicitly by product ads.

1/31/72 - Memo for Messrs. Colson, Ehrlichman, Flanigan, Haldeman (with copy to Clark MacGregor)re Mr.Whitehead's appearance before the Ervin subcommittee on 2/2/72; has been asked to testify on the First Amendment implications of cable television and public broadcasting; earlier hearings have dealt with fairness doctrine and it is probable that there will be questions on these issues; it would be much better to make an affirmative statement of the Administration's position than to waffle; our image of evasiveness in these highly visible hearings has already given credence to charges of underhanded media intimidation; propose to reply to question (if there is no objection) with a statement of the Administration's position as shown at Tab A, attached, which is a general and low-key, but positive, position that does not commit us to any specific legislative or regulatory action; does not give us a basis for opposing CPB's involvement in public affairs and for opposing the FTC "counter-advertising" proposals which are derived from the fairness doctrine; am more convinced than ever that the more detailed OTP proposals in this area are not only good policy, consistent with our philosophy, but also are good positions politically; we should not press for them actively this year, but believe we should continue to affirm them in broad form; properly used they can insulate the Administration froma lot of criticism, encourage local broadcaster assistance on the network news problem, and provide a "high-road" cover for our efforts to focus more attention on press objectivity;

(1)
attaches Substance of Proposed Position re Fairness Doctrine and Access; (2) Current Fairness Provisions Applicable to Political Presentations; (3) Prior Political Use of the Fairness Doctrine; and (4) Political use of New Proposals; and (5) Effect on Republican Interests.

2/25/72 - Memo from Charles Colson --"for those of you who have questioned my concern with the Fairness Doctrine and its importance to us", attaches article from the Richmond News Leader dated 2/5/72.

3/3/72 - Draft memo to Mr. Colson re the article from the Richmond News Leader dated 2/5/72 re political uses of the FCC's Fairness Doctrine and the White House position on repeal or modification of the qual time provision of the Communications Act (i.e., Section 315).

3/6/72 - Memo from Charles Colson attaching ----- (Eyes Only)

3/5/72 - Article in the Washington Post re "Nixon's Top Radio-TV Adviser Would Drop Fairness Doctrine."

3/9/72 - Memo for Mr. Colson replying to his memo of 3/6 concerning the article in the Washington Post, responding to his interpretation of the article and requesting comments on Mr. Whitehead's memo of 1/31/72.

5/3/72 - Memo for Mr. Flanigan responding to his note concerning an item in the news summary -- posture on the Fairness Doctrine should bebroken Sensitive down into three areas: (1) The keeping or scrapping of the Fairness Doctrine itself; (2) The detailed working of the Fairness Doctrine; and (3) The extension of the Fairness Doctrine into product advertising, the use of the Doctrine to require counter-advertising as proposed by the FTC, the twisting of the Fairness Doctrine into a mechanism for free access by various radical groups to get their viewspoints on the air, etc.

Date?

report has been made "virtually invisible." Aspin said "if there were a conscious conspiracy to prevent public scrutiny of the impact statement, it couldn't be accomplished much more effectively than this."

The Senate Labor Comm. approved a $9 billion anti-poverty bill after altering a key provision that would transfer the Legal Services program out of OEO to an independent corporation. Javits sponsored the change that would give RN control, saying he felt it essential to prevent another veto.

Leon Jarworski, Pres. of the American Bar Assoc., said "the legal profession has the responsibility to provide legal services not just for a part -- but for the whole of our nation's society. Jarworski again voiced the ABA's backing of the federally-funded Legal Services program and criticized the VP, without naming him, for the VP's alleged interference with it.

A three-judge Federal panel ruled (2-1) that a New York law under which State funds have been used to aid parochial and other non-public schools violates the Constitution. While the majority cited the First Amendment, the dissenting judge said he refused "to participate" in destroying the act by judicial action, saying "a majority of the legislature and the governor have determined that this...statute is a legitimate area of state concern and action."

Bobby Baker was granted parole effective June 1....A 10-2 approved House Ethics proposal designed to force Dowdy to relinquish his Hill voting rights, but not his seat, may never make it to the Floor. Rules Chmn. Colmer indicated his Comm. may not send it to the Floor. In an interview, Colmer, who helped set up the Ethics Comm., said he didn't see how Congress could pass such a resolution, that it would look "kind of silly" for him to judge a man guilty before the final court order.

Clay Whitehead warned newspaper publishers that the Fairness Doctrine is a "runaway theory" that might someday be applied to them as well as broadcasters....The FCC's implementation of the Fairness Doctrine has a "chilling" effect on broadcast journalism said the exec. officer of the Post-Newsweek stations.

Mr Whitehead

Tom -
I thought that you had agreed to stay off this subject? Can you please explain this to me.
Pete

Media Report/White House static over structure, funds keeps public broadcasting picture fuzzy

by Bruce E. Thorp

734

The folks who gave the nation *The Great American Dream Machine* are in trouble with an important viewer.

The viewer is President Nixon, and what he does not like is the way public broadcasting's own dream machine has developed since passage of the Public Broadcasting Act of 1967 (81 Stat 365).

Mr. Nixon has not spoken personally on the issue; his views are relayed through Clay T. Whitehead, director of the White House Office of Telecommunications Policy. *(For a report on OTP, see Vol. 3, No. 7, p. 338.)*

Whitehead, who is charged with drafting legislation for long-term financing of public programs, has not done so because, he says, public broadcasting is too centralized.

Too much authority for funding and programming is concentrated in the Corporation for Public Broadcasting, a private, nonprofit company set up by the 1967 act, says Whitehead, and too little control has been left to individual stations, which were supposed to be the heart of the system.

Shows offered by the Public Broadcasting Service—the public stations' network—dominate the system, according to Whitehead, and public-affairs shows, in turn, dominate PBS scheduling.

Whitehead said in a recent interview, "They want to be something different from what anyone thought they were going to be."

Industry leaders dispute Whitehead's charges. They say they have followed the intent of the Carnegie Commission on Educational Television, which recommended federal funding of public broadcasting in 1967, and of Congress.

Whatever imbalance there may be in the system, they argue, comes mainly from inadequate federal financing.

With less money than they anticipated, CPB officials have used it to develop their network first, putting the money where it will do the most good. As federal funds increase, they say, so will development of local stations and local programming.

The larger philosophic controversy has been focused on a financial conflict over long-term funding for public broadcasting.

The Carnegie Commission originally proposed that the industry be given federal funds outside the annual appropriations process.

Scene from "Sesame Street," the award-winning children's show on public television

But the 1967 Congress left it to future Congresses and Administrations to devise such a plan, and it has not yet been done.

Whitehead says that unless the industry structure is made to conform to what was envisioned, "permanent financing will always be somewhere off in the distant future."

Stymied in its effort to obtain long-term funding, the industry is putting its energies into support of a two-year authorization initiated by Rep. Torbert H. Macdonald, D-Mass., chairman of the House Interstate and Foreign Commerce Subcommittee on Communications and Power.

The bill, HR 13918, has cleared the full Commerce Committee with only two dissents and it could be approved early in May.

In the meantime, both the industry and the Administration have been moving quietly toward changes that may resolve the controversy.

The industry has taken steps to give local stations a greater voice in system funding and programming, which could go far toward satisfying the Administration's complaints.

The Administration has been preparing a list of five persons to be appointed soon by the President to the 15-member CPB board of directors.

Assuming confirmation by Congress, Mr. Nixon would have his first real majority on the board, which presumably would begin to reflect his views.

Funding and politics

The Carnegie Commission proposed that public broadcasting receive its federal money from a special trust fund.

The fund could be fed by an excise tax on new television sets, the commission said, estimating that a 5-per cent levy would produce $100 million a year at a cost of not more than $2.50 a year per set during the useful life of even the most expensive receiver.

The commission argued for permanent funding to insulate public programming from government involvement.

"The commission cannot favor the ordinary budgeting and appropriations procedure followed by the government in providing support from general funds," it said. "We believe those procedures are not consonant with the degree of independence essential to public television."

However, in creating the corpora-

FAIRNESS DOCTRINE

Quotes from 1949 FCC Report on Editorializing by Licensees

"The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station.

"It is this right of the public to be informed, rather than any right on the part of the government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting.

"And the Commission has made clear that in such presentation of news and comment the public interest requires that the licensee must operate on a basis of overall fairness, making his facilities available for the expression of the contrasting views of all responsible elements in the community on the various issues which arise. Mayflower Broadcasting Co., 8 F.C.C. 333; United Broadcasting Co. (WHKC) 10 F.C.C. 515; cf. WBNX Broadcating Co., Inc. 4 Pike & Fischer RR 244 (Memorandum Opinion).

"It has been suggested in the course of the hearings that licensees have an affirmative obligation to insure fair presentation of all sides of any controversial issue before any time may be allocated to the discussion or consideration of the matter. On the other hand, arguments have been advanced in support of the proposition that the licensee's sole obligation to the public is to refrain from suppressing or excluding any responsible point of view from access to the radio. We are of the opinion, however, that any rigid requirement that licensees adhere to either of these extreme prescriptions for proper station programming techniques would seriously limit the ability of licensees to serve the public interest.

"Fairness, in such circumstances might require no more than that the licensee make a reasonable effort to secure responsible representation of the particular position and, if it fails in this effort, to continue to make available its facilities to the spokesmen for such position in the event that, after the original programs are broadcast, they then decide to avail themselves of a right to reply to present their contrary opinion."

Fairness Doctrine Quotes

"It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints.

"The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view.

"It should also be clearly indicated that the question of the relationship of broadcast editorialization, as defined above, to operation in the public interest, is not identical with the broader problem of assuring "fairness" in the presentation of news, comment or opinion, but is rather one specific facet of this larger problem.

"We do not believe that any such consequence is either inevitable or probable, and we have therefore come to the conclusion that overt licensee editorialization, within reasonable limits and subject to the general requirements of fairness detailed above, is not contrary to the public interest.

"The main arguments advanced by these witnesses were that overt editorialization by broadcast licensees would not be consistent with the attainment of balanced presentations since there was a danger that the institutional good will and the production resources at the disposal of broadcast licensees would inevitably influence public opinion in favor of the positions advocated in the name of the licensee and that, having taken an open stand on behalf of one position in a given controversy, a licensee is not likely to give a fair break to the opposition. We believe, however, that these fears are largely misdirected, and that they stem from a confusion of the question of overt advocacy in the name of the licensee, with the broader issue of insuring that the station's broadcasts devoted to the consideration of public issues will provide the listening public with a fair and balanced presentation of differing viewpoints on such issues, without regard to the particular views which may be held or expressed by the licensee.

"We do not believe that programs in which the licensee's personal opinions are expressed are intrinsically more or less subject to abuse than any other program devoted to public issues."

Fairness Doctrine Quotes

"Assurance of fairness must in the final analysis be achieved, not by the exclusion of particular views because of the source of the views, or the forcefulness with which the view is expressed, but by making the microphone available for the presentation of contrary views without deliberate restrictions designed to impede equally forceful presentation.

"The Commission is not persuaded that a station's willingness to stand up and be counted on these particular issues upon which the licensee has a definite position may not be actually helpful in providing and maintaining a climate of fairness and equal opportunity for the expression of contrary views. Certainly the public has less to fear from the open partisan than from the covert propagandist.

"The basis for any fair consideration of public issues, and particularly those of a controversial nature, is the presentation of news and information concerning the basic facts of the controversy in as complete and impartial a manner as possible.

"The action of the station in carrying or refusing to carry any particular program is of relevance only as the station's actions with respect to such programs fits into its overall pattern of broadcast service, and must be considered in the light of its other program activities.

"The question is necessarily one of the reasonableness of the station's actions, not whether any absolute standard of fairness has been achieved. It does not require any appraisal of the merits of the particular issue to determine whether reasonable efforts have been made to present both sides of the question.

"Licensee editorialization is but one aspect of freedom of expression by means of radio."

Trouble Spots and Questions

If paid-access proposal is adopted, need for fairness with respect to advertising is obviated; as number of transmission channels increases, and the influence of each channel as a result diminished the need that programming on each channel be "fair" is removed.

- How does your renewal bill effect the Fairness Doctrine?

- Deprived of categories, would not the FCC simply fall back, in assessing fairness obligation on an overall basis, their own subjective determinations?

- In a press conference in December 1971, prior to IRTS speech, you said "I'm one of those people who happens to believe that business properly structured and given the right incentives does serve the public interest." And you went on to say in commercial TV today it is economically feasible to program for the mass audience but not the minority audience. Doesn't your license renewal bill even further insulate broadcasters from programming for the minority audience? How then do you expect local broadcasting stations to serve all the needs of its community, even its minority needs, or don't you care?

- Toward the end of 1971 you proposed abolition of the Fairness Doctrine. Last December you made an about face and said it was necessary. Which is it? What explains your change? Are you using the Administration position on the Fairness Doctrine as a carrot or stock over broadcasters depending on which way the political winds are blowing? The three reasons you gave for retaining Fairness Doctrine in 1972 were just as relevant in 1971 . . . .

CONTENTS

SUMMARY CHRONOLOGY: FAIRNESS DOCTRINE

1. 1943: U.S. Supreme Court decided that the licensing system established by the FCC was constitutional and that the FCC is responsible not only for regulating the traffic on the airwaves but the content of that traffic as well. (NBC v. U.S., 319 U.S. 190)

2. 1949: "Report on Editorializing by Broadcast Licenses" -- This, the Commission's first general statement on the fairness doctrine, imposed the "dual obligation" on licensees: They must seek out issues of public importance, and they must present contrasting views. The report also rescinded the 1941 ban on editorializing by broadcasters.

3. 1963: The FCC held that if a licensee presents one side of a controversial issue of public importance and cannot find sponsorship for opposing viewpoints in order to fulfill the fairness doctrine obligation, it must provide that time free of charge. (Cullman Broadcasting Company, Inc., 40 F.C.C. 576)

4. 1968: The U.S. Court of Appeals upheld the FCC's determination that the fairness doctrine must be applied to ordinary cigarette commercials, which present smoking in an aura of vitality, good health, and social acceptability. [Congress later prohibited cigarette ads on radio and television.] (Banzhaf v. FCC, 405 F.2d 1082 D.C. Cir.)

5. 1969: The U.S. Supreme Court upheld the constitutionality of the fairness doctrine and of the FCC's personal attack rules, declaring, "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." (Red Lion Broadcasting Company v FCC, 395 U.S. 367)

6. 1969: The FCC affirmed that the burden of proof is on the complainant and not the broadcaster in fairness cases and that the complainant must provide a prima-facie case before the complaint will even be considered by the Commission. (Allen C. Phelps, 21 F.C.C.2d 12)

7. August 11, 1969: Report of 20th Century Fund Commission on Campaign Costs in the Electronic Era (Newton Minnow, Dean Burch, Thomas Corcoran, Alexander Heard, Robert Price).

Major recommendations:

A. Voter's Time: Federal Government would provide to major party candidates for President and Vice President broadcast access to public via prime time, simultaneous airing over every broadcast and cable facility in country.

(1) Time Allotted:

(a) Six prime-time, 30 min. programs within 35 days of election

(b) Three prime time, 30-min. programs within 35 days of election

(2) Format: Designed to promote "rational political discussion for the purpose of clarifying major campaign issues..."

(3) Payment: Uncle Sam pays station at a rate not to exceed 50% of commercial rate card or the lowest charge made to any commercial advertiser for comparable time, whichever figure is lower. For Public broadcasters, they could charge the Government the cost incurred in presenting the program.

B. Time for other candidates: Minor party candidates would pay for their own time, but stations couldn't charge more than 50% of the lowest charge made to any commercial advertiser. However, stations could write off the difference on their Federal Income Tax.

8. 1970: The Court of Appeals, in an apparent move to put more force behind the fairness doctrine's applicability to product commercials, warned that the FCC's cursory treatment of ~~the~~ a Union's complaint was inadequate. The Commission had renewed without hearing the license of WREO-AM in Ashtabula, Ohio, which had stopped carrying paid advertisements from the Union about its side of a strike against a department store, while still carrying product ads for the store. The station maintained, and the FCC agreed, that no controversial issue was discussed in the product ads. The Court sent the desision back to the FCC for further study, but the Commission eventually reaffirmed its original decision. (Retail Stores Employees Union v. FCC, 436 F.2d 248 D.C. Cir.)

9. 1971: The Court of Appeals extended Banzhaf by applying the same line of public-health reasoning to the automobile pollution problem. The complaint argued that the use of high octane fuels and large car engines was a major source of air pollution, harming the public health, and therefore raising in their commercials the same issues that cigarette ads raised. The FCC held that cigarettes were unique, but the Court disagreed and reversed. (Friends of the Earth v. FCC,449 F.2d 1164 D.C. Cir.)

10. June 9, 1971: FCC issues notice of inquiry regarding fairness doctrine. First general inquiry in 22 years.

1. 1971: The FCC ruled that ESSO commercials, though they did not specifically mention the Alaska Pipeline, did subtly raise the need to develop oil resources on the Northern slopes. Although the fairness doctrine was thus applicable, the Commission ruled that NBC had covered opposing viewpoints adequately in later programing, and that no further action was necessary. (Wilderness Society and Friends of the Earth v. NBC, 30 F.C.C. 2d 643)

12. 1972: For the first time in history, the FCC revoked a license for fairness doctrine violations - and the U.S. Court of Appeals concurred, but not on fairness doctrine grounds. The FCC revoked the license on three grounds. First, it found that WXUR had

consistently failed to fufill fairness obligations. Second, it had not complied with personal attack requirements. Third, it has misrepresented itself to the Commission in its 1966 renewal application by failing to carry out many of its promises. The Court of Appeals agreed only with the third charge, Judges Bazelon and Wright issuing opinions still remarkable for their attacks on the fairness doctrine. (Brandywine-Main Line Radio, Inc. v. FCC, 473 F.2d 16 D.C. Cir.)

13. June 16, 1972: FCC issues its First Report following the 1971 notice of inquiry covering how the fairness doctrine applies to political broadcasting. Comr. Johnson calls it a "cop out," a boone for the incumbent President; Wiley responds.

14. 1973: The Supreme Court upheld the FCC by ruling that neither the first amendment nor the Communications Act of 1934 requires broadcasters to accept paid editorial advertisements. The U.S. Court of Appeals had reversed the FCC,holding that a flat ban on all paid editorials violated the first amendment if the station was accepting other paid ads. (CBS v. Democratic National Committee, 412 U.S. 94) OTP took a public position on the earlier Appeals Court ruling and this is stated in the attached memo to CAW from Scalia. In that memo, Scalia called the Appeals Court ruling "a leap towards more pervasive bureaucratic content control, in a fashion more pernicious than the Fairness Doctrine."

15. 1973: Responding to complaint from the Democratic National Committee, FCC says the public has no automatic right of reply to Presidential address on Administration Policy. (DNC vs. the FCC, 481 F.2d 543).

16. 1974: A Florida statute requiring that a political candidate receive space to reply to a newspaper's attacks was declared unconstitutional by the U.S. Supreme Court. (Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241).

17. Sept. 27, 1974: U.S. Appeals Court in Washington (Judges Fahy, Tamm and Leventhal) says the FCC misappled doctrine when it found fault with NBC documentary "Pensions: The Broken Promise." Complaint filed by accuracy in media (AIM). The court said FCC erred when it ruled that even though NBC was reasonable in saying that the subject of the program was "some problems in some persion plans," the program had the effect "infact" of presenting only one side of a subject, i.e., the overall performance of the private pension plan system. But the court said the editorial judgments of the licensee must not be disturbed if reasonable and made in good faith. The licensee's wide discretion and latitude must be respected even though, under the same facts, the agency would reach a contrary conclusion. The Commission's proper function is to correct the licensee for abuse of discretion. The court thinks it plain that the lecensee in this case was not guilty of an unreasonable exercise of discretion. National B/casting Co. V FCC, 31 RR 2d 551

Subsequently, AIM appealed to the full court which agreed to review the case.

18. June 27, 1974: FCC issues its second report on doctrine which discussed the doctrine generally and product advertising in particular. Here the Commission generally defends its reliance on and interpretations of the fairness doctrine. For example, the Commission says that when a station represents one side of a controversial issue, he isn't required to bring in the other side on the same program, but to make opposing views available in overall programming. There also is no requirement that there be an equal balance of views.

However, the report also comes down hard on the recent moves to establish free and paid "access time" as a substitute for the doctrine, nevertheless encouraging broadcasters to establish such systems on their own. The Report affirms that the fairness doctrine applies to editiorial advertising, but unless the facts are "so clear that the only reasonable conclusion" would be that an ad was arguing one side of an issue, the licensee's judgement will be respected. However, as for ordinary product ads, the Commission reversed itself. The trend to apply the doctrine more stringently to product ads (c.g. Banzhaf, Retail Stores, Friends of the Earth, Wilderness Society) marks a serious departure from the central purpose of the doc-

trine, said the Report, and in the future, the doctrine will apply only to those ads which discuss public issues in an "obvious and meaningful way."

19. July 2, 1974: OTP letter to Senate Commerce Committee on proposed legislation to exempt Presidential and Vice Presidential candidates from Sec. 315. OTP sees no reason why the bill should be limited to Presidential candidates, says it should apply to all Federal candidates.

20. July 1974: CTW article in Yale Law Journal reviews Newton Minnow's book "Presidential Television." CTW argues that since Minnow's book deals mostly with the effects of the growing use by Presidents of TV, their recommendations, and especially their proposed changes in communications law "smack of tinkering and manipulation rather than the redress of Constitutional imbalances." CTW proposes legislation that would require broadcasters to accept all paid announcements during commercial time without discrimination as to the speaker or subject matter. The advertiser, not the broadcaster, would be liable for the content. CTW went on to say that such a policy would be compatible with the concerns expressed by the Supreme Court in the Democratic National Committee Case.

21. Novermber 2, 1974: Justice Stewart's address to Yale Law school on press freedom.

22. November 26, 1974: Richard Jencks of CBS and Robert Lewis Shaynon of Annenberg School of Communications debate the fairness doctrine during NAEB convention. Henry Geller commented afterward on the debate and his remarks are included.

OTP Communications and Statements re Fairness Doctrine

Important highlights:

• An undated note from Flanigan accuses CTW of not towing the company line: **"I thought that you had agreed to stay off this subject [fairness doctrine]? Can you please explain this to me."** The note is handwritten on a summary of news statements, the last of which quotes CTW as "warning newspaper publishers that **the Fairness Doctrine is a "runaway theory" that might someday be applied to them as well as broadcasters...."**

• 5/3/1972 CTW memo to Flanigan outlines his recommendation for OTP's posture on the Fairness Doctrine.

Memo says that CTW's earlier package of proposals included scrapping the fairness doctrine, saying that this upset Colson who believed that the fairness doctrine gave the admin a useful lever against the networks. Based on Colson's reaction, CTW agreed not to espouse that aspect of his proposals.

CTW says that OTP has refrained from making recommendations or criticisms re details of the fairness doctrine b/c OTP has no expertise on the myriad complexities of the issue nor does the Administration have serious policy concerns with them.

CTW says that his comments have been limited to what Dean Burch and others have said, that "the Doctrine has gotten out of hand and needs serious attention to limit and clarify it, preferably by the Commission"

CTW says that OTP staked out a firm administration position on only one issue, which was saying that the Admin was opposed to FTC's proposal to extend the Fairness Doctrine to product ads. In all other areas, OTP cautioned against the unnecessary extention of regulatory control over broadcast and advertising business and its extension to print media.

"In summary, I have gone out of my way to make clear that this Administration does not endorse removal of the Fairness Doctrine . . . ."

• 1974 CTW book review in Yale Law Journal. The authors of the reviewed book "recommend that the equal time provision and the Fairness Doctrine not be applied to [presidential] broadcasts in order to avoid legal challenges and to prevent the President from demanding more time to reply to them."

In FN 17, CTW writes **"It should be noted that this reviewer recommends abolition of the Fairness Doctrine because of the opportunities it creates for bureaucratic and political second-guessing of editorial judgments."**

DATED

(1) 8/5/1971 Scalia memo to CTW recommending that CTW criticize recent BEM and DNC Court of Appeals decision that is worse than the Fairness Doctrine in increasing governmental control of program content

(2) 8/6/1971 CTW writes (in response to an inquiry, unclear who and whether sent) position on BEM-DNC decision

(3) Week before 1/17/72 Scalia made a speech to the FCC bar association (about FD?)

(4) 1/17/72 OTP's general counsels sought law office's comments re Fairness Doctrine Rulemaking

(5) 1/22/72 Scalia wrote memo re FTC's Fairness Doctrine Filing re FCC's request for views on the applicability of the doctrine to product ads

***(6) Memo dated 1/31/1972 from OTP to Colson, Ehrlichman, Flanigan, Haldeman sets out Tom's upcoming appearance to testify before the Ervin Subcommittee re the Fairness Doctrine. Attached were a (1) Substance of Proposed Position re Fairness Doctrine and Access; (2) Current Fairness Provisions Applicable to Political Presentations; (3) Prior Political Use of the Fairness Doctrine; (4) Political Use of the New Proposals; (5) Effect on Republican Interests.

(7) 2/20/1972 CTW testified before Senate Communications subcommittee on oversight (the Ervin Committee) and discussed the issue with Chuck Colson beforehand (see 5/3/72 CTW letter to Flanigan)

(8) 2/25/72 Charles Colson memo says that "for those of you who have questioned my concern with the fairness Doctrine and its importance to us," attaching a Richmond News Leader article dated 2/5/72.

(9) 3/3/72 CTW wrote memo to Chuck Colson re article Chuck sent him re political uses of FCC's "fairness doctrine" and the WH position on repeal or modification of the Communication's Act equal time provision. Letter says that 3 underlying assumptions of the article that potentially support the idea that the Administration is benefited by FD enforcement are incorrect

Letter says that "OTP is not proposing to eliminate the fairness obligation, just to eliminate case-by-case enforcement of it against licensees. This would give the private licensees more discretion in meeting their fairness obligations and would cut back on second-guessing by the FCC and the courts."

"With a few exceptions [court decisions on FCC fairness doctrine rulings] are contrary to Republican interests. . . . [And] they may get even worse unless the vehicle which brings them forth-the present case-by-case method of enforcing fairness-is eliminated. It is

therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees."

***(10) 3/5/72 Washington Post article "Nixon's Top Radio-TV Adviser Would Drop Fairness Doctrine"

***(11) 3/6/72 Colson Memo attaching ____ (Eyes Only).

***(12) 3/9/72 CTW memo to Colson replying to his 3/6 memo re Washington Post article, responding to his interpretation of the article and requesting comments on CTW's 1/31/72 memo.

(13) 3/17/1972 FCC confirms that Scalia will participate as Fairness Inquiry Panelist 3/28/72.

Letter says that FCC hopes "that such an open forum for the discussion of contrasting views and opinions will materially assist the Commission in its determination of appropriate policies with respect to the Fairness Doctrine." Letter includes FCC's "Notice of Inquiry in Docket 19260" and "recent Order."

(14) 5/3/1972 CTW memo to Flanigan outlines his recommendation for OTP's posture on the Fairness Doctrine.

Memo says that CTW's earlier package of proposals included scrapping the fairness doctrine, saying that this upset Colson who believed that the fairness doctrine gave the admin a useful lever against the networks. Based on Colson's reaction, CTW agreed not to espouse that aspect of his proposals.

CTW says that OTP has refrained from making recommendations or criticisms re details of the fairness doctrine b/c OTP has no expertise on the myriad complexities of the issue nor does the Administration have serious policy concerns with them.

CTW says that his comments have been limited to what Dean Burch and others have said, that "the Doctrine has gotten out of hand and needs serious attention to limit and clarify it, preferably by the Commission"

CTW says that OTP staked out a firm administration position on only one issue, which was saying that the Admin was opposed to FTC's proposal to extend the Fairness Doctrine to product ads. In all other areas, OTP cautioned against the unnecessary extention of regulatory control over broadcast and advertising business and its extension to print media.

"In summary, I have gone out of my way to make clear that this Administration does not endorse removal of the Fairness Doctrine . . . ."

(15) 1974 CTW book review in Yale Law Journal. The authors of the reviewed book "recommend that the equal time provision and the Fairness Doctrine not be applied to [presidential] broadcasts in order to avoid legal challenges and to prevent the President from demanding more time to reply to them."

In FN 17, CTW writes "It should be noted that this reviewer recommends abolition of the Fairness Doctrine because of the opportunities it creates for bureaucratic and political second-guessing of editorial judgments."

"Even if the television news departments of the three national networks failed to provide such extensive coverage of Congress . . . the Federal Communications Commission's Fairness Doctrine would provide a regulatory check on presidential television." [Statement doesn't support existence of the FD, just acknowledges that the FD exists and what its effect is]

"The authors also suggest that the congressional coverage under their proposal be exempt from the Fairness Doctrine. If the President and the congressional majority were of the same party, the President's opponents would not be represented by the televised congressional sessions, and they would lose the opportunity under the Fairness Doctrine to have these programs balanced by presentation of conflicting views. Moreover, if a broadcaster in this situation voluntarily attempted to balance the exempt congressional coverage by giving time to opponents of the President, there would be a danger that supporters of the President's policies might try to apply the fairness doctrine to this nonexempt coverage, forcing the broadcaster to give still more time to the presidential position."

FN 44 says that the shift of Fairness Doctrine enforcement to the "case-by-case and issue-by-issue implementation" "has made the Fairness Doctrine [the type of] mechanism that the Court [said] would regiment broadcasters to the detriment of the First Amendment."

(16) 7/2/1974 CTW letter to Senate Commerce Cttee Chair urging the Committee to report unfavorably on a bill that would repeal the "equal opportunities" requirement of the Communications Act of 1934 because it is only limited to Presidential and VP candidates instead of candidates for all federal offices.

UNDATED

(1) An undated OTP document outlines OTP's position on the Fairness Doctrine. It says that the recent shift to case-by-case enforcement should be replaced. "Ultimately fairness should be enforced through obligation during overall programming time, reviewed at license time, and through right of access by individuals during ad time. (Two separate claims or kinds of legitimate intereests, therefore two sets of mechanisms.)"

Says that industry reaction to OTP's position is that IRTS and Indianapolis speeches are inconsistent.

Date of document is post-February, 1972 and the Fairness Doctrine Inquiry, Docket 19260 was pending at the time.

(2) An undated OTP document shows that Scalia was one of nine panelists speaking about the Fairness Doctrine at some type of event.

(3) An undated timeline prepared by Eva includes several dates for which we have no documents. See dated documents below marked with asterisks.***

(4) Undated note from Flanigan challenging CTW that: "I thought that you had agreed to stay off this subject [fairness doctrine]? Can you please explain this to me." The note is handwritten on a summary of news statements, the last of which quotes CTW as "warning newspaper publishers that the Fairness Doctrine is a "runaway theory" that might someday be applied to them as well as broadcasters...."

(5) A document from 1972 or later titled "Fairness Doctrine" lists two pages of quotes about fairness from the 1949 FCC Report on Editorializing by Licensees. The third page is titled "Trouble Spots and Questions," and seems to be a list of questions for OTP to ask re renewing a broadcasting bill.

(6) A document from 1974 or later includes a table of contents on the first page, followed by a "summary chronology" of important events re: the doctrine. None of the other sections described on the table of contents are included.

CTW's "comments" in reply to an inquiry — not a statement of policy or formal press release position

August 6, 1971

CTW POSITION ON BEM-DNC DECISION

OTP is in sympathy with the court's objective of stimulating the free and open exchange of ideas through the broadcast media. It does not seem, however, that the means chosen to achieve this objective are desirable.

Leaving the acceptance of editorial advertisements to the discretion of individual broadcasters does indeed run the risk of unreasonable rejection. But a similar risk is run when we leave program and news content to private determination. As imperfect as this arrangement may be, it would be much worse to establish a system in which the Government decides who will be heard and which issues he will be permitted to address. The BEM-DNC decision invites precisely this type of dangerous government involvement in program content and public debate.

The decision gives new importance to the need for a thorough review by all branches of Government of the question of access to the media.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON, D.C. 20504

August 5, 1971

MEMORANDUM FOR MR. WHITEHEAD

FROM: Antonin Scalia

SUBJECT: BEM & DNC Court of Appeals Decision

We have completed a review of the D.C. Court of Appeals decision in the BEM/DNC case and have the following comments concerning the advisability of your issuing a statement on the court's action. Since you are generally familiar with the factual context of these cases, we will limit our summary to the holdings. We preface that summary with the observation that you should take the time to read the entire opinion (attached) as soon as possible. It is an extremely important decision, and is unlikely to be reviewed by the Supreme Court.

By a 2 - 1 vote (Wright and Robinson in the majority, McGowan dissenting), the court has held that a broadcast licensee's total prohibition against accepting paid advertisements concerning "controversial" issues -- referred to as "editorial advertisements" in the opinion -- violates the First Amendment. The court stressed that it was ruling only on the "narrow" issue of "a total, flat ban on editorial advertising." The court did not hold, in other words, that broadcasters are common carriers and must air all editorial ads submitted to them. Rather, it merely ruled that the First Amendment requires broadcasters to accept some editorial ads, and left it up to licensees and the FCC to develop and administer "reasonable" procedures and regulations for determining which and how many.

> "We need not define the precise control which broadcasters may exercise over editorial advertising. Rather, the point is that by requiring that some such advertising be accepted, we leave the Commission and licensees broad latitude to develop 'reasonable regulations' which will avoid any possibility of chaos and confusion." (Opinion, pp. 40-41)

> "[I]nvalidation of a flat ban on editorial advertising does not close the door to 'reasonable regulations' designed to prevent domination by a few groups or a few viewpoints. Within a general regime of accepting some editorial advertisements, there is room for the Commission and licensees to develop such guidelines. For example, there could be some outside limits on the amounts of advertising time that will be sold to one group or to representatives of one particular narrow viewpoint. The licensee should not begin to exercise the same 'authoritative selection' in editorial advertising which he exercises in normal programming. . . . However, we are confident of the Commission's ability to set down guidelines which avoid that danger." (Opinion, pp. 41-42)
>
> "The keynote must be a scheme of reasonable regulation, administered by the licensee and guided by the Commission." (Opinion, p. 43)

In effect, by remanding the BEM/DNC case to the Commission, the court has called for a rulemaking in which "the Commission should develop reasonable regulatory guidelines to deal with editorial advertisements." (Opinion, p. 44) The court suggested that BEM and DNC resubmit their ads to the broadcast stations and, unless the ads are found to be excludable under the FCC's guidelines, they should be accepted by the stations.

In short, the BEM /DNC case does not represent the first step toward common carrier access to the broadcast media and a resultant loosening of government content control. To the contrary, it is a leap towards more pervasive bureaucratic content control, in a fashion more pernicious than the Fairness Doctrine. Not only would the FCC have greater latitude for meddling in access questions, but it would be deciding those questions not on the issue-oriented grounds of the Fairness Doctrine, but on grounds much more closely tied to message content and individual or group identity (i.e., "'reasonable regulations' designed to prevent domination by a few groups or a few viewpoints" -- Opinion, pp. 41-42).

What is even worse from OTP's standpoint, the court's opinion very clearly eschews the spectrum scarcity rationale for imposing content control, and asserts that licensees are subject to First Amendment constraints because of (1) the governmental involvement in, and public character of, the enterprise ("almost no other private business -- almost no other regulated private business -- is so intimately bound to government and to service to the commonweal," Opinion, pp. 16-17) and (2) the importance or suitability of the enterprise for the communication of ideas ("in a populous democracy, the only means of truly mass communication must play an absolutely crucial role in the processes of self-government and free expression so central to the First Amendment", Opinion, p. 19). See Opinion, pp. 11-19. This is a rationale for content control that could just as well be applied to cable television operators and, perhaps, to CATV channel lessees.

In short, the opinion not only fails to establish a right of individual access to the broadcast media on a "first-come, first served" basis, but it may even suggest that the Constitution prevents such access, since "the real problem . . . is . . . that [editorial advertising] may be dominated by only one group from one part of the political spectrum," and "a onesided flood of editorial advertisements could hardly be called 'the robust, wide-open' debate which the people have the right to expect on radio and TV." (Opinion, p.41) The court has merely substituted for the "paternalism" of the broadcaster the much more dangerous paternalism of the FCC. It achieves this by recognizing a First Amendment right to be heard -- but then leaving to the Government the extent to which that right may be abridged. Although it sounds better, it is in fact worse than recognizing no constitutional right to be heard, but leaving the decision of whether to grant a hearing or not to the private stations. Until full right of access is assured, no right of access is preferable. We point out again that all this has been done pursuant to a theory of "state action" which would subject other communications technologies to the same fate.

Finally, it may not be amiss to raise one political consideration: If we establish the FCC's power (perhaps a constitutionally required power?) to prevent editorial advertising from being "dominated by only one group from one part of the political spectrum," we may have achieved in effect a judicially enacted campaign spending bill. A Republican candidate seeking to spend 6¢ per voter on broadcast advertising might be restricted to a lesser sum by the FCC if his impecunious Democratic opponent is able to scrape up only 1¢ per voter. This result is not inevitable under Judge Wright's decision -- but it is at least possible.

Recommended Action:

Since Judge Wright's opinion is diametrically opposed to OTP's goal of loosening governmental control of program content, and since it is an opinion which will receive wide prominence, a public statement criticizing it would be in order. It can be brief -- a mere sigh of regret over the increase of government involvement in content regulation, joined with the assertion that OTP reexamination of this whole area is more necessary than ever. I am sure it will not escape your attention that such a statement would win the support of the broadcasters at a time when their confidence in your good will is critical.

MOORE, BERSON & BERNSTEIN
660 MADISON AVENUE
NEW YORK, N.Y. 10021
(212) TE 8-0600

FRANK C. MOORE
COUNSEL

January 17, 1972

Joel Klaperman
Staff Attorney
Office of Telecommunications Policy
Executive Office of the President
Washington, D. C. 20504

Dear Mr. Klaperman:

Mr. Moore has referred your letter to me. I have arranged for our comments in the Fairness Doctrine Rulemaking to be sent to you under separate cover. We would appreciate receiving any filings your office may make in this matter.

In addition, we would also appreciate a copy of the speech given by Mr. Scalia to the Federal Communications Commission Bar Association last week if such is available.

Thank you very much.

Sincerely,

Andrew Jay Schwartzman

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MEMORANDUM FOR MR. COLSON

FROM: Clay T. Whitehead

SUBJECT: Fairness Doctrine

I have reviewed the article you sent to me (from Richmond News Leader, February 5, 1972) regarding political uses of the FCC's Fairness Doctrine and the White House position on repeal or modification of the equal time provision of the Communications Act (i.e., Section 315). Focussing solely on the Fairness Doctrine aspects, I found the article interesting but hardly illuminating in supporting the proposition that the Fairness Doctrine favors the Republican "ins" and hurts the Democrat "outs".

There could be, however, a number of unstated assumptions in the article which could support the implication of your covering note, i.e., that we are benefitted by present Fairness Doctrine enforcement. I thought it would be worthwhile to explore briefly some of these possible assumptions.

Assumption #1 - The Fairness Doctrine can be used affirmatively to require balanced network coverage of Administration viewpoints.

It is virtually impossible for the party in power to use the Fairness Doctrine to require balanced network coverage of its viewpoint. To do so, we would have to show that we were denied a reasonable opportunity to present our position on a particular issue; but straight news coverage nearly alway provides this required minimum. Moreover, network coverage does its greatest damage in the slanted presentations of news commentators and the bias of those exercising "editorial" responsibility; and

this is not reachable under the Fairness Doctrine. The FCC will take action only when there is evidence, other than program content, that the network has slanted or staged the coverage. This evidence almost never exists.

Of course, we use the Fairness Doctrine in an affirmative but informal way to get greater coverage of our viewpoint and to get Administration spokesmen on network discussion programs. However, looking at it realistically, this clout is not derived wholly from the Fairness Doctrine, but is simply one of the prerogatives of power: Whatever added weight is provided by the Fairness Doctrine threat could be preserved, as discussed below, under the OTP "fairness" proposals.

Assumption #2 - The Fairness Doctrine is one of the few obligations enforceable directly against the networks and thus its enforcement, or threatened enforcement, keeps the networks honest.

It is indisputable that we benefit from the fact that the Fairness Doctrine is one of the few obligations -- and the most important one -- that is enforceable directly against the networks, instead of through their owned and operated stations. This facilitates the direct, informal approach which has worked reasonably well (for us) in the past. But, in the long run, the most important check on network power is the combined power of the affiliates, and few things would mobilize the affiliates to use this power like a string of "fairness" complaints against the affiliates that concern network programs.

In the short run, however, direct action can be quite effective. To preserve ~~the~~ its effectiveness, ~~of this device,~~ I am currently considering a modification in the OTP "fairness" proposals ~~which would~~ to retain the feature of direct enforcement of the network's fairness obligations. The local station's obligation could still be enforced at renewal time, taking into account the licensee's overall performance.

Assumption #3 - The Fairness Doctrine can be used negatively to prevent coverage of opposition viewpoints.

Just as the equal time requirement is said to discourage the networks from giving free time for political discussions, the fairness requirement could discourage coverage of Democratic viewpoints in programs other than news ~~coverage~~ programs. There may be some truth in this argument but it is very difficult to prove, i.e., no one can prove how much more time would be devoted to this type of public affairs discussion if there were no fairness obligation. In any event, OTP is not proposing to eliminate the fairness obligation; just to eliminate case-by-case enforcement of it against licensees. This would give the private licensees more discretion in meeting their fairness obligations and would cut back on second-guessing by the FCC and the courts.

On the narrow question of Fairness Doctrine responses by Democrats, it is apparent from the Richmond News Leader article that, as long as there is no "tit for tat" response every time

an Administration viewpoint is expressed, we are benefitted by the Fairness Doctrine. In short, the Republican "ins" succeed when the broadcasters' discretion is upheld and the regulatory and judicial second-guessing is held to a minimum. The OTP "fairness" proposals accomplish precisely this end, and this is one of the principal short and long-range advantages to be gained by their adoption.

Whether or not Democrats obtain network time to respond to the President and his spokesmen now depends entirely on the particular judges who review the FCC's rulings in the DNC and RNC cases. With a few exceptions (i.e., the February 2, 1972 DNC decision by Judges Tamm and MacKinnon) the court decisions are contrary to Republican interests. As unfortunate as recent court decisions in the field have been, they may get even worse unless the vehicle which brings them forth--the present case-by-case method of enforcing fairness--is eliminated. It is therefore desirable to remove as much of the power as possible from the courts and return it to the discretion of the private broadcast licensees. It is unlikely that the courts will allow this short of legislation. The OTP proposals achieve this, while continuation of the present haphazard enforcement approach does not serve Republican interests.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

March 17, 1972

OFFICE OF
COMMISSIONER RICHARD E. WILEY

Mr. Antonin Scalia
General Counsel
Office of Telecommunications Policy
The White House
Washington, D. C. 20500

Dear Mr. Scalia:

This will confirm your scheduled participation as a Fairness Inquiry Panelist on Tuesday, March 28, 1972 -- 2:00 to 4:30 p.m. at the Commission's Meeting Room, Room 856 N, 1919 M Street, N. W., to discuss Part III of the Inquiry, "Access to the Broadcast Media as a Result of Carriage of Product Commercials".

It is our hope that such an open forum for the discussion of contrasting views and opinions will materially assist the Commission in its determination of appropriate policies with respect to the Fairness Doctrine. In order to utilize most effectively the limited time available and, at the same time, to promote a "robust and wide-open" discussion, we request that no formal opening statements be made. Instead, we will proceed directly to a discussion of the relevant issues.

In this connection, I am enclosing, for your information, copies of the Commission's Notice of Inquiry in Docket 19260 and its recent Order outlining the issues to be discussed. While we in no way intend to limit the panel discussion to only those issues, we do believe that they set forth generally the most relevant questions involved in this Inquiry. Please do not hesitate to contact this office if there are additional items of information which you believe will be helpful.

Please accept my profound appreciation for your willingness to assist the Commission by serving as a Fairness Inquiry Panelist. I am confident that your personal participation will contribute greatly to making this historic meeting a productive and worthwhile step in the Commission's resolution of the very difficult issues before it.

Cordially,

Dick

Richard E. Wiley
Commissioner

enc.

May 3, 1972

MEMORANDUM FOR MR. FLANIGAN

Our posture on the Fairness Doctrine should be broken down into three areas:

1. The keeping or scrapping of the Fairness Doctrine itself. You will recall I made a package of proposals relating to broadcast regulation for purposes of discussion, including among them the elimination of the Fairness Doctrine. Colson was upset that this would eliminate the only lever that could be used directly against the networks on coverage of political issues. Based on his reactions and other considerations, I agreed that I would refrain from espousing that aspect of the proposals.

2. The detailed working of the Fairness Doctrine. OTP has no particular expertise, nor does the Administration have any serious policy concern, with the myriad details and complexities of the Doctrine as it has evolved. Dean Burch has enough trouble in the Commission's current Fairness Doctrine inquiry without the Administration second-guessing him. I have, therefore, refrained from any recommendations or criticisms on particular details of the Fairness Doctrine and intend to continue that. My comments on the workings of the Doctrine itself have been confined to what Dean Burch has said and what every serious observer of broadcast regulation realizes--that the Doctrine has gotten out of hand and needs serious attention to limit and clarify it, preferably by the Commission itself if the Courts will allow it.

3. The extension of the Fairness Doctrine into product advertising, the use of the Doctrine to require counter-advertising as proposed by the Federal Trade Commission, the twisting of the Fairness Doctrine into a mechanism for free access by various radical groups to get their viewpoints on the air, etc. In the case of counter-advertising, we agreed to put the Administration in the opposition to the irresponsible FTC proposal that the Fairness Doctrine be extended to product ads. In other areas, we have not taken any firm Administration positions, but have cautioned against unnecessary and undesirable extension of this kind of regulatory control over the broadcast and advertising businesses and its extension into the print media. License renewal policies, channel limitations, ownership restrictions,

SENSITIVE

access demands, advertising, and the like have been entangled by the FCC and the courts with the Doctrine, all growing basically out of the spectrum limitation. It is one of the key areas for policy resolution in cable. It is impossible to deal with broad or specific policy without touching on the fairness obligation and the Doctrine.

In summary, I have gone out of my way to make clear that this Administration does not endorse removal of the Fairness Doctrine; I have avoided any detailed comment on the Doctrine itself; and have confined public statements to drastic extensions of the Doctrine beyond the areas to which it is traditionally applied, and to the relation of the broader fairness obligation to such important policy questions as license renewal criteria, cross-ownership, cable television, and the like. The comments you saw in the news summary were directed at extensions of the Doctrine into advertising, the increasing tendency of the courts to ignore the spectrum scarcity rationale, and the desire by many activists to extend the Doctrine into the print media; I did not touch on the current workings of the Doctrine and specifically acknowledged that the broadcasters (Colson: read as "networks") have a fairness obligation that cannot be removed as long as we have Federal licensing of the airwaves. You will recall that Chuck Colson and I discussed this in preparation for my testimony before the Ervin Committee and agreed the only area he was upset about was the removal of the Doctrine as it relates to the networks. My public positions in this area have been low key and consistent with my understanding of our agreements.

Clay T. Whitehead

CTWhitehead:sr/jm

cc: Mr. Whitehead
Eva ✓

SENSITIVE

Presidential tv

The Yale Law Journal

Volume 83
Number 8
July 1974

BOOK REVIEW

Media Chic
Minow, Martin & Mitchell: Presidential Television

by

Clay T. Whitehead

83 YALE L.J. 1751

Media Chic

Presidential Television. By Newton N. Minow, John Bartlow Martin & Lee M. Mitchell. *New York: Basic Books, Inc.*, 1973. Pp. xv, 232. $8.95.

Reviewed by Clay T. Whitehead†

Within a relatively short time television has grown from insignificance to nearly total pervasiveness. Since the early 1950's we have become accustomed to this new medium, using it more hours each day[1] and increasingly relying upon it for advertising, entertainment, news, and political debate. Not surprisingly, the new medium and Presidents have found over the years a mutual attraction. Presidents need television to reach the electorate, and the TV medium finds presidential words and actions great "copy" (to stretch only slightly the newspaper term).

Presidential Television[2] documents the steadily expanding use of television by incumbent American Presidents. Following an analysis of the political implications and potential dangers of this phenomenon, the authors reach what seems to be the main point of the book: a series of proposals aimed at mandating an approximate equality of simultaneous television network time among the President, the Congress, and the party in opposition to the President.

The authors point out that the concern of the Framers of the Constitution was not that the President would become too powerful, but that he would not be noticed at all among the numerous members of Congress, whose personal constituencies would make them more powerful as a group.[3] Today, the authors maintain, the President has confounded the Framers' predictions by becoming the most visible, and therefore most powerful, politician in the country. They set out

† Director, Office of Telecommunications Policy, The Executive Office of the President, Washington, D.C. The author wishes to acknowledge the assistance of William Adams.

1. Total television viewing per home has been estimated to have reached 6 hours, 20 minutes per day in the over 60 million homes in the United States having television receivers. BROADCASTING MAG., BROADCASTING YEARBOOK 12 (1974).

2. N. MINOW, J. MARTIN & L. MITCHELL, PRESIDENTIAL TELEVISION (1973) [hereinafter cited to page number only].

3. Pp. 102-03, *citing* THE FEDERALIST No. 73 (Hamilton sees a natural tendency of legislative authority to "intrude upon the rights and absorb the powers of the other departments").

to show that it is largely because of the visibility resulting from his frequent use and masterful manipulation of television that he outshines the Congress and the courts and leaves his opposition far behind.

The proposals advanced by the authors aim at correcting this situation, as they perceive it, by "balancing" presidential use of television in four ways: (1) simultaneously broadcasting live on all television networks during prime time at least four evening congressional sessions each year; (2) granting to the national committee of the largest political party opposing the President an automatic legal right of reply to presidential addresses during an election year and near the time of off-year congressional elections, under the same conditions of coverage that the President enjoyed; (3) televising voluntary debates between spokesmen of the two major parties two to four times annually; and (4) providing free time simultaneously on the three networks to all presidential candidates according to a formula giving equal time to the major party candidates and lesser amounts of time to minor candidates.[4] The authors recommend that the equal time provision[5] and the Fairness Doctrine not be applied to these broadcasts, in order to avoid legal challenges and to prevent the President from demanding more time to reply to them.[6]

I

Unfortunately, the authors confuse the causes and the effects of the phenomenon they call "presidential television." Because they deal almost exclusively with effects, their recommendations, and especially their proposed changes in communications law, smack of tinkering and manipulation rather than the redress of constitutional imbalances. The authors blame the President's frequent television appearances for what they consider his undue power over public opinion in comparison with that of Congress and the opposition party. This conclusion is inaccurate in two respects. First, the present authority and prominence of the presidency result not from television but from the historical growth of the involvement of the federal government, and thus of the

4. This last proposal was earlier developed in THE TWENTIETH CENTURY FUND COMM'N ON CAMPAIGN COSTS IN THE ELECTRONIC ERA, VOTERS' TIME (1969). This review will not discuss the proposals developed originally in that study. The authors also recommend that to preserve its judicial integrity, the Supreme Court should continue to avoid television coverage, while taking some steps to improve general press coverage of its functioning. Pp. 92-102.

5. 47 U.S.C. § 315 (1970).

6. For a summary of the authors' proposals, see pp. 161-65.

Executive, in national and international affairs.[7] Second, the President does not have control over the total amount and nature of his coverage on television, and there is no assurance that he will benefit from the exposure he does receive.

As the nation and the federal government both grew, so also did the power of the presidency. For the first 160 years of our constitutional history, this growth was unaided by television. By the dawn of the era of presidential television in 1947, when President Truman made an address from the White House to launch the Food Conservation Program,[8] the fears of the Framers that the President would be an obscure and unnoticed figure had long been put to rest.

Because of the inherent nature of the office, a Chief Executive is able to supervise or control detailed administrative matters and to act quickly and decisively in circumstances where the pace of national and international events is too rapid for the more contemplative Congress. In both situations, the pragmatic approach of Congress has been to delegate increasing authority to the President in order to allow effective action. Congress has also deliberately accepted certain methods of conducting business which allow the President to set much of its agenda; a large portion of the congressional year is devoted to consideration of the President's budget and legislative proposals. Congress has an even lesser role in international relations, where the President has a constitutional primacy.[9] Not surprisingly, much of the coverage of the President on national television has focused on foreign affairs.[10]

The coverage of the President in all the mass media, including television, reflects his importance, prestige, and newsworthiness in national and foreign affairs. The President's central role is evidenced by the fact that he regularly gets headline coverage in the more than 60 million newspaper copies printed daily in the United States,[11] as

7. The authors almost entirely ignore these factors in their concern with television. There are only occasional, brief admissions that other factors even exist. "Because he can act while his adversaries can only talk, because he can make news and draw attention to himself, and because he is the only leader elected by all the people, an incumbent president always has had an edge over his opposition in persuading public opinion. Presidential television, however, has enormously increased that edge." Pp. 10-11. "Presidential power has expanded because of the growth in national involvement in foreign affairs, because of the increasing role of the federal government in national life, especially in social services, and because television has given the president more access than Congress to the public." P. 105. Even in these statements, however, television is still portrayed as the most significant factor.

8. P. 55.

9. *See, e.g.*, United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

10. For one illustration that coverage is predominantly on foreign affairs, *see* note 14 *infra*. In addition, there has been extensive coverage of presidential actions in areas where Congress has delegated authority to the President, for example, wage and price regulation during the Nixon Administration.

11. U.S. DEP'T OF COMMERCE, POCKET DATA BOOK 296 (1973).

well as extensive coverage in the national news and opinion magazines. The authors recognize the fact that "[a]lmost anything the President does is news."[12] If "the modern trend in American government is towards an increasingly powerful president and an increasingly weak Congress,"[13] then television, like the other mass media, has only reflected that trend.

Furthermore, there is no evidence that the President's use of television confers any kind of political omnipotence. The political and social forces in this country are sufficiently diffuse to prevent presidential control of public opinion, and therefore, despite his use of television, the President may be defeated on unpopular policies and programs. For example, most of President Nixon's first term television addresses dealt with his Vietnam policies, which nevertheless remained less popular than most of his other domestic and foreign policies.[14] More powerful countervailing forces were acting concurrently to diminish any television advantage that the President might have enjoyed.

Despite the significant amount of attention he gets, the President does not control television coverage. He is covered by the networks and local stations at the discretion of their own independent news departments, and has no right to demand television time.[15] Furthermore, congressmen and other public figures frequently appear on television, and the views and activities of the President's opponents are regularly reported. In fact, if all programming is considered, senators and representatives appear on television much more frequently than the President.[16]

12. By virtue of his office, the President of the United States—its constitutional leader, supreme military commander, chief diplomat and administrator, and preeminent social host—obviously ranks higher in the scale of newsworthiness than anyone else—defeated opposition candidate, national party chairman, governor, congressman, senator.

. . . .

A presidential press conference is clearly news. So is his television address; a report of it will be on page 1 in tomorrow's newspapers. A presidential speech broadcast only on radio will be reported in the television news.

P. 21.

13. P. 103.

14. As of April 30, 1972, President Nixon had preempted network programming a total of 19 times to make addresses to the nation. Ten of these addresses, more than half, dealt with Vietnam or Southeast Asia policy. This subject, to which he devoted by far the most attention, never received as much public support as the authors' notion of the power of presidential television might predict.

15. At times, the President has had to bargain with the networks for a desired television time spot. The authors relate that an Eisenhower speech on the Quemoy-Matsu crisis was delayed until after prime time, while President Kennedy had to postpone a speech designed to prevent racial violence at the University of Mississippi from 8:00 p.m. to 10:00 p.m. (by which time rioting had already started). P. 35.

16. In 1973 alone:

[W]ell over 150 different Congressional spokesmen appeared on the NBC Television Network in more than 1,000 separate appearances of varying lengths. By contrast,

Even if the television news departments of the three national networks failed to provide such extensive coverage of Congress, and the local TV stations on their own news shows did not cover their local senators and representatives, the Federal Communications Commission's (FCC's) Fairness Doctrine would provide a regulatory check on presidential television.[17] In 1970, the FCC recognized that the large number of presidential addresses presented an unusual situation triggering television fairness obligations even when all other programming was nearly balanced.[18]

The impression left by the authors overstates the President's television advantage over Congress and the opposition party. If television under proper circumstances can be an electronic throne for the President, it can also be an electronic booby trap awaiting a chance slip or slur in an offhand remark, thereby causing an explosion of indignation or outrage and a consequent drop in the public opinion polls.

No President has been uniformly effective in his television appearances.[19] It is perhaps the unique intimacy conveyed by television that is responsible for its capacity to betray both the serious and the super-

the President appeared approximately 148 times (of which about 20% were ceremonial occasions).

J. Goodman, President of NBC, Statement Before the Jt. Comm. on Cong. Operations, Mar. 7, 1974, at 4 (hearings to be published).

The *CBS Evening News* broadcast six nights a week to 18 million people a night included 222 interviews with or appearances by members of Congress from June 1, 1973, to last week [the week prior to Feb. 21, 1974] . . . . In addition there were hundreds of other reports of Congressional activity on the *CBS Evening News* during that period.

. . . .

In 1973, for example, there were 31 appearances by members of Congress on *Face the Nation* alone.

A. Taylor, President of CBS, Statement Before the Jt. Comm. on Cong. Operations, Feb. 21, 1974, at 2 (hearings to be published). Since June 1973, CBS has also implemented a more expansive reply policy for leading opposition figures to reply to presidential messages. *Id.* at 5.

17. The statutory basis for the Fairness Doctrine is the Communications Act, 47 U.S.C. § 315 (1970), but in reality the doctrine is an administrative concept grounded in the "public interest" standard governing broadcast regulation. 47 U.S.C. § 309 (1970). The doctrine requires that if a broadcaster gives time to present one side of a "controversial issue of public importance," he must provide a reasonable opportunity for the presentation of conflicting viewpoints. He must provide free time if paid sponsors are not available. There is no "equal time" requirement, and the broadcaster determines what time will be provided for the reply, the format to be used, and who the spokesmen for the other side will be. No individual or group has a right to time under the Fairness Doctrine, which is concerned only with the presentation of issues. *See, e.g.*, Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10415 (1964); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) (Fairness Doctrine held constitutional).

It should be noted that this reviewer recommends abolition of the Fairness Doctrine because of the opportunities it creates for bureaucratic and political second-guessing of editorial judgments.

18. Committee for the Fair Broadcasting of Controversial Issues, 19 P & F Radio Reg. 2d 1103 (1970).

19. *See, e.g.*, pp. 37, 40, 47, 48, 50-54, 58.

ficial weaknesses of a politician. The authors attribute the fall of Senator Joseph McCarthy in the mid-1950's to this effect.[20] On a more subtle level the authors suggest that President Johnson's continued inability to use television to bridge what became known as his credibility gap marked his failure to win support for his Vietnam policies and caused his political power to wane.[21] Perhaps this was also due to extensive television coverage of the application and effects of those policies.

Finally, having more to lose than to gain, an incumbent President nearing election time may choose to avoid the risks of television appearances in the hope that his opponent will be discredited and undermined by using television.[22] Such a practice is wholly inconsistent with the authors' notion of television's invariably favorable influence on public opinion and political forces.

II

The authors' first proposal for ending the imbalance in television exposure is that Congress should permit television "on the floor of the House and Senate for the broadcast of specially scheduled prime-time evening sessions . . . ."[23] At least four times per year, these are to be carried live by the three major networks simultaneously. "These broadcasts should be exempt from the 'equal time' law and the fairness and political party doctrines."[24] Staging special evening sessions for television coverage appears well within the power of Congress and, at least at the outset, sufficiently interesting to warrant the three-network, simultaneous, prime-time coverage the authors seek to achieve.[25] But the wisdom and propriety of such a congressional maneuver simply to counteract the President's use of television is doubtful.

20. P. 107.
21. *See* p. 47.
22. *See, e.g.*, p. 58.
23. Pp. 122, 161.
24. Pp. 124, 161. The Fairness Doctrine is discussed in note 17 *supra*. The "equal opportunities" provision, 47 U.S.C. § 315 (1970), applies only to actual candidates during an election campaign. The political party doctrine, a creation of FCC case law, provides that if one major party is given or sold time to discuss candidates or election issues, the other party must be given, or allowed to buy, time (but not necessarily equal time). Pp. 87-89.
25. Prime time is defined as the peak television viewing hours for evening entertainment, generally 7:00-11:00 p.m. It is interesting to note that the only hour which is prime time for the entire nation is 10:00-11:00 p.m., eastern time. The suggested live sessions would have to begin late in the evening in Washington, D.C., to reach west coast viewers during prime time.

While discussing ways to give Congress access to the media, the authors never really address the question of *how* congressional television will counteract presidential television, and their conclusion that "Congress needs television"[26] is therefore without force. Since Congress is by nature pluralistic, many of the recent attempts of its members to present unified fronts have necessarily expressed only the least common denominator of their views and thus those efforts have lacked the impact of a singly-spoken presidential statement.[27] It is hard to see how the prime-time congressional specials could be much better, unless carefully staged by the majority party leaders; yet if the specials were actually staged, both viewers and news commentators might see them as contrived performances. These special congressional sessions are therefore unlikely to improve significantly the image of Congress or provide an effective means of expressing opposition to the President.

In practice, it is doubtful that this proposal would result in the long-run balance to presidential television the authors seek. More often than not, Congress and the White House have been held by the same party, a situation that could give even greater exposure to the President's position and put the opposition party at a more serious television disadvantage when it is perhaps most dangerous to do so.

The authors also suggest that the congressional coverage under their proposal be exempt from the Fairness Doctrine. If the President and the congressional majority were of the same party, the President's opponents would not be represented by the televised congressional sessions, and they would lose the opportunity under the Fairness Doctrine to have these programs balanced by presentation of conflicting views.[28] Moreover, if a broadcaster in this situation voluntarily attemped to balance the exempt congressional coverage by giving time to opponents of the President, there would be a danger that supporters of the President's policies might try to apply the Fairness Doctrine to this nonexempt coverage, forcing the broadcaster to give still more time to the presidential position.

Furthermore, this proposal seems to require the networks to broad-

26. P. 121.

27. Pp. 125, 130. In describing the attempts of Democratic party leaders to present opposition to President Nixon's Vietnam policy, the authors observe that the "quest for a consensus resulted in a watered-down response that George Reedy, President Johnson's former press secretary, said 'sounds like yapping' to most television viewers." P. 130. The authors also observe that the diversity within Congress creates severe limitations on its ability to rebut presidential television. P. 121.

28. *See* p. 1755 *supra*.

cast these congressional sessions. This raises the specter of government compelling its own coverage, a dangerous precedent. Currently, one of the checks on the political use of television is that the President and Congress can only request time, and the networks can therefore negotiate over the time of day and amount of time given.[29] This protection would be removed if either the President or Congress were permitted to demand television time.

The authors have not given sufficient weight to First Amendment interests in their proposal to broadcast congressional sessions. A better solution, if Congress wishes to be more accessible to all of the media,[30] would be to permit journalists to cover whatever congressional activities they consider newsworthy by means of print, radio, or television. Adequate television coverage of Congress could best be encouraged through improvement of congressional procedures. One proposal is to institute several reforms, including restructuring committees to remove overlapping jurisdictions, developing a more efficient method for reviewing the President's budget proposals, and coordinating the actions of the House and Senate, in the hope that such reforms would increase the visibility of Congress and make it easier for the press to cover congressional activities.[31] Constructive proposals of this nature might profitably be undertaken before Congress schedules its debut on live, prime-time television.

When Congress does something newsworthy, it invariably receives broad coverage. All that Congress needs to do is open its doors, if it decides that the public needs "congressional television." Journalists should be left to take care of the rest. Congress has no need to demand or legislatively require television coverage.

29. *See, e.g.*, note 15 *supra*.

30. C. Edward Little, President of the Mutual Broadcasting System, points out that in 1972 congressional committees conducted 40 percent of hearings and other meetings behind closed doors. He notes encouragingly, however, that the trend towards closed meetings is being partially reversed in recent months. C. Little, Statement Before the Jt. Comm. on Cong. Operations, Feb. 21, 1974 (hearings to be published), *citing* 28 CONG. Q. ALMANAC 93 (1972).

31. Rep. J. Cleveland, Statement Before the Jt. Comm. on Cong. Operations, Feb. 20, 1974, at 5 (hearings to be published).

> But the final passage of a bill or a successful investigation are only parts of the legislative drama. The rest of the performance must also be comprehensible—both to achieve quality and to communicate effectively.
>
> . . . .
>
> Reform can achieve this objective. The restructuring of committees, for example, can reduce overlapping jurisdictions, clarify responsibility, improve oversight, and encourage more rational planning—all of which would heighten the visibility of committee work and make it more accessible to the media, as well as produce a higher quality legislative product.

III

The next major proposal the authors develop is that:

> [T]he national committee of the opposition party should be given by law an automatic right of response to any presidential radio or television address made during the ten months preceding a presidential election or within 90 days preceding a Congressional election in nonpresidential years.[32]

Suggesting amendment of § 315 of the Communications Act of 1934,[33] the authors propose that every broadcaster or cablecaster who carries a presidential appearance within the expanded response period provide "equal opportunities to the national committee of the political party whose nominee for President received the second highest number of . . . votes"[34] in the most recent presidential election. The equal opportunities and fairness provisions are to be suspended for this reply by the opposition.[35] The purpose of this proposal is "to insure equality in the electoral use of television."[36]

If such a proposal were implemented, the result would be the replacement of editorial judgment in campaign coverage by a mechanical rule. It is no doubt true that fairness and objectivity are often lacking in network coverage of political parties and candidates. It seems more likely, however, that even with the limited diversity of only three networks, day-to-day news selection based on a reasoned, professional judgment is superior to the mechanical application of a law which forces broadcasters automatically to present spokesmen selected by the opposition party.

One need not peer far into the past to find examples of the potential mischievousness of such a law. When President Johnson was pursuing his Vietnam policies, most of the effective opposition was in his own party, while Republicans were generally less critical of the war. Since the proposed law would not limit the other party to the issues discussed by the President, the Republicans could have eschewed any discussion of the war and instead attacked the President on some unrelated and perhaps less important issue. Ultimately, the war would have been opposed less effectively by the President's real opposition in the time remaining to the networks for coverage of other news topics.

32. P. 161.
33. 47 U.S.C. § 315 (1970).
34. P. 161.
35. P. 162.
36. P. 153.

On the whole, granting the party out of power a right of free reply will make political debate in America more partisan and institutional rather than philosophical and issue-oriented.[37] Such a provision may lock the current political scene into law by narrowing the range of expression to established partisans. Similarly, this proposal could hurt insurgent candidates running independently of the backing of party regulars by giving each national committee the power to select party spokesmen. Television debate of political issues is not likely to be strengthened by giving so much television control to the party regulars on the national committees.

The "opposition" to the President's policies can come from many sources. Whether that opposition is the other party, a local official, or the heir apparent within the President's own party, the wiser choice is to seek conditions under which each such group can receive news coverage to the extent that it is newsworthy and can also have a right to buy television time for itself. This latter issue of access rights, which would in many ways help achieve the authors' objectives, is explored in more detail below.

IV

The authors propose also that "National Debates" among spokesmen of the national political parties be established on a voluntary basis for all concerned, with the stipulation that they be shown live during prime time with simultaneous major network coverage.[38] Designed to facilitate the development of party positions, a dubious goal in itself, the debates would more than likely lead to many of the same results as the proposals for "opposition television" that were criticized above.

Political debates have always been voluntary for both participants and broadcasters. There has seldom been any hesitancy on the part of broadcasters to stage debates. The problem is that the incumbent, usually much better known, is often understandably reluctant to help provide an equal forum for his opponents. The National Debates would frequently meet the same obstacle. It is likely that they would never take place except when the strategies of all candidates coincide. Such debates therefore could never play a major role in balancing presidential television appearances.

37. The present Fairness Doctrine, in contrast, requires a balance of issues, not personalities or parties.
38. Pp. 155, 162.

The authors would vest in the national committees of each party the power to choose the spokesmen who will participate in these debates. They suppose that the "most arresting personalities and best debaters will be chosen."[39] More likely, the division within the national committees will often lead to compromise spokesmen noted only for their lack of further political ambition.[40] Without the charismatic figures that television seems to require, the debates would probably languish very low in viewer popularity—except for those few occasions when they would have been interesting enough to command coverage anyway.

V

In developing their recommendations for giving television reply time to Congress and the opposition party, the authors almost completely ignore the question of allowing a private right of access.[41] Giving access to groups other than Congress and the opposition party would make it possible to provide exposure for a wider range of political opinions. Had the authors considered the access issue in light of theories of broadcasting regulation and the requirements of the First Amendment, their recommendations might have been far different.

Despite the demand for some form of access by private groups, the Supreme Court ruled in *Columbia Broadcasting System v. Democratic National Committee*[42] that broadcaster refusal to allow paid access to the airwaves in the form of "editorial advertisements" did not violate the First Amendment or the broadcasters' statutory duty[43] to act "in the public interest." The Court, in considering the possibility of creating such a private right of access, said that it was necessary to weigh the interests in free expression of the public, the broadcaster, and the individual seeking access. It then held that the Congress was not unjustified in concluding that the interests of the public would be best served by giving full journalistic discretion to broadcasters, with the only check on the exercise of that discretion being

39. P. 155.
40. Conversely, if each party chose several spokesmen to represent various wings of the party, the debates could become little more than intraparty quarrels.
41. "Private right of access" refers to the practice of allowing individuals and groups to purchase television time to broadcast their views on politics or other subjects.
42. 412 U.S. 94 (1973). The Court overturned a ruling by the court of appeals that a flat ban on paid editorial announcements violates the First Amendment, at least when other sorts of paid announcements are accepted. Business Executives Move for Vietnam Peace v. FCC, 450 F.2d 642 (D.C. Cir. 1971).
43. 47 U.S.C. § 309 (1970).

the FCC's public interest regulation of broadcasters. The majority opinion pointed out that choosing a method of providing access to individuals and private groups that relied on detailed oversight by a regulatory agency would simply increase government interference in program content, in view of the need to create regulations governing which persons or groups would have a limited right of access.[44] The Court stated, however, that the access question might be resolved differently in the future: "Conceivably at some future date Congress or the Commission—or the broadcasters—may devise some kind of limited right of access that is both practicable and desirable."[45]

The appearance of *Presidential Television* revives the concerns that took *Democratic National Committee* to the Supreme Court. The growing role of broadcasting in American politics, together with the increasing clamor for some form of access, may justify legislative reexamination of whether the broadcaster should be required in selling his commercial time[46] to accept all paid announcements without discrimination as to the speaker or the subject matter.[47] In this way, paid editorial announcements would stand on an equal footing with paid commercials and paid campaign advertisements. The broadcaster would sell advertising time exclusively on the basis of availability, the same way that newspapers and magazines sell advertising space. All

44. 412 U.S. at 126-27. The Supreme Court distinguished this type of "right of access" from enforcement of the Fairness Doctrine, which the Court described as involving only a review of the broadcaster's overall performance and "sustained good faith effort" to inform the public fully and fairly. However, the Court apparently was unaware of the gradual shift away from general enforcement of the Fairness Doctrine towards specific, case-by-case and issue-by-issue implementation. *See* Blake, *Red Lion Broadcasting Co. v. FCC: Fairness and the Emperor's New Clothes*, 23 FED. COM. B.J. 75 (1969); Goldberg, *A Proposal to Deregulate Broadcast Programming*, 42 GEO. WASH. L. REV. 73, 88 (1973); Robinson, *The FCC and the First Amendment: Observations on Forty Years of Radio and Television Regulation*, 52 MINN. L. REV. 67 (1967); Scalia, *Don't Go Near the Water*, 25 FED. COM. B.J. 111, 113 (1972), *quoting* Paul Porter from *Hearings on the Fairness Doctrine Before the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce*, 90th Cong., 2d Sess., at 153 (1968). In effect, this shift in the method of enforcement has made the Fairness Doctrine similar to the type of "right of access" mechanism that the Court in *Democratic National Committee* said would regiment broadcasters to the detriment of the First Amendment. 412 U.S. at 127.

45. 412 U.S. at 131.

46. This proposal is limited to time reserved for paid commercials, not program time. A broadcaster would not be compelled to preempt regular programming. Commercial time on television falls generally in the range of 9 to 16 minutes per hour. The voluntary code of the National Association of Broadcasters allows nine minutes per hour during prime time, BROADCASTING MAG., *supra* note 1; the amount of commercial time is greater during other times of the day.

47. Under present government regulation, the broadcaster is legally responsible for his commercial time as well as his program material. In a system of paid access, it may be sufficient that individuals and groups are civilly liable for slander, obscenity, false or deceptive advertising, incitement to riot, or other offenses, and therefore the broadcaster should perhaps be relieved of liability for any infractions of law by users of the station's facilities.

persons able and willing to pay would have an equal opportunity to present their views on television.[48]

This kind of access right would be compatible with the policy concerns of the Supreme Court in *Democratic National Committee*.[49] This proposal would require no additional government administration or interference. Exempting access announcements from the Fairness Doctrine would cause a minimum of dislocation to the broadcaster's regular programming.[50] Moreover, broadcasters would not give up any significant control over substantive programming if the right of access were limited to commercial time. Both the journalistic freedom of the broadcaster and the interest of members of the public in obtaining television time are therefore protected by the creation of this limited right of access.[51]

By meeting some of the public demand for an electronic forum, developments in communications technology such as cable television will in the future almost surely reduce the hazards, real or imagined, from

48. This should not cause an unfair discrimination against groups which lack funds. Considering the amount of contributions which television appeals can attract, it is likely that any group with something important to say could raise money for the announcements by an on-the-air appeal. *See, e.g.*, p. 118 (an antiwar group paid $60,000 for time, but received $400,000 in contributions). Small, unpopular, or extremist groups might have trouble raising funds, but regrettably some of these groups probably would also be denied time under the present Fairness Doctrine. Poor groups whose views were not represented on programming time would be able to compel at least some coverage of their views through enforcement of the broadcaster's statutory responsibilities.

49. In fact, this would conflict less with *Democratic National Committee* than would the authors' proposals, which show little regard for the public interest or the journalistic freedom of the broadcaster. The authors would take from the broadcaster control over large blocks of time now devoted to program material, and give it to groups which the FCC could not hold accountable under the public interest standard. This was one reason the Court accepted the FCC's refusal to require public access in *Democratic National Committee*. 412 U.S. at 125.

50. If the Fairness Doctrine were applied to paid political advertisements, the broadcaster might be forced to provide free time for replies during regular programming time. 412 U.S. at 123-24 (the Court apparently did not decide whether the FCC would be permitted or required to extend the Fairness Doctrine to paid political advertisements). This possibility would be avoided by explicitly exempting these announcements from the Fairness Doctrine as part of the proposal. Such an exemption, of course, need not affect application of the Fairness Doctrine to product advertisements. Banzhaf v. FCC, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969). In addition, this proposal would leave the license renewal process available as a recourse in cases of extreme program imbalance.

The Fairness Doctrine, moreover, is not the source of this right of access. To use the Fairness Doctrine to justify a private right of access is to give it a function for which it was never intended.

51. In contrast, giving an unlimited right of access during regular programming time could remove a large amount of time from the control of the broadcaster and give it to individuals or groups. Since even proponents of access agree that this would be undesirable, they recommend more "limited" rights of individual access. But then it would be necessary to have detailed FCC-enforced regulations and standards to determine who would be entitled to time and which time slots would be made available. A right of access so constrained would result in the same type of governmental control over program content that was condemned in *Democratic National Committee*, 412 U.S. at 126.

presidential television.[52] In the meantime, the more limited medium of broadcast television must be made more responsive to individuals and groups seeking to express their points of view. The method by which this is done is crucial. Access can either be given on an ad hoc basis to those groups powerful enough to command it legally (such as Congress and the opposition party), as the authors suggest, or it can be sold on a nondiscriminatory basis. Only the latter proposal would be an improvement over the present system.

VI

The thrust of all of the authors' proposals is toward dictating to television viewers what they are to see, with paternalistic disregard for their actual desires. In doing so, the authors have lost sight of the substantial journalistic function that broadcasters share with publishers. Newspapers devote their space to those issues and events that the editors feel the readers will find most important. The more important the event, the more prominent is its position in more newspapers. No one tells a newspaper how many column-inches to devote to a certain topic, and certainly there is no law requiring the periodic coverage of specified events regardless of their newsworthiness.

To be sure, the "broadcasters' First Amendment" has come to be viewed[53] as an abridged version of the original one.[54] It is crucial, however, that intrusions on journalistic expression be severely limited. Most of the authors' proposals would impinge on free journalistic expression at a time when ways should be found to help preserve that expression. Indeed, the inevitable arbitrariness and complexity of such proposals provide the best arguments against legal controls over the use of television. The proposals go well beyond what is necessary to achieve many of the authors' goals and, unfortunately, fail to concentrate on the development of a general system of access that would be better designed to achieve those goals.

The major criticism of the authors' proposals, though, is that they

52. While the authors include cable systems in their suggestions, it is doubtful that anyone, including the President, should appear simultaneously on all of the potentially numerous networks in a medium of channel abundance like cable. It is also doubtful that all cable network organizations should be required to give free time to Congress or opposition parties, since there should be sufficient time for sale to accommodate everyone. Cable television, therefore, should be exempt from the programming requirements proposed by the authors.

53. *See* Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 388 (1969) (the right of the viewers and listeners is paramount to that of the broadcaster).

54. The First Amendment commands that "Congress shall make no law . . . abridging freedom of speech, or of the press . . . ." U.S. CONST. amend. I.

would impair rather than expand the ability of television to evolve into a medium reflecting a wide range of perspectives on the American social and political scene. With the extreme economic concentration of control over television programming by the three national networks[55] and the growing scope of FCC programming regulations,[56] we are already moving toward control of national television programming by a familiar coalition of big business and big government. Proposals such as those in this book serve only to entrench such a system and to constrain the diversity and free choice that should characterize American television.

Presidential Television provides an interesting and valuable addition to the literature on national politics by documenting the successes and failures of the evolving strategies that Presidents have devised in their efforts to adapt to the new television medium. But in the end, the authors fail to demonstrate the validity of their assertion that television has significantly and permanently altered the ebb and flow of America's political forces. We are left with presidential television as a still-evolving form, mastered neither by news departments nor Presidents, clearly something different from presidential radio and presidential headlines, very much a part of our political process, but hardly a fundamental threat to our constitutional system. The authors have discovered the dangers inherent in excessive concentration of presidential power. But, in seeking to check this power, they have chosen a course at variance with our most fundamental First Amendment principles, undermining the ultimate check on political power—an electorate that informs itself through a press unrestrained by government prescription.

55. The three networks originate about 64 percent of all programming for affiliated stations. BROADCASTING MAG., *supra* note 1, at 70. The percentage is higher during evening prime-time hours. Of the 700 commercial stations operating as of April 30, 1974, BROADCASTING MAG., June 3, 1974, at 40, only about 80 are not affiliated with the networks. Station ownership is also highly concentrated:

> Each of the networks owns the legal maximum of 5 VHF stations. Since these are in the largest cities, networks reach 25 to 35 percent of all TV homes with their own stations.

R. NOLL, M. PECK & J. MCGOWAN, ECONOMIC ASPECTS OF TELEVISION REGULATION 16 (1973).

56. *See, e.g.*, Notice of Inquiry in Docket No. 19154, 27 FCC 2d 580 (1971) (recommended percentages of certain types of programming); Further Notice of Inquiry in Docket No. 19154, 31 FCC 2d 443 (1971) (same); Report and Order Docket No. 19622, 29 P & F RADIO REG. 2D 643 (1974) (prime-time access restrictions on network programming).

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

July 2, 1974

DIRECTOR

Honorable Warren G. Magnuson
Chairman
Committee on Commerce
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request of May 20, 1974, for the views of the Office of Telecommunications Policy on S. 3463, proposed legislation to repeal the "equal opportunities" requirement of section 315(a) of the Communications Act of 1934, as amended (47 U.S.C. §315(a)) with respect to candidates for President and Vice President. Presently section 315(a) provides that if a broadcast licensee permits any legally qualified candidate for public office to use his station, he must afford equal opportunities to all other candidates for the same office in the use of his station.

We are not in disagreement with the purposes of this proposed legislation -- to allow broadcasters to offer free time and coverage to major party candidates without being legally compelled to offer "equal opportunities" to minor party candidates. We take exception, however, to limitation of this bill to Presidential and Vice Presidential candidates. The adverse effects of section 315(a) may be much more pronounced with respect to candidates for other Federal offices. We see no reason why the reform prescribed by this bill should be so severely limited.

Accordingly, we recommend that your Committee report unfavorably on S. 3463.

Sincerely,

Clay T. Whitehead

109TH CONGRESS
1ST SESSION

H. R. 3302

To amend the Communications Act of 1934 to prevent excessive concentration of ownership of the nation's media outlets, to restore fairness in broadcasting, and to foster and promote localism, diversity, and competition in the media.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2005

Mr. HINCHEY (for himself, Ms. WATSON, Ms. LEE, Ms. WOOLSEY, Ms. KAPTUR, Ms. SLAUGHTER, Mr. MORAN of Virginia, Ms. WATERS, Mr. STARK, Mr. FILNER, Mr. DEFAZIO, Ms. SOLIS, Mr. MCDERMOTT, Mr. HASTINGS of Florida, Mr. OWENS, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Communications Act of 1934 to prevent excessive concentration of ownership of the nation's media outlets, to restore fairness in broadcasting, and to foster and promote localism, diversity, and competition in the media.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Media Ownership Reform Act of 2005".

(b) TABLE OF CONTENTS.—

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) The Communications Act of 1934 requires the Federal Communications Commission and broadcast licensees to promote the public interest. The Commission has long had rules in place to promote the goals of localism, diversity, and competition.

(2) The Supreme Court, on numerous occasions, has upheld the Commission's and Congress's right to establish media protections because a monopolization of ideas is antithetical to our democracy.

(3) In 1945, the Supreme Court declared, "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society".

(4) In 1969, the Supreme Court declared, "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance mo-

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afraid of price differentials

nopolization of that market, whether it be by the Government itself or a private licensee''.

(5) Over the past two decades there has been a gradual shift of control in the public's airwaves into the hands of fewer private entities.

(6) Private entities can exert control over the public's access to information as many of the rules designed to foster diversity, competition, localism, and production of independent news and entertainment have been weakened or repealed.

(7) The past two decades have produced technological advances. Approximately 80 percent of U.S. households subscribe to cable or satellite systems offering multiple channels of video programming. The rapid growth of the Internet added another source of information to traditional media outlets. Over 71 percent of Americans have some form of online access.

(8) These advances have dramatically increased the number of information pipelines into Americans' homes. Despite the increase in information outlets, ownership and control of those is shrinking. A handful of companies control a large portion of both programming and distribution. Five companies now own the broadcast networks, 90 percent of the top 50

cable networks, produce three-quarters of all prime time programming, and control 70 percent of the prime time television market share. The same companies that own the nation's most popular newspapers and networks also own over 85 percent of the top 20 Internet news sites.

(9) While the Internet has become a new source of information, the vast majority of Americans continue to rely on television, newspaper, and radio as their primary sources of news information. Ownership of traditional news sources has been consolidated over the past 25 years. Two-thirds of America's independent newspapers have been lost since 1975 and according to the Department of Justice's Merger Guidelines every local newspaper market in the U.S. is highly concentrated.

(10) One-third of America's independent TV stations have vanished since 1975 and there has been a 34 percent decline in the number of radio station owners since the Telecommunications Act of 1996. There has been a severe decline in the number of minority owned broadcast stations. At the end of the 1990's, minorities owned just 1.9 percent of the U.S. television stations and 4 percent of the nation's AM and FM radio stations.

(11) As the major networks have been allowed greater vertical integration, the percentage of independently produced pilots and new series on the four national broadcast networks has declined from 87.5 percent in 1990 to 22.5 percent in 2002.

(12) The weakening of media protections, and subsequent consolidation of the media industry, has allowed companies to ignore their obligations to serve the public interest and severely reduce localism, diversity, and competition in today's media.

(13) The current state of today's media threatens the ability of our democracy to function because it does not allow for "the widest possible dissemination of information from diverse and antagonistic sources" and shrinks the marketplace of ideas.

(b) PURPOSES.—The purposes of this Act are—

(1) to inform the public of the scope of media rules and regulations that have been weakened and lost over the past two decades;

(2) to restore fairness in broadcasting;

(3) to reduce media concentration;

(4) to ensure that broadcasters meet their public interest requirements; and

(5) to promote diversity, localism, and competition in American media

SEC. 3. FAIRNESS IN BROADCASTING.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) by redesignating subsections (a) through (d) as subsections (b) through (e), respectively; and

(2) by inserting before subsection (b) the following new subsection:

"(a) PUBLIC INTEREST OBLIGATION TO COVER PUBLICLY IMPORTANT ISSUES.—A broadcast licensee shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance. The enforcement and application of the requirement imposed by this subsection shall be consistent with the rules and policies of the Commission in effect on January 1, 1987.".

SEC. 4. BROADCASTING OWNERSHIP LIMITATIONS.

(a) ESTABLISHMENT OF BROADCASTING MULTIPLE OWNERSHIP LIMITATIONS.—Part I of title III of the Communications Act of 1934 is amended by inserting after section 339 (47 U.S.C. 339) the following new section:

"SEC. 340. BROADCASTING MULTIPLE OWNERSHIP LIMITATIONS.

"(a) NATIONAL TELEVISION AUDIENCE REACH LIMITATION.—The Commission shall not permit any license for a commercial television broadcast station to be granted, transferred, or assigned to any party (including all parties under common control) if the grant, transfer, or

assignment of such license would result in such party or any of its stockholders, partners, or members, officers, or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in television stations which have an aggregate national audience reach exceeding 25 percent.

"(b) RADIO OWNERSHIP LIMITATIONS.—

"(1) NATIONAL RADIO OWNERSHIP LIMITATIONS.—The Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) to establish provisions limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally. Such limitation shall not exceed 5 percent of the total number of AM and FM broadcast stations.

"(2) LOCAL RADIO OWNERSHIP LIMITATIONS.—The Commission shall revise section 73.3555(a) of its regulations (47 C.F.R. 73.3555) to provide that—

"(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM);

"(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 4 commercial radio stations, not more than 2 of which are in the same service (AM or FM);

"(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 3 commercial radio stations, not more than 2 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 25 percent of the stations in such market; and

"(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 3 commercial radio stations, not more than 2 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 40 percent of the stations in such market.

"(c) CABLE/BROADCASTING OWNERSHIP RESTRICTIONS.—The Commission shall not permit any license for a commercial television broadcast station to be granted, transferred, or assigned to any party (including all parties under common control) if the grant, transfer, or assign-

ment of such license would result in such party or any of its stockholders, partners, or members, officers, or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in such station and directly or indirectly owning or controlling a cable television system whose service area overlaps in whole or in part with such television broadcast station's predicted Grade B contour, computed in accordance with section 73.684 of the Commission's regulations (47 C.F.R. 73.684).

"(d) SATELLITE/BROADCASTING OWNERSHIP RESTRICTION.—The Commission shall not permit any license for a commercial television broadcast station to be granted, transferred, or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners, or members, officers, or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in such station and directly or indirectly owning or controlling a satellite carrier that provides service to customers who are located within such television broadcast station's predicted Grade B contour, computed in accordance with section 73.684 of the Commission's regulations (47 C.F.R. 73.684).

"(e) NO GRANDFATHERING.—The Commission shall require any party (including all parties under common control) that holds licenses for commercial broadcast stations in excess of the limitations contained in subsection (a), (b), (c), or (d) to divest itself of such licenses as may be necessary to come into compliance with such limitation within one year after the date of enactment of this section.

"(f) SECTION NOT SUBJECT TO FORBEARANCE.—Section 10 of this Act shall not apply to the requirements of this section.

"(g) DEFINITIONS.—

"(1) NATIONAL AUDIENCE REACH.—The term 'national audience reach' means—

"(A) the total number of television households in the Nielsen Designated Market Area (DMA) markets in which the relevant stations are located, or as determined under a successor measure adopted by the Commission to delineate television markets for purposes of this section; divided by

"(B) the total national television households as measured by such DMA data (or such successor measure) at the time of a grant, transfer, or assignment of a license.

No market shall be counted more than once in making this calculation. The Commission shall not provide any discount in the measurement of national audience reach for UHF stations, or on the basis of any other class or category of television station.

"(2) COGNIZABLE INTEREST.—Except as may otherwise be provided by regulation by the Commission, the term 'cognizable interest' means any partnership or direct ownership interest and any voting stock interest amounting to 5 percent or more of the outstanding voting stock of a licensee.".

(b) DURATION OF LICENCES.—

(1) AMENDMENT.—Section 307(c)(1) of the Communications Act of 1934 (47 U.S.C. 307(c)(1)) is amended by striking "8 years" each place it appears and inserting "3 years".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to any license granted by the Federal Communications Commission after the date of enactment of this Act.

(c) CONFORMING AMENDMENTS.—

(1) Section 629 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004, is repealed. Subject to the amendments made by this

subsection, section 202 of the Telecommunications Act of 1996 shall be applied as if such section 629 had not been enacted. This paragraph shall be effective as if enacted on the day after the date of enactment of Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004.

(2) Subsections (a) and (b) of section 202 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 110) are repealed

(3) Section 202(c)(1) of such Act is amended—

(A) by striking "its regulations" and all that follows through "by eliminating" and inserting "its regulations (47 C.F.R. 73.3555) by eliminating";

(B) by striking "; and" at the end of subparagraph (A) and inserting a period; and

(C) by striking subparagraph (B).

SEC. 5. INVALIDATION OF MEDIA OWNERSHIP DEREGULATION.

(a) DEFINITION.—For purposes of this section, the term "media ownership proceeding" means the Federal Communications Commission proceeding on broadcast media ownership rules (MB Docket No. 02–277, MM

Docket No. 01–235, MM Docket No. 01–317, and MM Docket No. 00–244).

(b) NEW RULES INVALIDATED.—Except as provided in subsection (d), the final rules adopted by the Federal Communications Commission pursuant to its media ownership proceeding, and announced by the Commission on June 2, 2003, shall be invalid and without legal effect.

(c) REINSTATEMENT OF PREVIOUS RULES.—Except as provided in subsection (d), any rule of the Federal Communications Commission that was in effect on June 1, 2003, and that was amended, repealed, or otherwise modified by the Commission pursuant to the media ownership proceeding is hereby reinstated as it was in effect on June 1, 2003. Any such rule shall be applied and enforced both prospectively after the date of enactment of this Act and retroactively to June 2, 2003, as if the media ownership proceeding had not occurred.

(d) EXCEPTION.—This section shall not apply to the limitations required by section 340 of the Communications Act of 1934, as added by section 4 of this Act.

(e) USE OF BIENNIAL REVIEW PROHIBITED.—The Federal Communications Commission shall not apply section 202(h) of the Telecommunications Act of 1996 or section 11(b) of the Communications Act of 1934 (47 U.S.C.

161(b)) to any review of broadcast media ownership rules after the date of enactment of this Act.

SEC. 6. REVIEW PROCESS FOR MEDIA OWNERSHIP.

(a) THREE-YEAR REVIEW PROCESS.—The Commission shall, once each 3 years beginning in 2006, conduct a review of—

(1) how the Commission's regulations concerning media ownership promote and protect localism, competition, diversity of voices in the media, diversity in broadcast ownership, children's programming, small and local broadcasters, technological advancement; and

(2) what regulations should be strengthened, added, eliminated, or altered, consistent with the priorities described in paragraph (1).

(b) REPORT TO CONGRESS.—The Commission shall, promptly after the conclusion of each review under subsection (a), submit a report thereon to Congress.

(c) PUBLICATION OF FINAL RULES PRIOR TO COMMENT; HEARINGS.—Before issuing any final rule concerning limitations on media ownership, the Commission shall—

(1) publish such rule in the Federal Register;

(2) conduct not less than 5 public hearings in various regions of the country to afford the public

a reasonable opportunity to comment on such rule; and

(3) widely advertise the time and place of such hearings in advance.

SEC. 7. PUBLIC INTEREST REPORTS.

Section 309(k) of the Communications Act of 1934 (47 U.S.C. 309(k)) is amended by adding at the end the following new paragraph:

"(5) PUBLIC INTEREST SERVICE REPORTS REQUIRED.—

"(A) REPORT AND HEARINGS.—For the purposes of enabling the Commission to render the determinations required by paragraph (1)(A), each broadcast licensee shall—

"(i) at least once every 2 years, submit to the Commission and publish, or otherwise make broadly available to the public at no cost, a report on how the broadcast station is meeting the requirement to serve the public interest in accordance with subparagraph (B); and

"(ii) conduct public hearings in accordance with subparagraph (C).

"(B) REPORT CONTENTS.— The information in the report required by subparagraph (A)(i) shall include—

"(i) the broadcaster's attempts to ascertain and satisfy local community needs;

"(ii) the broadcaster's use of public service announcements;

"(iii) the level and variety of the broadcaster's children's programming and the extent of the broadcaster's restraint from improper commercial advertising during children's programming; and

"(iv) the level and variety of the broadcaster's nonentertainment programming, particularly public affairs programming;

"(v) the broadcaster's proposals for future programming; and

"(vi) the broadcaster's coverage of issues important to its local communities, and how that coverage reflects the diverse interests and viewpoints of that local community.

"(C) PUBLIC INTEREST HEARINGS.—Each broadcast licensee shall hold at least two public

hearings each year in its community of license during the term of each license to ascertain the needs and interests of the communities they are licensed to serve. One hearing shall take place two months prior to the date of application for license issuance or renewal. The licensee shall, on a timely basis, place transcripts of these hearings in the station's public file, make such transcripts available via the Internet or other electronic means, and submit such transcripts to the Commission as a part any license renewal application. All interested parties shall be afforded the opportunity to participate in such hearings.".

SEC. 8. PREVENTION OF PROGRAMMING VERTICAL INTEGRATION.

Part I of title III of the Communications Act of 1934 is amended by inserting after section 340 (as added by section 3) the following new section:

"SEC. 341. PREVENTION OF PROGRAMMING VERTICAL INTEGRATION.

"(a) LIMITATIONS ON VERTICAL INTEGRATION IN THE ACQUISITION OF PROGRAMMING.—The Commission shall, in accordance with subsection (b), prescribe rules to prevent the persons controlling the distribution of video

programming over network distribution systems from acquiring unreasonable proportions of such programming from subsidiaries or affiliates contrary to the public interest in the goals of diversity and competition in the media marketplace.

"(b) MINIMUM STANDARDS.—The rules required by subsection (a) shall, at a minimum—

"(1) for any of the four largest national television networks, prohibit such network from distributing network produced programming over such network in an amount that exceeds, for any month, more than 60 percent of their primetime programming;

"(2) for any other national television network, other than a network described in paragraph (3), prohibit such network from distributing network produced programming over such network in an amount that exceeds, for any month, more than 70 percent of their primetime programming;

"(3) for a national television network that has been in operation for less than 3 years, prohibit such network from distributing network produced programming over such network in an amount that exceeds, for any month, more than 90 percent of their primetime programming;

"(4) for a cable network that is owned or controlled by a large cable operator or by a national television network, prohibit such network from distributing network produced programming over such networks in an amount that exceeds, for any month, more than 65 percent of their primetime programming; and

"(5) for any other cable networks, prohibit such network from distributing network produced programming over such network in an amount that exceeds, for any month, more than 75 percent of their primetime programming.

"(c) DEFINITIONS.—As used in this section:

"(1) NETWORK PRODUCED PROGRAMMING.—The term 'network produced programming' means programming that is owned or produced by an entity controlled by or affiliated with the same entity owning or controlling the network, or one over which the network has sole or joint creative control, acts as the distributor, or has a financial interest, but does not include programming that is owned or produced, or under the sole creative control, by an affiliated television broadcast station that is not owned or controlled by such network.

"(2) PRIMETIME PROGRAMMING.—The term 'primetime programming' means programming broadcast during the hours of 8 p.m. to 11 p.m., Monday through Sunday, but does not include newscasts, sports programs, or telecasts of feature films.

"(3) CABLE NETWORK.—The term 'cable network' means a cable channel that broadcasts video programming which is primarily intended for the direct receipt by a cable operator or a satellite operator for their retransmission to cable or satellite subscribers, but does not include a cable channel that reaches less than 16 million cable households.

"(4) LARGE CABLE OPERATOR.—The term 'large cable operator' means a cable operator, as such term is defined in section 602, that has 3,000,000 or more subscribers in the aggregate nationwide.".

SEC. 9. IMPLEMENTATION.

Within 180 days after the date of enactment of this Act, the Federal Communications Commission shall complete all actions necessary to prescribe regulations, or changes in regulations, to carry out the amendments made by this Act.

○

BILL DETAILS

HR 3302 was first introduced in the House on July 14, 2005

HR 3302: Media Ownership Reform Act of 2005

1) invalidate all of the FCC's 2003 media ownership rule rewrite (an appeals court only remanded the rules for a re-do), and reinstate the newspaper-broadcast cross ownership rule the local TV multiple ownership rule that the FCC scrapped in the 2003 rewrite;
2)restore the fairness doctrine;
3) lower the cap on TV station ownership from the 39% (raised by Congress) back to to 25%;
4) reduce the number of radio and TV stations a company can own;
5) increase the number of public interest obligations on all broadcasters;
6) get rid of the UHF discount "loophole" that counts only half a UHF station's audience reach toward ownership caps.

The bill would change the FCC's biennial reg review to triennial (two years does not seem to give the FCC enough time, particularly if the changes are controversial), but would require any media ownership rule to be published in the Federal Register and be the subject of at least five public hearings across the country. (FCC Chairman Kevin Martin is said to be agreeable to that number of hearings on the FCC's current attempted rewrite of the 2003 rules.)

overview

Number
HR 3302

Session
109th

Title
Media Ownership Reform Act of 2005

First Introduced
Jul 14, 2005

Current Status
In the Energy and Commerce Committee

Cosponsors
16

Relevant Activist Issues
Media Ownership
Media Consolidation

Bill PDF
download (requires Acrobat®)

Last updated July 19, 2005

The bill, co-sponsored by Diane Watson (D-Calif.), would also take aim at vertical integration by mandating more independently-produced programming on the TV networks.

Current Status

In the Energy and Commerce Committee

Cosponsors

Originally sponsored by Maurice D. Hinchey (D-NY).

Peter A. DeFazio (D-OR)
Alcee L. Hastings (D-FL)
Barbara Lee (D-CA)
James P. Moran (D-VA)
Bernard Sanders (I-VT)
Louise McIntosh Slaughter (D-NY)
Fortney (Pete) Stark (D-CA)
Diane E. Watson (D-CA)
Bob Filner (D-CA)
Marcy Kaptur (D-OH)
Jim McDermott (D-WA)
Major R. Owens (D-NY)
Janice Schakowsky (D-IL)
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Nixon Aide Explains TV License Challenges
By Lou Cannon Washington Post Staff Writer
The Washington Post, Times Herald (1959-1973); Mar 9, 1973; ProQuest Historical Newspapers The Washington Post
pg. A17

Nixon Aide Explains TV License Challenges

By Lou Cannon
Washington Post Staff Writer

The Nixon administration's chief television spokesman yesterday described the license renewal challenges to two Florida television stations as a "very blunderbuss approach" to the issues of fairness and responsibility in broadcasting.

Clay T. Whitehead, 34, director of the White House Office of Telecommunications Policy, made his comment during a lengthy defense of the administration's television policies in which he described his own use of the words "ideological plugola" as "exceedingly descriptive, colorful and masterfully vague."

The two Florida television stations, in Jacksonville and Miami, are owned by the Post-Newsweek Stations, Florida, Inc., a subsidiary of The Washington Post Co.

At an hour-long breakfast session with reporters, Whitehead said that the administration's upcoming legislative proposals on license renewals will give the federal government less of a "finely honed club" to use against license holders. He was then asked whether he considered the four challenges to the Post-Newsweek stations as "finely honed."

"No challenge is ever finely honed," Whitehead replied. "It's a very blunderbuss approach. You're talking about putting some man out of business."

Without specifically relating his statement to the Florida challenges, Whitehead said that "if a challenge is brought with the purpose of harrassing a station . . . I think that's an abuse of the licensing procedure."

He was asked if this is the case in the Florida challenges.

"It would be highly improper, if not downright illegal, for me to comment on any specific license situation," Whitehead said.

The Florida challenges are based on the argument that local ownership would better serve the communities. Many of the participants in the three challenges to the Jacksonville license and the single challenge in Miami have close ties to the Nixon administration.

The Jacksonville station is widely considered as an aggressive investigator of local irregularities with a politically liberal orientation. However, all of the challengers have denied that their license applications, now pending before the Federal Communications Commission, are politically inspired.

Whitehead said that complaints about a purported desire of the Nixon administration to censor critical stations are "poppycock." At one point, he also suggested that the implied threat of a license removal is far more effective than actually removing a license.

"The main value of the sword of Damocles is that it hangs, not that it drops," Whitehead said. "Once you take a guy's license away, you no longer have any leverage against him."

Whitehead said the administration's license-renewal legislation will be introduced in the House today or Monday by Reps. Harley O. Staggers (D-W.Va.) and Samuel L. Devine (R-Ohio).

The measure would extend license renewal periods from three to five years while making local stations responsible for what Whitehead has called "the totality of broadcast programming."

This would make local stations accountable, among other things, for the content of network news shows.

Whitehead contends that the result of this policy will be to encourage a greater diversity of opinion at the local level. Presently, he said, the three major networks have "an extensive amount of dominance over the totality of news from television."

Critics within the industry have expressed fears that local stations will shun controversy to avoid having their licenses challenged.

Only Tuesday the CBS television network, in a move it said was "virtually unprecedented," canceled the showing of an anti-Vietnam war drama, "Sticks and Bones," which had been scheduled for tonight.

The network acted after 70 or more of its 197 affiliates had canceled out on the prime-time drama. Whitehead said he approved of the network being responsive of its affiliates.

"This is a good example of how the process ought to work," he said.

When 'Fairness' Gets Out of Hand

By Michael Gartner

It would be a perfect question for a law school examination. Here are the facts:

Fact No. 1: An independent government regulatory agency has certain powers over the television industry. It has promulgated a "policy statement" that on "controversial public issues" both sides must be aired. For purposes here, we shall assume that the policy is legal.

Fact No. 2: Some years ago, this policy was expanded to include commercials for cigarets because there was persuasive medical evidence linking cigaret smoking to various illnesses. As a result, broadcasters airing cigaret commercials were required to show a significant (but not necessarily equal) number of anti-smoking commercials.

Fact No. 3: Later, because of the grave danger of smoking cigarets (or perhaps because of a political compromise), all commercials for cigarets were banned from television. For purposes here, we shall assume that the ban is legal.

Query: If a station continues to show anti-smoking commercials, is it required to present the prosmoking side, too? Expound and expand.

It seems easy. If you are stating one side of an argument and are required to give time to the second side, logic dictates that if you are espousing the second side of the argument you should be required to take notice of the first side. This exam is a snap.

Logic dictates that—but the law is not always logical. And a few days ago, this very question was decided in the illogical way. The U.S. Court of Appeals for the Fourth Circuit in Richmond, Va., upheld a Federal Communications Commission ruling that this fairness issue was up to the corporate consciences of the individual stations. In other words, stations that were required to air antismoking commercials and that have continued to do so on their own since the ban are not required to tell the other side of the story.

"It is reasonable for a licensee to assume that the detrimental effects of cigaret smoking on health are beyond controversy," the court ruled. Such an assumption, of course, is one that certain people—cigaret manufacturers, say, and perhaps millions of smokers—aren't willing to make.

A Second Chance

All right, you flunked Question One, but you have a second chance. Here is Question Two, based on the same fact pattern plus your new knowledge of the court's answer to Question One. Query: If a television station runs an advertisement urging the viewer to buy a certain kind of an automobile, is that such a "controverisal issue of public importance" that the station is required to present the arguments of people who contend that you shouldn't buy any car.

Well, you say, this one really is easy. If smoking is no longer a controversial issue, then driving certainly can't be, either.

Wrong again. Again, recently, a U.S. Court of Appeals—this one in Washington, D.C.—held in a two-to-one decision that the advertising of cars and leaded gasolines is a controversial issue and that antipollution forces must be given their say, in free ads or in documentaries or what have you. (This decision incidentally, ran counter to the position of the Federal Communications Commission.)

These two examples point up the complexities of the FCC's so-called fairness doctrine, a well-intentioned policy that lately, at least, seems to have gotten out of hand. The anti-smoking case is merely absurd. ("An utter joke," is the way one broadcaster terms it.) But the automobile case, in which the court seems to greatly extend the doctrine, raises an issue far broader than the pollution question before the bench.

The issue is simply, "Where do you draw the line?"

"Dentists are quite reasonably concerned about the effect of sugar-laden confections upon dental health, particularly among children. Should candy, gum and soft-beverage commercials be embraced by the fairness doctrine?" a staff report prepared for the Senate subcommittee on communications asked in 1968.

It went on: "Another minority . . . is determined that a substantial number of society's problems would be obviated if all consumed only 'natural foods.' Saturated fats are linked with heart disease. Firearms and ammunition arouse the passion of others, both pro and con. Among those lawfully licensed to practice the medical arts are some who oppose ingestion of medications of any sort, while their opposites may fervently believe them to be 'cultists' whose very existence constitutes a threat to public health. Religious beliefs militate against other products and services. . . . Just how far may the fairness doctrine be extended to embrace broadcast announcements favoring commercial products and services?"

The staff answered its own question. The fairness doctrine, it said, should not apply to "broadcast advertisements primarily soliciting or encouraging the purchase or use of a lawful specific product or service."

But even that answer, ignored by Congress, doesn't avoid the problem. What about issues and ideologies and concepts? The Army is spending millions for commercials to entice youths to sign up. Should antiwar groups be given time to shoot down the armed forces? Assume that a struck store is advertising its wares on television. Should the strikers be given time to say "Don't shop there, the store is unfair to its workers"? Suppose a woman is made to look like a scatterbrain in a promotional ad for a TV series. Should women's lib advocates be given time for rebuttal? Suppose the cancer fighters have an ad saying "give to cancer." Should the heart-attack fighters be given time to say their cause is worthier?

"There is almost nothing advertised that might not be deemed controversial by some group," maintains Grover Cobb, an executive vice president of the National Association of Broadcasters in Washington. If the fairness doctrine continued to be expanded, he says, "stations would be at the mercy of all types of fringe groups representing an infinite number of various opinions."

A man at a network in New York puts it another way. "If a station shows a spot for The Wall Street Journal," he says, "should we then have to give time to The New York Times?" And he answers himself. "Of course not. This is getting to be absolutely stupid. They're tearing us to pieces."

Thus, the nation's 625 or so television stations are in a dilemma. One way out, of course, would be for them not to accept ads that they know to be controversial—ads relating to the ecology arguments, for instance. But that is not a way out at all.

Earlier this summer, the Court of Appeals in Washington ruled that commercial television stations can't arbitrarily deny the purchase of time to espousers of controversial issues. That is, if you want to buy an ad urging peace in Vietnam (which, in fact, was the ad at issue), a station must sell it to you. But then, of course, with the fairness doctrine in operation the station must be prepared to *give* time to the opposing view.

"The only answer," says a network official in New York, "is to go noncommercial—then you would have no problems." Of course, you also would have no revenues and no profits which could upset the stockholders.

The FCC to Blame

The Federal Communications Commission itself opposed that decision, as it opposed the court's ruling on the antipollution issue. But the agency has only itself to blame. It is the agency, not the courts, that promulgated the vague policy in its ceaseless efforts to expand control into the nontechnical areas of broadcasting. (Control over the technical aspects is a necessity, of course; without it, anyone could compete for the same frequencies and chaos would result.) If no such doctrine had been laid down in 1949, no such court decisions would have been handed down in 1971.

In June, the seven-man agency announced that it would undertake a broad-ranging inquiry into the effectiveness of the doctrine. It is asking now for broadcaster suggestions and it probably will report its recommendations and conclusions to Congress by mid-1972. Clearly, some changes are needed. "There are so many gray areas in the current doctrine," complains Mr. Cobb of the National Association of Broadcasters. "The fairness doctrine as it now stands is nebulous, hazy and unworkable."

It is indeed unworkable, as the spate of court decisions this summer has shown. And there seem to be just two workable conclusions that the FCC could logically reach: Keep the policy but simply take over the industry, parceling out time to whatever causes government czars might deem worthy; or private industry, concerned about making money, cannot afford this luxury. Or else abandon the policy and let the industry get back to running itself.

Anything in between these poles seems illogical and impractical. But, then, agencies, like courts, aren't always logical and practical.

Mr. Gartner, page one editor of this newspaper, is a lawyer.

Booknotes.org

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America's Right Turn: How Conservatives Used New and Alternative Media to Take Power

by **Richard Viguerie**

BRIAN LAMB, HOST: Richard Viguerie, co-author of "America`s Right Turn," what`s the purpose of this book?

RICHARD VIGUERIE, CO-AUTHOR, "AMERICA`S RIGHT TURN: HOW CONSERVATIVES USED NEW AND ALTERNATIVE MEDIA TO TAKE POWER: Brian, when I got involved in politics in the late 1950s, early 1960s, conservatives didn`t have access to the microphones of the country. We went up against the blockage of "The New York Times," "Washington Post," CBS, NBC, ABC. We couldn`t get our message out there. We were like the tree that fell in the forest. No one heard about our candidates, our causes, our issues.

And I got to thinking about the Catholic Charity, the Christophers, whose motto is, "Don`t curse the darkness, light a candle." So I began to think, you know, what could be our candle? And the first candle for conservatives was direct mail. And it allowed us to bypass the monopoly of Walter Cronkite and the gatekeepers out there and go right into people`s homes. So that`s what built the conservative movement in the `60s and `70s.

And I can make a case that Ronald Reagan would not have gotten the Republican nomination in 1980 without direct mail because that`s how he raised his 250,000 donors. That`s how he found them, giving him $10, $25, $50. At best, he was the fifth choice of the Republican establishment that was giving the $1,000 contributions -- Bob Dole, Howard Baker, George Bush, the 41st, John Connally. And Reagan depended upon the $10 and $25 donors then, as the Republican Party depends on them now.

LAMB: You start off by talking about Martin Luther and the printing press, and then Thomas Paine. Why?

VIGUERIE: Well, the -- my church, the Catholic church, had a monopoly on using information back in the Middle Ages, and of course, long before that. And when the printing press came along, it changed everything. There were no longer gatekeepers that prevented people from getting information out there, and Martin Luther very astutely used the pamphlets to disseminate his message. And he doesn`t have to communicate with a lot of people because there were so few people that were literate in those days, but the -- it took about, you know, 50 years for the Catholic church to figure out what was happening out there.

Usually, the establishment, just like today, they avoid going with the new technology, the new means of communication, and kind of stick with what they know. And the Catholic church was late to figure out how Martin Luther King -- Martin Luther was using the printing press to change everything, in terms of religion in those days.

Thomas Paine in 1775, `76, et cetera, did the same thing. The printers in those days were small businesspeople, and they were probably the first group to really en mass go against the king of England. And through the printing press, the American revolution really was developed. And without Thomas Paine and the others out there getting that message out, there wouldn`t have been an American revolution.

LAMB: One of the things you talk about in your book, the book publishing industry. And I notice that this book is published by Bonus Books, which I don`t know much about, and it`s certainly not one of the big houses. Why did you go to Bonus Books, and who are they?

VIGUERIE: I went to Bonus Books because none of the big houses were interested, quite frankly, and Bonus Books, run by a wonderful publisher, Jeff Stern (ph), based in Los Angeles and Chicago, was very interested. And they`ve been a wonderful publisher for us.

There`s a knock on publishers, Brian, which you probably have heard, that too many publishers are not really publishers, they`re printers. They just print the book and then give it to you and let life take over then. But Bonus Books has been very good to work with. They`ve been very aggressive in marketing and promoting. And it`s just kind of -- what I`ve done all my life is work with those who are not part of the establishment. We tried to go with the establishment, quite frankly, and couldn`t find any that were interested, and Bonus Books was interested in publishing it.

LAMB: Who`s your co-author?

VIGUERIE: David Franke (ph). I first met David here in Washington, D.C., in the late `50s. And then David just coincidentally happened to be from Houston, where I was, and David was working up here for "Human Events," a small conservative publication in those days. And he went back to Houston, where it was his home and my home. I was chairman of the Harris County Young Republicans, and we worked together for a year or so there.

And then in 1961 -- and David, by the way, in the late `50s, early `60s was about 50 percent of the young conservative movement. He and his roommate, a fellow named Doug Caddy (ph), were starting a number of conservative organizations, and they started one called Students for Goldwater, and then that morphed into later that year Young Americans of Freedom, which was the principal conservative youth organization, founded in the fall of `60 at Bill Buckley`s family estate, Sharon (ph), Connecticut.

And I came later to -- next year to work as the executive secretary for Young Americans of Freedom. And I got the job through David Franke, so David and I have worked together for, gosh, 45 years.

LAMB: What would you say was the beginning for you in political thought?

VIGUERIE: Brian, I do not remember a time in my life when I wasn`t a conservative. What Churchill says, If you`re not a liberal when you`re 20, you don`t have a heart, and if you`re not a conservative when you`re 40, you don`t have a brain. Well, I just was always a conservative. When we`re 13, 14 years old, kids in the neighborhood are playing cops and robbers and they`re shooting the robbers, I`m not. I`m shooting communists. I know that communists, at age 13, are bad people and we got to get rid of them.

LAMB: What year would that have been?

VIGUERIE: That would have been `45, `46, `47, the late `40s. And of course, it was a -- you know, a great -- a time of great turmoil. The

Second World War was over, and we were beginning to focus on the Soviet Union. And every conservative that I know of my generation and generations prior to me and the generation that came after, before we were concerned about social issues, before we were concerned about the role of government, taxes, first we were anti-communist. We were very concerned about the brutality, the evil of communism. And that was the glue that held the conservatives together in the `40s, `50s, `60s, `70s and through most of the `80s there.

LAMB: Go almost to the end of this and list the number of things available to conservatives today that were not available when you started in this business.

VIGUERIE: Gosh, almost everything that we are involved in now, in terms of communicating our message, wasn`t available there. Of course, the mail was there, but nobody used it. And that was what I was fortunate to be able to pioneer, back in the `60s and the `70s, was using the mail to reach out to people in their homes and bypass that monopoly that the left had on the microphones of the country.

And then, of course, starting in the late `80s, after Reagan abolished the Fairness Doctrine, then talk radio came along. But as long as you had to -- if somebody spoke for an hour on a conservative position, then you had to give free hour time to liberals, of course, radio stations couldn`t survive if they had do that. So that there was really no talk radio worthy of the name, and it wasn`t until the Fairness Doctrine in 1987 was abolished that there was an explosion of talk radio.

And then after that, of course, cable television, and then, starting in the mid-`90s, the Internet began to take over. And there`s a new means of alternative media, Brian, that we don`t even talk about in the book because it`s happened so recent, and that`s documentaries -- Michael Moore, "Fahrenheit 9/11." And there`s another four or five anti-Bush documentaries that are in the can about to come out some time in the next couple of months.

LAMB: Where is the right on the documentaries?

VIGUERIE: Zero. You know, we do a lot of things well. We do direct mail well. We do talk radio, television, the Internet. We don`t do documentaries. That`s what the left does. They do movies and...

LAMB: Anybody talking about doing documentaries?

VIGUERIE: Not to my knowledge. I`m starting to give it some serious thought because just as the left forgot to think about direct mail in the `60s and the `70s, they all woke up, Brian, within a few hours of each other, election night, November, 1980. They said, A-ha, that`s what Viguerie and friends have been up to al these years. But that gave us an big advantage. It took them four or five years to catch up. So for a period of 15, 20 years there, we were building the conservative movement through direct mail.

And of course, I think everybody acknowledges that conservatives do talk radio much better, and we do very well on cable television. Internet`s probably 50/50. But if we give the left the full range on documentaries, that`s going to put us at a serious disadvantage.

LAMB: You do a lot of statistical analysis in here, a lot of graphs and charts and everything in all these different areas. How did you two do this?

VIGUERIE: Well, you know, I more than David have lived the alternative media. David was there at the beginning and has been very involved with a number of alternative media companies over the years -- Phillips (ph) Publishing and newsletters and one thing and another. But in terms of the political use of the alternative media, that`s been my main background. So he and I spent, you know, hundreds of hours talking about it and reviewing all of the 45 years that we`ve both been involved in it here.

And then I did some of the writing, but David did the lion`s share of it. I had what is called a day job. And I asked David to go out and do the research and assimilate all of the charts and the graphs, do a lot of interviewing. Some of the -- we interview a lot of people in there, a lot of liberals. Many of them are friends of mine. We interviewed those together, and some of the interviews David did on his own. But a lot of the heavy lifting, in terms of the research and the graphs, the charts, David did that.

LAMB: How did you get people like Roger Craver (ph) and others, the liberals in here to say what they said?

VIGUERIE: Well, Roger`s a long-time dear friend. You know, the liberals in there -- Hal Mauchau (ph), Roger Craver, Morris Dees -- are long-time friends of mine, all of them, and they`re not competitors. We work a different side of the fence there. And we`re all good friends. And there`s a fellow who I don`t know well, but Hal Warwick (ph), he`s in there. And they were just very open.

You know, and I think that`s true of people -- we`re all professionals, and I`ve been relatively open over the years. These fellows have written extensively and talked extensively about what they do, and I do the same. I -- Hal Mauchau, the principal, probably, fundraiser for the liberals these days, hosted a reception recently for me at his office among his liberal friends there. And I`ve been out to Roger Craver`s office, talked to his people. And we -- we`re trying to bring some civility back to the process. And I`m not sure if we`re making any progress, but we enjoy each other`s company.

LAMB: When did you move to Washington, and where do you live now? Because I know you refer in here to a 123-acre farm.

VIGUERIE: Well, I -- when my wife and I got married 42 years ago, we first moved to New York, where Young Americans for Freedom`s office was located. And within the year, the office had relocated here to Washington, D.C., and so we lived on Capitol Hill and bought a home after a few years. And my wife has never forgiven me fully for selling the home. It`s worth 10, 20 times what we sold it for (UNINTELLIGIBLE) nice home.

But after a while, we moved to Maryland, and family, children came along, and we wanted to have a little space. And then we ended up maybe 30 years ago moving to Virginia and lived in McLean. But at the same time, we bought a place out in the country, Rappahannock County, and we have a couple hundred acres there, and I`m a gentleman about the whole process. I watch the weeds grow and start the morning with a couple of cups of coffee and just enjoy myself out there.

But my office for many years was in Tysons Corner, 7777 Route 7. And that was a rather well-known address among people in politics because we -- in Hillary Clinton`s words, we hatched a lot of conspiracies, in her terms, there. A lot of concerted activities took place not only in our office on Leesburg Pike, Route 7, but also at our home in McLean. We used to meet

just all the time.

LAMB: Let me read what Roger Craver, the liberal direct mail expert, says about you. He says, "I used to always say if we could get in, we really ought to go to one of the Viguerie or Buchanan barbecues because those right-wingers have a hell of a lot of fun, and we had these wine and cheese parties to listen to this insufferable BS" -- he doesn`t say BS -- "on the part of the liberals. And I think that translates into the media. I think every liberal commentator wants to explain how we work our way out of whatever problem`s being discussed, whereas the right-winger will just say, Well, the way we can work it out, our way out of the problem, is to kill the bastards."

Strong stuff. And he goes on to tell exactly how he feels about what liberals do right and what conservatives do right and wrong. What do liberals do wrong all the time, in your opinion? And what do they do right?

VIGUERIE: Coincidentally, Pat Buchanan and I used to be neighbors in McLean there. I don`t know if that`s why Roger said that but, there was an interesting group of conservatives that lived out in McLean when Roger said that.

The -- in terms of marketing, the liberals left the field to conservatives all through the `60s and `70s. And as I said earlier, it wasn`t until election night, November, 1980, that the left woke up. And I was kind of pleased with the progress that the conservatives made, and I said to myself -- and I wrote about it -- it would take 10, 12 years before the left would catch up with conservatives, kind of, like, you know, in the whole missile area, once you get an advantage on the opposition, then it takes them a long time to catch up.

Not so. Within four years or so, in my opinion, the left had caught up with the conservatives. And shortly after that, I think they surpassed the conservatives. I think that they -- generally, the left does a better job today of marketing their cause through direct mail than the conservatives do. They really do. That`s not for the Democrats, now. The Democratic Party did not move into direct mail, as the liberal organizations did.

LAMB: You say by the way, you found out here and you were surprised to find out that the Democratic National Committee only had 30,000 on their list?

VIGUERIE: That`s right.

LAMB: Who`d you find that out from?

VIGUERIE: Hal Mauchau, the horse`s mouth.

LAMB: Told you for this book?

VIGUERIE: For this book, yes. And he was very frustrated that the Democratic National Committee has not been more aggressive in marketing, as the Republican Party had been.

LAMB: How big is the Republican list?

VIGUERIE: Oh, they`re -- their donor list is several million, and their market, potential market, of prospect acquisition potential is probably five, seven, eight million. But interesting, since that book has been written, the world has turned over a lot, in terms of marketing. And now, through Hal Mauchau and others there, the Democratic National Committee I think is running circles around the Republicans. You never know because, Brian, it is under the radar. So you`re not sure what`s happening out there. But for all intents and purposes, it does appear that the Democrats have finally woken up in the last year. They`re using direct mail to great advantage for their cause.

LAMB: In your professional life, the Richard Viguerie Company, how many letters have you sent out trying to raise money?

VIGUERIE: One, I wish I had kept accurate accounts, but it`s something over two billion.

LAMB: And you get paid how?

VIGUERIE: I get paid by the letter, piece mail. But interesting enough, Brian, I developed a business model early on, first day I opened the doors for business in `65, that -- I learned and realized early on that God, in his infinite wisdom, seldom saw fit to put in a non-profit body an entrepreneur, i.e., a risk taker. So I said early on, I would take the risk. So if the program is a success, we get paid. If it`s not, we don`t.

It`s kind of, like -- I began to realize a few years ago, studying the Internet -- you don`t study the Internet very long before you come across a term called venture capitalist. And I said, Hey, that`s what I`ve been all these years, a venture capitalist for the conservative cause. A few years ago, my friend, Morton Blackwell, placed a name on me which I think may be appropriate, is the "funding father of the conservatives," because there was a time, for almost 20 years, when I was the only one raising money for the conservative cause.

LAMB: So if you had to send out the perfect -- in your lifetime, the perfect letter, how long would it be? What would it say? Would it be positive or negative? And who would sign it? Based on history, not today, but based on your history of being in business.

VIGUERIE: Well, Ronald Reagan was about as good a signature as you could get. And this is counterintuitive. You talk to the average new client, the lay person, in terms of marketing, and they think a short letter is best. Not so. Morris Dees had great success raising money for George McGovern with 12 and 16-page letters. When you`ve got a cause that`s relatively unknown, people don`t know about your candidate, your organization, you can`t tell them enough information in a one, two-page letter to get a $25, $50 donation. You need to be able to tell them a lot. There`s an old sales adage, The more you tell, the more you sell. And so you need a lot of paper to tell your story, so an 8, 12-page letter is almost better than -- always than a 4-page letter.

LAMB: Positive or negative?

VIGUERIE: I hate to -- it`s not popular to say it, but I`ll be honest and say the negative is what raises money, not the positive. If everything is going fine and everything is good, there`s no problems out there, people are not going to respond. When you have a lot of anger out there -- and there`s a lot to be angry about in the world today -- people respond to that. They want to know that there`s somebody out there dealing with the

issue that they are concerned about, whether, in our terms, it was communism, role of government, government is too big -- Reagan said it taxes too much, governs too much, spends too much, regulates too much. And so when you talk about those issues, people respond. Yes. That`s right.

And what are you going to do with the money? So many times, people in a fund-raising mailing think it`s sufficient just to kind of what I do, say, cuss the problem. Well, that doesn`t work. What`s your solution to the problem? And you must have a solution to the problem, or else people are going to agree with you but move on.

LAMB: How many people work for you today?

VIGUERIE: Oh, about 40, 45.

LAMB: When were you the biggest?

VIGUERIE: We were the biggest back in the `70s. And we`d had 250 or more employees. But we put out the same volume of mail now, but we do it with 40 employees because I came late in life to realize that nobody came to us because I had a printing company or a mailing company or a list company, a computer company. They came to us because of our brain power, our creative abilities and marketing ability. So we got rid of all that and just focus on the creative part.

LAMB: Ronald Reagan, Jr.`s toy box.

VIGUERIE: I wish I had that letter! What that`s about, Brian -- I went with Young Americans of Freedom in the summer of 1961 -- and I was a green kid from Texas. I didn`t know nothing. And I just was kind of thrown into this organization that had $20,000 in debt, 1,20 members, so to speak. Had a lot publicity, but we didn`t have a lot else going for us.

LAMB: What did they stand for, by the way? What was...

VIGUERIE: YAF, Young Americans for Freedom. And there was a big debate whether they were going to be conservatives or Young Americans for Freedom. And the Young Americans for Freedom group won out. And we were kind of a pet project of Bill Buckley in those days. He monitored us very carefully.

And I was -- it was a great job. I was given an opportunity to kind of do what I wanted to. And when I interviewed for the job, my boss, Marvin Liebman (ph), who was head of -- he was the advertising agency, so to speak, that had the Young Americans for Freedom account -- showed me his mail room, where he kept maybe 20,00 or 30,000 donors on three-by-five index cards, who had given $100 and how often, and that type of thing. And Brian, as God is my witness, it was like a duck, like I was a duck that was 2 or 3 years old and had never seen water, but I knew what to do (UNINTELLIGIBLE) My gosh, where has this thing been all my life?

And so I just fell in love with the whole marketing and direct mail process. And it wasn`t very long, after a year, year-and-a-half, I said, Please relieve me of all duties except marketing and mail. Let me just focus on that. And I did that. And just by three years after I went with YAF, I left, started my own business. If I`d have had the sense God gave most people, I wouldn`t have done it because I thought I knew everything. I knew less than 1 percent of what I know now.

LAMB: The toy box.

VIGUERIE: The toy box! I got sidetracked. Sorry. So it`s now, oh, I guess winter of `62, February, March, something like that. And I`m trying to raise money for the organization. So I ask various celebrities if they`ll sign letters, and they all do. You know, John Wayne and Jay Howard Pugh (ph), Charles Edison, son of the inventor, et cetera. But I really wanted Ronald Reagan because he was a big TV star. This is 1962, two years before his famous speech for Goldwater, four years before he runs for governor.

LAMB: What was he doing?

VIGUERIE: He was -- I guess he was still on "GE Theater," hosting a TV program there, what was it, "Death Valley Days" or something like that. But anyway, conservatives knew and loved him, and he was just an admired figure and a celebrity because he was Hollywood, TV.

So anyway, I wrote him a letter and asked him to sign the letter. Didn`t hear anything from him for weeks. And after a month, I was, you know, a little dejected and (UNINTELLIGIBLE) it was a struggle. I just didn`t -- it wasn`t -- it was hard to raise money, so I was really hoping that he would come forward. Didn`t hear anything. So after a month or six weeks, I forgot about it.

One day, I`m sitting at my desk, and I opened all the mail in those days. And this was three, four months after I wrote the letter. And when you open comment mail, sometimes people -- they love you and they tell you so, or people tell you, Go jump in the lake, or a lot stronger than that. And a lot of times they`ll mark up a letter with crayon, you know, or ink pen and say unpleasant things.

And I got one of those letters, all marked up, and it was just a mess. And so I just threw it away. Well, that`s another person telling me to go jump in the lake. But there was something caught my eye, and I literally brought it back two or three times. I kept trying to throw it away. And finally, I said, Clear your head. Something`s unusual about this. And then I realized it was the letter I had written to Ronald Reagan. And it was all marked up with crayon, and down at the bottom, the left-hand corner, it said, Mr. Viguerie, I`m so embarrassed. I just found this letter in Ronnie`s toy chest, and I`m so sorry. Of course, if you think my name would be of any help to you, please use it. Sincerely, Ronald Reagan.

LAMB: And you say that Ron Reagan, Jr., was 4 years old.

VIGUERIE: He was 4 years old at the time, right. And it had been in his toy chest for three or four months when the governor found it.

LAMB: So what did you do with the name?

VIGUERIE: We used it. I had sent him a sample of the letter and, you know, just started mailing that letter. The problem with the fund-raising in those days -- we had a lot of problems, but the No. 1, Brian (UNINTELLIGIBLE) just weren`t conservative mailing lists out there. There were just a handful of them out there. So we`d go out there and get somebody`s -- beg, borrow, whatever, to get somebody`s mailing list. But you know, 10,000 here, 20,000 there. A 50,000 mailing was a big, big deal in those days.

LAMB: So what did you raise money for the first time out with Ronald Reagan?

VIGUERIE: To help Young Americans for Freedom combat the liberal influence on college campuses. In those days, the far left, SDS and others, they were very, very active, and there was a strong Marxist, left-wing radical element on college campuses. And interesting enough, over the years of 1961, `62, `63, I tried several type approaches. One, send $10, $25, and Young Americans for Freedom will go out there and help elect good candidates, like John Tower and Barry Goldwater. That was one approach. Another approach was send money and we will combat the radical left students and professors on college campuses.

It`s interesting, no contest between the results. Where we were asking money for college campus activities, we`d raise four or five times as much as when we`re were asking for political activity, which made a lot of sense. I mean, what do these 20-year-old kids know about electing someone to office? But where our expertise was, is dealing with the left on the college campuses. And they responded very strongly to that. And Young Americans for Freedom -- to this day, the conservative movement benefits greatly from Young Americans for Freedom. Probably a third or more of the conservative leaders that I work with today got their start in Young Americans for Freedom in the `60s and the `70s.

LAMB: Is the organization still around?

VIGUERIE: A few places, isolated here and there, a few states. It`s a shell, quite frankly, of its former self there. One of the problems with youth organizations, the leadership turns over a lot. Usually, most successful organizations has an ongoing, permanent leadership, with a board of directors. Bill Buckley just, you know, resigned from "National Review" after 50 years. And so you really need that continuity of leadership, and you don`t get that in youth organizations.

LAMB: So you made your way, at one point, to the Capitol and got your hands on some donor lists and all that. What was that story? What year was that?

VIGUERIE: This would be 1964. And I`m not sure how I heard about it, but in those days, if you ran for president, you had to file with the clerk of the House of Representatives all of the names and addresses of the people who had given you $50 or more. So I went down there one day, and lo and behold, there was this big stack of sheets of paper with Barry Goldwater`s $50-plus donors.

So I had brought a legal pad, and I started writing. And I came back the next day and wrote more. And I got to realize, Hey, you know, I`ve got a full-time day job, still working for Young Americans for Freedom, and this is -- I`m not making a lot of progress. So what I did, I went out and hired about six women to come in with three-by-five index cards and write the name and addresses and the dollar amount they had given there. And did that for about two-and-a-half, three months.

And I was just about finished. I had, I estimate, about 15,000 names there. And after I`d gotten 12,500, a nice man there didn`t know what I was doing, but it just didn`t feel right to him, said, Well, you can`t do this anymore. You got to stop this. And if I had the maturity I have now, I`d say, Talk to my lawyer. Ladies, keep writing, because it was legal. It was all very proper. You can`t do that now. They`ve passed laws in, I think it was, the 1970s that you can`t use commercially, for fund-raising, the donors that are filed with the Federal Election Commission for -- I

think you have to file all your donors of $200 or more. You can go and look at those, but you can't use them for any commercial or fund-raising purposes. But in 1964, you could.

LAMB: How do they know whether you're using them or not?

VIGUERIE: Well I guarantee you, the Federal Election Commission has got them what we call seeded, salted, and they have what we call dummy names in there. And they've got names in there that are unique to that file. And they will know about it if you use the file.

LAMB: But as you know, you can get on the Internet and find out whether your neighbor gave money to a candidate.

VIGUERIE: Absolutely. Absolutely.

LAMB: Now, you don't use those lists?

VIGUERIE: Oh, no. You can't use them. You can't use them commercially at all. And I guarantee you, the Federal Election Commission will know about it, and you will be in big trouble. And I've never heard of anybody having that problem because everybody who's in the business knows that that's forbidden.

LAMB: The book is full of the different milestones along the way, including -- you mention the Fairness Doctrine. Let me go over that with you for a moment because a lot of people have never heard of it. How long -- you go through the series of vetoes and overriding vetoes and all that stuff. What was the Fairness Doctrine? How long was it in law? And what year was it dropped?

VIGUERIE: Some time, I think it was, in the 1940s that the Democrats instituted the Fairness Doctrine. And it could even have been in the '50s, but somewhere in the '40s or '50s. The Fairness Doctrine said -- sounded nice, in terms of the title, but we know the title of legislation sometimes does the opposite of what it really is intended to do.

And it said that if you expressed a viewpoint, if somebody had a different viewpoint, they had the right to come on give a response. So if you took an hour and talked about how bad taxes were -- high taxes, you had to give somebody to talk about lower taxes, you know, or a different position on taxes, equal time. And of course, there was a little talk radio out there back when the Fairness Doctrine was in place, but it was bland. People really avoided expressing opinions because radio stations couldn't give away an equal amount of time.

And when Reagan was president in 1985, the FCC decided they wanted to do away with that, and they couldn't decide whether it was to be done by an act of -- needed to be done by Congress or executive order. And finally, the courts ruled it could be done by executive order, so the FCC, with Reagan, abolished the Fairness Doctrine. And the Democrats were upset. And even, quite frankly, Brian -- I don't talk about it in the book, but some conservatives who will be nameless, dear friends of mine, thought that it was really bad, that this would be bad for conservatives.

LAMB: Reed Irvine was one of them, wasn't he?

VIGUERIE: Well, I'm sure Reed was. Yes. Yes, Reed was.

LAMB: And what would have been the reason?

VIGUERIE: Well, they just thought that it was a -- the media was so dominated by liberals that if they did away with the Fairness Doctrine, then conservatives would never have a voice out there. We were getting our opinions out there a little bit, but they could not see what the marketplace would produce, which was talk radio. And you know, Reed and other conservatives who supported his position in those days don`t talk about that anymore.

LAMB: For that matter, the Nixon administration was against it.

VIGUERIE: Oh, probably so, you know, but Nixon, of course, was no conservative. He was a big-government Republican. Conservatives like to say that Johnson passed the Great Society legislation, Nixon funded it.

LAMB: But on that note, before we go to more on the Fairness Doctrine, would you consider yourself a Republican or a conservative?

VIGUERIE: Oh, a conservative.

LAMB: Are you a Republican?

VIGUERIE: Yes, sure. I vote Republican. I`m, you know, identified with the Republican Party. But first and foremost, I am a conservative. And I`m a Republican only because that`s the way to be effective.

LAMB: You say there are two kinds of conservatives.

VIGUERIE: There are...

LAMB: There are many more, but they`re -- the traditionalist...

VIGUERIE: The traditional conservatives -- well, back in the mid-`70s, Brian, there were two types of conservatives known as the old right and the new right and...

LAMB: What are you?

VIGUERIE: I was definitely new right. And that term was given to us, basically, by John Fialkin (ph) of "The Washington Star" back in those days. And what -- there were just a handful of us here in Washington, Paul Weyrich, Terry Dolan (ph), Howard Phillips, Ed Fuelner, myself, and then out-of-town people like Pat Robertson, Jerry Falwell...

LAMB: Before you -- go back with that list, though. Paul Weyrich today does what today?

VIGUERIE: Paul Weyrich, just like me, does the same thing. He organizes conservatives at the grass roots level. He`s our No. 1 perhaps conservative strategist.

LAMB: Free Congress.

VIGUERIE: Free -- he heads Free Congress PAC.

LAMB: What does Ed Fuelner do?

VIGUERIE: Ed Fuelner then and now is president, chairman of the Heritage Foundation.

LAMB: And when did that start?

VIGUERIE: That started around 1973, `74. Interesting, the first chairman of Heritage was Paul Weyrich, and he resigned shortly thereafter and then Ed Fuelner a little later came on, and Ed`s been head of it for 25, 30 years.

LAMB: And in addition, you named -- I wrote some of these names down -- Terry Dolan is no longer alive.

VIGUERIE: Terry died in the mid-`80s. And interesting enough, each of us had our own role. I was kind of the funding person there, and Weyrich was our strategist and Fuelner with the Heritage Foundation, and Howard Phillips was grass-roots organizing. Terry was our political election person, and he headed the NCPAC, National Conservative Political Action Committee, that was enormously successful in defeating liberals and electing conservatives in the 1978 election, 1980, `82. And then after Terry died in 1985, no one stepped forward to replace him. Terry was just irreplaceable. No one stepped forward until fairly recently, when another Terry Dolan has stepped forward, and that`s Stephen Moore, with the Club for Growth. And Stephen is now filling the role that Terry did so well back in the `70s and `80s.

LAMB: Another name you mentioned of the new right, Morton Blackwell, and he -- you talk about him in your book as starting a school for learning how to be a conservative.

VIGUERIE: Morton and I teamed up together back in the early `70s. He came to work for me, said that the magic words to get him to leave the think tank he was at to come work with me was I said, Morton, come and work at the Viguerie company, help me build the conservative movement. And that was what we were all focused on back in those days is building a movement because we were just kind of a hodgepodge of organizations and individuals, a lot of frustrations, but we weren`t coming together in a cohesive way.

And so Morton was kind of my ambassador without portfolio to the conservative movement, to kind of bring it all together. And he worked at the office for six, seven years, was at all of these meetings and organized a lot of activity. In the `70s, he began to form an organization called Leadership Institute. And no one is in Morton`s category or class of organizing and training young people. Doesn`t matter what you want to do. You want to work on Capitol Hill, he`ll train you how to get a job and be effective there. You want to run for office, he`ll train you how to run for office.

LAMB: But as a conservative?

VIGUERIE: As a conservative. Exactly.

LAMB: How`d he get into that? And how old do you have to be to get into his leadership...

VIGUERIE: Well, he takes people at all age. My son, Ryan (ph), went to several of his classes and was youth coordinator for a congressional campaign in Utah, successful, back in `96.

LAMB: Do you pay him?

VIGUERIE: He -- it`s a very, very modest amount. Morton is a master conservative fundraiser. And he`s done a masterful job of raising lots of money to subsidize the training. I think these young people sometimes pay a modest amount.

LAMB: You also talk about a national journalism center, where you had people like Ann Coulter and John Fund and others graduate from.

VIGUERIE: Right.

LAMB: Who does that?

VIGUERIE: Well, for many, many years, that was done by M. Stanton Evans, who was one of the founders of the entire conservative movement back in the `50s and the `60s. Stan, when he was 27 years old, was the youngest editorial writer, editorial editor, editorial page editor, in the country, the Indianapolis newspaper. And so Stan ran a journalism center, training young people to go out into the marketplace and work for the networks, become a syndicated columnist. And many -- John Fund at "The Wall Street Journal" was one of his graduates in the early 1980s.

And so interesting enough, as I said, we began to think about the movement. We wanted to train people to be effective as journalists, as political operatives. Robert Reich of -- Bill Clinton`s first secretary of labor, had a very interesting and widely talked about op-ed piece in "The New York Times" in January of this year, where he talked about the serious mistake that the left has made, that the left has no gone out and built a movement. They have thought of this as a spring and, Our goal is to defeat Reagan or defeat Bush, that type of thing. But the conservatives, early on, we thought of this as a marathon, and we`re going to be doing this for decades and decades, and we`re about the business of building a movement.

LAMB: By the way, would you represent a client you didn`t agree with?

VIGUERIE: Oh, no. Not at all.

LAMB: In other words, if some liberal comes in, say they want you to raise money for them, direct mail, you won`t do it.

VIGUERIE: No. But interesting, I`ll tell you a little -- no, I would not do it. But I did raise money, and excitedly, enthusiastically for somebody four years ago that I never thought I would, and that was former mayor Rudy Giuliani. And I was excited and enthusiastic about raising money for him. He was running against Hillary Clinton, and it was just no contest. Conservatives who were very opposed to Giuliani before he ran for the Senate there in `79 and 1980 -- excuse me -- in `99 and 2000, found themselves very -- all of a sudden, big fans of Rudy Giuliani.

LAMB: Back to the Fairness Doctrine again, though. Rush Limbaugh comes along in, what, 1988?

VIGUERIE: Yes, because the Fairness Doctrine was done away in late `87, so he comes along in `88.

LAMB: So right before that, how many times did the FCC repeal the Fairness Doctrine, and what happened to it in the Congress?

VIGUERIE: Well, the -- when Clinton came into office -- I forget if it was `93 or `94, but the -- he wanted to repeal it and the Democrats wanted to repeal the Fairness Doctrine. And the conservatives organized a campaign. This was a "hush Rush" effort. They wanted to abolish Rush Limbaugh and the conservatives. So we were able to prevent Clinton from doing this, and the Democrats, in `93, `94. But when the Democrats had Congress in `88, `89, they tried again to legislatively abolish the Fairness Doctrine, and Reagan vetoed it and his veto was upheld.

LAMB: So both Ronald Reagan and George Herbert Walker Bush vetoed...

VIGUERIE: Yes.

LAMB: ... the attempt to reinstate the Fairness Doctrine. Is it safe to say, then, that Rush Limbaugh and all the conservative talk show hosts would not exist today if that Fairness Doctrine were still in...

VIGUERIE: Absolutely. A radio station couldn`t economically put on Rush Limbaugh for three hours and give away free three hours of time for an Al Franken to try to refute what he`d just said. The economics wouldn`t -- interesting enough, John Kerry has made it clear that if he`s elected president, he would like to reinstate the Fairness Doctrine and put into effect the gatekeepers, in a way, and silence the talk radio show hosts in this country. So he`s made it very clear he wants to bring back the Fairness Doctrine, which puts the -- all the talk show hosts, right and left, out of business.

LAMB: How -- in your opinion, how liberal has the television anchors and the networks been over the years? Because a lot of -- we get a lot of people call our call-in shows say that they`re all a tool of the corporate leaders.

VIGUERIE: Well, corporate leaders are not all that conservative, by the way.

LAMB: You talk about that in your book, too.

VIGUERIE: Yes. Absolutely. That`s a -- sometimes we find ourselves on the same side of the fence. But when we were getting started as the new right in the mid-`70s, late `70s, we had to oppose the big corporate interests as much as we did the Democrats because the big corporate people are not concerned about the social issues. They`re not concerned about over-regulation of government, because that helps them continue to be a big boy and girl and keep the little boys and girls as little boys and girls.

But the networks out there, Brian, since the `50s, have been liberal. Every poll that I`ve ever seen shows that when they cast votes in

presidential election, they vote for the Democrat candidate 10 to 1. Bernard Goldberg`s book, "Bias," documents the liberal media`s bias very well. And the three major anchors out there on the three major networks are definitely left of center. We`ve seen just fairly recently Walter Cronkite come out and make no bones about it, he`s a liberal. But we`re supposed to believe that his liberal views had no influence on his reporting back in the `50s and the `60s. Well, that`s very hard to believe. And he`s very open about his liberal beliefs now.

LAMB: How did Fox network, in your opinion, make it?

VIGUERIE: Well, Fox has had a profound impact on cable television not only because it is, I guess, the No. 1 watched program of cable television stations out there, even though they don`t have as many stations as CNN, but they`ve also forced the other cable television stations to put on more conservative hosts and pay attention to the conservative market out there. So the other cable televisions are more conservative today because of Fox.

LAMB: You run an excerpt with an interview with "Broadcasting and Cable" magazine and Roger Ailes. Roger Ailes -- how long have you known him? What kind of impact has he had on this discussion over the years?

VIGUERIE: I`ve known Roger only very casually. You know, I`ve talked to him a few times. I like him very much. I think he`s just a masterful professional. And he`s -- also could make a very good living, I`m sure, in my profession, you know, direct marketing because he knows marketing. He saw a niche and moved in and occupied it. And one of the first rules of marketing is the first mover owns the market there, and he was the first cable television to come into -- and you know, as he would -- if he were sitting here, he would say, We`re not conservative, we`re not moderate, we`re not liberal, just fair and balanced.

But for conservatives, we hadn`t had that. All of, you know, the 45 years I`ve been involved, we`ve never had both sides presented. Interesting enough, David Halberstam wrote a book years ago called "The Powers That Be," where he looked at the five major media properties out there. And in this wonderful book, he talks about how media bias evidences itself. It doesn`t evidence itself because people are distorting information or lying or working the numbers, it comes in the selection of the news stories. And it`s very, very, very true. So that over the years, the networks are talking about waste, fraud and abuse in the military budget. Well, that`s all true. There`s nothing maybe wrong. There is that waste, fraud and abuse in there. But they chose that subject rather than waste, fraud and abuse in the Welfare program. And all Fox is doing is giving both sides of the story.

LAMB: I just want to read what Roger Ailes said in this interview. The question from "Broadcasting and Cable" magazine is, "You didn`t grow up as a journalist?" Roger Ailes says, "I`ve had a broad life experience that doesn`t translate into going to the Columbia journalism school. That makes me a lot better journalist than some guys who`ve had to listen to some pathetic professor who has been on the public dole all his life and really doesn`t like this country much and hates the government and hates everybody and is angry because he`s not making enough money."

You agree with that?

VIGUERIE: I do. In fact, I reread that yesterday, and I said, Good for you, Roger! You know, and I grew up in Houston, Texas, graduated from the University of Houston, and I think that I understand marketing and am able to communicate with the conservative marketplace out there because I have had that experience, because I worked in an oil refinery for six or seven summers. Bill Buckley famously said years ago that he was a

conservative, but he was not of the breed. Roger Ailes and I am of the breed. That`s where we come from.

LAMB: Well, "Broadcasting and Cable" says, "So if Fox News is fair and balanced, then why do so many other people not believe it?" Ailes says, "Because they`re getting their ass beaten." And then "Broadcasting and Cable" says, "What do you get your back up if anybody says you -- why do you get your back up when anybody says you run a right-wing Republican network?" Ailes then says, "The more they call us that, the more viewers watch us because the American people think the rest of the media is too liberal. Most injuries in journalism are caused by journalists falling off their egos onto their IQs" -- "emphasis added" you say in the book. "The concept that journalism knows and the public knows nothing and they`re idiots is wrong."

Again, you agree with that strong language?

VIGUERIE: Oh, sure. Sure. Sure. The network anchors, they know what they`re doing, and that`s -- they`ve made a conscious decision to do it, even though they`re losing audience. They`re losing audience -- they have 50 percent of the audience that they had a few years ago. And the same is true in Hollywood. Study after study after study, Brian, has shown that G and PG-rated movies make a lot more than the R-rated movies, but they`re just derned and determined that they`re going to produce the type of movies that they want, even though the marketplace doesn`t want them.

LAMB: By the way, back to the direct mail for a moment. What`s a success for direct mail, what percentage of returns?

VIGUERIE: Ah! Very interesting question, Brian. It depends on what your goal and objective is. I caught, quite frankly, a lot of grief in the 1970s because I would go out there for a campaign, maybe spend $1 million and maybe $700,000, $800,000 would come back. And the national media was saying, Viguerie is ripping off the conservatives. As if they cared!

But I understood something that not a lot of people then and now in the non-profit community understand, and the left didn`t understand it then, and I think the Democrats are beginning to get it now. And that`s lifetime value of a donor. Every successful businessperson comes into this world understanding the lifetime value of a customer. Amazon is Amazon and AOL is AOL because they gone and spend a dollar $1 and bring in 20, 30 cents, knowing that over the next three or four years that they would make that up as a loss and have a profit from those customers for years to come.

And the same for the conservatives. Again, I was building a movement. And while we might have lost $300,000 on a mailing, within six months or a year, that loss would be made up, and those people would support that cause and organization for years and sometimes decades to come. And our purpose many times, if not most of the times was, not fund-raising but to pass legislation, to defeat legislation.

And David Broder came to my office in the late `70s, and he was perplexed, genuinely so, and he said...

LAMB: "Washington Post" political reporter.

VIGUERIE: Yes. But in -- yes. In those days, he might have still even been with "The Washington Star." But anyway, David was then and now the dean of political reporters. And he said, Richard, I`ve been all over Capitol Hill. I`ve been to the vice president`s office. And you know, Clinton -- excuse me, Jimmy Carter is president of the United States. The

Democrats have almost a two thirds majority in Congress, but all the legislation they want is not getting through -- the Consumer Protection act, you know, this is not happening, that`s not happening. Why, with the strong majorities in Congress and a White House sympathetic to these programs, why isn`t it happening?

I said, Well, David, I don`t know. But let me tell you what I`m doing and some other conservatives are doing, and maybe that could shed some light on it. And I began to talk to him about the 100 million letters that we were mailing on this project and that, and all of the under-the-radar activities that were going on out there. And I think it helped David understand what was happening out there. Again, it was all under the radar, all this alternative media. It`s a lot less under the radar now, but it was really under the radar in those days.

LAMB: So what`s the number of conservatives out there that you could get to through direct mail today that might give money to a cause?

VIGUERIE: If you put all of the conservative donor lists out there together, I would say maybe eight million.

LAMB: OK, let`s say you send out a letter to eight million. What`s the optimum number that will come back to you? And just on a -- from your experience.

VIGUERIE: Sure. Well, you know, not all those eight million people would respond to the same signature. Some would respond to Wayne LaPierre at the NRA, you know, for his signature, and some for James Dobson and some for Tom DeLay. And so it -- but if you had the optimum signature for each one, you get a 3 percent response, you`ve had a real good success.

LAMB: What`s the best response you`ve ever had?

VIGUERIE: Oh, for Rudy Giuliani, you know, sometimes you get 8 percent, 10 percent response.

LAMB: Does that bode well, if he wants to run for president in the future?

VIGUERIE: No, that doesn`t say anything about his success in the future because he was running against Hillary. And I believe I could have mailed the telephone book and made money on the first prospect mailings.

LAMB: As you sit there looking at 2008, in the event that she were to run for president, do you smile when you think of using her name?

VIGUERIE: Oh, yes!

LAMB: Why?

VIGUERIE: Well, you know, she`s a lightning rod, just like Jesse Helms and Ronald Reagan and Tom DeLay, or George Bush, Karl Rove are all lightning rods for the left now. And a lot of people out there are very afraid of Hillary as president.

LAMB: By the way, one of the dirty little secrets seems to be comes

out in your book is that if you lose, you win.

VIGUERIE: Well, from a -- those of us in the marketing business, yes. We always do better if the other side is in power. But as a good American, you know, I`ll do everything I can do help George Bush get elected. But my business would do better if Kerry were. But I -- it`s not what I want.

LAMB: On page 287, you start to list ideological Web sites. And somebody would have to get your book to completely understand what you`ve done here, but what`s the bottom line that you learned from political Web sites, ideological Web sites? Who`s winning?

VIGUERIE: There are two types of activities on the -- on the Web. One is information, education, et cetera. The other is political activity. In terms of the Web sites that provide information, material for people`s use, education, et cetera, the conservatives do far better than the left.

LAMB: Let me list the first four. And what you`ve done is, you`ve gone to Alexa.com, which is on Amazon, to see the success of these Web sites. And you determined that the 264th Web site is the first ideological Web site, which the Drudge Report. And then it`s Worldnetdaily, Newsmax and Lewrockwell.com. How big a deal are those first four that you mention? Salon, which is not a conservative site, is No. 5 on your list.

VIGUERIE: Right. Well those -- it`s -- you know, it`s just very, very important because that`s how conservative -- the conservative movement is thriving and prospering today, with that news and information that we can get instantaneously to our people out there. In terms of organizing our activities, it`s just critical.

LAMB: How did Drudge do it?

VIGUERIE: Drudge did it by accident. He was a clerk out in Los Angeles, working for one of the film studios out there, and every morning, he`d come to work and look in the trash can and find that they had the Nielsen ratings in the trash can for overnight. And he said, Wow, this is a gold mine. So he began to -- he sat up a little Web site and began to put some of this information out there and began to attract a following. And of course, his big break was when he got the information about Monica Lewinsky, that the networks and the big media outlets, they all had that information weeks before he did, but they had spiked it. And he put it out there.

LAMB: You talk about Joe and Elizabeth Farah, who have Worldnetdaily. And that`s the second one on the list. How did they get started?

VIGUERIE: Joseph, who is a -- and his wife, Elizabeth, are friends of mine, and Joseph was an old-line newspaper man. He`s not that old, but he`s been in the media, a journalist, for a long time in California, and a very successful journalist there. And then he set up an on-line newspaper, in essence, called Worldnetdaily. And there are two principal conservative on-line newspapers, Worldnetdaily and Newsmax.

LAMB: Townhall.com, which I looked on this morning, is -- I guess it belongs to Heritage.

VIGUERIE: Yes.

LAMB: And you say that there are 67 different conservative columnists on there. They get a lot of traffic for that?

VIGUERIE: I assume so.

LAMB: I mean, they`re way up there. They`re -- like, on this list, they`re 1,351 from the top, but on your list, they`re the No. 6 on there.

VIGUERIE: But you know, those conservative columnists, we promote them -- or they`re promoted other places, too. ``The Conservative Chronicle`` publication has, you know, 35 or 40 of these syndicated columnists. And that`s another area that the conservatives have outperformed the left on, is syndicated columnists.

LAMB: Are you surprised that "The Economist," which is a British magazine, is ahead of "The Wall Street Journal" editorial page?

VIGUERIE: Yes, that is surprising, yes, because I don`t think of "The Economist" as certainly -- I think of it as establishment, center, left of center publication.

LAMB: By the way, I wondered if it was mistake when I saw Antiwar.com in bold face because that is not a conservative site, and you suggested it might be here.

VIGUERIE: Well, Brian, remember that there`s a lot of conservatives that are not happy with Bush`s position on the war. So there`s a lot of conservative anti -- war sites out there.

LAMB: We have a minute, and I wanted to ask you about that. I wrote down that you say that conservatives are starting to think it would be better if George Bush were defeated.

VIGUERIE: That`s not a majority, but there`s a lot of conservative activists out there that are very disillusioned with George Bush`s presidency. He said he was a compassionate conservative, as his father did. His father said he was a conservative. He didn`t govern as a conservative. And George Bush, the 43rd, has been a much better conservative president -- president for conservatives than his father was.

But there`s still -- growth of government is out of sight. And a Republican president always moves left in his second term. And we`re seeing nothing out there to give us comfort that he would govern more to the right in a second term than he would to the left.

LAMB: Here`s the cover of the book. Our guest has been Richard Viguerie, co-author of "America`s Right Turn." Richard Viguerie of the Richard Viguerie Company, a direct-mailing activity for the ideological right. Thank you very much.

VIGUERIE: My pleasure, Brian.

END

America's Right Turn: How Conservatives Used New and Alternative Media to Take Power

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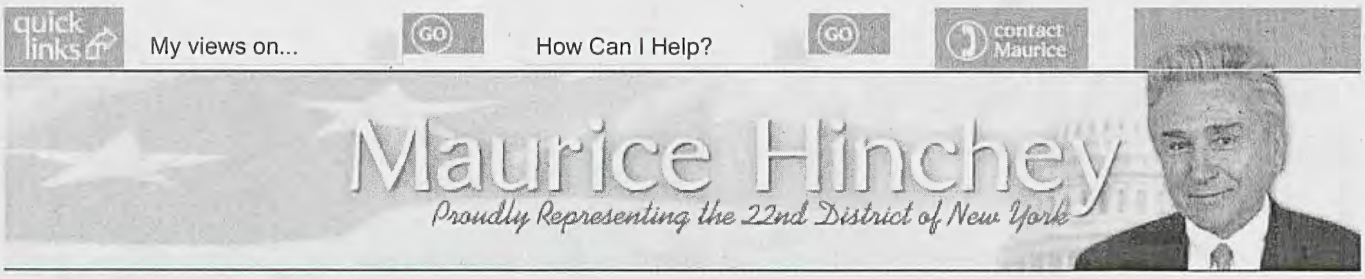

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Media Ownership Reform Act (MORA)

The Media Ownership Reform Act seeks to restore integrity and diversity to America's media system by lowering the number of media outlets that one company is permitted to own in a single market. The bill also reinstates the Fairness Doctrine to protect fairness and accuracy in journalism.

Media Ownership Reform Act

Bill Summary

I. Guarantees Fairness in Broadcasting

Our airwaves are a precious and limited commodity that belong to the general public. As such, they are regulated by the government. From 1949 to 1987, a keystone of this regulation was the Fairness Doctrine, an assurance that the American audience would be guaranteed sufficiently robust debate on controversial and pressing issues. Despite numerous instances of support from the U.S. Supreme Court, President Reagan's FCC eliminated the Fairness Doctrine in 1987, and a subsequent bill passed by Congress to place the doctrine into federal law was then vetoed by Reagan.

maybe these are graded?

MORA would amend the 1934 Communications Act to restore the Fairness Doctrine and explicitly require broadcast licensees to provide a reasonable opportunity for the discussion of conflicting views on issues of public importance.

II. Restores Broadcast Ownership Limitations

Nearly 60 years ago, the Supreme Court declared that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is essential to the condition of a free society." And yet, today, a mere five companies own the broadcast networks, 90 percent of the top 50 cable networks, produce three-quarters of all prime time programming, and control 70 percent of the prime time television market share. One-third of America's independently-owned television stations have vanished since 1975.

There has also been a severe decline in the number of minority-owned broadcast stations; minorities own a mere four percent of stations today.

- MORA would restore a standard to prevent any one company from owning broadcast stations that reach more than 35 percent of U.S.

television households.

- The legislation would re-establish a national radio ownership cap to keep a single company from owning more than five percent of our nation's total number of AM and FM stations.
- The bill would reduce local radio ownership caps to limit a single company from owning more than a certain number of stations within a certain broadcast market, with the limit varying depending upon the size of each market.
- Furthermore, the legislation would restore the Broadcast-Cable and Broadcast-Satellite Cross-Ownership Rules to keep a company from aving conflicting ownerships in a cable company and/or a satellite carrier and a broadcast station offering service in the same market.
- Finally, MORA would prevent media owners from grandfathering their current arrangement into the new system, requiring parties to divest in order to comply with these new limitations within one year.

III. Invalidates Media Ownership Deregulation

MORA would invalidate the considerably weakened media ownership rules that were adopted by the Federal Communications Commission in 2003; rules that are now under new scrutiny through the FCC's Future Notice of Proposed Rulemaking. The legislation further prevents the FCC from including media ownership rules in future undertakings of the commission's Biennial Review Process.

IV. Establishes a New Media Ownership Review Process

MORA creates a new review process, to be carried by the FCC every three years, on how the commission's regulations on media ownership promote and protect localism, competition, diversity of voices, diversity of ownership, children's programming, small and local broadcasters, and technological advancement. The bill requires the FCC to report to Congress on its findings.

V. Requires Reports for Public Interest

MORA requires broadcast licensees to publish a report every two years on how the station is serving the public interest. The legislation also requires licensees to hold at least two community public hearings per year to determine local needs and interests.

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Media Ownership Reform Act
(MORA)

Congressman Maurice Hinchey (NY-22)

THE PROBLEM

The American media is becoming increasingly dominated by large telecommunications companies that are pressuring smaller companies out of the market and shrinking the diversity of voices in our media environment.

- Since the Telecommunications Act of 1996, Congress and the Federal Communications Commission have repeatedly altered our nation's media ownership rules by increasing media ownership caps that limit the number of media outlets one company is permitted to own in a single market. The result has been greater consolidation in the media industry, with telecommunications giants buying up more and more television and radio stations, newspapers, and other media outlets, forcing local and independent media owners to be bought up or go out of business, and denying public access to a wide array of information.

- As part of a large deregulation process in 1987, the Reagan administration dissolved the Fairness Docrine, an important piece of legislation that required broadcast news programs to cover controversial topics in a fair and balanced manner. First introduced in 1949, the Fairness Doctrine's suspension was a massive blow to journalistic integrity, forcing the general public to lose trust in media outlets from which they receive news and information each day.

THE SOLUTION

- Congressman Hinchey introduced the Media Ownership Reform Act, which seeks to restore integrity and diversity to America's media system by significantly lowering media ownership caps. These caps will keep the power and influence of large telecommunications companies under control and encourage smaller businesses to participate and compete, bringing a greater diversity of viewpoints into media programming.

- MORA also reinstates Cable/Broadcast Cross-Ownership rules, which forbid any company from owning and operating a broadcast station and a cable station in the same market, limiting the influence of that company on the various media outlets.

- The bill also restores the Fairness Doctrine, compelling broadcast news outlets to investigate issues thoroughly and present their findings in an unbiased way.

H.R.3302
Title: To amend the Communications Act of 1934 to prevent excessive concentration of ownership of the nation's media outlets, to restore fairness in broadcasting, and to foster and promote localism, diversity, and competition in the media.
Sponsor: Rep Hinchey, Maurice D. [NY-22] (introduced 7/14/2005) Cosponsors (16)
Latest Major Action: 7/14/2005 Referred to House committee. Status: Referred to the House Committee on Energy and Commerce.

COSPONSORS(16), ALPHABETICAL [followed by Cosponsors withdrawn]: (Sort: by date)

Rep DeFazio, Peter A. [OR-4] - 7/14/2005
Rep Filner, Bob [CA-51] - 7/14/2005
Rep Hastings, Alcee L. [FL-23] - 7/14/2005
Rep Kaptur, Marcy [OH-9] - 7/14/2005
Rep Lee, Barbara [CA-9] - 7/14/2005
Rep McDermott, Jim [WA-7] - 7/14/2005
Rep Moran, James P. [VA-8] - 7/14/2005
Rep Owens, Major R. [NY-11] - 7/14/2005
Rep Sanders, Bernard [VT] - 7/14/2005
Rep Schakowsky, Janice D. [IL-9] - 7/22/2005
Rep Slaughter, Louise McIntosh [NY-28] - 7/14/2005
Rep Solis, Hilda L. [CA-32] - 7/14/2005
Rep Stark, Fortney Pete [CA-13] - 7/14/2005
Rep Waters, Maxine [CA-35] - 7/14/2005
Rep Watson, Diane E. [CA-33] - 7/14/2005
Rep Woolsey, Lynn C. [CA-6] - 7/14/2005

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Media Mouse: Grand Rapids News & Independent Media

Vermont Senator Bernie Sanders Addresses National Conference for Media Reform

January 19, 2007

This article is part of a series of articles by Media Mouse covering the 2007 National Conference for Media Reform. We believe that these will be of value to those organizing for social change in the Grand Rapids and West Michigan area.

Newly elected Vermont Senator Bernie Sanders addressed the National Conference for Media Reform during a morning plenary session on Saturday. The Senator, who has been praised by many progressives and political activists, is a political independent who is affiliated with neither the Democrats nor the Republicans, describing himself instead as a socialist. Sanders' speech gave an overview of how the corporate media system in the United States has failed to address a number of critical issues including healthcare, Iraq, the economy, and global warming. He praised the media reform movement for making some gains, but explained that despite the movement's successes thus far, it is rare that politicians are asked about corporate control of the media. However, Sanders argued that the movement is approaching a critical mass and suggested that with grassroots activism, a House caucus looking at media reform issues, and the probability that many media reform issues will soon be taken up in the Senate, the movement has a chance to make significant changes to the corporate media system.

Sanders spent the majority of his time explaining how the corporate media's failings have shaped the national debate on a number of issues. Like many speakers during the weekend, Sanders evoked the legacy of Martin Luther King, Jr. and explained that the media portrays him as an activist for voting and civil rights each year but ignores his organizing against the Vietnam War and economic injustice. War and economic injustice are two issues that have not been covered adequately in the corporate media, according to Sanders, who charged that the corporate media was responsible in part for the deaths of Iraqi civilians and United States soldiers, as well as the money diverted from social programs to the military budget. Economic injustice is also ignored by the corporate media, with the media rarely portraying the reality of working people, a reality that often means two family members working and still barely being able to make ends meet. However, Sanders said that the morality

of this is never considered and the media describes "moral values" from a fundamentalist point of view rather than considering the morality of the number of billionaires growing in the United States at the same time hunger is growing. He described the United States as moving towards an oligarchic system, yet the media has completely ignored wealth disparity. Similarly, the media has failed to raise globalization as an issue and instead has trumpeted free trade and ignored its relationship to job loss and low wages both inside and outside of the United States.

Two other issues systematically distorted by the media are healthcare and global warming according to Sanders. Sanders explained that the United States is far behind other countries in the quality of its healthcare system and in terms of the number of its residents insured, while its residents pay more for prescription drugs than other countries. The media has failed to explain that the United States is the only country that does not guarantee healthcare, instead choosing to ally itself with corporations and free-market ideologues opposed to single-payer healthcare. Sanders told the crowd that single-payer healthcare legislation in the 1990s had more support than any other bill introduced during that decade, but the media never mentioned its support and attacked the measure. The media has used a similar approach in its reporting on global warming, again aligning itself with corporation and rightwing/free-market think-tanks, and asserting that there is debate in the scientific community when in reality there is no serious debate about the existence of global warming.

Sanders closed by describing what he expects the Senate to address in terms of media reform over the next couple of years. Sanders expressed hope that the Senate would examine the use of the public airwaves by private media corporations and that the Senate would consider to what degree these companies have served the public interest. In light of the domination of radio and television by rightwing hosts, Sanders suggested that it is time that the Fairness Doctrine be revisited. He also said that media deregulation needs to be stopped and those licensees should be held accountable and that hearings should be brought back to in the license renewal process. Sanders explained that media reform work was important for anyone working for social change, as media is needed to make the gains necessary for building the society that we want.

} But govt should not control speech!

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Democrats' New 'Fairness' Push May Silence Conservative Radio Hosts, Critics Say

By Fred Lucas
CNSNews.com Staff Writer
January 17, 2007

(CNSNews.com) - Democrats in Congress are pushing for legislation that they say would bring more balance to the media, but critics say would muzzle conservative voices.

The Fairness Doctrine, a federal regulation requiring broadcasters to present both sides of a controversial issue, was enforced by the Federal Communications Commission from 1949 to 1987, when it was dropped during the Reagan administration.

Many in the broadcast industry credit the dropping of the rule to the rise of conservative talk radio that became a booming industry, featuring personalities like Rush Limbaugh, Sean Hannity and Laura Ingraham.

Bringing back the regulation will ensure more even-handed coverage of political issues, said Jeff Lieberson, spokesman for Rep. Maurice Hinchey (D-N.Y.), who has proposed the "Media Ownership Reform Act."

"The political interests of media owners can have a direct and indirect effect on the way news is presented to the public, so it's important that all sides are heard," Lieberson told **Cybercast News Service** Tuesday.

The Fairness Doctrine is a key component of Hinchey's bill, which also sets tighter limits on media ownership. Sen. Bernie Sanders (I-Vt.) has proposed a companion bill in the Senate.

"This is not an attempt to muzzle them at all," Lieberson said of conservative talk show hosts who are opposed to the Fairness Doctrine. "They will still be heard. This will ensure that different views that are not theirs will also be heard."

But muzzling is exactly what such a law would do, charged Cliff Kincaid of Accuracy in the Media, a conservative media watchdog group.

"Make no bones about it, they want to force the conservative media to hand over air time to liberals," Kincaid said in an interview. "When federal bureaucrats dictate the content of radio and TV shows, it's muzzling to tell them what to say and how to say it."

Many conservatives have long argued that the bulk of major newspapers,

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news magazines and network news programs tilt left and regard talk radio as an antidote.

"Liberals used to dominate the media, and they are irritated there are competing voices, so now they want to reign in the conservative media using the federal government," Kincaid continued. "There is no prohibition against liberal talk radio. Liberals tried talk radio and it was not successful in the market place."

Kincaid pointed to Air America, the liberal talk radio network started in 2004 that is now in bankruptcy but still operating with a limited audience.

The Fairness Doctrine was adopted by the FCC in 1949 as a regulation, never a law enacted by Congress. The effort now by Democrats in Congress is to codify the doctrine into law.

When the rule was in place, radio and TV stations could face hefty fines if their stations aired controversial statements on public affairs without providing equal time to opposing viewpoints. Critics said the result was self-censorship by timid broadcasters who avoided politics to escape any potential government retaliation.

The U.S. Supreme Court ruled in 1969 that the doctrine did not violate the First Amendment, because the airwaves belonged to the public and thus could face government regulation to which print media were not subjected.

After the FCC ditched the rule in 1987, Democratic lawmakers made several attempts to bring it back in statute. Those attempts were unsuccessful even when Democrats controlled both the White House and Congress in 1993 and 1994.

Despite the 1969 court ruling, Dennis Wharton, spokesman for the National Association of Broadcasters, told **Cybercast News Service** Tuesday it was fundamentally a First Amendment question.

"It was not appropriately named," Wharton said of the doctrine. "It was unfair in inhibiting broadcasters' free speech rights.

"There has been an explosion of viewpoints and coverage of issues since the elimination of the Fairness Doctrine," Wharton said. "It's been a boon for free expression."

Hinchey, chairman of the "Future of Media Caucus" in the House, is among several
Democratic lawmakers who spoke at the National Conference on Media Reform in Memphis, Tenn., this past weekend.

Rep. Dennis Kucinich (D-Ohio), chairman of the House subcommittee on domestic policy, announced he would hold hearings on the media, which would include looking at restoring the Fairness Doctrine.

"We know the media has become the servant of a very narrow corporate agenda," Kucinich, a candidate for the 2008 Democratic presidential nomination, reportedly told the Memphis event.

"We are now in a position to move a progressive agenda to where it is visible," he said.

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The Barker and the Shill: The Fraud of the Fairness Doctrine

By Selwyn Duke on Jan 29, 07

If you're old enough to remember the days when freak shows were in carnivals and not daytime television, you may know about the barker and the shill. These were carnival employees who both worked to entice customers into entering the mysterious realm of the sideshow, only, their methods were very different. The barker - the correct terminology is the "talker" - was a P.T. Barnum-like character, a bold salesman who sang the praises of the exhibits. Although he was given to the hyperbole of marketing, he made no bones about his agenda: He wanted your business.

The shill was a very different animal. His job was to stand amidst the crowd and pose as one of their number; he would then feign awe as he claimed to have seen the show and that it was truly a jaw-dropping experience. He was trading on his illusion of impartiality, knowing it lent him a capacity to convince that eluded the talker with his obvious agenda.

This occurs to me when I ponder the attempt to resurrect the "Fairness Doctrine" by politicians such as Congressman Dennis Kucinich and avowedly socialist senator Bernie Sanders. For those of you not acquainted with this proposal, it harks back to a federal regulation in place from 1949 to 1987. Ostensibly it was designed to ensure "fairness" in broadcasting, mandating that if radio and TV stations air controversial viewpoints, they must provide equal time for the "other side."

Now, as many have pointed out, this effort is motivated by a desire to stifle conservative commentary. After all, it isn't lost on the radical left that the dumping of this doctrine in 1987 directly coincided with the rise of conservative talk radio. Freed from the threat of hefty government fines, stations were finally able to formulate programs based on market forces and not government regulation. Thus did Rush Limbaugh, Michael Savage, Sean Hannity, Laura Ingraham and many others give voice to the usually silent majority.

Of course, many may wonder why I'd take issue with fairness. Shouldn't we give the "other side" its day in court, one may ask?

The problem is that this regulation would be applied to talk radio but not arenas dominated by liberal thought, a perfect example of which is the ever-present mainstream media (which presents the "other side"). This is because talk show hosts trade in red meat commentary, whereas the mainstream press is more subtle in its opinion-making.

Fine then, say the critics, that's as it should be. We don't have to worry about "responsible journalists"; it's those acid-tongued firebrands who pollute discourse with their pyro-polemics who bedevil us. And on the surface this sounds convincing, which is why I tell you of the talker and the shill.

The dirty little secret behind the Fairness Doctrine is that it punishes the honest. Think about it: Radio hosts are the talkers; they wear their banners openly as they proclaim who and what they are. Sure, they may be brash and hyperbolic, loud and oft-sardonic, but there is no pretense, little guile, and you know what they want you to believe. You know what they're sellin' and if you're buyin'.

The mainstream media, however, is a shill. Oh, not shills working with talk radio, of course, as their talkers are entities such as MoveOn.org and Media Matters, but they are shills nonetheless. They masquerade as impartial purveyors of information, almost-automatons who, like Joe Friday, are just interested in the facts, ma'am. They flutter their eyes and read their Teleprompters, and we are to believe God graced them with a singular ability to render facts uncolored by personal perspective.

In reality, though, the Shill Media are about as impartial as an Imam in a comparative religion class. Let's not forget that they used to call Republican reductions in the rate of spending growth "budget cuts," have a habit of referring to pro-lifers as "anti-abortion groups" (they don't call pro-choice groups "pro-abortion") and to terrorists as insurgents or even "freedom

fighters," and only seem to perceive hate crime when the victim's group has victim status. And while I can't comprehensively document news bias here, suffice it to say the Shill Media are at least as ideologically monolithic as talk radio. Why, in 1992, 89 percent of Washington journalists voted for Bill Clinton; in 1996 the figure was 92 percent. Even outside the Beltway liberal bias reigns, with scribes so situated favoring Democrats by about a three to one margin.

But the point here isn't the nature or pervasiveness of the bias, but its insidiousness. The Shill Media are the truly dangerous ones because of their illusion of impartiality. There's a reason why we trust what Consumer Reports says about Buick a lot more than what Buick says about Buick. And if we discovered that Buick's marketing arm was masquerading as a consumer advocacy magazine, we'd want the subterfuge revealed. Remember, brainwashing is only effective if you're not aware it's occurring.

This is why the Fairness Doctrine is an insult to the intelligence of anyone possessing more than a modicum of that quality. Its message is, hey, hide your bias well, be a slick propagandist and you'll proceed unmolested. But dare not tell the truth or be so bold as to bare your soul. Like an ostentatious literary critic, we appreciate subtlety and abhor straightness. Lying lips trump truthful tongues, don't you know?

Thus, far better than a fairness doctrine would be a "Truth in Media Doctrine." And here's its mandate: When a correspondent is shown on the nightly news, there must be a caption to the effect of, "Dan Rather, Clinton-Gore-Kerry voter" or "Katie Couric, lifelong Democrat."

Hey, why not? Let's strip the masks off the shills. Otherwise, it's a bit like letting Mullah Omar sing the praises of Islam while dressed as a Catholic priest. And shouldn't these "responsible journalists" be at least as honest as those troglodytes in talk radio?

I wax satirical but, in reality, ensuring disclosure is far easier than securing fairness. In fact, how could the latter possibly be achieved? After all, media bias lies not just in how news is reported but also in what they choose to report on in the first place. Why do they decide to focus on sex-discrimination in the construction industry instead of transgressions by abortionists? Why Abu Ghraib instead of the oil-for-food scandal? Why that which helps or harms one cause but not another?

The fact is that the media choose the social battlefields and decide which way salvos will be fired. Human judgement is in play when they decide whether to broadcast or bury, how often a story will run, what terminology will describe it and what imagery will attend it.

Then, the idea that fairness is ensured by disseminating the "other side" presupposes that there are only two sides, but an issue isn't a coin. There are often a multitude of sides, therefore, a dictate to present both sides simply means government input in the process of discrimination. And that's what it is, since only two sides will be chosen from among many. What about the libertarians, Greens, Vermont Progressives, Constitutionalists, Christian Freedom Party members and communists? Oh, silly me, I forgot. The communists are giving us the Fairness Doctrine.

Now, some will say the other side is simply a refutation of the talkers' controversial positions. But here I note that much of talk radio commentary is in fact a refutation of Shill Media positions. Thus, insofar as this goes, talk radio doesn't need to be balanced by the other side.

It is the other side.

So, affirmative-action and quotas in commentary? Please. Should I think Big Brother capable of factoring millions of different elements into a media formula and developing a paradigm for fairness? Sure, let's have the Post Office run the press.

Of course, the dirty little secret is that the Fairness Doctrine is about everything but. Its proponents are political shills, bristling at the fact that their talk radio test balloon, Airhead America, only succeeded in talking its way into Chapter 11. Their spirit is the same one that gives us speech codes in colleges and corporations, the effort to stifle grassroots lobbying and hate speech laws. Perhaps it's that those who can teach, do, and those who can't, legislate.

You know, there's an image conjured up by this scheme, that of a sullen, pouty little child complaining, "That's not fair!" and stamping his foot with arms akimbo. But as John F. Kennedy observed, "Life's not fair."

No, it certainly isn't. Some people are born with intelligence, others aren't. Some people possess logic, reason, sound ideas, philosophical depth and powers of persuasion, others don't.

I guess the less gifted's recourse to this ploy is a tacit admission that they bring no ammunition to the battlefield of debate. And now it seems they fancy big government a substitute for big ideas.

Selwyn Duke

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By Selwyn Duke on Jan 29, 07 | Email | Profile Permalink

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Liberals seek to restore Fairness on the air

Radio

By DAVID HINCKLEY
DAILY NEWS STAFF WRITER

With Democrats mattering a little more in Washington these days, some Democratic liberals are pushing for the reinstatement of radio's Fairness Doctrine.

Don't expect it to happen anytime soon, although Sen. Bernie Sanders of Vermont and representatives Dennis Kucinich of Ohio and Maurice Hinchey and Louise Slaughter of New York are backing legislation to reverse the 1987 FCC decision that killed it.

Essentially, the Fairness Doctrine required broadcast licensees to devote a reasonable amount of airtime to the discussion of important public issues and to have both sides represented in that discussion.

As spelled out by the FCC in 1949, the Fairness Doctrine also incorporated the Personal Attack Rule, requiring broadcasters to provide rebuttal time to anyone who had been attacked on the air.

In general, progressives think the Fairness Doctrine is a good idea because it would prod broadcasters to balance what liberals see as a conservative tilt in radio.

Conservatives consider the doctrine an inappropriate government intrusion that is needed less than ever in the booming satellite, cable and Internet media age.

Rush Limbaugh has long lobbied against reinstating the Fairness Doctrine, calling it an attempt to dilute the popularity and influence his show has achieved in the free market. He calls reinstatement a "Hush Rush" campaign.

Michael Harrison, editor of Talkers magazine, calls the doctrine "dangerous and unproductive" and bad for talk radio.

"It did nothing except chill free speech," Harrison says. "It made it very difficult for stations to engage in free and open discussion of ideas. Talk radio owes its explosive growth over the last 20 years to the repeal of the Fairness Doctrine."

Steve Rendall, senior analyst for the progressive media watchdog group FAIR, says talk radio's growth was "helped only a little" by the repeal of the doctrine, which he would like reinstated.

"It's not a panacea," Rendall says. "But it would have value because it would make clear that broadcasters using public airwaves have a responsibility to present a range of views on critical issues."

Whatever its merits, even proponents see little chance it will be reinstated.

"Personally, I believe it was a good thing," says Dr. Kim Zarkin of Westminster College in Utah, co-author of the 2006 study "The Federal Communications Commission" (Greenwood Press). "But at this point, it would be like closing the barn door after the horse got out. There's almost no way to go back to it."

Even if Congress votes to reinstate it, Zarkin notes, President Bush almost certainly would veto it.

She also suggests that after 20 years without the doctrine, enforcement - always random, like with jaywalking laws - would be "nearly impossible. If you enforced it literally, you'd put big numbers of people out of work, because there isn't an Al Franken for every Rush Limbaugh."

On WABC (770 AM) yesterday morning, co-host Curtis Sliwa and newsman George Weber warned that a new Fairness Doctrine would be an unworkable nightmare.

Co-host Ron Kuby suggested this could have a bright side for him and Sliwa because Kuby is WABC's only in-house leftist.

"WABC would have no choice," Kuby says. "It would have to carry 'Curtis and Kuby' 5:30 a.m. to 5:30 a.m., Monday to Sunday."

Originally published on January 17, 2007

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Column 2

Neutral Ground

As Web Providers' Clout Grows, Fears Over Access Take Focus

FCC's Ruling Fuels Debate Between Broadband Firms And Producers of Content

Blocking Out Vonage Service

By Amy Schatz
And Anne Marie Squeo

Doug Herring was on a business trip to Tennessee last fall when phone calls to his wife at home in Elberta, Ala., stopped going through. About a month before, the Herrings had switched to Vonage Holdings Corp.'s Internet phone service but hadn't experienced any previous problems.

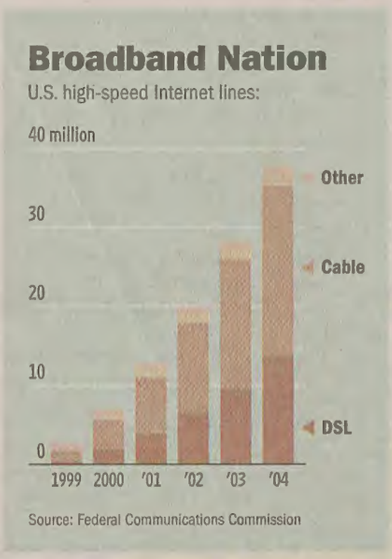
Mr. Herring says he soon discovered the problem: His Internet provider, a unit of Madison River Communications, had blocked Vonage's phone service, which competed with Madison's service. In March, Madison River, which provides cable, Internet and phone services in eight states, agreed to stop blocking calls after the Federal Communications Commission intervened.

Madison River's action affected only a small number of customers, but it became a rallying cry for those who want the government to step in now to make sure consumers have the right to use the Internet as they please in the future. The increasingly heated debate pits phone and cable companies, which offer high-speed Internet access to consumers, against tech giants such as Microsoft Corp., Google Inc. and Yahoo Inc. as well as providers of online content, such as Walt Disney Co.

Advocates of so-called net neutrality argue that what's at stake is no less than the future of the World Wide Web. As more and more Americans turn to high-speed connections, or broadband, for their access to the Internet, the power of the phone and cable companies that provide this access has grown. Technology has evolved allowing the broadband companies to block Web sites from their customers. If they start using this power to promote their own commercial content offerings and weed out rivals, say critics, the innovative and free-wheeling Web could be crippled.

So far, evidence of such tinkering is scarce, and broadband providers—and many regulators—scoff that the market would never let them censure the Web.

But conflicts of interest have arisen in the past when owners of information pipelines have incentives to favor one company over another. Airlines, for instance, built the original computer-reservation services for travel agencies, and programmed them to push flights by the airline that owned the system to the top of agents' screens—until the government intervened in 1984.



On Friday, the FCC waded into the debate when it issued new rules for data services provided by telephone companies. The new rules release phone companies from an obligation to share their high-speed Internet lines, known as DSL, with rival providers of Internet service. The move, a victory for Bell companies, puts them on an equal footing with cable-television providers, which offer their own version of high-speed Internet through cable connections.

But critics say the unanimous FCC decision strips away some of the rules designed to protect consumers' rights—including the ability to freely access the Internet. In place of a strict policy on free access, the FCC instead on Friday issued a statement saying consumers have a right to freely use legal Internet applications and services.

At the Friday meeting, FCC Chairman Kevin Martin reiterated his belief that the market would prevent abuse, but agreed to begin crafting consumer-protection guidelines for high-speed Internet users. "Competition has ensured consumers have had these rights to date, and I remain confident that it will continue to do so," he said.

Most broadband Internet providers today allow their 38 million U.S. customers to use home connections as they wish, although some do charge consumers extra to attach Internet phones, videogame systems or other devices. But consumer groups, high-tech companies and their allies in Congress fret that cable and phone companies—which have spent billions of dollars to build high-speed networks—have incentives to block or slow access to rival Web sites or services in the future.

It's an issue that has attracted more attention in recent years as cable and telephone companies expand from providing Internet pipelines into providing online content. Cable company Comcast

Please Turn to Page A6, Column 1

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Job Data Might Be a Salve

White House Underscores Broad Industry Increases; Little Gain in Real Wages

By GREG IP

WASHINGTON—Brisk job growth, rising wages and broad hiring across industries suggest the U.S. job market is steadily picking up steam.

That may be good news for President Bush, whose economic approval ratings have gotten worse even as most indicators of the economy have gotten better.

Tracking the Economy, page A6.

Nonfarm payrolls grew by 207,000 in July from June, marking the biggest increase in three months, the Labor Department said Friday. Employment in the prior two months was revised up by a total of 42,000. Although payroll growth has been volatile, monthly gains have accelerated to an average of 191,000 this year.

Meanwhile, the unemployment rate, which is based on a separate survey of households, held at 5%, the same as in June, down half a percentage point in the past year. For blacks, it dropped to 9.5%, the lowest since 2001, from 10.2%.

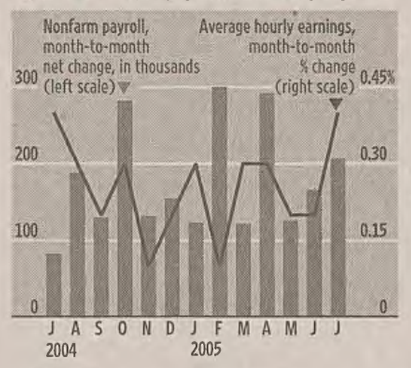
The jobs report suggests the U.S. economy, which expanded solidly in the second quarter, may be accelerating in the current quarter. That prospect is likely to lead the Federal Reserve to raise its short-term interest-rate target for the 10th consecutive time at its meeting tomorrow, to 3.5% from 3.25%, and to signal continued increases thereafter. "All this news is consistent with what the Fed's assumption had been: that the economy would be growing above trend, so it keeps them on course for now," said James Glassman, an economist at J.P. Morgan Chase & Co.

However, subsequent rate increases may not be necessary if long-term rates rise enough to slow the economy. Treasury-bond yields had been an unusually low 4.1% a month ago but have since risen to 4.39%.

The Bush administration is trying harder to highlight the good news on the economy and is playing up a meeting tomorrow between Mr. Bush and his economic team in Texas. Mr. Bush devoted his Saturday radio address to the economy, declaring: "The American economy is the envy of the world, and we will keep

Wage Catch-Up

Wage growth accelerated in July and job growth was brisk. Change in hourly earnings and the number of nonfarm payrolls, seasonally adjusted



Note: June and July 2005 figures are preliminary
Source: Labor Department

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FCC Ruling Fuels Web-Access Debate

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Corp., for instance, last year made an unsuccessful bid for Disney and is now building its own content empire.

Clearly, there have been some instances in which network owners and high-tech companies have formed profitable partnerships, notably SBC Communications Inc. and Yahoo's co-branded DSL Internet service, which has been a source of growth for both companies.

But tech companies worry business could suffer if Internet broadband providers block or slow use of their Web services or offer better connections to content that broadband providers own or profit from. For instance, they argue, that without a government prohibition, a broadband provider might cut a deal with an online retailer to trigger a pop-up ad when a consumer types in the address of a rival retailer, or it might allow a favored retailer's site to load more quickly.

This worry is particularly acute in Hollywood as entertainment companies explore ways to distribute movies and TV shows over the Internet. They rely on using Internet networks owned by potential competitors, such as cable company Time Warner Inc. or phone companies, which are expanding into the TV distribution business.

In 2002, six big trade associations—including the Business Software Alliance, National Association of Manufacturers and Consumer Electronics Association—formed the High Tech Broadband Coalition and began lobbying the FCC to adopt a net-neutrality standard. They were joined by several big companies, including Microsoft, eBay Inc. and Amazon.com Inc. The efforts were put on hold when the FCC's moves to deregulate Internet services bogged down in federal courts. In June, the Supreme Court concluded that the FCC was best-equipped to decide rules for Internet-service companies. The high court upheld an FCC rule that allowed cable companies to refuse access to their Internet network by rival service providers. Soon after, the FCC's Mr. Martin announced plans to deregulate DSL services, too.

In late July, the FCC quietly put out word it planned to vote on the DSL issue at its Aug. 4 meeting. Last Monday, an unlikely coalition of lobbyists for Dell Inc., Microsoft, Vonage and three consumer-advocate groups fanned out across the FCC's offices to plead for enforceable net-neutrality rules.

While Yahoo's lobbyist made his pitch to FCC aides on Tuesday, Amazon was polishing an 18-page net-neutrality brief. Later that same day, the High Tech Broadband Coalition delivered a letter outlining four net-neutrality principles it believed the FCC should adopt, some of which were echoed in the language the FCC used in its statement supporting the net-neutrality concept. Amazon immediately said it would "look forward to working with Congress on the next step" and another high-tech lobbyist said the FCC's decision was better than nothing but "we're only half-way up the mountain."

Phone and cable companies, such as Verizon Communications Inc. and Comcast, are privately discussing voluntary industry standards to ensure free access to the Web, but say publicly that legislation is unnecessary. They insist they won't ever block access to competitors' Web sites because customers wouldn't stand for it.

"It's a solution in search of a problem," says Dan Brenner, senior vice president of law and regulatory policy at the National Cable Television Association. "One odd-ball example [Madison River's Internet call blocking] that the commission dealt with quickly and effectively doesn't present the evidence that you have a market failure here."

Congressional proponents of net-neutrality legislation acknowledge there isn't a problem now, but say there might be. "The temptation is always there by the owner to favor his own content," says Rep. Rick Boucher, a Virginia Democrat. "The Internet customer of that broadband provider should be able to reach any Web site he wants to reach unimpeded."

Some Canadians late last month had a problem with telecommunications firm Telus Corp. The company blocked one million high-speed Internet subscribers from accessing an Internet site operated by union members engaged in a contract dispute. The site included photos identifying Telus managers and internal company information regarding an employee strike. Telus said the posting was illegal under Canadian law and endangered its employees. Union officials charged censorship.

"As an Internet-service provider we're not normally in the business of blocking or editing or deciding what's wrong unless the content is deemed to be illegal," said Bruce Okabe, a Telus vice president. "It would be morally negligent to allow that site to remain up." After Telus got a court order forcing the union to remove the photos, access to the Web site was restored.

The Bush administration isn't convinced net-neutrality rules are necessary and is focused on boosting broadband use in the U.S., especially in light of cries that the U.S. is lagging behind Canada, South Korea and other countries in broadband penetration. "We haven't seen any evidence of this being a problem," FCC Chairman Martin said recently.

But it is sometimes difficult for a consumer to determine if an Internet-service provider is intentionally blocking or diminishing access to a Web site. While popular sites such as Amazon.com worry less about a complete blocking of their sites, they are concerned about a degradation of service, says Paul Misener, Amazon's vice president of global public policy. "The thing with the technology today is you can be fairly subtle about this," he says. "So every 20th page hit gets a 'Page Not Found' error. The average consumer will blame that on the destination site."

When technology moves from being a novelty to an integral part of daily life, consumers begin asserting their rights to use it as they please and will, if necessary, demand government step in to make that happen, says Debora Spar, a Harvard Business School professor, whose book, "Ruling the Waves," traced the history of regulation of technology. "As [the Internet] becomes a utility...it makes it harder for companies to say their competitive needs trump my needs as a consumer," she says.

Things were simpler when most people connected to the Internet through a dial-up phone connection. Internet providers offered service on a "best efforts" premise, promising to transmit email messages and bits of Internet data as fast as possible, but offering no guarantees. Older analog systems weren't just slower; network operators couldn't easily distinguish between types of digitized packets of information shooting across the lines. But they can tell with high-speed networks, which is why universities can crack down on students illegally sharing songs.

As Internet pipes grow and can handle larger chunks of data, cable and phone companies have legitimate reasons for grappling with how to prioritize network traffic. Time-sensitive services, like phone calls or Internet TV, shouldn't be delayed because too many customers are downloading email or bulky music or video files.

Some countries, notably China, routinely block access to some Internet sites, but the practice hasn't been common in the U.S. outside of schools and libraries, which often use filtering software to block indecent sites and software used to swap songs and videos.

Broadband network owners do, however, routinely block access to try to halt the spread of unwanted spam or computer viruses. They also monitor how much data are being transmitted to a consumer's PC and warn users when they're using their connections too much.

Recently, PrairieWave Communications, a small Sioux Falls, Iowa, phone company which operates in Minnesota, Iowa and South Dakota, started charging customers an extra $5 to $15 a month for a dedicated Internet line if they use an Internet phone service or online videogames. The company says a dedicated line is necessary to guarantee call quality and provide better technical support.

"When the call quality is poor, [customers] don't call the supplier, they call us," says Craig Anderson, PrairieWave's chief executive officer. He questions why Internet phone providers should be allowed free access to a network on which his company has spent millions. "I can't compete with them and subsidize their entrance to get to my customers at the same time," he says. "I'm perfectly happy to open up my network to others, but they have to compensate me for that."

Emboldened Iran Rejects Nuclear Offer; North Korea Talks End

Continued From Page A3

nium found in Iran were likely brought there on used equipment imported from Pakistan and not produced locally.

The tests are the fruit of an IAEA success in soliciting Pakistan's assistance. To overcome Pakistan's refusal to allow the IAEA to inspect its nuclear weapon's production sites, two senior Pakistani officials accompanied a shipment of centrifuge parts from Pakistan to Vienna, Austria, and observed the swabbing of the equipment for samples of radioactive particles. The results matched samples found on similar equipment in Iran purchased from Pakistan, a diplomat with knowledge of the matter says. Iran told the IAEA it had purchased used centrifuges from Pakistan, according to an IAEA report on Iran's nuclear program.

The IAEA has asked independent labs to confirm these results, said a Western diplomat familiar with the result. The diplomat said the data from the uranium tests would be presented to the IAEA board of governors on Sept. 19.

"This result is impossible to fake," added the diplomat. "The preliminary [...]t results confirm Iran's disclosures t[o the] IAEA were accurate."

The Nuclear Nonproliferation Treaty gives signatories the right to pursue atomic-energy programs if they renounce nuclear weapons and submit to monitoring by the IAEA to ensure they aren't cheating.

But Washington and others have come to view some civilian nuclear activities as too dangerous and some states as too untrustworthy for the old system to work. The U.S. is talking to allies and the IAEA about a new approach in which countries would be offered guaranteed nuclear-fuel supplies if they agree not to separate plutonium or enrich uranium.

Those activities, which can be steps in the preparation of fuel for nuclear reactors, can also produce the kinds of fissile materials used in atomic weapons.

While the U.S. is insisting that Pyongyang dismantle civil as well as military programs, the European offer to Tehran would assist Iran with development of nuclear energy as long as it eschewed uranium enrichment.

U.S. officials said their tougher position on North Korea is justified, given the [co]untry's behavior. Pyongyang withdrew [fro]m the NPT in 2003. It then restarted [its m]ain nuclear reactor and says it has [been r]eprocessing spent fuel rods to obtain plutonium for an expanding nuclear arsenal. In February, it publicly declared its possession of nuclear weapons.

"We've got a country that took a so-[ca]lled re[search] reactor and turned it into [...] mo[...]

Battle of Words

Key dates in the standoff over North Korea's nuclear program:

Jan. 29, 2002: U.S. President George W. Bush labels North Korea, Iran and Iraq an "axis of evil" in his State of the Union address.

Dec. 31: North Korea expels U.N. nuclear-weapons inspectors.

Jan. 10, 2003: North Korea withdraws from the Nuclear Nonproliferation Treaty.

Feb. 6: North Korea says it reactivated nuclear facilities.

Aug. 27-29: North Korea joins the first round of six-nation talks on its nuclear program in Beijing, which include China, Japan, Russia, South Korea and the U.S.

Feb. 25-28, 2004: Second round of six-nation talks.

June 23-26: Third round of six-nation talks.

Feb. 10, 2005: North Korea announces it has nuclear weapons, says it is staying away from six-nation talks.

March 31: North Korea declares it should be treated equally as a nuclear power; demands that nuclear talks address disarmament of all countries involved.

May 16: The two Koreas resume direct talks.

July 9: North Korea agrees to return to a fourth round of six-nation talks for the first time in 10 months.

Aug. 7: Envoys announce a three-week recess in nuclear talks after 13 days of talks fail to produce a planned statement of principles to guide future negotiations.

Yongbyon's *nuclear facility has a reactor and plutonium reprocessing facility*

Sources: AP; Institute for Science and International Security; WSJ research

reactors in North Korea in exchange for a promise by Pyongyang to freeze and eventually dismantle its nuclear-weapons programs. That deal fell apart in 2002 when, U.S. offici[...]

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t post, from 1993 to 2003. Mr. to the shopping-center group ial capacity in late 2002 and rought in as a consultant. His o mall owners: Forget about eld metal detectors, the ma- s and the explosives-sniffing ead, he said, adopt Israel's approach to shopping-mall se- learning the terrorist modus "It's not about guns, it's about Mr. Arad says.

curity companies immediately grating the Israeli techniques raining programs. Many secu- s say the effort has placed the security industry far ahead of parts in other sectors, such as sit and the protection of many ldings. "It's not perfect, and ross the whole mall industry, re following the right path," rad.

s 6,500 uniformed employees more than 400 malls in 46 uding the shops at Union Sta- shington and Woodfield Mall icago. The company reached ychological studies of suicide d was one of the first security to employ Israeli tactics in ng.

an to move away from the idea s a suicide bomber look like to e act," says Mr. Lusher. The e method, he adds, is that you g behavior instead of people. acial profiling in counterterror- is a much-debated topic. Lon- ort Police Chief Constable Ian s said that his overstretched t waste time searching "little dies," while New York Mayor mberg has insisted that pas- hes in the city's subway will nd not based on race.

e things IPC learned from its he Israeli approach was to yees to use all their senses g out for bombers, not just Often suicide bombers will elves with perfume, fragrant vater in preparation for what will be their martyrdom— a flowery tell-tale scent.

picious behavior has been e Israelis act quickly, but The key to stopping or pre- ttack, they've found, is sim- , look the suspect in the eye n I help you?" The Israelis contact" and find that it's to force a bomber to aban- r make him detonate early, s target.

, the method does carry l Israeli security guards foiling mall attacks by sui- , Mr. Arad says. But their oubtless saved hundreds of

signs that IPC trains its k out for is anything that e preoperational planning. ide bombers show that it is em to case a target before o conduct dry runs. "We've suring space with their feet says Mr. Lusher. "In [illegible]

Homeland Security is also now offering its own courses on recognizing terrorist behavior throughout the country to security companies that protect shopping centers, sports stadiums and other commercial properties. "These are the type of antiterrorist training that just a few years ago was reserved for federal agents and the U.S. military," says Mr. Flynn.

On July 21, Homeland Security officials advised mall owners to increase their vigilance after the London attacks and met last week with mall-security experts to discuss ways the department could facilitate more training.

Mr. Lusher agrees that relations with Homeland Security and the FBI have been improving dramatically but says that IPC will continue to rely on its own analysis of events as it did during the recent attacks in London.

Meanwhile, events like one on a recent Wednesday keep him on edge. At about 5:30 p.m., a young man leaned over a walking bridge inside the Rivercenter mall and spat down on a passing boatload of sightseers.

A woman screamed. Boat traffic stopped. A mall-security guard in a black "Smokey the Bear" hat came running. Within minutes, the police arrived, but they failed to catch the assailant.

"It's really not that much of a stretch from spitters to bombers in the context of what we are up against," says Mr. Lusher. "Welcome to my nightmare."

SEC Presses Court To Allow Civil Case Against Scrushy

By Chad Terhune

The Securities and Exchange Commission, seeking to sustain its civil fraud case against former **HealthSouth** Corp. Chief Executive Richard M. Scrushy, warned in a court filing that an adverse ruling could have "chilling effects" on prosecuting corporate fraud.

Mr. Scrushy was acquitted in June on 36 criminal charges related to a $2.7 billion accounting fraud at the Birmingham, Ala., chain of rehabilitation clinics and hospitals. Shortly after the acquittal, U.S. District Judge Inge Johnson in Birmingham ordered the SEC to show why its civil case shouldn't be dismissed.

The SEC filed suit against Mr. Scrushy in 2003 but the case was put on hold while the Justice Department pursued criminal charges.

In lifting a freeze on Mr. Scrushy's assets in 2003, Judge Johnson had criticized the SEC and Justice Department for collaborating too closely in their efforts to pin the accounting fraud on Mr. Scrushy. At Mr. Scrushy's criminal trial, also in Birmingham, U.S. District Judge Karon Bowdre concurred with Judge Johnson's reasoning and faulted the government for "failing to advise Mr. Scrushy or his attorneys about the criminal investigation of which he was a target" in early 2003.

In a court filing late Thursday, attorneys at the SEC said, "Scrushy wants the SEC to become the con man's ear in the Justice Department, the universal leak for all DOJ investigations of securities law violations. Such a ruling would have chilling effects, not just on the SEC, but on confidential investigations and cooperative law enforcement by other agencies as well."

The SEC said in its filing that Congress has encouraged cooperation among federal agencies to achieve stronger enforcement.

Some legal experts have worried that the federal court rulings in Birmingham could complicate recent efforts by federal agencies, local U.S. attorneys and the Federal Bureau of Investigation to act more swiftly and aggressively against corporate fraud by cooperating more closely than in the past.

In a court filing last month, Mr. Scrushy's lawyers said, "neither of the government agencies involved, the SEC or the Department of Justice, have produced credible evidence that Mr. Scrushy knew others at HealthSouth were engaged in any accounting improprieties, much less fraud."

MICHAEL J. MILLER

The Phone as a Platform

MOBILE PHONES ARE getting to be as powerful as PCs, with processors, platforms, and operating systems that let developers create compelling applications. Combine this with the development of broadband networks, such as EV-DO and HSDPA, and we're seeing some very impressive network applications as well. Meanwhile, people love to customize their phones, which has launched the ringtone business into the stratosphere. It's even bigger than for-pay digital downloads of complete songs from sites like iTunes—something that continues to astound me.

That's just for starters.

Most phones today can receive e-mail, but until recently it's been difficult. Keyboard phones are suddenly getting much less expensive: The Motorola Q sells for just $199 with a two-year (fairly pricey) contract. And new phones aimed at younger consumers, such as the T-Mobile Sidekick and the Kyocera Switchback, sell for $150 without a contract.

One of the coolest new phone applications I've seen uses GPS technology. Verizon's VZ Navigator works surprisingly well.

I've used the Q and the new Palm Treo 700p in recent weeks, and there's a lot to like about both of them. The Q is a better phone. It's much thinner, fits nicely in your pocket, and has built-in voice dialing over Bluetooth. But the 700p is better for e-mail. The shortcuts are faster and easier to use, it has keys for quickly going to your mail or calendar, and it includes Docs to Go for editing and viewing attachments. (For details, see my blog at *go.pcmag.com/miller/phones*.) But not everyone needs a keyboard phone. If all you want to do is read your e-mail, most any phone will do the job.

We're also seeing more entertainment applications for phones, especially Brew and Java games. And Microsoft is now talking about Live Anywhere for connecting online gaming on your PC, Xbox, and phone. This strategy is part of a larger trend toward messaging, whether it's standard SMS, MMS, or connections to Internet messaging clients.

Phone-based multimedia is also gaining traction. I've tried MobiTV, which sends TV signals over the air to your phone. Sprint has been the leader in such services in the U.S., but others are trying to catch up. Now Slingbox has an option that lets you view content from your TV at home over the phone. The data plans can get expensive, and so far there are only a limited number of subscribers.

One of the coolest new applications I've seen uses GPS technology, which a number of new phones have. (It's great in emergencies.) Verizon's VZ Navigator worked surprisingly well at giving me maps and voice-based driving directions. But the screen is small, and downloading maps takes longer than it would to load them from a local hard drive. I'm not sure that everyone will want to pay $10 a month or $3 a day for such a system, but it is cool.

Then there are photos and videos. It's very difficult today to buy a phone that doesn't come with a camera, even though most people find uploading and sharing those photos to be difficult. New services from Vizrea and Sharpcast are designed to move photos from your phone to your desktop to the Web and back again. A number of social-networking sites are adding features like this as well. Yahoo! now has a full suite of services called Yahoo! Go, and Microsoft offers MSN Mobile.

All these services have a lot to offer, but getting onto them is much harder than it should be. There are multiple impediments: a bunch of different platforms that developers write for, a bunch of different phone makers, and four big national wireless carriers that want to control the applications on your phone.

Most applications work only on a certain set of phones or on a particular carrier's service. And prices tend to be high. Applications require a monthly fee, but we've yet to see the bundling that we have with cable or satellite TV.

Consumers should be able to pick applications regardless of phone or carrier. And we need bundles of services for music, video, photo sharing, and travel directions so that the costs are more predictable and affordable. We're moving in this direction—although slowly, as the carriers tend to be quite conservative. But this bundling is what it'll take to make these mobile devices much more than just phones. □

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BILL MACHRONE

Demand Net Neutrality!

HOW WOULD YOU LIKE IT IF you went to gas up your Ford Escape and the pump would deliver only a quart per minute? You'd inquire, only to discover that your brand of gas had struck a deal with General Motors to pump gas at the full rate only into GM cars. But if you wanted to pay extra, you could have it at the full flow rate. At the station across the street, BMWs and Audis were getting full flow, but Fords would still have to wait.

Preventing a similar situation is what "Net neutrality" is all about. The telcos that run the high-speed networks are the spinal cord linking us all to one another and to the providers we choose. Under the guise of needing more money for installing more fiber and faster terminal equipment to handle multiplexed signaling on existing fiber, the telcos are trying to establish a tiered price-performance system.

Large Internet service providers such as the telcos are often outmaneuvered by smaller, more nimble start-ups that create new services such as VoIP, streaming video, podcasting, and music downloads. When these offerings become successful, the telcos may decide to enter the business. Then they realize that it's their high-speed lines that make the service possible, and that their customer (the start-ups buy upstream access from the telcos) is now their competitor. There are other layers, such as ISPs, area networks, and packet aggregators, but ultimately, each layer pays its upstream provider.

Suddenly it becomes attractive to slow down the rate at which those services can deliver packets to you, so the telcos' offerings will look more inviting. Worse, without a Net-neutrality law, the telcos and ISPs can block access to some sites.

Think you live in a free country, with unlimited access to everything on the Net? Guess again. The only difference between the U.S. and China is that the ISPs, not the government, are blocking sites. They're doing it for financial, not political gain, although there are some cases of ideological censorship. (See *www.savetheinternet.com/=threat#abuse.*)

My colleague Michael J. Miller was the first to go on record in these pages, back in March, with a plea for you to make your voices heard (*go.pcmag.com/netneutrality*). Since then it appears that the telcos' powerful lobbying efforts are keeping Congress from doing what it should do: declaring the Internet portions of the telcos to be common carriers and thereby subject to federal regulation, so that all content providers pay for and get nonpreferential service. If a telco wants to offer content or services, it must do so on a level playing field.

Some service providers are trying to sell the idea that content providers are getting a free ride. As AT&T CEO Ed Whitacre said, "I think the content providers should be paying for the use of the network—obviously not the piece from the customer to the network, which has already been paid for by the customer in Internet access fees, but for accessing the so-called Internet cloud."

Whitacre says that content providers such as Google and Yahoo! should be paying for the privilege of reaching his customers, conveniently forgetting that they pay bandwidth charges for the gigabytes of data retrieved from their servers each month. Every content provider pays its host for access; the more data we draw from a provider, the more the provider pays to the host. Yet the telcos say they're not making any money on the backbone. Did they forget how to make a profit?

The only difference between the U.S. and China is that here the ISPs, and not the government, are blocking sites.

You may hear that telcos can't charge more money for backbone traffic because it's regulated, like phone rates. Untrue. Telephone rates are governed by state utilities commissions and by federal law, but in the eyes of the law Internet access is not telephone access. Laws mandating universal access to telephone service redistribute a share of the profits from long-distance and international calls to rural telephone access *and* new technology development—so money goes back to the telcos anyway.

It is important that you let your legislators know that Net neutrality matters greatly to you and that it should be a major platform plank for anyone seeking reelection. Tell your senators that you want them to support S.2917, which guarantees net neutrality (*www.congress.gov/cgi-bin/bdquery/z?d109:S.2917:*). Let the Senate Committee on Commerce, Science, and Transportation (*commerce.senate.gov/about/membership.html*), where the bill now resides, know how important this subject is to you. □

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For more of his columns, go to **go.pcmag.com/machrone**

Ominous Neutrality

By Steve Forbes

If Washington followed Hollywood's lead and gave an academy award for the best political sound bite of the year, "Net Neutrality" would win in a walk for 2006.

Good sound-bite; bad policy.

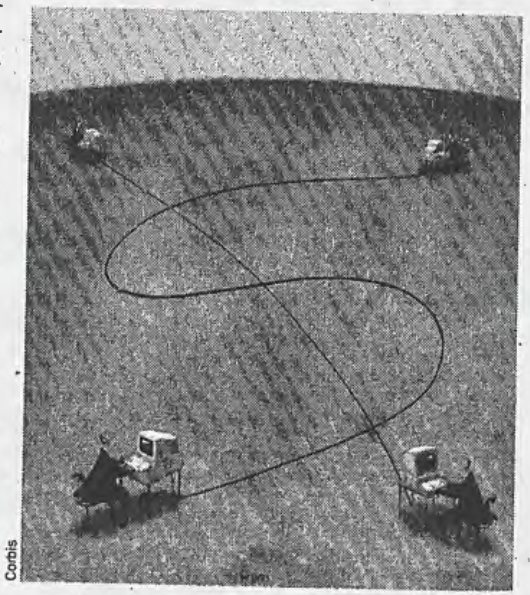
Net Neutrality has everything a good sound-bite needs. It's short, alliterative, easy to remember and so elastic in meaning that anybody can define it according to their own agenda.

That's exactly what's happening in Congress right now, where well-financed lobbyists are pushing for Net Neutrality legislation. According to their benign-sounding definition of Net Neutrality, it simply means that Internet network operators like the phone and cable companies would have to give equal treatment to all traffic on their networks, without giving anybody's content preference in handling.

But scratch the surface of what the Net Neutrality crowd is really asking for and Net Neutrality shifts from benign to ominous. The Net Neutrality lobbyists want Congress to pass innovation-stifling restrictions on what companies like Verizon and AT&T can do with the new high-speed broadband networks that these companies haven't even finished building yet.

These networks are the superhighways for transporting Internet content and services. They will also permit Verizon and AT&T to offer Internet-based cable TV programming in competition with the cable companies, which are already competing in telecom services. Slapping these networks with premature, unnecessary regulations would be an inexcusable barrier to the tradition of innovation at the heart of the Internet.

Phone companies are investing billions of dollars in network innovation. They need to earn a return on their investment. One logical way is to use a tiered pricing system that charges a premium price for premium services—which means super-high-speed services that gobble extra bandwidth on the network. Those who are happy with standard broadband speeds would continue to pay the same prices they pay now.



Corbis

This is the same concept as mail service. If you want to send a letter from New York to Los Angeles and delivery in four days to a week is OK, you can do it for the price of a 39-cent postage stamp. But if you want the letter delivered without fail by 10 a.m. the next morning, you upgrade to FedEx and pay for the extra service you need.

Applying this principle to the Internet sounds like the free market at work to me. But the Net Neutralizers have responded with manufactured indignation, claiming that it's discrimination and somehow tramples on the egalitarian spirit of the Internet.

Surprisingly Google, E-Bay and other high-tech companies have become big supporters of this flavor of Net Neutrality; they supposedly fear discrimination from Internet providers. But they have no real evidence to back-up such fears. If problems do arise, then these can be dealt with specifically.

Passing Network Neutrality legislation would be a re-run of the disastrous Telecom Act of 1996 which forced telecom companies to provide network access to competitors at below market prices. That certainly put a chill on network innovation. After years of wasteful lawsuits and regulatory infighting, the network access monster has gone away. But it was a big factor in letting America slip into the high-tech Stone Age, with consumer broadband services lagging far behind what's available in countries like Japan or South Korea.

Members of Congress are on the verge of updating the Telecom Act to bring it into sync with a communications industry that's been transformed by Internet technology. As they do that, we can only hope they don't compromise the future of this vital industry by falling for the rhetoric of Net Neutrality. After all, what network operator would be silly enough to keep investing billions in network innovations if the fruits of its innovation had to be given away at below cost?

Mr. Forbes is president & CEO of Forbes, Inc. and editor-in-chief of Forbes magazine.

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The plight of the North Koreans in China is a humanitarian disaster. While Pyongyang bears ultimate responsibility for the abuse of its people, China acts as a facilitator. We hope it is finally willing to fulfill its obligations under international law to provide for the humane treatment of refugees. Until then, the North Koreans who just made it to the U.S. are three of the lucky ones.

Wi-Fi to the Max

The backers of so-called Net neutrality have lost nearly every battle in Congress so far, although they plan to take another tilt at that windmill when lawmakers return from recess in September.

Sprint's retort to the Net neutrality crowd.

Out in the real world, however, things are not proceeding according to script, at least for those who insist that what the Internet really needs is a brand-new layer of government regulation. Yesterday, Sprint announced plans to spend as much as $3 billion building a nationwide WiMax network that would provide high-speed Internet access to 100 million consumers by 2008, according to Sprint's estimate.

What does this have to do with Net neutrality? Well, WiMax is one of several emerging technologies that stand to reshape the Internet-service industry in the coming years. Those who argue that the government should enforce some politician's idea of "neutrality" on Internet service claim that the phone and cable companies enjoy a comfy duopoly on providing Internet access to consumers. According to this reasoning, these companies need to be regulated so they don't abuse their market position by trying to erect "tolls" on the information superhighway.

High-speed wireless Internet access, however, means no more duopoly. And WiMax is not the only contender. Starting today, the Federal Communications Commission is auctioning a big swath of wireless spectrum for cell-phone providers. The auction is overdue and beset by market-distorting preferences for certain bidders, but with luck the result will be a lot more wireless bandwidth to go around.

WiMax, meanwhile, operates in unlicensed spectrum, meaning Sprint doesn't have to shell out money in auctions to deploy the technology. WiMax is like a wireless home network or a hot-spot in a coffee-shop, but it works over much longer distances, allowing greater coverage and a wider variety of uses. WiMax is still unproven in a roll-out of this size, but the fact that Sprint is spending billions to give it a go is testimony to the dynamism of the high-speed Internet market.

A decade ago, the conventional wisdom was that the old-fashioned copper-wire phone network was an "essential facility." That is, it was unique, valuable and couldn't be replicated, so competition with the Baby Bells was impossible unless the "last mile" to homes was opened up to competitors to use. Today we have cable companies offering phone service and more and more cell-phone subscribers every day.

A similar thing is happening in the high-speed Internet space. Those who want to regulate broadband providers are saying that the phone and cable networks are too valuable and too hard to replicate for anyone to break up the duopoly. We guess Sprint didn't get the memo. If Congress should for some reason lose its cool and give in to the MoveOn.org crowd pushing for greater Internet regulation, it will likely come just in time for its backers, once again, to be proven wrong about the absence of competition in telecom.

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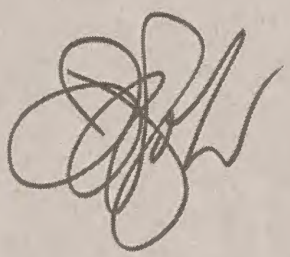

Jim Tobin, President &
Chief Executive Officer

Boston Scientific

by Ross Rubin

PICKING YOUR PACKET

Are we on course for Net neutrality or Net brutality? We place our bets on the future Net.

More than 40 percent of Americans now have broadband access, mostly through local cable monopolies or rapidly consolidating telecoms like Verizon or AT&T. These companies claim that they want to make improvements in their network to support new kinds and new tiers of service, which could lead to them forcing online content and service providers to "pay for play" or even favoring homegrown content and services.

Opponents of these plans argue that carriers shouldn't discriminate among the packets on their networks; Internet Service Providers should adhere to "Net neutrality," lest they upend the level playing field that has allowed companies such as MySpace, YouTube, and Digg to amass vast audiences with little or no advertising. Even worse, broadband service providers could degrade the performance of VoIP services such as Vonage in favor of their own VoIP offerings like Verizon's VoiceWing.

If the current Congressional climate prevails, Internet neutrality mandates will disappear. In that case, here are a few scenarios on how the future could pan out.

Scenario: Parallel Pipes

ISPs favor content partners that pay for play and let consumers take advantage of enhanced video services for premium prices, but in bowing to public sensitivity and potential competitive pressures, offer customers the option of having their traffic routed in a way that doesn't favor any content or services at their current prices. This preserves the de facto Internet neutrality for them.

NET BRUTALITY

NET PROBABILITY **60 percent**

Scenario: Don't Shed a Tier

ISPs heavily favor content partners that pay for play and raise rates for most of their customers. However, to avoid too loud of an outcry and in the name of closing the digital divide, they offer a tier of service below today's prices that preserves basic connectivity, albeit at reduced bandwidth that doesn't offer good video performance.

NET BRUTALITY

NET PROBABILITY **30 percent**

Scenario: Net of the Long Knives

Seizing on the worst fears of groups like the "Save the Net" coalition, broadband ISPs block content to any site that doesn't tithe by the terabyte. Most consumers are forced to choose between the Internet subset of their local DSL provider and their cable provider as bidding wars for distribution drive all but the megaportals and Fortune 500 service sites out of business.

NET BRUTALITY

NET PROBABILITY **10 percent**

Broadband ISPs are unlikely to fiddle too much with the basic benefits of broadband access, especially in the short term. Furthermore, they're unlikely to degrade the level of service offered today for most sites, especially if there's an opportunity to sell consumers higher levels of baseline bandwidth.

In short, the fear regarding Internet neutrality generally fails to account for competition and customer demand. The Internet grew to where it is today because of open access, but even today there are vast differences in site performance because of Web sites' infrastructure investments and traffic patterns. Internet neutrality can prevent abuses, but it may also neutralize a rising tide that could lift all bits.

Ross Rubin is director of industry analysis for The NPD Group, a market research and analysis firm. He writes the Portable Pundit column for LAPTOP and the Switched On column for Engadget.

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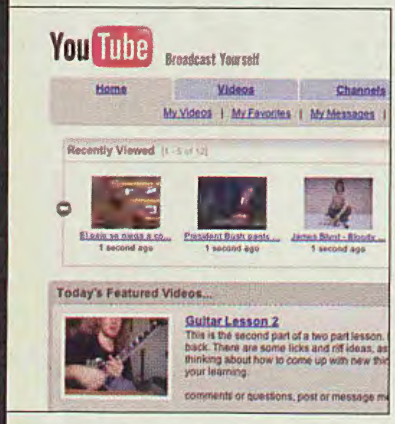
Keep the Net Neutral

If the online universe has had an unofficial slogan to date, it might have been the caption to that famous cartoon by Peter Steiner: "On the Internet, nobody knows you're a dog." Not only do digital communications allow anonymity, but the underlying TCP/IP protocols that govern the flow of data are supremely egalitarian. Everybody's packets of information are treated equally by the routers. Thanks to that level playing field, entrepreneurs working out of their garages have been able to compete toe to toe with Fortune 500 companies in new businesses.



WHO WILL PAY for online video?

But with the rising popularity of streaming video and miscellaneous other services labeled "Web 2.0," some telecommunications companies are arguing that this model of "net neutrality" must change. Online video quality is relatively intolerant of even small transmission delays. AT&T, Verizon, Comcast and other companies that own the backbone lines for the Internet would like to prioritize data streams to make the traffic flow more rationally. If they have their way, the Internet's next slogan might borrow from George Orwell's *Animal Farm:* "All animals are created equal, but some animals are more equal than others."

The telcos propose "tiered service" for providers of Web content. Currently those providers pay just for the bandwidth they use, but the telcos also want to charge them a premium for guarantees that their data will get preferential treatment. The telcos argue that they will need to invest to handle the growing bandwidth demand. The only alternative to charging the content providers is to charge individual consumers more for access, which seems undesirable.

Critics see a catch. Companies that sign with the telcos, or the content arms of the telcos themselves, could have a huge advantage over their rivals—an antimeritocratic arrangement that would distort competition and handicap start-ups. In the most abusive situations, some Web sites would become virtually unusable. And of course, the expense of those extra fees will eventually get passed along to consumers anyway in higher costs for content.

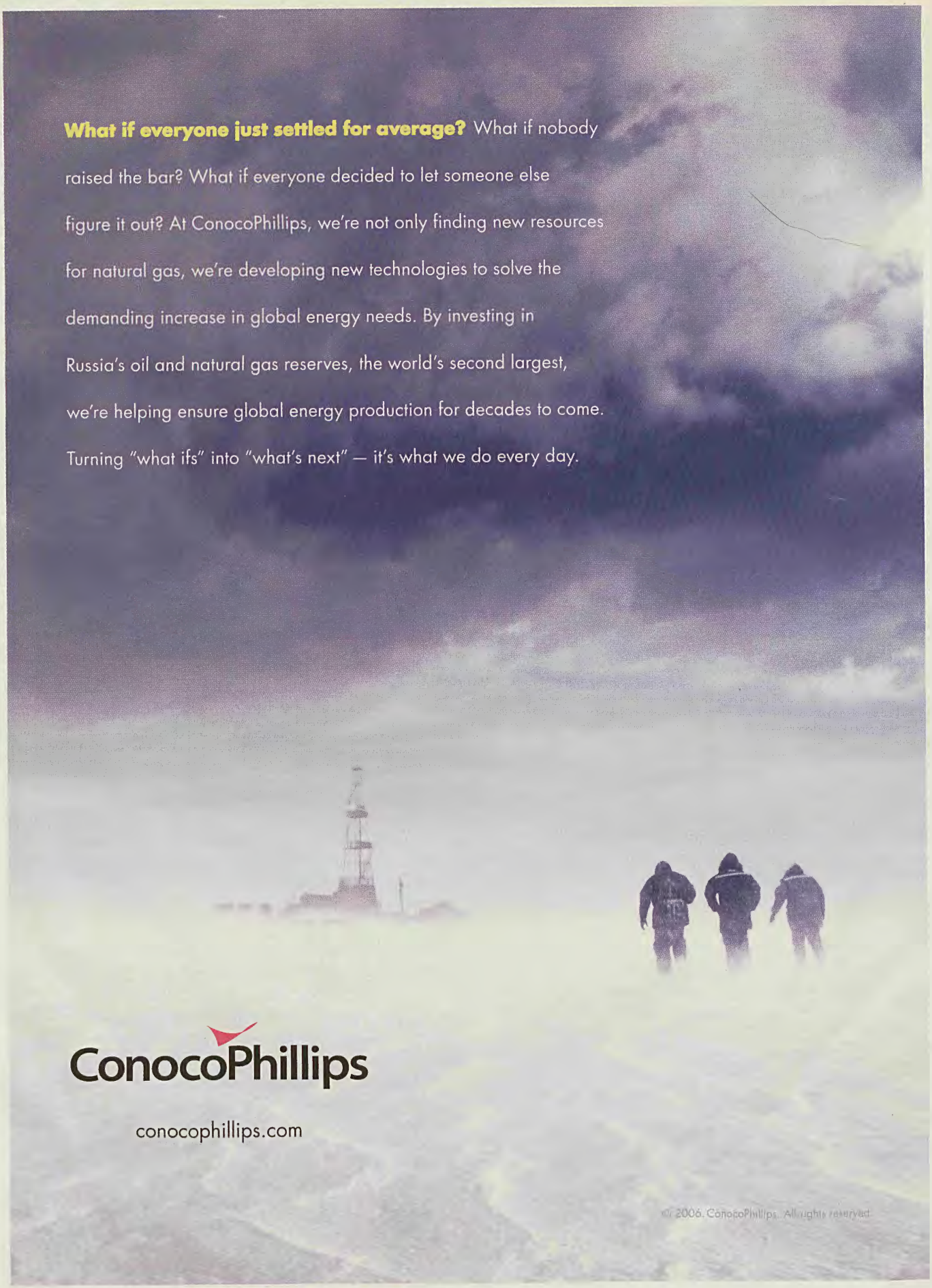
On balance, those favoring net neutrality make the better case. A system for prioritizing data traffic might well be necessary someday, yet one might hope that it would be based on the needs of the transmissions rather than the deal making and caprices of the cable owners. Moreover, personal blogs and other Web pages are increasingly patchworks of media components from various sources. Tiered service would stultify that trend. If the costs for video are not to be universally shared, perhaps it will ultimately be fairer and more practical for individuals to pay for the valued data they receive.

Ending net neutrality might feel safer if the telcos did not often enjoy local monopolies on broadband service. Almost half of all Americans have limited or no choice if they want high-speed connections. That dearth of competition lowers incentives for the telcos to keep overall network service high.

In June the House of Representatives dealt net neutrality a blow by passing an overhaul of the Telecommunications Act of 1996 that specifically omitted any protections for it. The Senate is drafting its own sweeping telecommunications reform bill. To express your preferences on this important issue, contact your congressional representatives and consider signing one of the dueling petitions organized at SavetheInternet.org (favoring net neutrality) and HandsOff.org (against it).

KRT

THE EDITORS editors@sciam.com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INSIDE THE BELTWAY

By John McCaslin

Can he fly?

With **Osama bin Laden** still breathing down his neck and Iran standing stubborn if not firm on nuclear expansion, **George W. Bush** finds he doesn't have enough time remaining to be a lame-duck president.

"If Bush goes home with Iran's nuclear program not shut down," frequent conservative critic **Patrick J. Buchanan** wrote this week, "his legacy will be Iraq and a failed presidency."

Certainly not a legacy Mr. Bush wanted to leave for historians. Nevertheless, as **President Clinton** proved before him, there's still time to rebound.

James R. Hedtke, author of "Lame Duck Presidents: Myth or Reality," writes in the current issue of the Ripon Forum: "With two years left in office, Bush stands at the crossroads of his presidency. Though the prospects for a successful final [22] months in office look dim, there is still a glimmer of light. That Clinton could reinvigorate a beleaguered presidency in 1999 should give hope to Bush in 2007."

Mr. Hedtke says the success or failure of Mr. Bush hinges largely on events in Iraq, not on his lame-duck status. And if his recent "policy and command changes in Iraq prove to be effective, this lame duck might yet soar."

Glider 'guts'

Walter Cronkite and **Andy Rooney**, who were among eight civilian and military combat journalists making up "The Writing 69th," both make appearances in the new film "Silent Wings: The American Glider Pilots of World War II."

Narrated by actor **Hal Holbrook**, the long-overdue film on an almost-forgotten fighting force interviews several surviving glider veterans and features rare archival footage and photographs that "put the audience right at the center of the action in the hazardous world of the American glider pilot."

"Being a glider pilot was one of the toughest assignments in the war," said the film's producer-director, **Robert Child**. "These heroic men flew troops and supplies into battle — landing virtually on top of the enemy. If they survived the crash landing, then they fought on the ground.

"Thousands of lives were saved and battles won because of their efforts. In fact, one pilot we interviewed said the 'G' in their emblem didn't stand for glider; It stood for 'guts.' "

One general described glider pilots as "the most uninhibited individuals ever to wear an American uniform."

Lessons of corn

In between one lawmaker's revelation that illegal aliens were using Uncle Sam's services to wire money home to Mexico, and another congressman's call for the country to apologize for slavery, a passage from **John Steinbeck**'s "The Grapes of Wrath" filtered up from the House floor this week.

"The people came out of their houses and smelled the hot stinging air and covered their noses from it," read **Rep. Sam Farr**, California Democrat. "Men stood by their fences and looked at the ruined corn, drying fast now . . .

"And the women came out of the houses to stand beside their men — to feel whether this time the men would break. The women studied the men's faces secretly, for the corn could go, as long as something else remained," the congressman continued. "After a while, the faces of the watching men lost their bemused perplexity and became hard and angry and resistant. Then the women knew that they were safe."

Yes, it would do lawmakers good to equate these lessons of corn to the fight against terrorism. Mr. Farr, however, was merely celebrating the late author's birthday, Feb. 27, 1902.

President Bush's legacy still has a "glimmer of light" in his term's final months, as his predecessor showed in his lame-duck rebound.

Associated Press

Chip and dip

There was a great deal of response to our item this week about **President Bush** purportedly "double dipping" during a recent White House event — as in, taking one bite out of dip-laden finger food, whether it be a corn chip or carrot, only to then dip the remainder of the snack back into the communal dip bowl.

"I am moved to respond," says **Dan Kuester** of the Iowa State University News Service in Ames, Iowa. "Experienced dippers know that the easiest way to avoid taking two dips, despite what your 'expert' advocates, is to simply break your dipping stick into two pieces and dip one time with each.

"For instance: If the carrot is too long and will require more than a single swim in the dip pool, simply break it. Then you may enjoy two dip-covered, guilt-free, germless pieces of dip-covered yumminess without the social embarrassment of the dip-mouth-dip-mouth progression — known in the vernacular as the double dip."

Finally, a woman who didn't identify herself writes: "I swear, I almost drowned giggling in my bathtub. Gourmet magazine (March 2007), p.49: National Chip and Dip Day is March 23."

● *John McCaslin, whose column is nationally syndicated, can be reached at 202/636-3284 or jmccaslin@washingtontimes.com.*

Poor education found in states

Business sector grades efforts

By Amy Fagan
THE WASHINGTON TIMES

U.S. Chamber of Commerce leaders yesterday said states are doing a poor job educating America's children for the future, citing a new report by the chamber that graded each state in areas from academic achievement and teacher quality to how wisely a state is spending its education dollars.

"This is an effort to do what is responsible for America's youth," said chamber President Thomas J. Donohue. "Our study has found that when it comes to education, the states aren't making the grade."

The study, conducted with help from the Center for American Progress (CAP) and the American Enterprise Institute, compiled and analyzed data from other research, the National Assessment of Educational Progress (NAEP) and a national survey of teachers. States received letter grades in nine categories but no overall rankings.

Arthur Rothkopf, senior vice president of the chamber, said the report identifies "leaders and laggards."

Massachusetts, Minnesota and New Hampshire topped the list of 10 states that received A's for academic achievement. New Mexico, Mississippi and the District took the three lowest slots among the 10 that received F's. Grades were based on an analysis of the 2005 NAEP, a test given to a sampling of students nationwide.

John Podesta, president and chief executive officer of CAP, pointed out variations. He said Massachusetts, the top state for academic achievement, showed only 44 percent of fourth-graders proficient in reading and 49 percent proficient in math — numbers he called "unconscionable."

The study also examined whether states presented accurate information or overstated student performance. Massachusetts, Maine, South Carolina, Wyoming and Missouri received A's for honesty. Oklahoma and Tennessee received F's, and 15 other states that were deemed to be sugarcoating performance got D's.

Most states received A's or B's on teacher quality. Six received D's, and Rhode Island got an F. The scores were based largely on whether states test teachers in both basic and subject-specific areas, and whether they recruit and test non-teaching professionals.

In a comparison of education spending with student performance, 10 states — including Utah, North Carolina and Washington — received A's. The District and nine states — including Hawaii and New Mexico — failed.

The report was issued as the National Governors Association ended its winter meeting. Governors considered a federal framework to help states, institutions of higher learning and the private sector work together on innovations to improve proficiency in math and science, increase the number of science and engineering students, among other goals.

The chamber yesterday suggested higher starting salaries for teachers, removing ineffective educators and giving principals more control over budget and personnel. Chamber officials said the business community can give schools examples of management improvements, data collection and innovation.

"We want the business community at the table at every state," Mr. Rothkopf said.

Left out

A family member of a September 11 victim says Senate Democrats invited him to Washington then snubbed him yesterday after he criticized a bill adopting 9/11 commission recommendations.

"They made me sit in the hallway for 40 minutes for nothing," said **Bruce DeCell**, a former New York City police officer whose son-in-law was killed at the World Trade Center on September 11.

He was invited by the Senate Democratic Steering and Outreach Committee to represent victims' family members at a lunch and press conference that included Senate **Majority Leader Harry Reid** of Nevada, **Sen. Hillary Rodham Clinton** of New York and **Sen. Frank R. Lautenberg** of New Jersey.

Mr. DeCell, a board member of the World Trade Center United Family Group and vice president of the 9/11 Families for a Secure America, said he was asked to wait in the hall for his turn at a press conference but ended up waiting until it was over.

"I personally don't care if I'm at the press conference or not," he said. "If they don't want me, they could tell me, and I would just go home."

Thomas Russell, director of the steering committee, later called and apologized, saying he was "being pulled in too many directions and he forgot to come and get me," Mr. DeCell said.

Mr. DeCell called the explanation "disingenuous."

"If there were 20 of us and he forgot one, I'd understand it," he said. "I was the only family member who traveled down here for this."

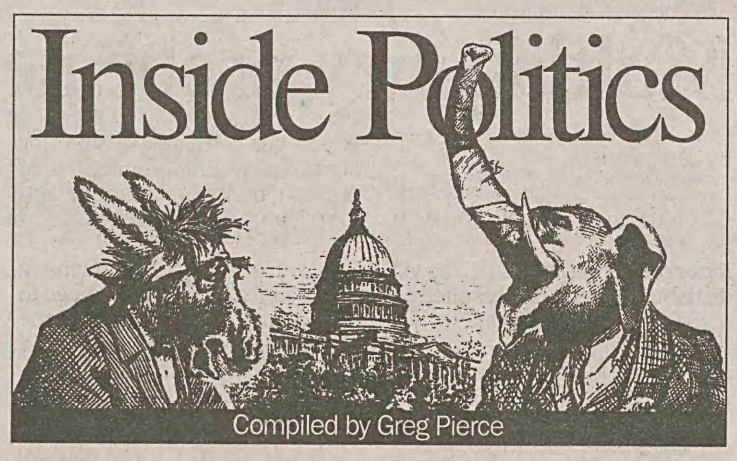
Opting out

Rep. Peter Hoekstra, Michigan Republican, said yesterday he will advance a bill that will let states opt out of **President Bush**'s No Child Left Behind education law.

"We're going to provide an alternative" to the five-year-old law, Mr. Hoekstra said at a Heritage Foundation forum. "We think this is the direction to go."

Mr. Hoekstra said Republicans sold out their principles by allowing No Child Left Behind to become law in the first place, because now that it's in place it will only grow in both funding and regulations. "We are on the doorstep of having a national

Inside Politics



Compiled by Greg Pierce

federal curriculum," he said, calling this possibility "devastating."

The act — which Mr. Bush and some top lawmakers are working to renew this year — aims to have all students proficient in reading and math by 2014 by requiring states to test children annually and to set standards that schools must meet each year.

Mr. Hoekstra's bill, to be introduced next week, would allow state leaders to declare that their state is responsible for educating its own children, thereby freeing the state from No Child Left Behind mandates.

Mr. Hoekstra said it's needed, since there's already pressure to expand the law. He noted that even a conservative — **Rep. Zach Wamp**, Tennessee Republican — teamed up with fitness guru **Richard Simmons** yesterday to advocate adding physical education to No Child Left Behind.

Ridge and McCain

Former Homeland Security Secretary **Tom Ridge** will serve as national co-chairman of Republican **John McCain**'s presidential exploratory committee, the campaign said yesterday.

Mr. Ridge, a former two-term Pennsylvania governor, served as first head of the Department of Homeland Security from 2003 to 2005.

"What sets John apart is his ability to form coalitions around a common, principled cause. Our country is at a crossroads, and John McCain is the leader who fundamentally knows what it takes to move us forward and keep us safe," Mr. Ridge said.

Campus crusade

Conservative activist **David Horowitz** continues fighting political correctness on America's college campuses, and will bring the battle to Washington this weekend with his second annual Academic Freedom Conference.

The conference Saturday and Sunday at the Omni Shoreham Hotel, sponsored by Students for Academic Freedom (SAF), will follow on the heels of the three-day Conservative Political Action Conference, which begins today at the same location.

Former Sen. **Rick Santorum**, Pennsylvania Republican, will give Saturday's keynote address at the SAF conference, which also will feature panel discussions with student activists from across the country.

On Sunday, Mr. Horowitz — whose new book, "Indoctrination U.," chronicles his campaign for fairness in academia — will debate **Cary Nelson**, president of the American Association of University Professors, on the topic, "Political Indoctrination and Harassment on Campus: Is There a Problem?"

"In the past year, we have succeeded in persuading two universities, Pennsylvania State University and Temple University, to adopt new academic freedom protections, which — for the first time — give students explicit academic rights," Mr. Horowitz said. "These are major victories, but it is crucial that we address not only how far we have come, but how far we have yet to go."

Group fined

A conservative independent group that ran millions of dollars in ads against Democratic presidential candidate **John Kerry** in 2004 will pay $750,000 to settle charges that it violated federal campaign laws.

The penalty, announced yesterday by the Federal Election Commission (FEC), is the third-largest in the history of the commission, which regulates election money. The FEC's six commissioners approved the settlement unanimously, the Associated Press reports.

The group, Progress for America Voter Fund, raised nearly $45 million in 2004, making it the best-financed Republican-oriented group in that campaign. The FEC said that it "failed to register and file disclosure reports as a federal political committee and accepted contributions in violation of federal limits."

Benjamin Ginsburg, an attorney for the Progress for America Voter Fund, said the group was not admitting guilt. He blamed the FEC for not setting clearer guidelines for independent groups that seek to influence elections.

In December, the FEC settled cases against three similar groups — liberal and conservative — that acted in a like fashion.

Award winners

Accuracy in Media (AIM) will honor **Michelle Malkin** and **Mark M. Alexander** for outstanding contributions to journalism in a ceremony today during the American Conservative Union's 2007 Conservative Political Action Conference.

The Reed Irvine Accuracy in Media Award is named for AIM's founder, **Reed Irvine**, who was America's first media watchdog.

Mrs. Malkin is a syndicated columnist, author, Fox News Channel contributor and a blogger. Mr. Alexander is executive editor and publisher of the Patriot Post (www.patriotpost.us).

Mrs. Malkin will receive the Reed Irvine Accuracy in Media Award for Investigative Journalism in recognition of her work in three 2006 columns on illegal immigration — "Racism gets a whitewash," "Reconquista is real" and "'La Raza' schools: Your tax dollars at work."

Mr. Alexander's May 12, 2006, piece, "Pollaganda — media polls as instruments of propaganda," earned him the Reed Irvine Accuracy in Media Award for Grassroots Journalism.

• *Greg Pierce can be reached at 202/636-3285 or gpierce@washingtontimes.com.*

Jefferson gets homeland security seat

By Audrey Hudson and Jerry Seper
THE WASHINGTON TIMES

The Justice Department's ongoing bribery investigation of Rep. William J. Jefferson of Louisiana did not prevent Democrats yesterday from appointing him to the Homeland Security Committee.

House Speaker Nancy Pelosi, California Democrat, removed Mr. Jefferson from the prestigious Ways and Means Committee last year citing the investigation but says "homeland security is an appropriate place for him to be."

The appointment angered Republicans who vowed to break decades of precedent and demand a recorded vote when Democrats bring the measure to the floor.

"House Democrats and their leaders should immediately reconsider this baffling and troubling decision," said Minority Leader John A. Boehner, Ohio Republican.

"The Democrats previously determined Congressman Jefferson is unfit to serve on the Ways and Means Committee, which oversees the nation's finances and trade, so it is difficult to comprehend how they can approve of Congressman Jefferson's fitness for a seat on the Homeland Security Committee, with access to America's most sensitive and closely guarded intelligence information," Mr. Boehner said.

The threat is likely to prompt Democrats to ratify Mr. Jefferson's seat in a late-night voice vote, but a senior House Republican aide says Republicans will monitor floor proceedings day and night to block the unanimous-consent measure.

"Members rarely, if ever, oppose another party's steering committee selection," the aide said of the confirmation practice, which predates World War II.

"It's usually a sleeper vote, these votes historically come up with very little fanfare because it's an arrangement that we don't mess with each others' appointments. There has been no reason to, until now," the aide said. "This is a big break in precedent."

Mr. Jefferson dismissed the Republicans' call for a vote as "simply politics as usual" and said that "as the congressional member who represents hurricane-ravaged New Orleans," he is particularly needed on "this panel, which oversees FEMA and examines how to improve federal response to natural disasters like Hurricane Katrina."

He said of Mrs. Pelosi that "all she is trying to do is come to the aid of Louisiana constituents who were devastated some 18 months ago . . . the same people who were unable to receive the federal assistance they needed on the watch of the very same Republican leadership."

Mr. Jefferson, the focus of an FBI bribery investigation, was videotaped in July 2005 accepting $100,000 in $100 bills from an FBI informant who was wearing a wire. According to an 83-page FBI affidavit in the probe, agents found $90,000 hidden in a freezer in his Northeast Washington home in August.

The affidavit, filed to support a subsequent raid on his congressional office, said the cash was wrapped in aluminum foil and stuffed inside frozen-food containers. Serial numbers found on the currency in the freezer matched serial numbers of funds given by the FBI to their informant.

In January 2006, former Jefferson aide Brett M. Pfeffer pleaded guilty to bribery-related charges, saying the congressman demanded money in exchange for brokering two African telecommunications deals.

Four months later, Vernon Jackson, chief executive of IGate Inc., a Louisville, Ky., telecommunications firm, pleaded guilty to bribery, saying he gave cash to Mr. Jefferson and his family members in exchange for help obtaining business deals in Nigeria, Ghana and Cameroon. Jackson was sentenced to 7 years and 3 months in prison.

According to the affidavit, the FBI uncovered "at least seven other schemes in which Jefferson sought things of value in return for his official acts."

Mr. Jefferson has not been charged and has denied any wrongdoing.

"In the real world, Mr. Jefferson wouldn't even be given a job as a security guard until and unless the issue of the $90,000 in his refrigerator was resolved satisfactorily," the Republican aide said. "Common sense dictates that the same standard, at least, should be applied for a job protecting our national security."

Atheists seek legal right to fight Bush program

ASSOCIATED PRESS

The Supreme Court wrestled yesterday with the question of whether taxpayers have the right to challenge the White House's promotion of federal financial aid for religious charities.

At issue is whether a Wisconsin-based group of atheists and agnostics have legal standing, by virtue of being taxpayers, to bring their complaint in the federal court system.

Taking one extreme, Justice Stephen G. Breyer asked a lawyer for the White House whether a taxpayer would be able to challenge a law in which Congress sets up a church at Plymouth Rock.

"I would say no," responded Solicitor General Paul D. Clement, but he added that such a church could be challenged in other ways — just not on the basis that a taxpayer has been injured. Mr. Clement is representing the Bush administration, which is trying to prevent the taxpayer lawsuit over its promotion of federal aid through the White House Office of Faith-Based and Community Initiatives.

Taking the opposite extreme, Justice Antonin Scalia asked an attorney for the Wisconsin group whether taxpayers would be able to sue over the use of security money for a presidential trip during which religion is discussed.

Andrew Pincus said that taxpayers would not have standing to do so, arguing that in such a case the money spent would be "incidental," and not central to the issue.

The case may turn on a 1968 Supreme Court decision that created an exception to the general prohibition on taxpayer challenges to the government spending of tax revenue. In an 8-1 decision by Chief Justice Earl Warren, the court allowed taxpayers to challenge congressional spending for private religious schools.

World scene

BRITAIN

Anglicans accept homosexual members

LONDON — The Church of England's assembly yesterday affirmed existing teaching that homosexuality is no bar to full participation in the church but avoided the fractious debate within the Anglican Communion about accepting homosexual relationships.

A motion approved nearly unanimously by the governing General Synod disposed of language including a commitment to "respect the patterns of holy living to which lesbian and gay Christians aspire," but affirmed "that homosexual orientation in itself is no bar to a faithful Christian life or in full participation to lay and ordained ministry."

GERMANY

Muslims urged to renounce Islam

BERLIN — A group of human rights campaigners have set up an organization to encourage Germans to renounce Islam and criticize the country's Muslim bodies, the founders said yesterday.

Iranian-born Mina Ahadi said she established the Central Council of Ex-Muslims as a counterweight to groups she said wrongly claimed to represent 3.3 million Germans.

Germany's Central Council of Muslims, one of the bodies targeted by the new group, declined to comment, but association leader Ayyub Axel Koehler told the Tagesspiegel daily newspaper last month that he did not understand the motives of the new group but defended its right to exist.

"We have to criticize these organizations and we have to criticize Islam which degrades women. That is why we have founded this movement," said Ms. Ahadi, who has been under police protection for several months.

WEST BANK

Israeli troops kill 3 Palestinians

JENIN — Israeli troops fatally shot three Palestinian militants in the West Bank town of Jenin yesterday and raided the nearby city of Nablus for the second time this week, placing tens of thousands of people under curfew.

The army said the Islamic Jihad militants who were shot in Jenin had planned a suicide bombing in Tel Aviv that was thwarted last week. The dead included Ashraf Saadi, a spokesman for the group.

Witnesses said the militants were sitting in a car when undercover troops fired at them from another car. Two militants were killed in the car and the third, Mr. Saadi, was fatally shot trying to escape, the witnesses said. The army said the militants fired first.

NAMIBIA

Mugabe visit stirs anger

WINDHOEK — Hundreds of people protested a visit yesterday by Zimbabwean President Robert Mugabe, holding signs reading, "Go home dictator."

Police cordoned off the Zimbabwean Embassy, where demonstrators gathered. The local National Society for Human Rights called Mr. Mugabe's three-day state visit an insult to Namibia.

Mr. Mugabe, who arrived Tuesday, has faced international condemnation for his autocratic rule and poor human rights record.

UNITED NATIONS

Cultural team tours disputed excavation

JERUSALEM — A team from the United Nations Educational, Scientific and Cultural Organization toured yesterday an Israeli archaeological excavation that Muslims fear could damage Islam's holiest site in Jerusalem.

Israel says the dig, 165 feet from a religious compound known to Muslims as the Noble Sanctuary and to Jews as Temple Mount, will do no harm to the Dome of Rock and Al Aqsa mosques on the plaza, which overlooks Judaism's Western Wall.

Israeli archaeologists began what they called a "rescue excavation" at the site on Feb. 7 to salvage artifacts before planned construction of a walkway leading up to the complex, where the two biblical Jewish Temples once stood.

PAKISTAN

Militants behead Afghan teacher

DERA ISMAIL KHAN — Islamist suspects captured and beheaded an Afghan teacher whom they accused of being a spy for the United States, an official said yesterday.

The man's body was found early Tuesday in a large sack dumped by a road near Jandola, a town in the South Waziristan tribal district, the local security official said. He asked not to be identified because of the sensitive nature of his job.

The area is a stronghold for pro-Taliban militants suspected of harboring al Qaeda remnants in remote tribal regions along a porous, poorly defined section of border between Pakistan and Afghanistan.

From wire dispatches and staff reports

FROM PAGE ONE

KOREA

From page A1

Associated Press

North Korea's senior Cabinet councilor, Kwon Ho-ung (left), yesterday met South Korean Unification Minister Lee Jae-joung in Pyongyang, North Korea, for the first formal negotiations between the neighbors in seven months.

by the two countries' chief nuclear negotiators, Christopher Hill and Kim Kye-gwan. Mr. Kim is expected to arrive in San Francisco today and meet with nongovernmental groups in the San Francisco Bay Area before heading to New York tomorrow.

North Korea has also invited Mohamed ElBaradei, director-general of the International Atomic Energy Agency, to Pyongyang for talks on dismantling the North's nuclear facilities.

On Capitol Hill, Lt. Gen. Michael Maples, head of the Defense Intelligence Agency, said on Tuesday that recent information and analysis show the North has taken initial steps to close its main nuclear reactor at Yongbyon.

"There are parts of this nuclear program that we have to pay a lot of attention to, to see if we have the kind of disclosure and the inspection capabilities that we are looking for," he told the Senate Armed Services Committee.

Joseph DeTrani, mission manager for North Korea in the Director of National Intelligence's office, said the United States will continue to insist that the North declare all of its nuclear programs, including the suspected enrichment of uranium.

Pyongyang has never admitted publicly to having such a program, though U.S. officials insist the North Koreans acknowledged it when confronted with evidence in 2002.

Mr. DeTrani said the U.S. has "high confidence" that North Korea was acquiring materials for a production-scale enrichment program in 2002. The assessment of the program's continued existence is "at the mid-confidence level," he said.

The six-party talks, which produced the Feb. 13 agreement, began in 2003 but were dogged by repeated North Korean boycotts. The last one followed Washington's successful effort in 2005 to persuade a Macao bank to freeze about $24 million in North Korean assets.

Mr. Hill, assistant secretary of state for East Asian and Pacific affairs, indicated yesterday that the Treasury Department may be ready to ease those restrictions, saying that such a development "will not solve all of North Korea's problems with the international financial system."

"It must stop its illicit conduct and improve its international financial reputation in order to do that," Mr. Hill told the House Committee on Foreign Affairs.

In Pyongyang yesterday, senior officials from the two Koreas held their first formal negotiating session in seven months.

The South's chief delegate, Unification Minister Lee Jae-joung, criticized the North for conducting missile and nuclear weapons tests last year and urged it to "quickly implement the Feb. 13 agreement," said spokesman Lee Kwan-se.

North Korea's senior Cabinet councilor, Kwon Ho-ung, defended his country's missile tests as a "legitimate right for self-defense as a sovereign nation," but remained silent on the nuclear issue.

The North will hold talks with Japan on establishing diplomatic relations and resolving other disputes March 7 and 8 in Vietnam, Japan's Chief Cabinet Secretary Yasuhisa Shiozaki said yesterday.

● *This article is based in part on wire service reports.*

Israel's first Arab president has Web abuzz

By Joshua Mitnick
THE WASHINGTON TIMES

TEL AVIV — Israel got its first Arab president this week, a temporary position in a largely ceremonial post. It was a minor item in most newspapers and television, but the buzz on the Internet reflected deep divisions in the Jewish state, where one in five citizens are Arab.

When Israel's acting President Dalia Itzik, a Jew, left for a one-week visit to the U.S. on Tuesday, Majalli Wahaba, a Druze, automatically became acting president until Ms. Itzik returns.

Mr. Wahaba, a deputy speaker in parliament, also owes his sudden promotion to rape accusations against Israeli President Moshe Katsav, who took a leave of absence.

That scandal vaulted the parliament speaker, Ms. Itzik, to the position of acting president. Mr. Wahaba is the only deputy parliamentary speaker from the ruling Kadima party, placing him in line for the presidency.

As acting president, Mr. Wahaba wields the power to grant clemency to prisoners, receive foreign ambassadors and attend official ceremonies on behalf of the state.

Beyond that, the presidency is largely a symbolic position that was established to elevate the head of state above politics.

"With our own hands, we are bringing the Arab occupation on Israel," wrote one blogger.

Wrote another: "I love the Druze, but we've lost our traditions — a disgrace." A third asked: "There's no democracy. How can Arabs take control of the Jews?"

There were also supportive messages sending congratulations to the Druze community and proclaiming "a great day for the state of Israel."

"Nice going. The Druze are our brothers, and they deserve equality," said one.

Israel's Arab minority, about one-fifth of the population, traditionally has been underrepresented in government.

The first Arab Supreme Court justice was appointed several years ago, and in January, Raleb Majadele from the Labor Party was named as the first Arab Cabinet minister in Israel's history.

"It's considered a part of making cosmetic changes without really dealing with the problems inside the Arab community," said Jafar Farah, director of the civil rights group Mossawa.

"It's good that at a time that people are calling to transfer the Arab population [to control of the Palestinian Authority], that Arab representatives are sitting in different positions, but in practice, it doesn't change anything."

Unlike most Israeli Arabs, who avoid army service, Mr. Wahaba, 53, rose to the rank of lieutenant colonel in the Israeli Defense Forces.

He first ran for parliament with the Likud Party in 2003, and then went with former Prime Minister Ariel Sharon when Mr. Sharon split from Likud to form Kadima in 2005.

More commentary at www.washingtontimes.com

Commentary

Beijing's diplomatic strategy

By William Hawkins

Iranian President Mahmoud Ahmadinejad defiantly proclaimed on Feb. 25 that "Iran has obtained the technology to produce nuclear fuel, and Iran's move is like a train ... which has no break and no reverse gear."

Deputy Foreign Minister Manouchehr Mohammadi then warned that "We have prepared ourselves for any situation, even for war." The International Atomic Energy Agency (IAEA) had announced three days earlier that Iran has expanded its uranium enrichment efforts, rather than freeze them as required by the U.N. Security Council.

The Bush administration's response had been to call for U.N. economic sanctions, but China and Russia are expected to delay and water down any action against Tehran. Between the IAEA finding and Mr. Ahmadinejad's outburst, Beijing reports Foreign Minister Li Zhaoxing talked with his Iranian counterpart and "reiterated the principled position of peacefully solving the Iranian nuclear issue through diplomatic efforts." This means endless dialogue, but no action by anyone except Iran.

Mr. Ahmadinejad was undoubtedly encouraged by the outcome of China's other major diplomatic effort, the Six-Party talks on North Korea. Beijing decided to "host" these talks in 2003 to head off a regime change in Pyongyang similar to the one the U.S. engineered in Baghdad. This is also when Tehran opened negotiations with the Europeans from a similar fear that has now subsided.

In Asia, Beijing has more than accomplished is objective, having pushed for "positive incentives" to prop up Kim Jong-il's dictatorship without forcing North Korea to give up the small stockpile of nuclear weapons, which are its ultimate deterrent.

Secretary of State Condoleezza Rice has been frank enough to say the new Six-Party deal is only an "important initial step toward the goals of a denuclearized Korean Peninsula" and that the process is still only in "the first quarter" of the game. It will likely fall apart in the implementation phase, as in the past. But the tensions caused by North Korea's tests of missiles and a nuclear bomb have been reduced and Beijing has taken its bows.

Beijing has adopted a traditional Chinese strategy dating back to the ancient Warring States period. This era, when Qin rose from a weak position within a system of competing powers to unite China in 221 B.C., plays a role in Chinese thinking similar to that of the Founding Fathers in America. In the winter Chinese Journal of International Politics, Wei Zongyou, a professor at the Shanghai International Studies University of Foreign Studies, has described Qin's strategy as one of "divide and conquer" as it sought to prevent other states from uniting to block its rise as the new, dominant hegemon.

In the Six-Party system, Beijing started out with Russia on its side. It then played on South Korea's fears of war, desire for reunification, and hope for commercial gain, to further Seoul's appeasement policy toward Pyongyang. Then it only needed to isolate the U.S. by demanding it negotiate with North Korea directly, an appeal that also won support from liberal critics of the Bush administration at home. Bilateral talks took place in Berlin in January. This alienated America's only firm ally in the multilateral negotiations, Japan, which has refused aid to North Korea under the new agreement.

Professor Wei's analysis of Qin fits the needs of Beijing today as a "revisionist state" that must prevent the "status quo" states from uniting against its rise. Like Qin, once Beijing has sufficient power, it will seek to overturn the current order and make additional gains as the new arbitrator of world politics. Professor Wei cites Paul Schroeder, professor emeritus of history at the University of Illinois, to support his argument such revolutions are easier than most people think. In this interpretation of history, the balance of power often fails to contain aggression because "most states, under most circumstances simply cannot bear the burden, and opt for a less costly strategy." Among these strategic choices are "hiding" and "bandwagoning."

There is no shortage of people "hiding" from the implications of China's rise in America and Europe. Beijing is recruiting many smaller, disgruntled states, as attested to by President Hu Jintao's trips through Latin America and Africa. Beijing's ties with Iran also fit Professor Wei's model of those who "choose to bandwagon with revisionist great powers bent on constructing a new international system; they are power-maximizing states" as opposed to the "security-maximizing states" of the more listless status quo powers.

In her very insightful book "War and State Formation in Ancient China and Early Modern Europe," Notre Dame Professor Victoria Tin-bor Hui presents a similar analysis of how "Qin relentlessly pursued self-strengthening reforms, divide-and-conquer strategies and ruthless stratagems." She warns that these "stratagems are still available to political actors who want to upset the liberal world order." A more concise description of Beijing's current behavior would be hard to find.

William Hawkins is senior fellow for National Security Studies at the U.S. Business and Industry Council.

Iran action would test military

By Georgie Anne Geyer

We're getting close to a moral and strategic "high noon" for the reputation of America's brave but bureaucratic military leaders. The sun is shining ever more strongly — and dangerously — over Iran.

Just about any officer from general on down would have told you privately before and after the Iraq war began that he was against it — it was an "adventure," it was ill-planned, it was Donald Rumsfeld's war. But he wouldn't have said it in public because that would mean the purgatory of resignation. Yet now, one retired general after another has gone up to the Hill to testify it was a terrible mistake, and even the generals in charge in Baghdad give negative assessments when asked in Congress what really will happen.

This week a report by Joint Chiefs of Staff Chairman Gen. Peter Pace alerted Congress in the kind of military "shorthand" officers use to say we're in a mess. The report warned of "significant" risk the U.S. military, strained by Iraq and Afghanistan, won't be able to respond to another crisis. This represents a substantive worsening in preparedness from a year ago, when the risk was assessed as "moderate."

Yet, at the same time, there is speculation — and yes, evidence — in Washington these days that the administration and our military leaders are moving ahead toward some kind of strike at Iran: Gen. Pace's "other crisis" right on our doorstep.

Ah, but you say civilian voices from Defense Secretary Bob Gates on down have said we are *not* going to war with Iran. Why am I so suspicious? Well, listen to super investigative journalist Seymour Hersh, who has correctly called virtually every turn from the beginning of the Iraq disaster, commenting on CNN about his new piece on Iran in the latest New Yorker magazine:

"The Pentagon is in the midst of intensive plans to bomb Iran," he says. "In fact, some American intelligence forces have been going into Iran for months. They expect an attack this spring. Much of the senior military leadership does not want it."

Then, speaking of the two carrier groups in the Persian Gulf, which would have to leave through the narrow Strait of Hormuz, Mr. Hersh adds: "They could have a terrible carrier problem in the strait, where they are very vulnerable to attack. The Iranians have hundreds of PT boats that could become suicide boats. My instinct tells me that the president is not going to leave without doing something on Iran."

Of course, everyone agrees — including, amazingly, the Europeans, Russians and Chinese — that there is a real danger from Iran and its nuclear program. But the question is how best to deal with the Persian state. Among our best scholars, the question comes down to whether the United States should develop a strategy to enforce "regime change" or more long-term and lasting "behavior change."

We have a good example in Iraq of exactly how far the administration's foolhardy regime change policy has gotten us — we may soon face a series of regional wars across the entire Middle East. On the contrary, it has worked when the United States and other countries have pursued in-depth, well-considered policies of behavior change, as they have in the past, even with Iran. (Saudi Arabia and the Gulf States normalized relations with Iran in the 1990s, for instance, in exchange for Iran halting support of radical elements within those states.)

In a brilliantly argued piece in the recent Foreign Affairs, Ray Takeyh, senior fellow at the Council on Foreign Relations, argues it is "time for detente with Iran" in place of the present policy of nonrecognition, military threats and cultural insults.

"Washington must eschew superficially appealing military options, the prospect of conditional talks, and its policy of containing Iran in favor of a new policy of detente. In particular, it should offer pragmatists in Tehran a chance to resume diplomatic and economic relations. Thus armed with the prospect of a new relationship with the United States, the pragmatists would be in a position to sideline the radicals in Tehran and try to tip the balance of power in their own favor," he writes.

Mr. Takeyh's recommendations are actually backed by real, palpable changes within Iran that make long-range behavior change a possibility. Local votes within Iran have gone strongly against the fanatical Iranian president. Criticism of him has even come from the supreme leader, Ayatollah Ali Khamenei. Iranian scholars just denounced the sinister Holocaust conference held in Tehran last year, saying it merely provided a pretext for warmongers in the region.

Despite the raving threats of the Iranian President Mahmoud Ahmadinejad, Mr. Takeyh sees him as "not a messianist seeking to usher in a new world order; he is a canny manipulator trying to rouse public indignation in a chaotic neighborhood." And Iran, no longer the messianic Islamic state of the Ayatollah Ruhollah Khomeini in the 1980s, is now a regional power seeking "not assurances against U.S. military strikes but an acknowledgment of its status and influence." Thus, the more we threaten and insult, the more radical and ready to strike out they become.

These are the kinds of rational foreign policy ideas being voiced more and more in America's intellectual establishment — and they offer the only cause for hope we have. Yet our military, so brilliant in training and weaponry, has not seen fit to build these ideas into its policies. They cannot, of course, publicly criticize the president or their civilian leaders. But they are by law supposed to privately give the president their best advice, and there is no evidence this has occurred over Iran.

There are many ways within the Pentagon that power can be used to form and change policy. But if we attack Iran — and it looks as though the U.S. would do it, not Israel — even these small hopes will be sacrificed for years.

Georgie Anne Geyer is a nationally syndicated columnist.

America's unique Internet success

By Scott Cleland

A tech legislative priority of congressional Democrats, "net neutrality," threatens America's unique Internet success, because it would reverse America's 11-year, bipartisan policy to promote competition and not regulate the Internet.

Democratic presidential candidates Sens. Hillary Clinton and Barack Obama, are co-sponsors of Dorgan-Snowe (S.215), a net neutrality bill that for the first time would mandate broadband provide equal treatment to all Internet content. House Speaker Nancy Pelosi also supports net neutrality as does House Telecom Subcommittee Chairman Ed Markey, who plans a series of hearings soon to promote net neutrality legislation.

To justify massive new government intervention in the Internet marketplace, Democrats are busily manufacturing a "broadband crisis" and an "Internet blocking problem" that simply does not exist. Policymaking by false premise is always dangerous. It's downright irresponsible when it threatens to undermine the unregulated Internet, one of the key engines of our nation's economic and productivity growth.

Advocates of new net regulation or "net neutrality," have made up a "parade of horribles" to scare people into the arms of big government regulators. They breathlessly claim government price regulation is necessary to "save the Internet" from a hypothetical discrimination problem, which they can't define, prove or document. To advance their big-government agenda, these critics falsely claim there isn't enough broadband competition to protect consumers; America is falling behind the rest of the world on broadband; and broadband deployment is too slow in reaching all Americans. They are wrong on all counts.

Far from falling behind the rest of the world, America has more broadband connections and more Internet users than any other country. We lead the world in deployment and investment in competitive broadband facilities. America's pro-competition broadband policy has established more facilities-based broadband competition than any other country. As a result, Americans have a unique diversity of broadband access choices. And far from being slow, the rate of Internet and broadband adoption in the United States is happening faster than most any other communications service in U.S. history.

Behind America's unique Internet and broadband success has been a greater reliance on the free-market and deregulation than any other country. Lurking behind the calls for net neutrality is a big-government agenda that seeks greater European-style price regulation and larger subsidies for broadband under the guise of "public-private partnerships." Regulating the Internet would take away consumers' diversity of choices and freedom to choose the best Internet service for their individual needs. Outlawing competitive differentiation would also destroy any investment incentive to dynamically increase the Internet's capacity to handle video and exploding demand.

America has achieved unique Internet success from promoting competition and reducing regulation:

(1) The U.S. is the only country with a national cable infrastructure. Investing more than $100 billion over the last decade, the U.S. cable industry has built the world's fastest universally-available (94 percent), wire line broadband access network.

(2) The U.S. has been uniquely bold in promoting facilities-based competition. Other nations still protect their national monopolies from facility competition by regulating wholesale broadband prices. While regulated reseller competition can produce short-term benefits, free-market, facilities-based competition is necessary to promote innovation, consumer choice and network redundancy long-term.

After some unproductive fits and starts, the bipartisan 1996 Telecom Act's national policy of promoting competition, reducing regulation, and encouraging rapid deployment of new technologies, is finally working.

(3) America is unique in achieving extremely rapid deployment of multiple wireless broadband networks. Fueled by plummeting microchip prices, Verizon, Sprint, AT&T and T-Mobile have over the last three years invested billions of dollars to build out and improve their national wireless broadband networks. This came on top of America leading the world in the number of WiFi hotspots and Sprint and Clearwire beginning to build two additional national WiMax networks.

The critics who dismiss wireless as a competitor to cable modems or DSL are the same naysayers who said wireless would never be a competitive substitute for phone service. More than 10 million Americans have proved them wrong.

Should the government pass a new net neutrality law that would ration bandwidth to force one equal tier of Internet service, where Americans would subsidize a free ride for online giants like Google?

(4) Plummeting microchip prices are also increasing the bandwidth and lowering the cost of satellite broadband, making it an increasingly robust and affordable broadband alternative for those rural hard-to-reach households. The critics who dismiss satellite as a broadband competitor are the same naysayers who said satellite would never be able to compete with cable. The 30 million Americans who use satellite TV have proved them wrong again.

Don't be fooled by critics of broadband competition and supporters of net regulation. Net neutrality is basically a debate between dueling visions for the Internet's future. Should the Internet continue like it is today, unregulated with a broad diversity of consumer choice? Or should the government pass a new net neutrality las that would ration bandwidth to force one equal tier of Internet service, where average Americans would pay more to subsidize a free ride for online giants like Google?

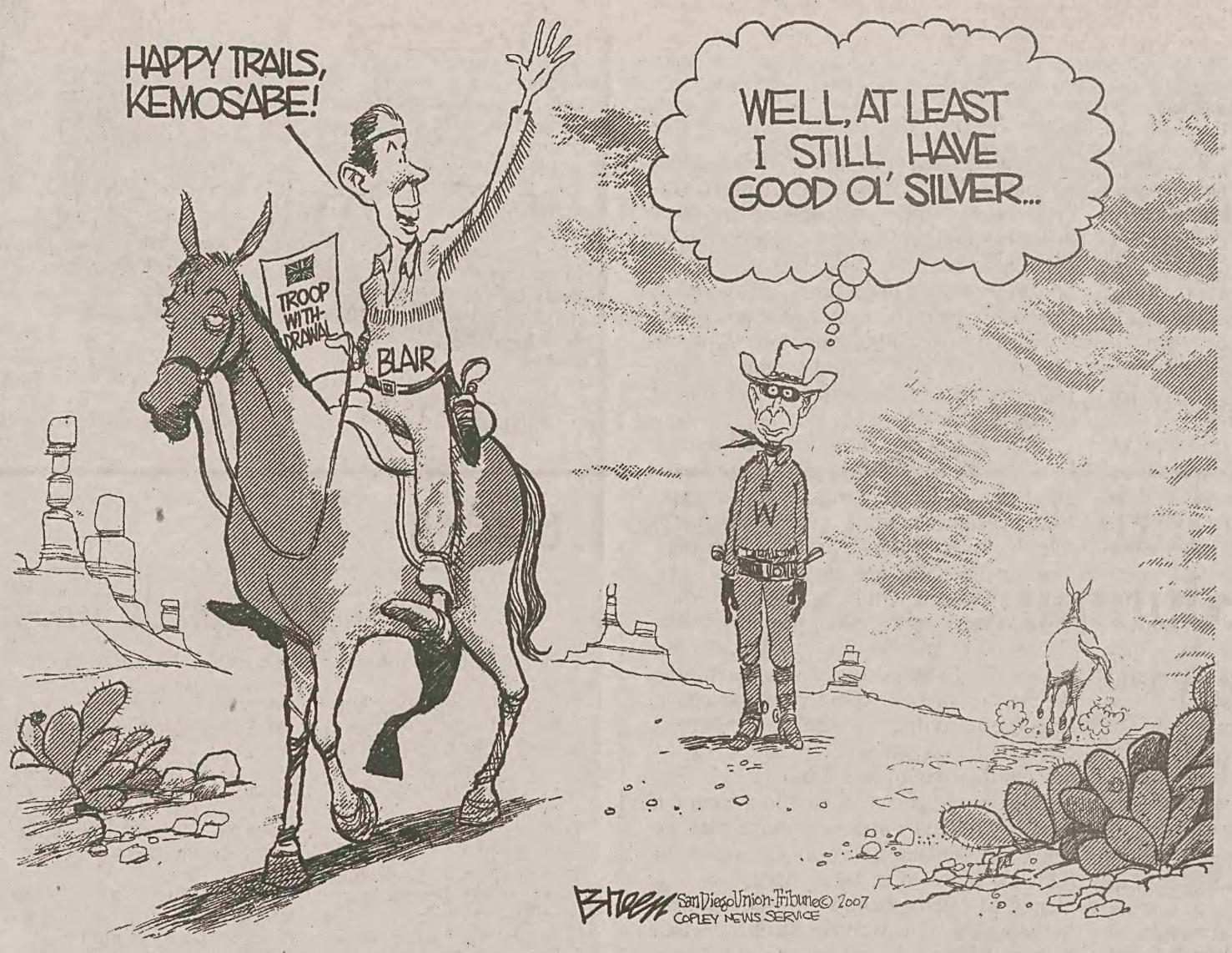
There is no "broadband crisis" or net neutrality problem to solve with regulation. There is simply a choice: Trust the free-market that has made the Internet what it is today and leave the Internet alone; or abandon a decade of success in promoting competition and creating diversity of consumer choice, and have big government socialize the Internet to make it the same for everyone.

Scott Cleland is chairman of NetCompetition.org, a forum of broadband companies, and is a former deputy U.S. coordinator for international communications policy.

More commentary at www.washingtontimes.com

Commentary

Drawdown rationale and risks



By Michael O'Hanlon

The Bush administration is spinning as good news the British decision to reduce its presence in the southern Iraqi city of Basra by at least 1,500 troops. By this perspective, Prime Minister Tony Blair's decision reflects an improvement of the security situation in at least one Iraqi city and may provide a model for other parts of the country.

Indeed, the British decision to reduce its troop presence in Basra is understandable and probably acceptable at one level. Basra, an overwhelmingly Shia city, does not face the sectarian struggles Baghdad and other parts of central and northern Iraq have wrestled with over the last year. And it is further removed from the tactical sanctuaries and car bomb factories and operational headquarters of al Qaeda in Iraq, making it less prone to suffer from terrorist strikes.

To be sure, there are still risks for Basra in this decision. That city and its environs have faced serious periods of warfare among various contending Shia militias in recent years. Some militias are more closely affiliated with Iran, meaning Tehran may sense more of an opportunity now to promote extremist groups that are friendlier to its interests. And any increase in chaos, due to such intermilitia strife or to simple criminality, could slow efforts to make Basra an example for the rest of the country — not to mention efforts to improve oil production and transportation in and around southern Iraq, something crucial to the entire country's economy.

Overall, however, I believe the local risks can be tolerated. If the rest of Iraq could have Basra's problems, we would all be better off. And on balance British troops have made a notable contribution.

But on balance the British decision is bad news. We need more help in Iraq, not less. The British troop drawdown works against the overall thrust of the surge strategy. It is not a fatal problem for the coalition, to be sure. But it is surely not good news.

The overall Iraq mission really needs more troops in and around Baghdad — the city Tony Blair has just rightly said is crucial to the whole country's well-being. The fact the United States is adding 17,000 troops to its presence in Baghdad, consistent with the counterinsurgency strategy favored by Lt. Gen. David Petraeus, was determined by available American force levels. It is not truly an adequate number. As such, U.S. troops could certainly use help from NATO's most accomplished military in counterinsurgency and stabilization missions, the U.K. armed forces.

While British forces are certainly strained in Iraq and Afghanistan and elsewhere, their proportional contribution to key allied military missions (adjusting for the two countries' relative populations) is less than half that of the United States. The real reason British troops are going home is not, first and foremost, because of excessive military strain. It is because British politics demand it.

This news will not be welcome in the United States, and will not help Mr. Bush. Of course, it also needs to be put in perspective. Americans have long known they are getting only minimal help with this war, and have long wrestled with the fact it is not popular abroad. At this point, however, Americans are also pragmatic. They know the British presence, while important, is not huge to begin with.

And they also know we are in Iraq not because we want to be, not because we relish it, not because it is a well-received mission internationally, but rather because at this point we must find some way to salvage a minimal level of stability in Iraq (if at all possible) for Iraqis' good and our own strategic interests. The British decision will not change this basic reality.

Clearly, the main reason British troops are going home rather than to Baghdad has to do with British domestic politics more than any military or strategic rationale. While understandable at one level, and hardly the end of the world, it is also too bad given what it means for the burden faced by American troops — and the still-mediocre prospects for success of the overall mission in Iraq.

Michael O'Hanlon is senior fellow at the Brookings Institution.

Rising tensions with Iran

By Claude Salhani

As the Wednesday deadline set by the United Nations for Tehran to back down from its controversial nuclear program failed to be met, Iran's President Mahmoud Ahmadinejad said he was ready for talks but rejected U.S. preconditions that the Islamic Republic freeze its nuclear works.

In any case, some of Iran's preconditions have already slammed the door shut on possible future talks. The Islamic Republic suggests a complete nuclear free zone in the Middle East. This of course, would mean Israel — although it has never officially admitted to possessing nuclear weapons — would be required by such an agreement to dispose of its nuclear arsenal, something hardly likely to happen anytime in the near future.

The foreseeable future in fact does not appear promising for U.S.-Iranian relations. With no direct dialogue between Tehran and Washington, tension in the area is only likely to increase. This week, a second U.S. carrier task force, the USS John C. Stennis, will reach the Gulf around the same time Iranian revolutionary guards are conducting one of the largest military exercises involving live ammunition.

Washington and the West insist on a Middle East devoid of nuclear weapons, excluding Israel, citing fears that if Iran manages to build a nuclear bomb, other countries in the region would likely want to follow suit. Saudi Arabia, Egypt and Turkey — all three Sunni-dominated countries — are likely candidates to join the nuclear club. Saudi Arabia certainly has the means to buy itself a nuclear weapon or two or three, or maybe entice Pakistani scientists to come to work in the desert kingdom in return for lucrative financial contracts and benefits.

Meanwhile, Ali Larijani, Iran's top negotiator on nuclear affairs said his country is "looking for new ways and means to start negotiations," as he headed into a new round of talks with Mohamed ElBaradei, chief of the International Atomic Energy Agency for an 11th-hour meeting in Vienna Tuesday.

At the end of the day the final decision regarding Iran's nuclear program rests with the country's Supreme Leader Ayatollah Ali Khamenei. But an early indication came from Mr. Ahmadinejad, who stressed that Iran would stand fast by its commitments to pursue its nuclear program. And so far the vast majority of Iran's leaders have maintained the same approach toward their nuclear policy.

"If they say that we should close down our fuel production facilities to resume talks, we say fine, but those who enter talks with us should also close down their nuclear fuel production facilities," Mr. Ahmadinejad said, in essence closing the door to future negotiations on the subject.

So what are the chances for a negotiated resolution to the crisis? President Bush continues to say everything remains on the table and has not ruled out military action. His new Defense Secretary Robert Gates insists the United States is not looking for a pretext for war with Iran.

A BBC report citing unnamed diplomatic sources, however, said U.S. contingency plans for any U.S. attack go beyond targeting atomic sites to include most of Iran's military infrastructure. With the bulk of the U.S. military tied up in Iraq and Afghanistan, it would be unrealistic to imagine any military engagement with Iran would resemble the conflict in Iraq. One might imagine that, in a confrontation with the Islamic Republic, the U.S. would want to restrict the fighting to heavy use of the Air Force, guided missiles and seaborne bombardments.

The disadvantage of trying to win a war without committing ground troops by relying almost exclusively on superior air power was demonstrated last August when Lebanese Shi'ites of Hezbollah clashed with the Israeli army. Hezbollah dug in and waited for the infantry to arrive. That is when the real fighting began. In Iran's case, the United States will certainly not commit its infantry. However, Iranian ground forces might well choose to cross the border into Iraq and confront U.S. forces there, on what is almost home turf.

A report prepared for the Emirates Center for Strategic Studies and Research 12th annual conference by Anthony Cordesman of Washington's Center for Strategic and International Studies is looking closely at Iran's military capabilities.

Mr. Cordesman pointed to five major kinds of current and potential threats posed by Iran.

(1) As a conventional military power, Iran has limited capabilities. It could become more threatening if it was allowed to modernize its military components.

(2) Iran can pose an asymmetric threat using unconventional forces.

(3) Iran's capabilities to use proxies, such as Lebanon's Hezbollah militia, strengthen its asymmetric power.

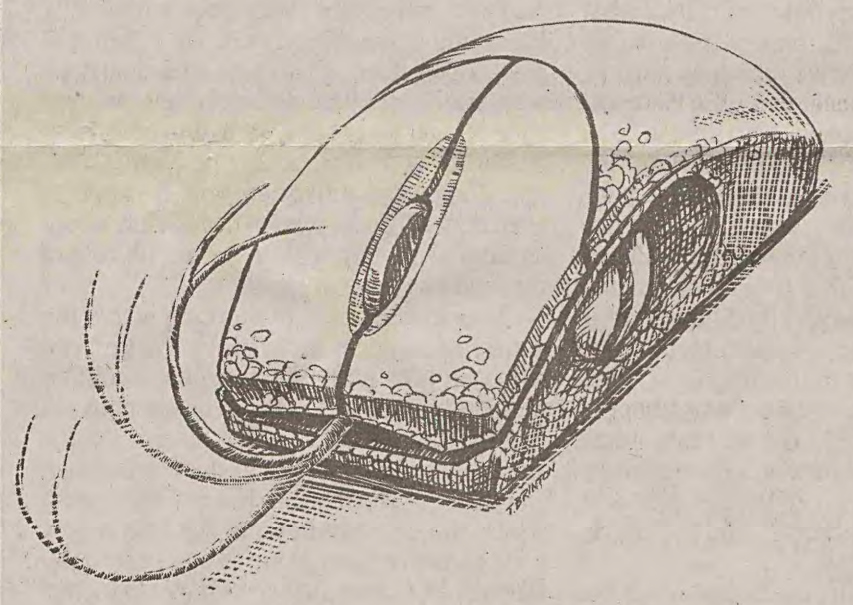
(4) Iran has the potential to develop nuclear-armed long-range missiles.

(5) Iran's could promote religious and ideological feelings in the Islamic world that would exacerbate the schism between Sunni and Shi'ite Muslims.

Mr. Cordesman's report, specifically parts of it that relate to Iran's capability of carrying out asymmetrical warfare, is something every U.S. military planner thinking of engaging Iran — from the commander in chief to the platoon's 2nd lieutenant in the field — must study thoroughly.

Claude Salhani is international editor for United Press International.

Illogical net neutrality idea



By Randolph May

Maryland's legislature frequently is the birthplace of bad ideas spawned by a penchant for costly over-regulation. Remember last year's ill-fated Wal-Mart law, which dictated the exact percentage of Wal-Mart's payroll to be devoted to paying employee health care costs?

Now some Maryland legislators have introduced a bill to regulate the Internet under the guise of so-called "Net neutrality." Regulations purporting to ensure strict neutrality regarding Internet traffic almost certainly will have the effect of neutering the Net. So let's call a spade a spade: The Maryland bill — and similar ones cropping up elsewhere — are really Net neutering measures.

The Maryland bill states that broadband Internet service providers should not sell to Internet content or applications providers any service that prioritizes any Internet traffic "based on its source, ownership, or destination." In addition to this non-discrimination obligation, broadband providers would have to file quarterly reports detailing where they provide service, the number of customers served, and the speed and price of the various service offered. The required information is not limited to service in Maryland. The bill specifically identifies broadband providers using DSL, cable modems, wireless, and power-line technologies as subject to its mandates.

Like the Wal-Mart law struck down by a federal court because it was inconsistent with federal policy governing employee benefits, Maryland's Net neutering bill likely would be held unlawful because it, too, is inconsistent with federal policy. Congress declared in the Telecommunications Act of 1996 that U.S. policy is "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by federal or state regulation."

Pursuant to this declaration, the Federal Communications Commission has determined that broadband Internet services are interstate information services that should be largely unregulated, not telecommunications services subject to traditional public utility nondiscrimination obligations and rate regulation. In 2005, the Supreme Court approved the FCC's classification determination. The FCC has since indicated it will consider complaints alleging Net neutrality-like discrimination case-by-case.

Classifying broadband Internet service as an interstate service not subject to state regulation should not come as a surprise. The Internet is essentially "borderless," with data packets not following any predetermined path. Unlike the old circuit-switched networks, it is impossible, as a practical matter, to distinguish between intrastate and interstate traffic. Indeed, much of Internet traffic originates or terminates overseas. It is rare for an online user to access Web sites hosted only in-state. Moreover, broadband Internet providers generally have multistate or national footprints designed to accommodate cross-state business practices and advertising.

Apart from likely federal preemption, there are sound policy reasons why the bill should be rejected. Internet subscribership is growing nicely without regulation. The FCC's most recently released data show that for the year ending June 2006, the number of high-speed lines in Maryland increased 66 percent, an even more robust figure than the healthy nationwide 52 percent increase.

The rapid growth in broadband lines in service has been accompanied by increasing competition. The Maryland bill's identification of telephone, cable, wireless and power companies demonstrates this trend. Broadband companies compete ever more vigorously to sell consumers Internet, video and voice service. The FCC's latest data show 95 percent of Maryland zip codes have at least two providers of broadband service, while 92 percent have three or more. While the power companies, for now, remain largely on the sidelines, their potential market entry already exerts competitive pressure because of their ubiquitous presence and resources.

It is not surprising that nationwide there have been only a few isolated "discrimination" complaints of the type Net neutrality regulation is intended to address. I know of none in Maryland. In a competitive marketplace, broadband providers will not adopt business practices that alienate their subscribers. If they do, subscribers will switch providers.

Finally, as the Internet continues to evolve, there may be legitimate economic reasons for broadband providers to offer to prioritize traffic in some price-related way to most efficiently meet consumer demand for various types of services. Absent such flexibility, all consumers ultimately will be required to pay more for Internet service than they otherwise would to cover the increased capacity costs caused by certain especially intensive bandwidth uses, such as videogaming or sites requiring higher speed, reliability and security, such as online telemedicine applications.

If broadband providers are not allowed to differentiate their services because of regulatory straitjackets, they will lack incentives to invest in new network facilities and innovative applications. This will have the perverse effect of dampening competition among existing and potential broadband operators, an effect the Net neutrality proponents claim not to want.

Net neutrality bills also have been introduced recently in California and Maine. All these state measures are unsound as a matter of law and policy. "Net neutrality" has a pleasing ring. But legislators should be smart enough to look beyond sound bite labels. They should understand that those who want to regulate Internet providers like public utilities will instead neuter the Net.

Randolph J. May is president of the Free State Foundation, a free market policy institute in Potomac, Md.

Welcome, Mr. Catoe

Native Washingtonian John B. Catoe Jr. returned home as the new general manager of Metro with his priority set: instituting a culture of safety throughout the system. Several events in recent months, including three pedestrians killed by buses in less than a week (seven fatalities in nine months), have tragically emphasized just how poorly Metro has performed in this regard. The other priority for Metro: confronting its budget problems.

To Mr. Catoe's credit, he understands that a quick fix for this problem doesn't exist. Safety must be inculcated throughout the entire organization, and bad habits that go uncorrected will catch up, and with fatal results that were, sadly, avoidable. In Los Angeles, where he was deputy chief executive of the Metropolitan Transportation Authority, Mr. Catoe turned to DuPont, which ranks as the safest company in the world. The project was such a success, Mr. Catoe recounted to editors and reporters at The Washington Times on Tuesday, that on one occasion when he visited a bus maintenance facility, an employee stopped him from entering and made him wait, safely, in his car until the required vest could be tracked down for him. Metro is currently talking with several companies to provide similar review and direction for its system.

The second part of the agenda will be addressing Metro's perennial financing issue. The projected shortfall for the fiscal 2008 budget is $64.1 million, which is less than originally projected but still more than the $41.7 million from fiscal 2006. Mr. Catoe needs to address both sides of the equation by making Metro more efficient and by increasing its revenue. A thorough review of every position in the Metro organization, as Mr. Catoe has promised, is a good start. Streamlining its operations by trimming functions that it no longer needs and possibly turning to outside contractors will allow Metro to close that budget gap without being forced to cut services, which should be the last resort.

The issue of overtime pay also needs to be addressed. A quick glance through Metro employee's salaries shows several bus and train operators making up to 60 percent of their base salary in overtime pay. The more overtime dollars that Metro has to shell out, the less efficient its operation. Reducing overtime means filling vacancies, Mr. Catoe said. And for bus drivers, for instance, Mr. Catoe is looking at a plan to stop the practice of hiring drivers only on a part-time basis, so that potential drivers aren't dissuaded from joining Metro because of the pay cut they would face initially.

The second part of the funding equation involves raising fares — a move that we think Mr. Catoe should pursue concurrent with his plans to increase operating efficiency. Mr. Catoe touted a "more comprehensive plan" that would tie fares to certain factors. Recognizing what a struggle it can be raise fares, instituting a system of automatic, smaller but more frequent, fare adjustments has merit. It would, at least, help Metro cover more of its operating expenses. Welcome home, Mr. Catoe, and good luck.

Judicial progress

In overturning the $79.5 million verdict against tobacco company Philip Morris, ruling on Tuesday that due process had been violated, the Supreme Court took what we hope will be a productive step toward reining in excessive punitive damages awards.

The lawsuit was filed by Mayola Williams on behalf of her husband, who died in 1996 of lung cancer after smoking two packs of cigarettes a day for 45 years. During the trial, the plaintiff's attorney asked the jury to "think about how many other Jesse Williams in the last 40 years in the State of Oregon there have been." Lawyers for Philip Morris requested that the jury be instructed "not to punish the defendant for the impact of its alleged misconduct on other persons," but the Oregon court declined to do so. Philip Morris challenged, but the Oregon Supreme Court upheld the trial court's decision not to include those instructions — and the nearly $80 million in damages.

The Supreme Court overturned that decision, concluding in a surprisingly close 5-4 ruling that the Constitution's due process clause protects a defendant from being punished for harm done to "nonparties," or those who are "strangers to the litigation." Ruling as the Oregon Supreme Court did would generate a panoply of questions — "How many such victims are there? How seriously were they injured? Under what circumstances did injury occur?" — that would not be answered during the course of the trial. A jury could then assign damages based on a grievance that the defendant doesn't have the opportunity to address.

The court did not rule on whether the punitive damage sum was unconstitutionally high, although with compensatory damages at $821,000, the punitive damages clearly violate the court's guidelines of a "single-digit ratio." That the court declined to set a limit on punitive damages is not a bad thing, however. Capping punitive damages, we have argued and still believe, is not necessarily a constitutional matter and is better addressed through tort-reform legislation.

What is important in this case is that the court has made progress in clarifying its position on how punitive damages should be meted out. "We did not previously hold explicitly that a jury may not punish for the harm caused others," wrote Justice Stephen Breyer. "But we do so hold now." That doesn't mean, the court went on to say, that a jury can't consider harm done to others by a defendant. "Conduct that risks harm to many," Justice Breyer wrote, "is likely more reprehensible than conduct that risks harm to only a few" — a fact that juries will still be permitted to consider, but only as they decide how to award damages for wrongs done to the plaintiff alone. Juries may well find it difficult to distinguish between weighing harm to others without "directly" punishing the defendant for it. On the whole, however it should reduce the size of absurd punitive damages awards. That's progress, but not quite clarity.

Nobles and Knaves

Noble: Velvet, the black Labrador mix who saved the lives of three hikers stranded on Mt. Hood.

Last weekend, a group of eight experienced hikers, along with their faithful pup Velvet, ran into trouble while climbing Mt. Hood, the tallest mountain in Oregon. As they battled heavy snow and howling winds during their descent, Kate Hanlon, Christina Redl, Matty Bryant and his dog Velvet — who were all roped together — slipped off an icy ledge. The remaining five hikers, unable to locate their companions, called for rescuers and settled in to wait.

Nearly 500 feet away, Matty, Christina and Kate, who luckily had cell phones, GPS equipment and Mountain Locator Units, called "911 on the hour and every half hour," they told ABC's "Good Morning America." Despite their high-tech equipment, a rescue team was unable to locate them until Monday morning because conditions and visibility were so poor. Luckily, however, there was Velvet. She sprawled across the hikers' bodies during the night to keep them warm, effectively saving their lives. The group was rescued by a brave and fearless team on Monday morning, but Velvet is the real hero in this tale.

For being man and woman's best friend, and in this case more valuable than all the high-tech gadgets one can find, Velvet is the Noble of the week.

Knave: The House ethics reforms that don't actually work.

Immediately upon gaining control of Congress, Democrats attacked ethics reform with the voracity of starving vultures. In a 430-1 vote, the House passed a bill that ostensibly prevents members from receiving gifts from lobbyists, be they meals, vacations or cold hard cash. After campaigning hard under the guise of making the 110th the "most ethical Congress in history," they were obligated to tackle the issue right away.

House Majority Leader Steny Hoyer was one such campaigner. But wait, isn't Mr. Hoyer's vacation to Rio Mar Beach Golf Resort and Spa in Puerto Rico in May being paid for by lobbyists? It is, and it's completely legal.

Lobbyists can donate as much money as they want to a congressman's political action committee. Because there are very few regulations on how PAC money can be spent, using lobbyist donations to fund a vacation for Mr. Hoyer is completely kosher, as long as it's technically the PAC that pays for it — a real-life example of the notorious loophole in the ethics reform bill.

Mr. Hoyer, and the unnamed lobbyists staying in 137 rooms already booked at the resort, ought to have a great time at the "PAC fundraiser."

Yes, it's legal, but it doesn't look good, especially for the House majority leader who ought set a better example.

For providing loopholes that render it useless, the House ethics reform bill is the Knave of the week.

Letters

For Ralph de Toledano

I met Ralph de Toledano only last year.

I had come back to Washington, after many years and was reading his book "Notes from the Underground" when I found this passage:

Oct. 18, 1960
Dear Ralph,
The Montero is marvelous. [I had sent him a recording of Germaine Montero reading Garcia-Lorca's "Lament on the Death of a Bullfighter," his greatest poem.] I scarcely expected at my time of life to have the kind of experience that occurs at my son's age: something new and wonderful, since what the young woman is saying in the tone (more than any words) is what has always been there. I thank you for bringing this young cretoiberienne to our house. . .
Whittaker

Suddenly, I had to meet him.

However, after the death of my grandfather, Whittaker Chambers, our families had not kept in touch. Fortunately, Ralph was not hard to find and was delighted when I called. He suggested we meet at his old stomping grounds at the National Press Club. At the appointed time and date, we met upstairs on the fourteenth floor, in the members' bar.

Ralph was a tall man, nearly 90. He had survived intestinal cancer, though not without scars. While a bit unsteady, he was still bright-eyed and was warmly welcoming as we sat down. Lunch was on him, of course: It was his treat to his old friend's grandson.

It was hard to know where to start talking. Conversation was hampered partly by the deafness of age. Part of it was due to the memory of Whittaker Chambers that played across his face faster than he could utter words. He started to tell stories several times but quickly broke off in mid-sentence, all the time smiling. I knew he missed my grandfather, and the memories were happy.

Then Ralph asked me whether I had read "Notes from the Underground."

I had come because I had read the book, I said — and to thank him.

He looked surprised.

I told him about the letter I had read. That record of Germaine Montero's he had given Grampa, her recital of Garcia-Lorca´s "Lament" that Grampa had enjoyed so much? It had come down to me. I had listened to it many times, but I had not known until those letters that it had come from him.

Thanks to that record, I told him, I had been sure to read Federico Garcia-Lorca, had read about the Spanish Civil War, Pablo Neruda's memoirs and poetry, Abel Paz's account of Durruti's Column, Orwell´s "Homage." Through that record, I had come to know of many of the leaders and intellectuals involved in that prelude to World War II. Because of that record, I had listened to my mother's copy of Germaine Montero singing Brecht's "Mother Courage," as well as my grandfather's copy of "Lotte Lenya Sings Kurt Weill."

Ralph loved music, and his face beamed.

Again, I thanked Ralph for his gift. He quoted something in Spanish I could not follow, but it did not matter. Looking at his face, I realized that in thanking him, I had given him something back in return. By learning of this lasting affect on our family, Ralph had touched his old friend again.

Just a few weeks ago, I happened to pass by the National Press Club again to see Ralph. He was not there. He had been in the hospital, reported Jack, the barman. Jack did not expect him to come to the Press Club anytime soon, but I could call Ralph at home. Meanwhile Jack would pass on my regards if he talked to Ralph. Then he asked my name and instantly remembered my sole visit more than a year ago: you are the grandson of Whittaker Chambers that Ralph met here. That's right, I said — what a thing memory is.

One matter I had not told Ralph that showed how deeply his gift had touched me was that I had read from Lorca's "Lament" at the funeral of my maternal grandfather. With the news of Ralph's death, I read it again:

Tardara mucho tiempo en nacer, si es que nace,
un andaluz tan claro, tan rico de aventura.
Yo canto su elegancia con palabras que gimen
y recuerdo una brisa triste por los olivos.

It will be a long time, if ever, before there is born
an Andalusian so true, so full of adventure.
I sing of his elegance with words that groan
and I remember a sad breeze through the olive trees.

DAVID CHAMBERS
Reston

Still a bad immigration bill

The article, "Senate illegals bill near complete" (Page 1, Thursday) states that Sen. Edward M. Kennedy is heading the effort to create an immigration bill that is likely to reach the floor in April. It is expected that the bill will be a reworking of the McCain-Kennedy immigration legislation introduced last year.

Mr. Kennedy authored the family unification legislation that lead to the huge influx of immigrants that flooded into the country since 1965. One should also remember the 1986 immigration legislation that rewarded over 3 million illegal aliens with amnesty.

Since Congress has a majority of Democrats as a results of elections held last year, it is expected that they will introduce legislation that will likely include another amnesty proposal in support of the president's version of a proposed amnesty for up to 20 million illegal aliens in the country.

It is expected that thousands of people opposed to any legislation that would grant amnesty will flock to Washington to lobby Congress during the last ten days in April. Led by a group of radio talk-show hosts from across America, their listeners will demand secure borders and workplace enforcement of existing immigration laws before considering any widespread attempt to legalize those illegally in the country.

BYRON SLATER
San Diego

Fix the whole system

In response to "Tim Kaine's failed leadership" (Op-Ed, yesterday): It is not failed leadership; it is plain out-right dishonesty. Go to the Virginia Treasury's Web site (http://www.trs.virginia.gov/cash/cash.asp) and the first thing you will be staring at is an arrogant boast about managing up to $8 billion dollars. Surf a little more into the site and you find that the average monthly liquidity has now reached $7 billion. That means on average the state carries a surplus of $7 billion, compared to an annual budget of approximately $30 billion.

The mainstream media, the Chamber of Commerce, Gov. Tim Kaine and his supporters want us to believe that they need a stable source of funding. If you have ever looked closely at Federal accounting, or state financial accounting and its history, you know that the whole idea of "dedicated taxes" — that is, taxes raised from a particular source and associated with a particular expenditure, is a total scam. Ever hear of the Social Security trust fund?

How many times has Virginia raided the highway trust fund to pay for things other than roads? Government trust funds are nothing but political allusions, and if the electorate ever comes to realize this, there may be some real reform in government fiscal operations.

The only thing that matters to the Virginia treasurer is that the color of the money is green. Would a road be any different if it were paid for by income taxes, registration fees or a sales tax? Of course not. And if you need a more stable source of funding, why not revamp the whole tax code and connect that one stable source to the whole Virginia budget? This will not happen, of course, because there is no one, ultimately stable source and there can never be, because in the end the state is exposed to the same risk as each and every tax payer.

SAMUEL BURKEEN
Reston

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LEADING THE NEWS

How Two Scandals Might Overlap

German Investigators Look For Links Between Seimens, Russian Telecom Minister

By Glenn R. Simpson And David Crawford

Two of Europe's highest-profile corruption scandals may be related: A German probe of alleged corruption involving Russia's telecommunications minister is overlapping with a separate German investigation of suspected bribery at **Siemens** AG.

Prosecutors in Munich are reviewing business transactions between Siemens and Russian telecom companies, particularly those allegedly affiliated with telecom minister Leonid Reiman, people familiar with the matter say. Siemens is embroiled in a broader cross-border corruption scandal related to allegations that the company for years paid bribes to win lucrative contracts. Meanwhile, a separate German criminal investigation is examining Mr. Reiman, a close friend and ally of Russian President Vladimir Putin, for suspected corruption.

Siemens, based in Munich, in December said it had uncovered about $545 million in suspicious transactions stretching back seven years. That disclosure came after more than 200 German police raided offices and homes of Siemens employees in mid-November, arresting several people linked to the company's telecom-equipment business.

In a search warrant for Siemens management offices issued in October, German prosecutors said Siemens officials may have paid bribes to unnamed Russian bureaucrats in the telecom sector, which Mr. Reiman has regulated since 1999. The alleged payments could constitute possible large-scale corruption and tax evasion, according to the search warrant.

Two of Siemens's largest telecom customers in Russia are companies that Frankfurt prosecutors are examining in their fraud investigation. That probe, which began in 2004, focuses on whether officials at German bank **Commerzbank** AG helped Mr. Reiman disguise financial holdings in the Russian telecom industry.

To date, there have been no specific allegations of illicit payments made by Siemens to entities affiliated with Mr. Reiman or any other Russian firm. Frankfurt prosecutors haven't filed charges. Spokesmen for the Munich and Frankfurt prosecutors' offices declined to comment.

A Siemens spokesman said the company knows Mr. Reiman only in his role as Russia's telecom minister. The spokesman added that Siemens isn't aware of any probe in Russia into the company's business dealings. He reiterated that the company is cooperating fully with German prosecutors.

The German criminal investigations are both politically sensitive and potentially explosive. They come at a time of mounting tension between Russia and the West. Mr. Putin's critics have denounced his administration as riddled with corruption. But many governments are reluctant to confront Moscow owing to its control of vast energy resources and to the country's critical role in efforts to prevent the spread of nuclear weapons and to forge Middle East peace agreements.

The U.S. Federal Bureau of Investigation, responding to a recent request from prosecutors in Frankfurt, is examining records of several U.S. shell companies allegedly used by the IPOC group, a multibillion-dollar telecom empire allegedly controlled by Mr. Reiman. German prosecutors in Frankfurt made the request late last year, say people familiar with the matter. The question of whether Mr. Reiman secretly controls IPOC—which owns Russian telecom assets valued at billions of dollars—has spawned a range of criminal investigations and court litigation. The allegations grow out of a bitter business dispute in Russia over one of IPOC's main assets, a stake in mobile-phone company OAO MegaFon that is also claimed by Russia's **Alfa Group**.

Much of Siemens's growth in Russia came from vendor financing and equipment sales to MegaFon, a privately owned company in which Mr. Reiman indirectly owns a major stake, according to witness statements in the Frankfurt probe.

MegaFon, Russia's third-largest mobile-phone company, was cobbled together by associates of Mr. Reiman in 2001 and awarded a coveted global system for mobile communications, or GSM, license when he was telecom minister. A large stake in MegaFon eventually became the key asset in the IPOC group. MegaFon signed at least $200 million of equipment-supply contracts with Siemens between 2002 and 2005, according to company financial statements and announcements.

Mr. Reiman has vehemently denied ownership of IPOC. A company spokeswoman reiterated that position. His former lawyer and business partner, Danish national Jeffrey Galmond, has said he is the sole owner of the group, which originally registered with Bermuda regulators in 2000 as a collection of mutual funds. A spokesman for IPOC didn't return calls seeking comment.

In May 2006, a Zurich civil-arbitration panel hearing the MegaFon dispute found that Mr. Reiman is "the sole beneficial owner" of the IPOC group and that his denials to the contrary "have no credibility." It said Mr. Reiman had engaged in corrupt and illegal acts during his government tenure in order to build and protect his secret telecom empire.

The tribunal also concluded that Mr. Galmond had provided "false testimony." IPOC has appealed that ruling.

Russian prosecutors have said they have found no evidence connecting Mr. Reiman to IPOC or any corrupt activity.

IPOC is under fresh legal pressure in Bermuda. Financial regulators last week asked the island's Supreme Court to liquidate the IPOC companies for unspecified regulatory infractions. Such a move could greatly hobble IPOC's efforts to defend itself and its shareholders in related criminal cases.

Police in Bermuda and the British Virgin Islands are also stepping up their inquiries of suspected money laundering by the IPOC group following recent moves to liquidate the company, people involved in those inquiries said.

Russia plays an important role in the unfolding Siemens scandal. At least three suspects have alleged in witness statements to prosecutors that bribes were paid by Siemens in Russia, according to a review of their statements. The three former high-level Siemens executives—including the German government's star witness, Michael Kutschenreuter—were involved in Russian telecom sales.

Siemens began dismantling its struggling telecom-equipment business—formerly its largest unit—in 2005. But Russia generated significant sales for Information & Communications Networks, a former unit that sold switching gear for traditional land-line phone systems and is now at the center of the corruption inquiry.

In May 2002, ICN secured a $150 million contract from a Russian government-controlled phone company, Svyazinvest. By virtue of his being telecom minister, Mr. Reiman is chairman of that firm, which acts as a purchaser for much of Russia's fixed-line telecom equipment.

Today, Siemens is one of Russia's leading providers of fixed-line and mobile-phone gear. It also sells telecom equipment to a broad range of other companies.

Siemens's position owes much to a series of deals the company made with entities the Swiss panel concluded are controlled by Messrs. Reiman and Galmond. Thus far, no evidence has emerged to suggest these deals were corrupt.

Much of the Russian telephone industry's equipment acquisitions are overseen by Mr. Reiman's ministry, and most of Russia's fixed-line-telephone service providers are majority-owned by Svyazinvest. To centralize the purchase and financing of telecom equipment, Svyazinvest gave that business to a subsidiary called RTC Leasing. RTC was privatized in a complicated transaction that left a group of companies affiliated with IPOC as its majority owner in early 2002.

RTC nonetheless retained its role as a major intermediary for equipment leasing. Today, RTC's major stockholders include two offshore companies Mr. Galmond also claims to own. RTC also arranged telecom-equipment deals for MegaFon.

Thomas Ganswindt, who ran the Siemens telecom-gear unit at the time ICN won its $150 million deal, said at a signing ceremony that the deal made Siemens "the leading supplier for switching systems in the Russian Federation."

Mr. Ganswindt, who left Siemens in September, was arrested by German police on suspicion of fraud in December. Mr. Ganswindt, who was later released, has denied any wrongdoing. He remains a suspect.

Both Mr. Kutschenreuter, who oversaw the finances of a Siemens division involved in Russian telecom sales, and another suspect who allegedly organized some illicit payments—Reinhard Siekaczek—have alleged in witness statements that Siemens's former top mobile-phone executive, Rudi Lamprecht, knew of an alleged system of slush funds and bribes, according to a review of their statements.

Mr. Lamprecht, now a member of Siemens's management board whose responsibilities include oversight of Russia, has denied any wrongdoing. Through a spokesman, he added he has no knowledge of any wrongdoing in Russia.

—Mike Esterl contributed to this article.

Siemens Business in Russia

Some of the German conglomerate's dealings:

Client	Project
Kirishi	Modernizing power-distribution systems at refinery
Cargill	Automation and power equipment at food plant
Rosneft	Prirazlomnoje offshore platform
Gazprom	Supply gas-pumping units for compressor station
Svyazinvest	One million switch ports supplied by Siemens
Russian Railways	$828 million order of eight high-speed Velaro RUS trains and service for 30 years

Source: Siemens

Tangled Web

❖ **The Situation:** German prosecutors are pursuing separate corruption probes that may intersect at Russia's telecom ministry.

❖ **The Players:** Siemens AG, which is wrestling with allegations that it paid bribes to win contracts in locales around the world. Russian telecom minister Leonid Reiman.

❖ **What's Next:** Investigators are examining whether Seimens's extensive business in Russia is material to either investigation.

BBVA Nears $10 Billion Deal for Compass

Spain's **Banco Bilbao Vizcaya Argentaria** SA last night was nearing a deal to purchase **Compass Bancshares** Inc. for roughly $10 billion, people familiar with the matter said. The deal would give the Spanish bank substantial new heft in Texas, a market it has identified as a place for major expansion because of the flow of money between the U.S. and Mexico.

Bankers for Compass have in recent weeks been shopping the bank—with total assets of $31 billion—hoping to lure a $70-per share price from potential buyers, one person familiar with the matter said.

By Carrick Mollenkamp in London, Dennis K. Berman in New York and Valerie Bauerlein in Atlanta

Such a price scared away a number of would-be buyers already in the region. But BBVA, as Spain's second-largest bank by market capitalization behind **Banco Santander Central Hispano** SA, is known, has been pushing hard to get into the Spanish-speaking markets in and around Texas. The bank is expected to pay nearly $72 per Compass share in a cash-and-stock transaction. That would represent about a 16% premium for Compass before a sharp increase yesterday in the stock. The transaction hasn't been completed and could still fall apart. Another bidder also could emerge.

Population growth in Texas and the Sunbelt regions has made banks such as Compass widely expected targets for bigger institutions. That has had a somewhat perverse effect on the market—pushing values up so high that Compass had difficulty attracting willing buyers.

Unlike its Birmingham, Ala., competitors who built a footprint across the Southeast, Compass opted to expand more widely. Besides its 164 branches in Texas, the bank has some 75 in Arizona and 44 in Florida. Compass's stock has risen nearly 36% in the past 12 months. Yesterday, the stock rose sharply on rumors of an acquisition, trading up $4.59, or 7.43%, to $66.37 after briefly hitting a 52-week high of $66.67. The sale will leave Birmingham with just one big bank, **Regions Financial** Corp., after years of four competing against each other. Compass didn't return calls to comment. BBVA wasn't available to comment.

For BBVA, the transaction would be its second in Texas in nine months. BBVA has a market value of about $90 billion, ranking it on par with the United Kingdom's **Barclays** PLC and Switzerland's **Credit Suisse Group**. In Europe, the bank ranks in the top 10.

Last June, BBVA agreed to buy Texas Regional Bancshares Inc. in a deal valued at about $2 billion. It also had purchased Laredo National Bancshares Inc. and State National Bancshares. All those moves are aimed at making BBVA a major provider of remittances between the U.S. and Mexico. The acquisition of Compass would give BBVA more firepower to take on the two biggest banks in Texas, **Bank of America** Corp. and **J.P. Morgan Chase** & Co.

BBVA itself has been the subject of far-reaching takeover speculation with buyers ranging from **Citigroup** Inc. to Bank of America. But in a recent note to investors, Dresdner Kleinwort's bank analysts in London suggested that Spain's top bank, Banco Santander Central Hispano SA, would step rather than allow a U.S. giant into Spain.

BBVA's stock could fall on the news that it's buying Compass. BBVA's increasing exposure to the U.S. has raised concerns because of the potential slowdown in the U.S. economy and depreciation of the dollar. In its December report, Dresdner said that 43% of BBVA's earnings are exposed to the U.S. currency. Dresdner said it defined dollar exposure as the dollar and currencies like the peso that would track the dollar.

Compass Chairman and Chief Executive D. Paul Jones has no clear successor, a likely factor in the bank's decision to sell. Compass reached its scale by making 53 out-of-state acquisitions in 20 years. But it lost momentum in July 2005 when it failed in its bid for Houston's Amegy Bancorp Inc., whose 75 branches in Houston and Dallas had made it a hot property. Salt Lake City-based **Zions Bancorp** bought Amegy for about $1.7 billion and Compass settled for the smaller TexasBanc Holding Co., based in Fort Worth. The TexasBanc acquisition didn't meet growth expectations, though, as key employees left in the transition.

Compass, like other regional banks, also has been hurt by an interest-rate squeeze that is shrinking the difference between the higher rates banks charge for loans and the lower rates they pay on deposits. Compass relied on net interest income for 61% of its revenue last quarter, compared to about 47% for larger, more-diversified competitor Bank of America.

Christopher Marinac, managing principal and research director at FIG Partners LLC in Atlanta, said he expects the interest-rate headwinds for banks to get even more difficult this year.

"This deal is a bit of an indictment of the operating environment for banks in general, particularly midsize banks who don't have the revenue diversity of the big players," said Mr. Marinac, who predicts more acquisitions.

—Robin Sidel contributed to this article.

POLITICS & ECONOMICS

Contract Probe Raises More Questions

Iraq Rebuilding Investigation May Turn Into Broader Look At Pentagon's Practices

By Scot J. Paltrow

WASHINGTON—A congressional investigation into waste in Iraq reconstruction work by U.S. contractors threatens to mushroom into a wider inquiry into Pentagon contracting practices in general.

Under questioning by the House Oversight and Government Reform Committee, Defense Contract Audit Agency chief William Reed confirmed that unsupported and questionable costs found in Iraq reconstruction contracting total more than $10 billion—nearly three times the previous public estimate.

David Walker, head of the Government Accountability office, Congress's audit agency, said lax contracting practices in Iraq are merely "the tip of the iceberg." They are symptomatic of loose Defense Department contracting practices over all, he said, and he urged the committee and Congress in general to conduct a broad investigation into the way the Pentagon awards and oversees contracts.

Mr. Walker said, "There is no accountability. Organizations charged with overseeing contracts are not held accountable. Contractors are not held accountable."

Under Chairman Henry Waxman (D., Calif.) the committee is holding a series of hearings into contracting abuses in Iraq. Staffers confirmed that Mr. Waxman and other committee Democrats likely will take a much wider look at defense contracting after the Iraq hearings conclude.

Mr. Walker cited multiple problems with Pentagon contracting practices. He attributed these to a lack of control by senior leaders, a shortage of personnel to oversee contractor performance, poorly defined requirements for contractors, and "poor business arrangements," he said.

Said Shay Assad, director of the Defense Procurement and Acquisition Policy Office, "GAO has made a number of recommendations to improve the Department of Defense's management and use of contracts." Mr. Shay said, "In general we have agreed with these recommendations, and we have been, and are continuing, to work on implementing improvements to address them."

In recent years increasing amounts of military work have been let out to private contractors, and the percentage of no-bid contracts—those awarded with no competition—has risen. Until now, Congress hasn't focused in depth on the problem, while many members of Congress have been criticized for awarding "earmarks" that funneled defense contracts to particular favored companies.

Mr. Reed said during the House panel hearing that the Defense Department had disallowed and withheld from contractors working in Iraq only 25% to 37% of the amounts his agency had identified as improper or questionable. The defense audit agency has no power to order compliance with its audits, and the final decisions are made by the individual military services or other officials.

A report by the committee's staffers said the estimate of $10 billion in possibly illegitimate contracting costs in Iraq likely is low. Mr. Reed confirmed that while his agency had audited $57 billion in Iraq contracts, it doesn't know the total amount spent on contracts there. The staff report estimates at least $75 billion spent on contracts in Iraq.

During the hearing, **Dyncorp International** Inc., a large government contractor, was one of several firms singled out for criticism. An audit report last month by the Special Inspector General for Iraq, Stuart Bowen, raised questions about work Dyncorp did and was paid for that the government hadn't requested, particularly on a new police training camp in Baghdad.

During the hearing, members of the committee raised questions about a luxury swimming pool and hundreds of trailers that were built for the camp but ended up unused. Mr. Bowen told the committee he is launching an in-depth audit of Dyncorp's work in Iraq.

A Dyncorp spokesman said all of the work had been specifically authorized by U.S. officials of the Coalition Provisional Authority that ran Iraq until a new Iraqi government took over: "Everything that we've done, we did in good faith, and everything we've done was authorized by the U.S. government"

In Brief–

Russia Tells Exxon It Must Bid For New Sakhalin Territory

Russia told **Exxon Mobil** Corp. that it is ruling out any automatic enlargement of the oil company's Sakhalin-1 license territory, as the project off the island on Russia's Pacific coast has hit peak output and is seeking new reserves. Moscow said it would put the adjacent deposits into an auction, despite their discovery by Exxon. Exxon has been seeking to enlarge the license territory of Sakhalin-1 to sustain peak production, which otherwise will last only for a few years and then start to decline.

Gas Deal Aids Brazil-Bolivia Ties

Brazil will pay as much as 11% more for natural gas from Bolivia under a deal that could resolve a year of strife between the South American neighbors. Brazilian President Luiz Inácio Lula da Silva and Bolivian President Evo Morales, signing the deal, both declared the impasse over and said their nations' often-tense relations will improve. Bolivia will get about $144 million more per year from Brazil for the gas, said Bolivia's hydrocarbons minister. Brazil paid Bolivia nearly $1.3 billion for the fuel last year. Brazil's state-run oil firm **Petróleo Brasileiro** SA, or Petrobras, last year had a net profit of 25 billion reals ($12 billion)—larger than Bolivia's gross domestic product of about $9.3 billion in 2005.

Singapore to Cut Corporate Tax

Singapore announced a cut in its corporate tax rate and measures to help low-income workers, moving to tackle growing inequality while shoring up the city-state's attractiveness to foreign investors. Singapore will cut its corporate tax rate to 18% from 20% in April 2008 in an effort to compete with rival business center Hong Kong, where the tax rate is 17.5%. The country's new budget also includes a previously announced rise in the goods and services tax, to 7% from 5%, a measure that is expected to raise 1.5 billion Singapore dollars (US$978 million) a year. The proceeds will help fund a social program under which the government tops up the salaries of low-paid workers.

MORE

Firms Ride High on China's Huge Rail Upgrade

By Bruce Stanley

After years of putting up with a patchy, overburdened rail network, China is suddenly shoveling billions of dollars into new tracks and high-speed trains. Beijing has embarked on a five-year plan through 2010 that calls for a near quadrupling of investment to modernize the country's railways, which it sees as a foundation of a prosperous economy.

For **General Electric** Co., **Siemens** AG and other makers of locomotives, signaling devices and related high-tech railway gear, the planned spending represents a potential sales bonanza. In the latest deal, **Bombardier** Inc. of Canada Monday announced it would provide equipment to power and control 500 freight locomotives to be delivered to China's Ministry of Railways starting in 2009. The contract will earn Bombardier $480 million.

China is already the world's second-largest market for freight trains and related equipment, after the U.S., and it is the fastest-growing market for both passenger trains and those carrying freight. GE, which recently signed contracts with the Ministry of Railways for more than $700 million of locomotives and signaling systems, forecasts that China will be the rail industry's No. 1 market in the world in 20 years.

The scale of China's planned railway expansion is unprecedented, says Nigel Rayner, a transportation specialist at the Asian Development Bank, which has lent the Chinese government $2.94 billion for railway improvements since 1989.

"North America, in the early days of railway development, might be the only vaguely comparable situation," he says, "but that was not the result of a coordinated, long-term plan."

China's railroads, many of which were built in the early 20th century, have struggled to keep pace with the demands of its burgeoning economy. Shortages of rolling stock make for packed passenger cars, especially during national holidays such as the Spring Festival that starts this weekend. China transports an average of 7.6 million passengers per kilometer (about 12 million per mile) of a train route, almost six times the world average.

The squeeze on freight capacity is even worse. China moves more than 10 times as much freight per kilometer of its train routes than the global average. And while shippers in China fill an average of 160,000 freight cars each day, they need closer to 200,000, according to the Asian Development Bank.

Beijing's investment in its railways has lagged far behind spending on its highways and seaports, and railroads still don't reach large swaths of the country, particularly in the interior, where many of its natural resources are located. Congestion is the norm on most rail lines, and travel on them is slow and often fitful. A passenger train must frequently slow for a sluggish freight train ahead of it to pull over on a siding and let it pass.

Although trains are much more cost-efficient than trucks for carrying freight over long distances, the shortage of railway capacity forces a lot of cargo onto China's highways—where overloaded trucks pollute the air and damage road surfaces. Coal makes up almost half of all rail freight in this energy-hungry nation, leaving little room for containerized cargo and other goods. Yet bottlenecks along tracks from coal-producing regions in northern China mean that many coal-burning factories in the South must rely on time-consuming shipments by barge.

Under its current five-year plan, Beijing targets investment of 1.25 trillion yuan ($161.1 billion) in new rails and equipment, and outlays of 250 billion yuan for locomotives and rolling stock. By the end of 2010, the Ministry of Railways aims to have laid 17,000 more kilometers (about 10,500 more miles) of track—half as much as in all of Germany—to create a nationwide web stretching more than 90,000 kilometers.

"I think in many other countries, if I saw the sort of increase the Chinese are talking about, I'd have thought, 'Oh my...they're being overambitious,' " says Mr. Rayner of the ADB. But he adds that the Ministry of Railways has "very clear ideas" and a record of performing "effectively and on time."

Last year, Siemens booked an order for 60 high-speed trains valued at €669 million ($878.3 million). Alstom Transport—a unit of **Alstom** SA of France—and a consortium led by Japan's **Kawasaki Heavy Industries** Ltd. each won identical orders for 60 bullet trains while Bombardier sold 40.

The voracious demand and the money Beijing has available to spend, together with the speed at which Chinese railway officials decide what to buy, have combined to make the country an "amazing market," says **Dirk Hoke**, president of Transportation Systems for Siemens Ltd. China.

The field isn't altogether clear. While China's railway market is growing annually at double-digit rates, much of what Beijing spends on trains and related equipment will go to Chinese companies. A lot of the planned investment will pay for tracks, bridges and stations, work that local companies can do more cheaply than foreign ones. Michael Chan, an analyst with Macquarie Securities Ltd. in Hong Kong, says 77% of the 332 billion yuan the government has budgeted for railways this year will pay for such civil construction.

"The boom in this market is not so big as some might anticipate," cautions Alstom Transport Senior Vice President Marc Chatelard, who manages Alstom's business in the Asia-Pacific region. Mr. Chatelard adds that the ability to offer lower prices than one's competitors is "ultimately the decisive factor" in making a sale.

Furthermore, foreign manufacturers that win rail-related contracts face demands to transfer technologies to Chinese joint-venture partners, as a quid pro quo for the profits they stand to earn in China. For example, Siemens, a German conglomerate, has agreed to build 57 of its 60 trains at a local factory. The trick for these foreign companies, as for those making aircraft and many other high-tech products in China, will be to give the Chinese enough to keep them happy without sowing the seeds of home-grown competition.

Still, China's ambitious plan to modernize and expand its rail system is an opportunity no supplier can afford to miss. Siemens's Mr. Hoke says he can't think of any other market in which every one of the world's main producers of high-tech trains is grabbing a share. Siemens recently clinched a €190 million contract to manage construction of a high-speed rail line from Beijing to the coastal city of Tianjin.

GE has gotten the railroad ministry interested in a range of products, from diesel-electric locomotives to signaling technologies, and the Fairfield, Conn., company values the market in China at more than $3 billion a year. GE is "well positioned to win" business with a line of fuel-efficient freight locomotives, says Patrick Jarvis, a spokesman for GE Infrastructure, the unit that makes railway equipment.

Alstom, which helped develop France's TGV high-speed trains, earlier clinched an order for 320 locomotives valued at €372 million. Alstom also has sold hundreds of train cars used in Shanghai's mass-transit system and recently won contracts to deliver signaling equipment to Beijing's subways in time for the 2008 Olympics there.

China's appetite for railway equipment is so keen that the government must divide orders among several companies to ensure that it gets all it needs on time. Yet diplomacy also plays a role in Beijing's choice of suppliers, just as it does with Chinese purchases of commercial aircraft. During a visit to Beijing in October by French President Jacques Chirac, for instance, Alstom signed a letter of intent to supply the Chinese with 500 freight locomotives.

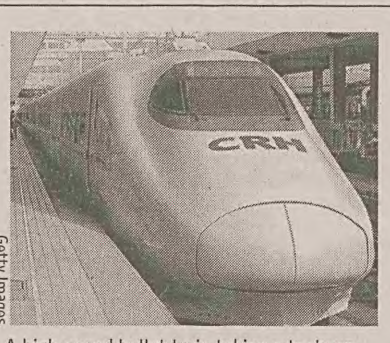
—Sue Feng and Kersten Zhang in Beijing and Juying Qin in Hong Kong contributed to this article.

Getting on Track

Elements of China's ambitious railway-modernization plan:

By 2010:

- Add 10,540 miles of new track, increasing national network to more than 55,800 miles
- Dedicate 4,340 miles of new track solely to high-speed passenger trains, some with top speed exceeding 200 miles per hour
- Upgrade 8,000 miles of existing track to handle high-speed passenger trains
- Electrify 9,300 miles of track to accommodate electric as well as diesel trains
- Increase maximum speed of freight trains on all lines to 75 miles per hour



Getty Images

A high-speed bullet train taking a test run out of the Shanghai South Railway Station last month

By 2020:

- Increase the national track network to 62,000 miles
- Increase dedicated high-speed passenger lines to 7,440 miles

Nevada Governor Denies Wrongdoing Over Contracts

Nevada Gov. Jim Gibbons denied any wrongdoing in the face of a federal investigation into whether he accepted gifts or payments from a company that won government contracts while he was in Congress.

"They can look as deeply as they need to and I encourage them to do so, but there would have been absolutely no influence," the newly elected governor told the Associated Press in Carson City, Nev. The Wall Street Journal reported in a page-one article yesterday that federal authorities are investigating his dealings with a contractor in his state when he was a member of Congress.

A federal law-enforcement official said the preliminary inquiry is focusing on what role Mr. Gibbons may have played in awarding military contracts to **eTreppid Technologies** LLC in Reno and whether he received any gifts in exchange. Mr. Gibbons said he hadn't been contacted by the FBI regarding his contacts with Warren Trepp, whom he described as a longtime friend; Mr. Trepp is the majority owner of eTreppid and contributed nearly $100,000 to Mr. Gibbons's campaign for governor.

"They never talked to me. They never have given me any kind of hint or whatever," Mr. Gibbons said.

WASHINGTON WIRE | *By John Harwood*

A Weekly Report From The Wall Street Journal's Capital Bureau

House Republicans Opposed To Surge May Pressure Senate

DEMOCRATS AIM to jump-start Senate debate on Iraq with House GOP defections today.

"As the House vote goes up, the Senate vote goes up," says Democratic caucus chairman Emanuel; predictions range from 20 to 40. Senate leader Reid plans vote tomorrow seeking floor action on House resolution after next week's recess.

Democrats pressure vulnerable Republican Sen. Sununu as new poll shows Bush's job approval dropping to 31% in New Hampshire. War unhappiness shadows 2008 presidential ticket's Granite State prospects as well as Sununu's re-election bid.

Weekly Standard pressures waverers from the right, noting "the American political system has primaries," too.

U.S. MILITARY WARNS troop surge can't succeed without Iraqi government changes.

Citing corrupt and inefficient bureaucracies in Baghdad, an Army official says, "If we don't get the ministries fixed, we will fail." Last year, ministries spent only about three-quarters of their budgets, with most money going for salaries.

Local governments can't raise money on their own and often get little help from Baghdad. A classified study by Pentagon's Joint Warfare Analysis Center suggests the best way to curb violence is providing jobs.

REPUBLICAN RIVALS EYE Romney as 2008 wild card.

The former Massachusetts governor's announcement in Michigan was low-key; only one-fourth of hoped-for crowd of 1,000 attended follow-up Des Moines event in bad weather. Former Iowa Gov. Branstad, who's uncommitted but has a son working for Romney, says Romney's gaining ground in Iowa polls, while McCain and Giuliani "have dropped."

Although Romney touts tax cuts, Cato Institute's Dan Mitchell says economic conservatives remain wary of his record on spending—a rising issue on Republican right. Giuliani and McCain teams count on besting Romney on strength and gravitas, despite his matinee-idol visage.

"How many good-looking presidents have we had?" asks a McCain strategist.

LAST-MINUTE HITCH in Dubai Ports World sale riles Washington. Treasury, Homeland Security, and Democratic Sens. Schumer and Menendez question New York-New Jersey Port Authority's demand for $84 million to approve sale to AIG Global. A spokesman for New Jersey Gov. Corzine insists, "We are staying out of this."

SMALL VICTORY? USAID's boast of minor monetary policy achievement underscores its difficulties in Iraq. "After 18 months of effort," the aid agency says, "advisers working with [Central Bank of Iraq] staff have finally won support from the Iraqi Ministry of Justice" for changes to "help maintain price stability."

DESPITE PUBLIC CLASHES, House Democrats and Bush administration still hope for labor-standards compromise in pending Peru, Panama and Colombia trade deals. Staff-level discussions could provide framework for broader accommodation in legislation extending Bush's trade-negotiating authority, but Democratic Rep. Levin of Michigan says "we still don't have a concrete proposal from the administration."

MOMENTUM: Trade group of for-profit hospitals next week joins accelerating health-care debate with universal-coverage proposal. Democratic Rep. Emanuel and Republican LaHood, both of Illinois, today offer incremental, bipartisan step: renewal of State Children's Health Insurance Program that would make it easier to sign up kids who are eligible but not enrolled.

DINGELL CHAFES at White House reluctance to let economic aide testify on climate change.

House Energy and Commerce chairman writes White House counsel Fielding, warning that his rebuffed invitation to National Economic Council director Hubbard is "non-compulsory—at this time." Former Clinton economic aide Shapiro says business taxes on carbon would work better than "cap-and-trade" schemes at reducing emissions.

U.N. Foundation chief Tim Wirth attributes brightening legislative prospects partly to need to demonstrate seriousness to China and India. "The whole way the discussion has changed is quite remarkable," says British climate change expert Nicholas Stern.

In December, 3,000 diplomats, scientists, and environmentalists will meet in Indonesia to discuss Kyoto Protocol.

MINOR MEMOS: Former Iowa Gov. Vilsack's appearance on NBC's "Tonight Show" places him in top-tier 2008 company; Giuliani, McCain, Clinton, Obama and Edwards have also sparred with Jay Leno. ... Asked about superiority of stocks as long-term investment, economic historian and Fed Chair Bernanke cautions, "If you look at stock markets in Czarist Russia, they don't look so great today."

—Washington Wire is updated each weekday at www.washwire.com.

FROM PAGE ONE

Backdating Probes Move to Faster Track

Continued from Page One

Inc., say people familiar with the situation, and is strongly considering bringing cases against ex-executives of Apple Inc. and semiconductor-equipment maker KLA-Tencor Corp. In St. Louis, at least one former executive of Engineered Support Systems Inc., a defense contractor now owned by DRS Technologies Inc. of Parsippany, N.J., has been told of a likely charge, says a person close to the matter.

The former Monster Worldwide general counsel who pleaded guilty yesterday is Myron Olesnyckyj, 45. He admitted that he and others conspired to systematically backdate stock options, inflate the company's earnings and mislead auditors. Separately, the Securities and Exchange Commission filed a civil complaint against him. Mr. Olesnyckyj agreed to forfeit $381,000 in personal gains. He faces sentencing in August.

Mr. Olesnyckyj, fired last year, is expected to cooperate with prosecutors investigating Monster founder Andrew McKelvey. Mr. McKelvey, who hasn't been charged, quit late last year rather than be interviewed in an internal company probe of options. A lawyer for him declined to comment.

In a 1999 email cited by the government, Mr. Olesnyckyj wrote to a human-resources official: "No written document should ever state lowest price over next 30 days! The auditorw [sic] will view that as backdating options and we'll have a charge to earning in the amount of the difference between price on day 30 and any lower price which is used."

That's the type of evidence investigators are looking for—"plus factors" that can give a case more promise of success. Such factors might include written indications of deliberate backdating; falsified documents; efforts to hide manipulation from auditors or investigators; or indications that top executives gave themselves backdated options. With so many companies admitting to an improper options practice, investigators have an abundance of possible cases.

Broadcom illustrates some of the elements investigators are focusing on as they set their priorities. The Irvine, Calif., company is one of the biggest companies in the options spotlight. It makes chips that help power all sorts of communications devices and has a stock-market value of more than $19 billion. The SEC in addition to the Justice Department is looking at Broadcom.

Also being investigated are Henry Nicholas—the former chief executive to whom the CFO's email was addressed—and Henry Samueli, Broadcom's chairman. Messrs. Nicholas and Samueli co-founded Broadcom. The two made up the committee that handed out options Broadcom has admitted were backdated.

Henry Nicholas

Mr. Nicholas said in a statement his focus was on running Broadcom, and "the minutiae of employee paperwork and documentation were not at the top of my list." Mr. Samueli's attorney declined to comment except to say that some of the Journal's information was "misleading."

Mr. Nicholas founded the company in 1991 with help from Mr. Samueli, his former engineering professor. After they took it public in 1998, its stock soared 20-fold in two years. Together the men sold more than $1 billion in Broadcom shares near the end of the tech boom. Each still holds about $1 billion of Broadcom stock.

A domineering figure, Mr. Nicholas routinely scheduled late-night staff meetings and boasted of working for days without sleep. At a yearly sales conference, he quizzed subordinates about chip designs, forcing those who erred to gulp down shots of hard liquor. He stepped down from his CEO post in 2003. Along the way, he settled into a 15,000-square-foot mansion, which he outfitted with a billionaire's toys: waterfalls, secret tunnels into the hills, a sports bar.

Mr. Samueli cuts a less flamboyant figure. A leading philanthropist in Orange County, he also owns the Mighty Ducks hockey franchise. Two University of California engineering schools bear his name.

Last year Broadcom admitted rampant backdating. It restated several years of results, taking $2.24 billion in charges against earnings—the biggest restatement so far in the scandal.

Mr. Ruehle stepped down as Broadcom's chief financial officer a few days before he was to be interviewed by outside lawyers doing the internal investigation. Broadcom said in a securities filing that Mr. Ruehle was "at the center" of backdating. Mr. Ruehle's lawyer, Richard Marmaro, said that if his client is charged, he "will not plead guilty because he did not commit any crime."

Broadcom in its filing also blamed a former human-resources chief, Nancy Tullos. It said she "encouraged, assisted in and enabled" the backdating. A lawyer for Ms. Tullos, who left in 2003, declined to comment for this article. The lawyer has said previously that Ms. Tullos followed the directives of superiors, didn't select any grant dates and always acted in the company's best interests.

Broadcom's backdating, which it has said occurred from 1998 to 2003, took place amid a gyrating stock price and a heated technology industry in which valued employees were often poached by others with big options packages. Broadcom emails, described by people who have seen them, suggest that executives sometimes deliberately gave grants earlier dates and sometimes cautioned others not to mention the dating process in writing.

Broadcom's auditor, Ernst & Young, raised concerns in 2000 about an aspect of the options process and reminded executives about the rules, say people familiar with the matter. At that time, options granted at the current stock price didn't affect companies' earnings. But a grant at below-market prices was considered compensation, so that companies had to count it as an expense.

In 2000 Broadcom made a giant options grant to a large number of employees, purportedly on a day in May when the stock had its lowest close for the quarter. Ernst discovered that the company hadn't finished divvying up the grant among employees until months later. Accounting rules say an option isn't recorded as granted until recipients are determined.

Ernst warned company officials, including Mr. Ruehle, not to make such "subsequent allocations" again, according to people familiar with the matter. Ernst reminded executives of how options should be accounted for, taking them through the rules.

Like many stocks, Broadcom's sank after the Sept. 11, 2001, terrorist attacks. It hit its lowest price in three years on Oct. 1, before recovering and then more than doubling by year-end. Broadcom claimed to have granted a slew of options to non-officers on Oct. 1. Investigators are looking at whether the company may actually have made this grant later and backdated it, say people familiar with the situation.

Broadcom said in its federal filing that co-founder Mr. Nicholas was "at times" involved in the backdating, and bore a large responsibility for the problems because of "the tone and style of doing business he set." A person familiar with the grant dated Oct. 1 said it engendered jealousy among those who didn't get options then, and that Mr. Nicholas and others appear to have retroactively added more people to the list.

In an email on Jan. 2, 2002, Mr. Nicholas sent a list of employees included in the Oct. 1 grant to at least two people, including Ms. Tullos, say people familiar with the email's contents. "I found my old share grant spreadsheet from before October," he wrote.

But the electronic time stamp on the computer file indicated the spreadsheet had been created toward the end of 2001, long after Oct. 1, say people familiar with the matter. The discrepancy has led investigators to examine whether the email and spreadsheet might be an attempt to provide written cover for manipulated grants.

Broadcom said in its federal filing that co-founder Mr. Samueli was "involved with" the "flawed option granting process." The company cleared him, saying he "reasonably relied on management and other professionals" regarding proper treatment of the options. According to people familiar with the matter, Mr. Samueli, as a member of the Equity Award Committee, received a number of emails that discussed retroactive date selection.

Mr. Samueli cooperated with the internal probe but so far has declined a request to speak to government investigators—unusual for a sitting chairman. When weighing how much responsibility corporations themselves bear for fraudulent conduct, prosecutors are supposed to consider how cooperative top officials have been, according to Justice Department guidelines.

An outside lawyer for Broadcom said it wouldn't comment on the investigation except to say that it was cooperating fully. "Dr. Samueli did cooperate fully and voluntarily with the company's independent internal investigation," said the lawyer, David Siegel.

In any effort to link backdating to Messrs. Nicholas and Samueli, prosecutors would face a potential hurdle: The co-founders didn't regularly receive option grants themselves. The two received just one grant, for a million options each, in 2002. Broadcom has said no grants to the founders or to directors were among those misdated.

Ms. Tullos and Mr. Ruehle, by contrast, received numerous options, including grants the company has said were manipulated. Mr. Ruehle had $32 million of unexercised options when he left last year. The company canceled them. Last year the company canceled $4 million of options Ms. Tullos held.

Several emails written by Ms. Tullos suggest she may have been aware the dating practices were troublesome. In a period when Broadcom's stock was falling, a business-unit head repeatedly asked her when his subordinates would get options. Eventually, she told him "I cannot tell you what we are doing" in a "post-Enron" world, according to people familiar with the matter. In a message to another employee asking about options, she wrote, "I cannot answer in writing."

Prosecutors would need more than suggestive emails to make a successful criminal case. A document that seems like a smoking gun can grow cold when the context is explained to a jury by an experienced defense lawyer.

Another obstacle for the government in prosecuting backdating is at some companies the practice was discussed openly, making it harder to argue that executives knew they were engaged in wrongful conduct.

Defense lawyers will doubtless pass blame around. Those representing CEOs are likely to argue that their clients—being business leaders, not accountants—relied on others to figure out how options should be issued and accounted for. Those representing subordinates are likely to argue that the boss made them do it.

Helping boost momentum toward the filing of charges is the statute of limitations. It's five years for securities fraud and wire fraud. But there's some flexibility, based on the notion that misdated options might affect earnings in later years.

—Paul Davies contributed to this article.

Dating Game

❖ **The News:** Investigations of possible stock-options backdating intensify.

❖ **Latest Cases:** A Monster Worldwide former counsel pleaded guilty, a day after a felony guilty plea was filed by Take-Two Interactive's founder.

❖ **Heating Up:** Emails discussing options dates at Broadcom have the attention of prosecutors, who are considering filing criminal charges.

WSJ.COM

ONLINE TODAY: See a scorecard of companies that have been identified as having potential stock-option dating issues, plus complete coverage, at **WSJ.com/PerfectPayday**.

O'Keeffe Painting Is at the Center of a Modern Fight

Continued from Page One

Booker T. Washington and historian John Hope Franklin.

"It was a very, very bitter decision" to sell them, says Fisk President Hazel O'Leary, former secretary of energy in the Clinton administration and a Fisk graduate. "On the other hand, you ask yourself 'Do you want two pictures or do you want Fisk University for the next 50 years?' "

Hazel O'Leary

Many of the nation's 101 predominantly black colleges and universities, including Fisk, have struggled financially in the wake of the racial integration of higher education. They have lost prospective students and tuition revenue to better-funded, predominantly white universities. Contributions from their early benefactors, many of them white philanthropists, have diminished, and donations from alumni and foundations have not made up the difference.

Fisk decided in 2005 to sell several of the paintings and to use other artworks as collateral for a loan, then settled on selling only the O'Keeffe and the Hartley, the two most valuable. Under state law applying to the sale of certain charitable gifts, it sought approval from Davidson County Chancery Court in Nashville. The Georgia O'Keeffe Foundation filed a motion to block the sale, arguing it would violate the directives of Ms. O'Keeffe.

Last November, Fisk struck a deal with the Georgia O'Keeffe Museum, which had taken charge of the painter's estate from the foundation: The museum, located in Santa Fe, N.M., would pay $7 million for her famous oil painting, a 1927 depiction of New York's American Radiator Co. skyscraper. Fisk could sell the Hartley painting, a 1913 abstract, to a Tennessee buyer, so long as the buyer permanently lent it back to Fisk for display.

Then Mr. Cooper stepped in. Exercising his statutory power, he has taken the position that both paintings should stay in Nashville. The city best known for country music and the Grand Ole Opry, he contends, should rally to help Fisk and to recognize the artworks as treasures worth keeping.

Mr. Cooper told the school and the museum that he would approve their settlement only if both paintings were first offered for sale to any buyer who agrees to lend both back to Fisk. If no such buyer surfaced within 30 days, he proposed, the O'Keeffe museum would get its namesake's painting for $7 million, and the Hartley would go on the block. Both Fisk and the museum agreed to the terms, and the 30-day period begins today. Under the agreement, $560,000 from any sale will fund renovations to the gallery where the collection is housed. Ms. O'Leary says the rest will be used to restore the endowment and cover the annual operating deficit.

The collection "has been taken for granted," says Mr. Cooper. "There is nothing like a deadline to focus attention," and to "prod and gauge what the public's interests are here."

The plan mirrors a deal brokered in December in Philadelphia that stopped Thomas Jefferson University from selling Thomas Eakins's 1875 painting, "The Gross Clinic," to the National Gallery of Art and a museum in Arkansas for $68 million. That deal allowed 45 days for local museums and foundations to raise money to purchase it.

Last year, Atlanta's mayor rallied business leaders to drum up $32 million to buy the writings and personal papers of the late Martin Luther King Jr. The civil-rights leader's children had planned to auction the documents, which now are held at his alma mater, Atlanta's Morehouse College.

Fisk, which was founded in 1866, was long one of the nation's most important African-American schools. But it was virtually unknown to most whites when Ms. O'Keeffe's husband, famed photographer Alfred Stieglitz, died in 1946.

Ms. O'Keeffe donated the bulk of his valuable collection of photographs and art to well-known institutions such as the Metropolitan Museum of Art and the National Gallery of Art. But at the suggestion of a friend, New York photographer and writer Carl Van Vechten, she gave 101 pieces to Fisk. Mr. Vechten, who was white, collaborated with, and was a patron to, black artists and writers during the Harlem Renaissance, and was a friend of Fisk's president at that time.

The bequest included works by many modernist painters championed by Mr. Stieglitz at his famed "291" gallery in New York. Photographs by Mr. Stieglitz were also included, as were prints by Picasso and lithographs by Toulouse-Lautrec and Cézanne. The O'Keeffe painting is said to be her only work bearing a reference to her husband, whose name appears in red neon lights to the left of the subject building.

From the beginning, there were questions about whether Fisk would have sufficient resources and expertise to safeguard and display the collection, according to Ms. O'Keeffe's published correspondence. The campus gym was converted into a gallery for the exhibition's debut in 1949. When Ms. O'Keeffe arrived several days before the opening, she angrily made wholesale changes, repainting every wall white and ripping out ceiling lights, her letters say.

By 1972, the paintings needed to be taken down and sent to New York for restoration. Ms. O'Keeffe gave the school $20,000 to help. But Fisk couldn't afford the whole job, and the art wound up in storage in New York. By 1983, Fisk was nearly $3 million in debt. Its buildings were crumbling, and at one point, the gas company shut off heat in its dormitories.

Civil-rights leaders and affluent blacks and whites rallied to help. Bill Cosby donated $1.3 million. President Reagan gave $1,000 and appointed a committee to examine the plight of black schools. Fisk raised $27 million over seven years, and in 1984, the Stieglitz collection returned to a renovated gallery.

By the mid-1990s, however, Fisk was once again in financial trouble. The departures of four presidents in less than a decade had interfered with fund-raising efforts. Some trustees who had been instrumental in raising money rotated off the board, and others resigned after disagreements over financial matters.

Georgia O'Keeffe

Fisk had no resources to promote its art, and gallery attendance slumped. At its main gallery, named for Mr. Van Vechten, the roof leaked and climate controls failed.

In 2004, Ms. O'Leary took over as president, raising hopes for a turnaround. To spark donations, she publicized Fisk's dire condition. Five straight years of $2 million budget deficits, she said, had consumed half of its endowment, leaving just $7 million. She said she had little choice but to sell part of the Stieglitz collection.

The Georgia O'Keeffe Foundation argued that the plan would violate the artist's sale prohibition—and would void the donation and necessitate the collection's return to the O'Keeffe museum. Fisk maintained it had the right under state law to sell the paintings—and that in a later letter Ms. O'Keeffe had withdrawn her prohibition of a sale.

Saul Cohen, president of the museum's board of directors, says the attorney general's plan to solicit other bidders for 30 days would help Fisk, while still leaving the O'Keeffe museum a chance to get the painting.

Says the attorney general: "We will let the Stieglitz collection go if it means maintaining the survival of Fisk."

OPINION

REVIEW & OUTLOOK

Broadband Breakout

"I love the free market, but the fact is more concentration means less competition, and these markets are less free than they should be. And this Commission is about regulation—regulators. I always worry a little when I hear regulators shy away from regulation talk."

—Senator Byron Dorgan (D., North Dakota) addressing members of the Federal Communications Commission at a recent hearing.

If you're wondering where the new Democratic majority in Congress is inclined to steer telecom policy, look no further than Mr. Dorgan's comment above. Note how he pays lip service to free markets while ultimately favoring more regulation for its own sake.

But more regulation is the last thing today's telecom industry needs, at least if empirical evidence is any indication. As FCC Chairman Kevin Martin reported at a Senate hearing earlier this month, the industry is now taking risks in a way it hasn't since the tech bubble burst six years ago.

"In 2006, the S&P 500 telecommunications sector was the strongest performing sector, up 32% over the previous year," said Mr. Martin. "Markets and companies are investing again, job creation in the industry is high, and in almost all cases, vigorous competition—resulting from free-market deregulatory policies—has provided the consumer with more, better and cheaper services to choose from."

Much of this growth has been fueled by increased broadband deployment, which makes high-speed Internet services possible. The latest government data show that broadband connections increased by 26% in the first six months of 2006 and by 52% for the full year ending in June 2006.

Also noteworthy, notes telecom analyst Scott Cleland of the Precursor Group, is that of the 11 million broadband additions in the first half of last year, 15% were cable modems, 23% were digital-subscriber lines (DSL) and 58% were of the wireless variety. Between June 2005 and June 2006, wireless broadband subscriptions grew to 11 million from 380,000.

This gives the lie to claims that some sort of cable/DSL duopoly has hampered competition among broadband providers and limited consumer options. That's the charge of those who want "network neutrality" rules that would allow the government to dictate what companies like Verizon and AT&T can charge users of their networks. But the reality is that the telecom industry has taken advantage of this deregulatory environment to provide consumers with more choices at lower prices. Verizon's capital investments since 2000 exceed $100 billion, and such competitors as Cingular, T-Mobile and Sprint are following suit. So are the cable companies.

How deregulation has led to more investment.

It's also worth noting that the deregulatory telecom policies pushed by Mr. Martin and his immediate predecessor, Michael Powell, have accompanied a wave of mergers—SBC/AT&T, Sprint/Nextel, Verizon/MCI, AT&T/BellSouth. Most of these marriages were opposed by consumer groups and other fans of regulation on the grounds that they would lead to fewer choices and higher costs. In fact, these combinations have created economies of scale, and customers are clearly better off.

The result has been more high-speed connections, along with greater economic productivity, but also an array of new services. The popular video-sharing Web site YouTube is barely two years old. And it wouldn't exist today but for the fact that there's enough broadband capacity to allow millions of people to view videos over the Web.

Increased broadband demand has also been good news for Internet hardware companies like Cisco and Juniper, where annual sales are up by nearly 50%. A Journal report this week notes that "North American telecom companies are projected to spend $70 billion on new infrastructure this year," which is up 67% from 2003.

And prices are falling, by the way. Between February 2004 and December 2005, the average monthly cost for home broadband fell nearly 8%. For DSL subscribers, it fell nearly 20%. Which means that consumers are benefiting from new services and different pricing packages, as well as getting better deals.

The one sure way to stop these trends is by bogging down industry players with regulations or price controls that raise the risk that these mammoth investments will never pay off. Yet that seems to be the goal of Senator Dorgan and other Democrats such as Representative Ed Markey, another "Net neutrality" cheerleader, who is planning his own hearings. Consumers will end up paying for such policies in fewer choices and higher prices.

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Senate Consternation Process

POTOMAC WATCH
By Kimberley A. Strassel

The House spent this week debating an Iraq resolution that will damage U.S. efforts to fight terror overseas. Never to be outdone, the Senate got busy undercutting the war on terror here at home.

That's one way to view the fight Senate liberals are picking with President George W. Bush over the issue of Justice Department nominations—a battle that bubbled to the surface this week with regard to U.S. attorney appointments. California ringleader Dianne Feinstein is hoping to score a few political shots, as well as give the White House a taste of what's to come in future Senate confirmation brawls. If a little thing like national security gets in the way, so be it.

Ms. Feinstein and Senate Majority Leader Harry Reid picked up the U.S. attorneys football in January, after the news leaked that the White House was dismissing seven federal prosecutors. The administration says it's unhappy with these lawyers' performance, and at least it is firing its own appointees. One of Bill Clinton's first acts was to cashier pretty much *every* sitting U.S. attorney, all of whom had been appointed by Mr. Clinton's predecessors. Nothing in the record suggests either Mr. Reid or Ms. Feinstein were all that cut up over the Clinton dismissals.

This time, however, Mr. Reid is labeling the firings "cronygate," and accusing the administration of ousting capable U.S. attorneys in order to award political allies with plum posts. Ms. Feinstein went further, suggesting the administration's real goal was to circumvent the Senate confirmation process. She noted that a 2006 Patriot Act amendment gives the attorney general—rather than federal courts—the right to appoint interim U.S. attorneys, and to keep those interims in place until the Senate confirms a permanent replacement. Clearly, said Ms. Feinstein, the White House intended to pack the Justice Department with shady prosecutors and avoid the Senate altogether.

What we have here, then, is Ms. Feinstein, the serial filibusterer, the woman who rarely saw a Bush judge who deserved an up-or-down vote, accusing the administration of abusing the confirmation process. It might be fall-down hilarious, if everyone weren't taking the Californian so seriously. Instead, Ms. Feinstein recently convinced a majority of her fellows on the Judiciary Committee (including Republicans Arlen Specter, Orrin Hatch and Chuck Grassley) that the Senate was getting slapped about, and to vote to revoke the Patriot Act amendment.

Thus is the Senate lurching back to a pre-9/11 mentality, putting politics and turf ahead of key security issues. If Ms. Feinstein wins this battle, the appointment procedure reverts to the status quo ante. Under that old process, the attorney general can appoint an interim U.S. attorney for 120 days. But if the Senate doesn't get around to confirming a full-time replacement by then, the federal courts get to name a new interim.

That old system was primarily a constitutional oddity, but it also posed a threat to terror investigations. History shows that it is a rare event for a White House to get a permanent attorney through the confirmation process in 120 days; it usually takes closer to a year. Yet after the first 120 days, the federal courts officially get to staff the Justice Department.

Some courts, understandably, see the concept of the judiciary making executive appointments as constitutionally suspect. That's one reason why, in the past six years, courts in Florida, Oklahoma and Virginia have outright refused to make appointments. Courts also have little insight into the Justice Department's ongoing investigations, or who best can step in to fill an attorney vacancy. While many courts will, as a result, reappoint the AG's interim selection, they aren't required to do so.

That can lead to very bad selections. In 2005, a South Dakota judge attempted to appoint a buddy of former Senate Majority Leader Tom Daschle; the court pick came from outside the Justice Department and lacked security clearances. This led to a standoff between the attorney general and the court, and a crisis over who was really in charge. Hardly the best way to go about breaking up terrorist cells, or prosecuting Zacarias Moussaoui.

As it happens, nothing suggests the administration is trying to subvert confirmations. Since the Patriot Act amendment in March 2006, the White House has nominated 15 individuals to serve as U.S. attorneys, and all have gone, or are going, through the Senate confirmation process. There's zero reason to believe the next seven won't as well. But try telling that to Mr. Reid, who yesterday unsuccessfully tried to push the Feinstein proposal through the full Senate.

Dianne Feinstein

Meanwhile, Ms. Feinstein is only the latest to play politics with key national-security nominees. Carl Levin spent six months blocking the confirmation of Ken Wainstein, who was tapped as assistant attorney general for national security. That position was designed to further break down the infamous "wall" between intelligence and law enforcement, a goal that even Mr. Levin claims is important. Yet the Michigan Democrat was in a strop about documents he wanted from the Bush administration, and was only too happy to hold Mr. Wainstein hostage. Mr. Levin waged a similar war against Alice Fisher—nominated to head the Criminal Division of Justice—for more than a year.

The latest victim is Steven Bradbury, who was nominated in the distant past of June 2005 to head up the Justice Department's Office of Legal Counsel. As acting head of that office, Mr. Bradbury offered legal advice on the administration's domestic wiretapping program. This proved too much for Ted Kennedy, Dick Durbin and Russ Feingold. The last was so incensed over the wiretapping program he proposed censuring President Bush. That didn't fly, so he and fellow critics settled for blocking Mr. Bradbury from even getting a vote.

One big question after Democrats won the election was how they'd handle the all-important question of national security. The public's been getting a taste of that management via the Iraq debate, but the nominations flaps are equally revealing. Democrats like to say that having a robust criminal justice system is key to fighting terror, and that's true. Many Democrats (while they won't admit it) even still believe the courts are the *only* place to fight al Qaeda. The least they can do is show they mean it and ensure the Justice Department has the people it needs.

Write to kim@wsj.com.

Steal Magnolia

State Farm, the nation's largest home insurer, announced this week that it would no longer be writing new homeowner or commercial policies in Mississippi. Magnolia Staters wondering whom to thank for their rising insurance bills, assuming they can get insurance at all, should direct their catcalls at Attorney General Jim Hood.

Mr. Hood should have seen this coming back in September of 2005, when he launched his populist campaign against insurers. In the wake of Hurricane Katrina, private insurers began invoking their entirely legal "flood exclusions" and refusing to pay for any damage that wasn't caused by wind. These exclusions had been clearly written into contracts, yet Mr. Hood declared them "unconscionable" and sued the industry.

He claimed victory several weeks ago when he bludgeoned State Farm into a settlement, although everyone can now see his triumph comes at a price. State Farm will now be paying at least tens of millions of dollars in claims that it never factored into its risk premiums, and it has reasonably chosen not to make itself vulnerable again to Mr. Hood's extortion.

"It is no longer prudent for us to take on additional risk in a legal and business environment that is becoming more unpredictable," said State Farm Senior Vice President Bob Trippel, which is a polite way of saying "we'd be nuts to keep doing business in a state that can't spell c-o-n-t-r-a-c-t."

State Farm joins Allstate, which last year also stopped writing policies along Mississippi's coast. Together, the two insurers make up 40.5% of the Mississippi market. Homeowners looking for coverage will now have fewer companies to choose from, with higher premiums the likely result. If the rest of the industry follows suit and also exits Mississippi, consumers could have no choice at all.

Surrounding states such as Florida, which have begun to follow Mr. Hood down the insurance-bashing path, might want to reverse course before their own consumers end up staring down the next hurricane with no coverage. As for Mr. Hood, he and his buddies in the tort bar have provided an exquisite illustration of how political and legal predation against business ends up harming the little guy.

Iran's Smoking Guns

Following the weekend intelligence disclosures about Iranian-supplied weapons killing GIs in Iraq, we predicted Tuesday that "a large part of Washington will pretend the evidence doesn't exist, or suggest the intelligence isn't proven, or claim that it's all the Bush Administration's fault for 'bullying' Iran." Sure enough, President Bush faced a barrage of questions Wednesday wondering whether senior Iranian leaders were really aware of the weapons transfers, whether he was using "faulty intelligence," and whether the disclosures were part of a strategy designed to "provoke Iran."

Now sniper rifles show up in Iraq.

So here is the state of our public discourse: American military officials present prima facie evidence of Iranian weapons implicated in killing 170 U.S. soldiers and wounding 600 more, and Washington's main concern is not for the GIs but in refighting the last intelligence war.

Well, here's an item that doesn't seem to have been manufactured by Dick Cheney. According to a report in Britain's Daily Telegraph, U.S. forces in Baghdad have recently discovered 100 high-powered sniper rifles made by Austrian gun-maker Steyr-Mannlicher. The .50-caliber Steyr can accurately fire an armor-piercing round at a range of 1,500 meters. The weapon is good against Humvees, helicopters and body armor.

In 2004, Iran purchased some 800 Steyrs, allegedly for use against drug traffickers. At the time, both U.S. and British officials urged the Austrian government to bar the $15 million sale, fearing the weapons would fall into enemy hands. Former Austrian Chancellor Wolfang Schüssel thought otherwise, and let the deal go forward. To better grease the skids, then-Steyr-Mannlicher CEO Wolfgang Fürlinger made the case that the weapons were basically harmless and that Tehran had signed "end-user certificates" guaranteeing they would not be re-sold, according to the German newsweekly Der Spiegel.

Today, the Austrian government pleads that the sale had been "checked very thoroughly," and that "what happened to the weapons . . . is the responsibility of the Iranians"—which prompts the question of why the Austrians would have bothered with the end-user certificates. The Bush Administration took a less cavalier view and in 2005 banned Steyr-Mannlicher from bidding for U.S. government contracts.

It remains to be confirmed whether the serial numbers on the Steyrs found in Iraq match those from the 2004 sale—if they do, it ought to prompt a top-to-bottom review of all Austrian military contracts. Meantime, is it too much to expect American journalists and Members of Congress to devote as much skepticism to Iran's motives and behavior as they do to Mr. Bush's?

Putin and Progress

By Padma Desai

Whatever the West's grave misgivings about Vladimir Putin, they are not widely shared by the Russian people, who consistently give their president 70% approval ratings in opinion polls. Even former Presidents Gorbachev and Yeltsin, much admired in the U.S., have given a nod of approval to Mr. Putin's "strategic" direction, even though they express reservations about his moves to consolidate federal authority.

Nonetheless, there are two pertinent issues to face. First, would any Russian president succeeding Mr. Putin act differently in foreign policy? Second, is Russia regressing irretrievably into authoritarianism, or is she likely to embrace Western democratic norms despite the zigzags?

The Kremlin's pursuit of national interests in foreign policy, whether we like it or not, reflects a broad agreement among Russians. Indeed, on a whole range of issues ranging from NATO's eastward expansion to Mr. Putin's hardball tactics with the independent states in Russia's neighborhood, the majority of Russians support his decisions. Even Russia's leading reformers regard the neighborhood as Russia's area of interest.

Former Prime Minister Mikhail Kasyanov, who successfully carried out a series of reforms during his 2000-2004 tenure, insists that Russians "have special interests and responsibilities" in their immediate neighborhood. "We have a long history of shared problems and common tradition, although the former Soviet republics are now independent states," Mr. Kasyanov told me in a December 2004 interview.

Anatoly Chubais, the legendary privatizer of Russian industry, was even more explicit in his pronouncements, suggesting that Russia should become a "liberal empire." In an interview on Vremya TV, he added, "We must be frank and straightforward and assume this mission of leadership, not just as a slogan but as a Russian state policy. I believe this mission of leadership means that Russia is obliged to support in every way the expansion of its business outside Russia."

In short, unlike Europe and Japan, which share U.S. concerns despite occasional differences, Russia always will have geopolitical interests in its immediate neighborhood, extending its decision-making periphery as far as the Middle East and China. This does not imply that the West should uncritically accept specific decisions in pursuit of these interests, such as the expulsion of Georgians from Russia. But even if Russians were to subscribe to liberal Western values as President Bush desires, their future leaders still might choose to define their interests independently. Moscow would continue to engage the U.S. leadership in win-lose dialogues over Russia's determined foreign policy.

But never mind the likelihood that a liberal, democratic Russia might change its foreign-policy style: What are the prospects of such a Russia emerging in the first place? If it's correct to say that a prospering middle class—dare one call it a bourgeoisie?—inevitably leads to the rise of democracy, then Russia fits the bill admirably. The transformative changes in Russia, a remarkable development since Mr. Gorbachev's glasnost, are phenomenal. Russians are acquiring private housing, automobiles and fixed and mobile telephones at a dizzying speed. The overall poverty rate has declined from around 35% in the mid-1990s to about 10% today, and 70% of college-age youngsters receive a higher education.

There has been much angst over Russian muscle-flexing on the pricing and supply of oil and gas. However ham-handed, Moscow has simply used its bargaining power to extract better economic terms in situations of bilateral monopoly. Gazprom, the Russian gas supplier, has sought maximum possible terms from its European customers before they switch to alternative energy sources. At the same time, Ukraine and Belarus have bargained with Gazprom over transit charges because Russian gas must pass en route to Europe via pipelines located in their territories.

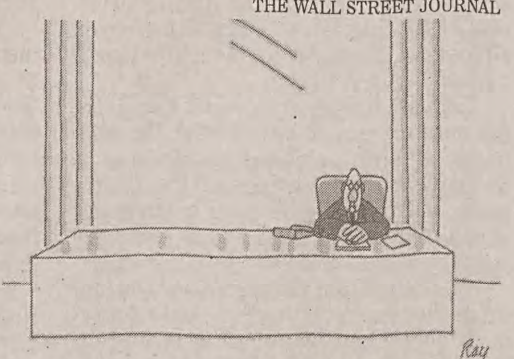
Russian industry and energy sectors will increasingly adopt market-economy rules and practices as they learn to interact and integrate with Western business. Recognizing this, German Chancellor Angela Merkel signed with Mr. Putin a 2006 agreement in which Wintershall, the energy unit of German chemical giant BASF, and Gazprom exchanged equivalent stakes in early 2006. More contracts are proliferating with French and Italian partners. Russia's giant power company is poised to raise $10 billion in the next two years and to invite Western companies to supply power generating units, technology and management know-how. Gazprom, according to some reports, is set to raise $75 billion in the next decade for financing a variety of projects. Will American businesses be sidelined from lucrative contracts and a liberalizing, market-oriented mission in a fast growing and diversifying Russian economy?

"There is a definite consensus among Russian society and the elite that Russia needs a market economy," Yegor Gaidar, Mr. Yeltsin's young reforming prime minister told me in October 2004. "By contrast, our struggle to form a robust, functioning democracy has not brought decisive results. . . .I do not think that the educated, urban populations in large countries such as Russia can put up with undemocratic regimes for long."

Ms. Desai, Harriman professor of comparative economic systems and director of the Center for Transition Economies at Columbia, is the author of "Conversations on Russia: Reform from Yeltsin to Putin" (Oxford, 2006).

Pepper . . . and Salt

THE WALL STREET JOURNAL



AS HE GREW OLDER, JAMERSON FOUND HIMSELF MOVING FARTHER AND FARTHER TO THE RIGHT.

Prophecies of doom

How the West invites its own ruin

If we could bind together all the rhetoric over the Middle East it would fit neatly into the Old Testament's Book of Jeremiah. Beware, beware, beware.

Americans are only beginning to appreciate the issues there, and what they mean to us. We've been asleep, occasionally stirring only long enough to hit the snooze button. Before September 11 few of us had heard the words al Qaeda, jihad, wahabi, intifada. We've had to learn them, like it or not, and parse their ominous overtones and threatening syllables of doom.

If our prophets once wandered in a wilderness of irrelevance, now they're roaring through a desert without directions or even a road map. (The "road map to peace," as we've learned, is but a chimera.) Arabic has replaced Russian as the language to learn in self-defense. A survey by the Pew Global Attitudes Project finds that the United States is disliked most by Muslim countries. That's no surprise, and the feeling is mutual, but we've lately realized that Islamist attitudes can be easily turned into action.

Newt Gingrich, the new Jeremiah, warns that Israel faces nuclear holocaust and the danger doesn't stop at the shores of the Dead Sea. The United States "could lose two or three cities to nuclear weapons, or more than a million in biological weapons," he says. The West has put itself at risk: "We don't have the right language, goals, structure, or operating speed to defeat our enemies." The former speaker of the House, who may be a candidate for president, has never minced words. But rarely has he been so outspoken about how our liberties are threatened: "Our enemies are fully as determined as Nazi Germany, and more determined than the Soviets ... freedom as we know it will disappear, and we will become a much grimmer, much more militarized, dictatorial society."

Suzanne Fields

The former speaker joined several other big names to speak by video to the Herzliya security conference outside Tel Aviv — a Mecca, you might say, for foreign policy experts and politicians eager to talk about the new threat to the West. Mitt Romney, the former governor of Massachusetts who also yearns to be president, echoes the Gingrich analysis. He calls Islamic jihad "the nightmare of the century" and warns against comparisons to the Cold War: "For all of the Soviets' deep flaws, they were never suicidal. Soviet commitment to national survival was never in question. That assumption cannot be made to an irrational regime that celebrates martyrdom." He's talking about Iran.

Sen. John McCain prescribes strengthening Israel's ties to NATO. "American support for Israel should intensify," he says. "The enemies are too numerous, the margin of error too small, and shared values too great."

John Edwards of North Carolina, a seeker of the Democratic nomination, urges tougher sanctions against Iran coupled with the threat of military force, but undercuts his tough message with the naive suggestion that more blather is the best medicine. This reprises Hillary Clinton's scolding of President Bush for his reluctance to "talk to bad people." The president talks to bad people all the time, but there are limits in what any president can say to them. "You know one of the first rules of warfare is know your enemy," says Hillary, as if affecting her best West Point expertise, "and we're flying blind because we won't sit down and try to figure out what these people really want, who's calling the shots, how we can better deter them."

If Sen. Clinton has been paying attention, she already knows what "these people" really want. Mahmoud Ahmadinejad, the president of Iran, has been clear enough. He jeers that the annihilation of Israel is at hand, and throws in the United States and Britain for wicked measure.

Bernard Lewis, a keen analyst of the Middle East and Islamic radicalism, told the Israeli conference that the danger from Iran is real, and particularly lethal because the Shi'ites believe an apocalypse is near. Given the Iranian leadership, "mutual assured destruction is not a deterrent but an inducement." Apocalypse now, on a worldwide scale edges toward probable.

President Bush made this clear in his State of the Union address, observing that Shi'ite and Sunni radicals seek to kill Americans, kill democracy in the Middle East and develop weapons to subdue everyone else. "Our enemies are quite explicit about their intentions," he said. "They want to overthrow moderate governments and establish safe havens from which to plan and carry out new attacks on our country."

The president, like many of those who yearn to succeed him, is like Jeremiah, an unpopular prophet. But Jeremiah, as ancient Israel learned, knew what he was talking about. There's a lesson here.

Suzanne Fields, a columnist for The Washington Times, is nationally syndicated. Her column appears on Mondays and Thursdays. sfields1000@aol.com

Squashing the First Amendment

Don't bring back 'Fairness Doctrine'

By Nat Hentoff

Four members of Congress, all of them Democrats — Sen. Bernie Sanders of Vermont and Reps. Dennis Kucinich of Ohio and Maurice Hinchey and Louise Slaughter, both of New York — are moving to bring back the Fairness Doctrine in broadcasting to ensure more "diversity of views" in a time when conservative hosts and commentators have larger audiences than liberal counterparts.

In effect by the Federal Communications Commission from 1949 to 1987, the Fairness Doctrine mandated that broadcast stations devote a reasonable amount of time to discussions of controversial issues of public importance — and that the broadcaster was required to offer reasonable opportunity for opposing viewpoints to be heard.

If a station failed to adhere to the FCC's interpretation of this "fairness" doctrine, the broadcaster could lose his or her license. Accordingly, the government would be in charge of policing the First Amendment — precisely the opposite of what the founders clearly intended.

Of all justices of the Supreme Court, the most persistent defenders of freedom of speech have been Louis Brandeis, William Brennan and William O. Douglas. In 1973, Justice Douglas thundered: "The Fairness Doctrine has no place in our First Amendment regime. It puts the head of the camel inside the tent and enables administration after administration to toy with TV or radio in order to serve its sordid or its benevolent ends."

During the 1940s and early 1950s, I was a full-time announcer and reporter on radio station WMEX in Boston. When official Fairness Doctrine letters came to the station's owner from the FCC, the front office panicked. Lawyers had to be summoned; tapes of the accused broadcasts had to be examined with extreme, apprehensive care; voluminous responses to the bureaucrats at the FCC had to be prepared and sent.

After a number of these indictments from Washington arrived at WMEX, the boss summoned all of us and commanded that from then on, we ourselves would engage in no controversy at the station. In newscasts, we could report controversies, but none of our opinions on public issues could be aired under the station's auspices. For any other controversial statements by nonstaff members, opposing views had to be given equal time to reply.

SWEET LAND OF LIBERTY

This happened at other stations as well. Champions of the Fairness Doctrine glowed in triumph, emphasizing that due to the "scarcity" of stations around the country, the Supreme Court — in its 1969 decision in Red Lion Broadcasting Co. v. FCC — had been correct in upholding the constitutionality of the Fairness Doctrine. This rationale for circumscribing the First Amendment by government dictate came to be known as "the scarcity doctrine."

But in 1984, the Supreme Court came to its First Amendment senses in FCC v. League of Women Voters. In view, ruled the court, of the continually multiplying number of radio and TV channels around the country — and, I would have added, the growth of one-newspaper towns and cities — the "scarcity doctrine," as it applied to broadcasters, diminished free speech.

Three years later, the FCC concurred: "The intrusion by government into the content of programming occasioned by the enforcement of (the Fairness Doctrine) restricts the journalistic freedom of broadcasters ... (and) actually inhibits the presentation of controversial issues of public importance to the detriment of the public and the degradation of the editorial prerogative of broadcast journalists."

Nonetheless, in 1987, a bill to restore the Fairness Doctrine passed the House by a 3-to-1 margin and the Senate by nearly 2-to-1. (With Democrats now in control of both chambers, this could happen again.) Then-President Reagan, who had been an active broadcaster (as in the "Death Valley Days" series), vetoed the bill because it was "antagonistic to the freedom of expression guaranteed by the First Amendment."

Should this enemy of free expression become law again in coming years, it would very likely also extend to FCC bureaucrats' taking charge of freedom of speech on cable television and the Internet and continuing new forms of expression — under the mandate of the FCC's definers of "diversity of views."

There are liberals who preach the need for "diversity of views" in calling for the return of the Fairness Doctrine because they bridle at the high ratings of Rush Limbaugh, Bill O'Reilly, Sean Hannity and other conservative broadcasters who currently have more public favor than the comparatively fewer liberal commentators. But these liberals ignore why we have the First Amendment. As Oliver Wendell Holmes emphasized: "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — not the thought that we hate."

The framers of the Constitution, in which the First Amendment is embedded, knew from experience that government control of freedom of speech and thought could lead to tyranny. Imagine if Tom Paine had had to give equal time to the royal governor's opposing views. With the "scarcity doctrine" ended, Justice Douglas was right: "TV and radio stand in the same protected position under the First Amendment as newspapers and magazines."

Nat Hentoff's column for The Washington Times appears on Mondays.

Callous abortion backers

We must protect everyone at risk

By Chris Smith

When House Speaker Nancy Pelosi boldly proclaimed this month that this would be a Congress that remembers the children, I couldn't help but think that this smart, savvy grandmother of six, who now wields the most powerful gavel in the world, was forgetting someone.

A whole lot of someones, for that matter.

At swearing-in, when Mrs. Pelosi invited the accompanying congressional kids to join her at the rostrum to "touch the gavel" as history was made, I smiled and thought what a gracious gesture and photo-op. And then I thought again of the forgotten girls and boys — at last count more than 49 million of them — killed by what is euphemistically called "choice." To be sure, born children need strong and stable families, better access to health care, educational opportunities, a clean environment to grow up in and freedom from violence and abuse.

The speaker is right, Congress should remember the children and strive to enhance the welfare and wellbeing of our young. No one is more precious than our children.

But it is equally valid and true that unborn children have inherent worth, value and dignity. They are children, too. They are not disposable commodities, nor are they junk. American jurisprudence — and public officials in all three branches of government — too often treat them that way. A Congress that remembers the children should strive to leave no child vulnerable, including the unborn.

In recent years, modern medicine and scientific breakthroughs have shattered the myth that unborn children are not human persons or alive. Birth is merely an event — albeit an important one, but only an event — in the life of a child.

Today, ultrasound technologies and other diagnostic tools have helped doctors to diagnose illness and disability before birth. New and exciting breakthrough health-care interventions for the unborn, including microsurgeries, are leading to an ever-expanding array of successful treatments and cures of sick or disabled unborn babies in need of help. Unborn children are society's littlest patients. This Congress should remember them as well.

In stark contrast, abortion methods rip, tear and dismember or chemically poison the fragile bodies of unborn children. There is nothing whatsoever benign, compassionate, or just about an act that utterly destroys the life of a baby and often physically, psychologically or emotionally harms the woman.

Abortion is a violation of fundamental human rights and should be treated as such. The right to life is for everyone, regardless of age, race, condition of dependency, disability, or stage of development. Congress has a duty to remember, and a duty to protect, everyone at risk — not just the planned, the privileged and the perfect.

There is a new, powerful group of women called Silent No More who courageously speak of their personal abortion tragedies. They protest that abortion is neither a compassionate option nor a reasonable choice; rather it is an act of violence.

Women wounded by abortion — like actress Jennifer O'Neill; singer Melba Moore; civil-rights activist Dr. Alveda King, niece of Dr. Martin Luther King Jr.; and a cofounder of the National Silent No More Awareness Campaign, Georgette Forney — have called on us to listen to their heart-wrenching stories and take seriously our moral duty to protect women and children from the predators who ply their lethal trade in abortion mills throughout the land. Dr. King has asked "How can the 'Dream' survive if we murder the children?" These brave wounded women are the new champions of life.

They have refused to be silent any longer. They care too deeply about other women and their children and they want others to be spared the anguish they have endured. And to the millions of women who have aborted, they are uniquely equipped to convey the breathtaking love, healing and reconciliation that God provides to those who ask.

More and more women are speaking up and proclaiming that "women deserve better than abortion," and I agree.

In one of Dr. Seuss's most memorable books for children and grandchildren, an elephant named Horton hears a small person — "a who" — crying for help and discovers a whole town of tiny persons living on a speck of dust called Who-ville. Horton cherishes and seeks to protect them. When an eagle steals the speck of dust, Horton pleads "please don't harm all my little folks, who have as much right to life as us bigger folks do."

Against all adversity and personal insult Horton painstakingly recovers Who-ville and begs the mayor to get all the little people to make a big noise so everyone will understand that they exist. They all yell and scream, but to no avail. No one but Horton hears them. However it is the voice of the smallest of the small that puts them over the top. Dr. Seuss writes, "Finally, at last their voices were heard!" They rang out clear and clean. And the elephant smiled and said "do you see what I mean? They proved they ARE persons, no matter how small and their whole world was saved by the smallest of all."

Mrs. Pelosi, unborn children are persons, no matter how small. They cry out for your — our — protection and safety, and to be remembered. On this one, we could all learn a lot from Dr. Seuss.

Rep. Chris Smith is a 14-term Republican from New Jersey.

Free Ramos, Compean

White House policy is wrong

By Rick Amato

President Bush's refusal to pardon Border Patrol Agents Ignacio Ramos and Jose Compean — and White House spokesman Tony Snow's attitude of indifference regarding same — is a slap in the face to families of murder victims slain by convicted felons in the country illegally and to our nation's law-enforcement professionals. John and Barbara March, the parents of former Los Angeles Deputy Sheriff David March, know only too well. Their son was murdered five years ago by Armando Garcia, a twice-convicted felon in the country illegally who had been deported to Mexico three previous times. After murdering Deputy March on April 29, 2002, Garcia then eluded law enforcement by slipping back across the border.

John and Barbara have worked tirelessly the past five years with authorities and politicians on both sides of the border to fight for the extradition of Garcia back to Los Angeles. After appearances on countless radio talk shows, thousands of hours of diplomacy and a myriad of behind-the-scenes political wrangling, Garcia was finally extradited to the United States on Jan. 9 of this year. Now John and Barbara March are committed to a new battle. They are dedicated to the release of Border Agents Ramos and Compean, sentenced to 11 and 12 years, respectively, for shooting a drug smuggler in the buttocks while trying to apprehend him after he had crossed the border illegally.

Appearing as a guest on my radio show just days prior to when the agents were required to report to prison, John March had this to say, "Border Patrol Agent Ignacio Ramos called me today to congratulate me on the extradition of Armando Garcia. Here is a man, scheduled to begin serving an 11-year prison term in just three days and he calls 'me' to congratulate 'me' on my family's good news. What does that tell you about the kind of man Ignacio Ramos is? And I also ask you what kind of message does their arrest and prison sentence send to our nations Border Patrol agents? The message it sends is clear: be careful of what you do while in the line of duty. You just might shoot at a convicted drug felon and end up going to prison."

President Bush's refusal to pardon Border Patrol Agents Ignacio Ramos and Jose Compean is a slap in the face to families of murder victims slain by convicted felons in the country illegally and to our nation's law-enforcement professionals.

Steve Spernak, the March family spokesman and a former decorated police officer added: "Had Border Agents stopped Armando Garcia and national laws locked him up as a repeat 'crosser' and convicted felon, their son, David, would be alive today. Same for unknown thousands of Americans, who have been murdered by convicted felons in the country illegally. The majority of victims are Mexican American immigrants in the country legally. This sends a chilling message to all Border Patrol agents and should to all Americans as well."

Recent statistics and events in California demonstrate the magnitude of the problem. Over a third of the 172,000 inmates in the California's prison system were captured while in the country illegally. In Los Angeles, 80 percent of the prisoners in L.A. County Jail are gangsters, a third of whom were arrested while in the country illegally. Last week there was a three-county sweep in which 745 illegal criminal aliens were arrested. According to Immigration and Customs Enforcement investigators, 400 were in custody and awaiting release back onto the streets.

California congressman and presidential candidate Duncan Hunter is attempting to take matters into his own hands. Mr. Hunter recently introduced the Congressional Pardon for Border Patrol Agents Ramos and Compean. According to Mr. Hunter's staff, research indicates Congress has never enacted legislation purporting to grant an individual pardon. However, the Supreme Court has not ruled on the constitutional authority of Congress to grant individual pardons. Mr. Hunter's staff is currently in the process of obtaining the text of pertinent House and Senate bills.

The White House stance is not only a slap in the face to families of murder victims and law enforcement. It is a slap in the face to American working-class families of all ethnic backgrounds.

Rick Amato is a San Diego-based radio talk-show host and political commentator.

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IRAQ

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wounding 34.

In addition to confirming the two American deaths in the helicopter crash, the U.S. command announced three combat deaths from Saturday — one Marine in Anbar province and two soldiers in the Baghdad area.

Provincial Gov. Assad Sultan Abu Kilel said the assault in Najaf was staged because the insurgents planned to attack Shi'ite pilgrims and clerics during ceremonies marking Ashoura, the holiest day in the Shi'ite calendar. The celebration culminates tomorrow in huge public processions in Karbala and other Shi'ite cities.

Officials were not clear about the religious affiliation of the militants. Although Sunni Arabs have been the main force behind insurgent groups, several Shi'ite militant and splinter groups have clashed from time to time with the government.

The governor said Iraqi soldiers attacked at dawn and militants hiding in orchards fought back with automatic weapons, sniper rifles and rockets. He said the insurgents were members of a previously unknown group called the Army of Heaven.

"They are well-equipped, and they even have anti-aircraft missiles," the governor said. "They are backed by some locals" loyal to Saddam Hussein, the ousted dictator who was executed last month.

Mr. Abu Kilel said two Iraqi policemen were killed and 15 were wounded, but there was no word on other Iraqi government casualties.

The Washington Times

A U.S. statement said the American helicopter went down while "conducting operations to assist Iraqi Security Forces" in the attack. It said that two crew members died and that their bodies were recovered. The statement did not say why the aircraft crashed.

It was the second U.S. military helicopter to go down in eight days. Twelve U.S. soldiers died Jan. 20 when a Black Hawk crashed northeast of Baghdad. The Army says it is investigating the cause, but a Pentagon official has said debris indicated the helicopter was downed by a missile.

The mortar attack in Baghdad occurred about 11 a.m. at the Kholoud Secondary School in the Adil neighborhood, police and school officials said. The principal, Fawzyaa Hatrosh Sawadi, said students were mingling in the courtyard during a break in exams when at least two shells exploded.

The blasts shattered windows in classrooms, spraying students with shards of glass. Associated Press Television News footage showed pools of blood on the stone steps and walkways. A fin from a mortar shell lay on the ground.

Hours after the attack, grieving parents wept as the bodies of their children were placed in wooden coffins. Police said four of the girls were killed instantly and a fifth died later.

In a joint statement, UNICEF and UNESCO called the attack "yet another tragic reminder of the risks facing Iraq's schoolchildren."

No group took responsibility for the attack, but a Sunni organization, the General Conference of the People of Iraq, blamed Shi'ite Muslim militias with ties to government security forces. The Sunni group said the mortar shells bore markings indicating they were manufactured in Iran, which U.S. officials accuse of supporting Shi'ite militias.

Associated Press

Iraqi soldiers took up positions yesterday in the Zarqa area near the holy Shi'ite city of Najaf during a daylong battle with insurgents.

HILLARY

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most of the blame onto President Bush for his execution of the war.

"He took the authority that I and others gave him, and he misused it and I regret that deeply," she said. "If we knew then what we know now, there never would have been a vote. I never would have voted to give this president that authority."

Yesterday's event was in stark contrast to her first public forum in Iowa on Saturday, where Mrs. Clinton drew no pointed questions about her vote. It was an indication that the staunchest anti-war Democrats had stayed away from her event, so by Saturday night she sought to address the question directly on her own.

"I know how difficult the last six years have been, particularly because of this president's foreign policy, his pre-emptive war in Iraq, his management of the war and his stubborn refusal to change course," she told a small gathering at a home in Cedar Rapids on Saturday night.

Mrs. Clinton also held her first press conference since announcing her White House bid Jan. 20 and told reporters that the world is less safe because of how the war in Iraq has played out.

"I understand how . . . much more dangerous it is" because of what she called "the president's policies" at a high school library here yesterday.

She also said she will "wholeheartedly support" either of the Senate resolutions condemning Mr. Bush's plan to add 21,500 troops to those already in Iraq — so long as it is "a clear statement of disapproval."

Mrs. Clinton also demanded that Mr. Bush pull all U.S. troops out of Iraq in two years, calling the war "his decision" and saying it would be "the height of irresponsibility" to pass it along to the next commander in chief.

"We expect him to extricate our country from this before he leaves office" in January 2009, she said.

White House spokesman Rob Saliterman called Mrs. Clinton's words "a partisan attack that sends the wrong message to our troops, our enemies and the Iraqi people who are working to make this plan succeed."

But most of the questions from reporters yesterday pertained to a moment earlier in the day when she responded to a question from the town-hall audience about whether her life has prepared her to face down "evil men" in the world, such as Osama bin Laden. As Mrs. Clinton often does, she repeated the question for those who might not have heard it.

"What in my background equips me to deal with evil and bad men?" she said aloud and lingered in thought for a moment. The audience roared with laughter and applause as Mrs. Clinton prolonged her silence with perfect comic timing.

But at the press conference later in the day, reporters were not laughing. The first question and several after demanded to know what precisely she meant. Each time, she dodged the suggestion that she was making light of a question about "evil and bad men."

Finally she grew exasperated and said: "I thought I was funny."

Then she told the several dozen reporters: "You guys keep telling me to lighten up. I be a little funny and now I'm being psychoanalyzed."

Among the few questions asked yesterday that did not pertain to the voter's question dealt with her stand on illegal immigration. She noted that she supported last year's Senate-passed bill that critics say would grant amnesty to the estimated 12 million to 20 million illegal aliens currently in the United States.

"I hope that we're going to return to considering that in the new Democratic Congress," she said. "I believe in a tough but clear earned path to citizenship."

The Fairness Doctrine: A Solution in Search of a Problem

Adrian Cronauer*

Conclusion

Introduction

For most of this century, American broadcasters suffered from diminished First Amendment status in comparison with their brethren in the print media. Broadcasters' editorial judgments were subject to oversight and second-guessing by the Federal Communications Commission (FCC or Commission) under what was called the "Fairness Doctrine." In 1987, the FCC ceased to enforce the doctrine and in the following years, Congress tried several times to revive it. Many observers in the media and on Capitol Hill now insist the issue is at last dead. Rumors and speculation, though, continue to abound over an eventual revival of the Fairness Doctrine. Advocates of the doctrine's return are now looking to the courts to force the FCC to do what it has refused to do on its own initiative and what Congress has been unable to mandate.

This Article examines the history of the Fairness Doctrine and the more common arguments offered in support of it. If the Fairness Doctrine, as interpreted by the Commission, upheld by the courts, and encouraged by Congress(note 1) were to be reinstituted, it would actually decrease the likelihood of public exposure to varying viewpoints by discouraging broadcasters from covering controversial issues. Furthermore, market forces are achieving the intended effect of the Fairness Doctrine without directly restraining broadcasters. Today's media-rich environment and the concurrent evolution of individual media outlets catering to specific constituencies, has already allowed the "invisible hand" phenomenon to work in the marketplace of ideas, just as it does in the commercial marketplace. As a result, the marketplace is achieving the sort of diversity and access the Fairness Doctrine was designed to foster but could never attain. Therefore, the Fairness Doctrine is not necessary in today's media, even though many commentators are trying to revitalize it.

The term "Fairness Doctrine" refers to a former policy of the FCC which, with certain minor exceptions,(note 2) mandated that a broadcast station which presents one viewpoint on a controversial public issue must afford reasonable opportunity for the presentation of opposing viewpoints.(note 3) The personal attack rule, an application of the Fairness Doctrine, required stations to notify persons when personal attacks were made on them in discussions of controversial public issues.(note 4)

The Fairness Doctrine has been both defended and opposed on First Amendment grounds. Backers of the doctrine claim that listeners have the right to hear all sides of controversial issues. They believe that broad-

casters, if left alone, would resort to partisan coverage of such issues. They base this claim upon the early history of radio. Opponents of the doctrine claim the doctrine's "chilling effect" dissuaded broadcasters from examining anything but "safe" issues.(note 5) Enforcement was so subjective, opponents argued, there was never a reliable way to determine before the fact what broadcasters could and could not do on the air without running afoul of the FCC. Moreover, they complain, print media enjoy full First Amendment protection while electronic media were granted only

second-class status.

New York Governor Mario Cuomo opposes the Fairness Doctrine on First Amendment grounds. He said in 1987, and reiterated last year, how he has "never understood the distinction made between electronic and print media in terms of the reasons for the first amendment . . . and the basic rationale for freedom of speech."(note 6)

In the 1974 case *Miami Herald Publishing Co. v. Tornillo*, the Supreme Court unanimously decided a newspaper is under no obligation to give any sort of equal timeno matter what the paper's economic power.(note 7) If the *Miami Herald*, delivered to 37 percent of all households in its region, escapes any public service obligations, why should each of a dozen local television stations and forty local radio stations face the prospect of losing their licenses when disagreements arise over "fairness"?(note 8)

Cuomo blames broadcasters for much of their own problems. "A lot of the owners, a lot of the people who make profits in this business (broadcasting)," he said, "will sell freedom for fees; they will make deals with the Congress; they will accept regulation that they shouldn't be acceptingall in exchange for an opportunity to make more money."(note 9) Commissioner Quello agrees with Cuomo. He complains broadcasters who "advertise products and do so much selling and are so influential in news are at their very worst in trying to promote their own interest to the public and the government."(note 10)

One other fact has exacerbated the situation: fairness, like beauty, is in the eye of the beholder. The necessarily subjective judgments imposed on the industry throughout the years led to a Kafkaesque situation in which broadcasters were never sure what was expected of them nor what they could be punished for. Rulings were made ad hoc and only after the fact resulting in what media critic and historian Les Brown calls "a tortured and complex series of regulations, legislation and litigation which many people, both within and outside the system, maintain undermines the journalistic integrity of broadcasting."(note 11) Former FCC Chairman Dean Burch put it nicely: "In the fairness area," he said, "the bond of theory and implementation has come unstuck and all the principal actorslicensees, public interest advocates, the Commission itselfare in limbo, left to fend for themselves."(note 12)

Underlying much of the concern over the Fairness Doctrine is an uneasy feeling among civil libertarians and some First Amendment advocates that the doctrine is yet another weapon for the federal government, a government which has never been comfortable with a broadcasting industry that it cannot control.(note 13) This concern has been validated by history. Bill Ruder, an Assistant Secretary of Commerce under President Kennedy, told how Kennedy's administration used the Fairness Doctrine to challenge and harass right-wing broadcasters, in the hope the challenges would be so costly that these broadcasters would find it too expensive to continue their broadcasts.(note 14) Those who recall the early 1970s are familiar with Spiro

Agnew's heavy-handed and self-serving efforts to intimidate the press in general, and the broadcast media in particular. Kennedy and Agnew had ample precedent. As early as 1933, "a member of the Federal Radio Commission issued a formal statement in which he informed broadcasters that any remarks made over their stations derogatory to or in criticism of his administration's program and policies would subject the offending station to a possible revocation of license."(note 15)

In August of 1987, the FCC, under Chairman Dennis Patrick, abandoned the Fairness Doctrine.(note 16) The political fallout was astounding. For more than three years, the Senate refused to confirm any nominees for seats on the FCC and severely restricted the Commission's budget. Since then, Congress has repeatedly tried to resurrect the Fairness Doctrine by legislative fiat but, so far, such efforts have been unsuccessful.

However, the specter of the Fairness Doctrine keeps coming back to haunt the dreams of First Amendment advocates.(note 17) In 1992, a coalition of activist groups and several individuals petitioned the FCC to reconsider the Fairness Doctrine.(note 18) On July 28, 1994, a number of those petitioners filed in the Court of Appeals for the Ninth Circuit for a writ of mandamus to force the FCC to act on their petition.(note 19)

Two weeks later, another coalition petitioned the Commission for an emergency ruling reinstating the Fairness Doctrine.(note 20) On the same day, this second coalition also petitioned for reconsideration of the doctrine as applied to ballot issues and sought to submit their own petition for consideration, although two years past the deadline for such petitions.(note 21) Ten days later, a group of media-related and First Amendment advocates filed pleadings opposed to the coalition's pleadings with the Commission.(note 22)

The political philosophy underlying the Fairness Doctrine not only provides a rationale for the exercise of governmental content regulation in over-the-air broadcasting, but also lays the groundwork for the expansion of governmental power into other electronic media, including cable, satellite, direct distribution systems, and future technologies. The Clinton administration's new information policy promises some protection for the media,(note 23) but worrisome First Amendment portents appear on the horizon.(note 24) Experience with the Fairness Doctrine in the context of broadcasting leads some to wonder if Congress will now try to impose such rules on the new media or, in the alternative, to pressure the FCC into reintroducing the doctrine as a regulatory policy.

I. A Historical Perspective of the Fairness Doctrine

The development of the Fairness Doctrine is intertwined with the history of American

broadcasting. Early commercial uses of radio centered on maritime uses, "mainly for ship-to-shore and ship-to-ship communication."(note 25) An obstacle quickly developed when transmissions from one source interfered with another. Trying to outshout each other, early broadcasters responded to problems of interference by increasing the power of their transmitters which, of course, accomplished little except to increase the electronic cacophony. The first attempt by the federal government to deal with the confused clamor of competing voices on the airwaves was the Radio Act of 1912, which put the task of bringing order out of the electronic chaos in the hands of the Secretary of Commerce.(note 26) Secretary of Commerce Herbert Hoover tried to place conditions on licenses, but "his power to regulate radio stations in this way was destroyed by court decisions interpreting the 1912 Act."(note 27)

The tug of war between the government and the broadcasters for control of the airwaves continued in 1925, when the Senate responded to the general concern of whether broadcasters might exert some sort of squatters' rights over the frequencies. The Senate passed a resolution declaring the electromagnetic spectrum to be "the inalienable possession of the people of the United States."(note 28) A year later, Congress passed a joint resolution which required licensees to waive any right to the wavelength they used.(note 29) Even so, the system quickly developed so as to provide licensees with what amounted to de facto property rights. "Even before Congress passed the 1927 Act, most observers recognized that stations were being transferred from one owner to another at prices which implied the right to a license was being sold."(note 30)

Although few stations were on the air before 1920, by November 1922, 564 broadcasting stations were operating in the United States.(note 31) By 1927, the confusion of the airwaves had increased to the point where most parties involved agreed on the need for an impartial arbiter to assign frequencies, limit signal strengths, and set out geographical coverage areas.(note 32)

The chaos that developed as more and more enthusiastic pioneers entered the field of radio was indescribable. Amateurs crossed signals with professional broadcasters. Many of the professionals broadcast on the same wave length and either came to a gentleman's agreement to divide the hours of broadcasting or blithely set about cutting one another's throats by broadcasting simultaneously. Listeners thus experienced the annoyance of trying to hear one program against the raucous background of another. Ship-to-shore communication in Morse code added its pulsing dots and dashes to the silly symphony of sound.

. . . .

. . . Private enterprise, over seven long years, failed to set its own house in order. Cutthroat competition at once retarded radio's orderly development and subjected listeners to intolerable strain and inconvenience.(note 33)

But the Radio Act of 1927 went far beyond needed traffic-cop functions.(note 34) It

supplanted the regulatory functions of the Secretary of Commerce with its new creation, the Federal Radio Commissionforerunner of the FCC. Although in one breath the statute explicitly forbade program censorship,(note 35) it also gave the new Commission authority to regulate the programming of the stations it licensed.(note 36) The 1927 Act included a requirement that if a legally qualified candidate for public office was allowed to use a licensee's facilities, all other candidates must be allowed equal access.(note 37)

The federal government thereafter controlled the airwaves' content, and it was not long before the Commission exercised its newly-found power by denying a license renewal to an Iowa station owner.(note 38) The owner used his station to launch attacks on persons and institutions he disliked.(note 39) The FCC commented enigmatically, "Though we may not censor, it is our duty to see that broadcast licenses do not afford mere personal organs, and also to see that a standard of refinement fitting our day and generation is maintained."(note 40)

In 1940, Mayflower Broadcasting unsuccessfully attempted to apply for the license of a Boston station, WAAB.(note 41) While denying Mayflower the license and renewing the license in favor of the incumbent, the Commission criticized the incumbent licensee for editorializing about controversial public subjects and favoring certain political candidates.(note 42) The station's license was renewed only after it showed it was complying with a policy to stop editorializing.(note 43) The result was all too predictable: through the 1930s and early 1940s, broadcasters totally abandoned the practice of editorializing and dropped much programming that might have been thought controversial.(note 44)

Another important decision in the development of the Fairness Doctrine was *NBC v. United States*.(note 45) Writing for the Supreme Court, Justice Frankfurter spoke of the situation prior to 1927 as "confusion and chaos" which

was attributable to certain basic facts about radio as a means of communicationsits facilities are limited; they are not available to all who may wish to *use* them; the radio spectrum simply is not large enough to accommodate everybody. There is a fixed natural limitation upon the *number of stations* that can operate without interfering with one another.(note 46)

Two FCC reports were important in early clarification of the Fairness Doctrine because they indicated the government's intent to strictly control content. In 1946, the Commission published the *Public Service Responsibility of Broadcast Licensees*, which warned that the Commission would thereafter pay closer attention to broadcasters' programming.(note 47) Moreover, in 1948, the Commission reexamined the *Mayflower* decision and issued another report, this time encouraging editorials, but requiring "overall fairness."(note 48)

In 1959, Congress amended Section 315 of the Communications Act of 1934 and included the phrase: "Nothing in the foregoing sentence shall be construed as

relieving broadcasters . . . from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."(note 49) The Commission chose to construe the added phrase as codification of the Fairness Doctrine by Congress,(note 50) although the Court of Appeals for the District of Columbia later rejected that decision.(note 51)

In 1967, the FCC created more specific rules insuring a right of reply to both *ad hominem* attacks on an identified person or group and to any position taken by a station for or against legally qualified candidates for any political office.(note 52)

In 1969, the Supreme Court upheld the constitutionality of the Fairness Doctrine in the *Red Lion* decision.(note 53) The Court justified this result by noting that more individuals would like to broadcast their views than there are available frequencies, reaffirming the Court's reasoning in *NBC v. United States*.(note 54)

In response to this "scarcity" argument, broadcasters stressed that the requirements of the Fairness Doctrine had a subtle but powerful "chilling effect,"(note 55) leading many of them to abandon their coverage of controversial issues in favor of "safe" issues.(note 56) *Red Lion* noted the broadcasters' arguments, but the Court found the possibility of a chilling effect to be remote.(note 57) Nevertheless, the door was left open for further consideration: "[I]f experience with the administration of those doctrines, indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications."(note 58)

II. The Downfall of the Fairness Doctrine

In 1984, the Supreme Court invited an action which would give it a chance to reverse *Red Lion*. In *FCC v. League of Women Voters of California*, the Court said if the Commission were to show the "fairness doctrine [has] `the net effect of reducing rather than enhancing' speech," the Court would be forced to reconsider the doctrine's constitutional basis.(note 59) However, no test case appeared.

In August 1985, the FCC took the bait. The Commission issued a report concluding the doctrine no longer serves the public interest and, instead, chills First Amendment speech.(note 60) The Commission predicted that without the chilling effect of the Fairness Doctrine, it was reasonable to expect an increase in the coverage of controversial issues of public importance.(note 61) In 1987, the FCC formally renounced the Fairness Doctrine.(note 62) Events since then have confirmed the FCC's prediction of more, rather than less, coverage of controversial issues.(note 63) The amount of opinion-oriented programming "exploded" over the ensuing six years and the number of radio talk shows jumped from 400 to more than 900.(note 64) Many observers ascribe this growth directly to the absence of the inhibiting effect of

the Fairness Doctrine.

Nonetheless, powerful congressional forces have dedicated themselves to reinstating the Fairness Doctrine and have tried to enact it into law.(note 65) Opposition by both Presidents Reagan and Bush kept it from happening during their terms.(note 66) With the election of President Clinton, though, such Capitol heavyweights as Ed Markey, Chairman of the House Telecommunications Subcommittee,(note 67) and John Dingell, Chairman of the House Energy and Commerce Committee,(note 68) viewed the new Democratic administration as unlikely to veto their attempts to bring the doctrine back.(note 69)

At first, little resistance was seen to a bill restoring the Fairness Doctrine. Some support for such a bill grew over the summer of 1993.(note 70) By the winter of 1993, however, talk show hosts, like Rush Limbaugh had generated nationwide publicity producing a large number of letters from listeners, opposing the doctrine at a two-to-one margin.(note 71) As a result, efforts to write it into law were abandoned.(note 72) Limbaugh and other talk show hosts assert that legislation to reinstate the Fairness Doctrine is an effort by liberal lawmakers to silence their conservative critics.

Still, considering the long history of the Fairness Doctrine and the determined attempts by some congressmen to resurrect it, it is reasonable to assume we have not seen the last of it.(note 73) Some speculate congressional pressure may prompt the FCC to reinstate the doctrine as a regulatory policy, while others suggest the current initiatives to rebuild our communications infrastructure may provide an opportunity for Fairness Doctrine backers to do surreptitiously what they have so far been unable to do openly.(note 74)

III. The Rationale behind the Rise and Fall of the Fairness Doctrine By contrasting the fifty years with the Fairness Doctrine in effect with the seven years since the FCC abandoned it, one must conclude that the Fairness Doctrine did not, in fact, increase the likelihood of public exposure to varying viewpoints. Rather, the Fairness Doctrine had exactly the opposite effect and, if reinstated, will not only act as an impediment to the public's right to know but will actually accelerate its negative effect on that right.(note 75)

A. Rationales for Governmental Control of Content<\H3> A frequently offered justification for governmental intrusion into the content of radio and television programming is the theory that broadcasters do not have any property rights in the narrow piece of frequency spectrum on which they broadcast.(note 76) Rather, the spectrum is supposedly public property, and each broadcaster has only a limited right to its assigned frequency, subject to whatever conditions the Commission may impose in the name of the public interest, convenience, and necessity.(note 77)

Under this theory, licensees can only use their frequencies as public trustees and must justify their use of the public spectrum by doing something for the "public" good.

There are several flaws to this viewpoint. First, there is nothing inherent in the nature of the frequency spectrum which makes it "naturally" public property.(note 78) Although there has never been any serious consideration of the notion until lately, contemporary literature contains some interesting arguments to justify the assignment of a limited number of legally enforceable private property rights to spectrum users.

At the time the Communications Act of 1934 was drafted, little was said or written to provide a philosophical rationale for the concept of treating the spectrum as public property. It merely was presented as a self-evident, almost axiomatic, "given."(note 79) However, the concept of broadcaster as a public trustee is not carved in constitutional granite; it is the product of a congressional declaration. Even accepting the theory of public ownership of the airwaves, there is no automatic justification for the government's intrusion into the *content* of the individual licensee's programming, beyond the sort of regulation properly imposed upon printed material.

The Supreme Court has attempted to justify the Fairness Doctrine's conflict with broadcasters' journalistic First Amendment rights by simply declaring such constitutional rights to be subordinate to broadcasters' "trustee" obligationsimposed in return for granting them the privilege of using "public" airwaves.(note 80) The Commission, however, pointed out, "It is well-established that government may not condition the receipt of a public benefit on the relinquishment of a constitutional right."(note 81)

Another frequently advanced justification for governmental intrusion into broadcast content looks to the medium's "pervasiveness." This argument, when reduced to its essentials, holds that the more effectively a medium persuades the public, the more it must be regulated. The corollary is that only completely ineffective media are entitled to full freedom from regulation. The "pervasiveness" rationale fails to account for the disparate treatment accorded to other equally or more pervasive media:

One can hardly argue a one-newspaper town is not "pervaded," "uniquely," by the orientation of its paper. A blockbuster motion picture, unlike a typical television or radio broadcast, is repeated for weeks on end in a community. Its exhibition is also more likely to pervade the community's consciousness than a single television . . . [or radio] broadcast.(note 82)

Furthermore, the "pervasiveness" argument could not have been one of the original justifications for the public trustee theory since, in its beginning, radio could *not* have been pervasive. Pervasiveness is a quality the electronic media developed slowly, and it would have taken quite a visionary to have foreseen, at the turn of the century, the vast system of broadcasting as it would evolve in the following eighty years.

Finally, the "pervasiveness" rationale exaggerates the effectiveness of individual stations and neglects to distinguish the effectiveness of those individual stations (which are regulated) from the effectiveness of the industry as a whole (which is what, arguably, is pervasive).

The FCC justified the continuation of the Fairness Doctrine by asserting that to achieve adequate coverage, opposing viewpoints must have essentially identical access to identical media.(note 83) The FCC rejected the argument that an adequate presentation of opposing viewpoints in print media or on another station is enough to achieve the goal of informing the public on important matters, although it "recognize[d] that citizens receive information on public issues from a variety of sources."(note 84) Instead, the FCC relied on three other contentions.

First, the Commission claimed that Congress, by amending Section 315(a) of the 1934 Communications Act, was giving statutory approval to the Fairness Doctrine.(note 85) However, the statutory language is highly ambiguous, and even those sections that seem clear are constitutionally doubtful.(note 86)

Second, the FCC cited the relative ease of enforcing the doctrine. Without the doctrine "it would be an administrative nightmare . . . to attempt to review the overall coverage of an issue in all of the broadcast stations and publications in a given market."(note 87) The report seemed to assume that it would be necessary to affirmatively examine the entire marketplace of ideas, rather than to presume overall coverage to be adequate unless a complainant produced evidence to the contrary. Merely because it is possible or easy to do something, however, is no reason to infer it is right or even constitutionally permissible.

The third justification was the likelihood the doctrine would achieve its stated goal of exposing the public to varying points of view.(note 88) In what amounted to a statement that the end justifies the means, the Commission declared that "the requirement that *each* station provide for contrasting views greatly increases the likelihood that individual members of the public will be exposed to varying points of view."(note 89) However, as shown, the Fairness Doctrine has been unsuccessful in achieving its goalsespecially considering other, less intrusive ways to achieve the same objective.

B. The Scarcity Rationale The theoretical cornerstone for reducing broadcasters' First Amendment protection has always been spectrum scarcity.(note 90) The idea dates back to the early days of broadcasting when there were few stations on the air. Because stations were scarce, the government asserted, it could impose an obligation to serve all the needs of all potential listeners upon the few stations in existence. This scarcity theory began in 1929 when the Federal Radio Commission stated its policy was predicated upon the assumption that any given station had a duty to serve the *entire listening public* within the service area of a station.(note 91) This argument is still used today without change.

As late as 1969, when there were approximately 837 television stations and 6565 radio stations on the air in this country,(note 92) the Supreme Court was still saying *each* station must be perfectly balanced in its presentation of controversial issues because spectrum scarcity precludes a large enough number of diverse voices to yield aggregate balance.(note 93) The rejection of an overall market view of balance might

have been justified in the early part of this century, but it has little factual support in today's abundant media environment.(note 94)

While the scarcity argument is no longer justified by current reality, it has been sustained through the semantic sleight-of-hand of switching, in mid-argument, between two meanings of the word "scarcity." In 1943, Justice Frankfurter gave his imprimatur to what has become an ongoing confusion between the use of a radio station and its ownership. His opinion in *NBC v. United States* referred to scarcity in two ways in the same paragraph: the number of people simply wanting to *use* a station and the number of frequency slots available for *operating* stations.(note 95) In *Red Lion*, Justice White perpetuated the fallacy by implying that every person who wants a broadcast license represents a different position on important issues.(note 96)

An article by former FCC Chairman Newton N. Minow superbly illustrates the confusion between those wanting a license and those with unique viewpoints.(note 97) In his article, Minow proclaimed the "proper test" for scarcity to be "the number of citizens who want a broadcast license and are unable to obtain one. At that point, a decision must be made as to who is to be allowed, and who denied, the exclusive license to use the channels."(note 98) To illustrate what he meant by "scarcity," Mr. Minow cited the RKO television channels which were opened to competitive application in the mid-1980s. The FCC, said Minow, "quickly got 172 applications, each applicant arguing, `[g]ive the license to me, and turn down the other 171.'"(note 99)

Minow declared, "Scarcity still exists when channels are not available to all."(note 100) Note carefully the shift in the meaning of the word "available." Traditionally, when speaking of controversial ideas, "availability" concerns only access to speak on some station or other. But, to portray what he meant by "availability," Mr. Minow cited the RKO television channels. Further, he pointed to the "almost 14,000 applications" for the new low-power television stations.(note 101) The implication is that in the case of RKO, 172 distinct points of view are clamoring to be heard; in the case of low-power television, almost 14,000. Of course, Minow's examples are not cases of people desperate for a broadcast license so they can espouse their unique political opinion. They are, rather, businesspersons who see a chance to acquire a valuable asset. There is no scarcity of outlets for differing viewpoints, only an overabundance of citizens who correctly see a broadcast license as a chance to make money.

The logical fallacy here is of mistaking those who want to use available frequency as a station owner for those who want to use the same frequency to express a particular viewpoint on a public issue. Don R. Le Duc of the University of Wisconsin wrote, "The U.S. legal system must develop the capacity to distinguish between *channels* and *content* as the source of communications competition, a distinction that has eluded the federal government for the past half-century."(note 102)

IV. The Marketplace as an Alternative Solution

The latter part of the twentieth century has become an age of broadcast specialization. That was not the case, however, when the Fairness Doctrine was developed. In the early days of radio, it was not uncommon for a geographic area to have only one station. Therefore, with what amounted to a temporary monopoly on radio listeners, pioneer stations tried to serve as many of the varied tastes and needs of their audiences as possible.(note 103)

Even when the radio industry had developed to the stage where two or three stations were serving most markets, stations would still vie with each other for the largest possible share of the potential audience. They did so by trying to serve, at one time or another in the programming day or week, as many listeners as possible. The resultwhat came to be called "block" programmingwas a mix similar to today's network television fare, in that it was designed to develop listener preferences for particular *programs*, not necessarily for particular stations. Unlike today, early radio listeners probably never thought of preferring to listen to a particular radio *station*. Back then, a family might start an evening of radio listening with Jack Benny, then change stations to hear Edgar Bergen and Charlie McCarthy, then move to yet another station to end their evening with Burns and Allen or Fibber McGee and Molly.

A. Narrowcasting

With today's proliferation of radio and television stations, we have entered an era of what broadcasters call "narrowcasting." The term "narrowcasting" describes a business strategy by which each station selects a particular special-interest segment of the larger overall audience and aims its programming solely at that particular audience segment.

In radio, the shift to narrowcasting happened decades ago. Today, a typical radio market includes at least one talk station, a religious station, an all-news station, and some non-commercial stations. Some stationslike NPRaim their programming toward an educated middle class. Some cater exclusively to a politically liberal audience (e.g., Pacifica stations), while others program for a conservative constituency. There are foreign-language stations and stations serving minority groups. Although most formats are musical, there is specialization in the kind of music played. There are classical stations, jazz stations, and country stations, while the general field of "popular" music is divided into subcategories: top 40, new age, heavy metal, oldies, middle of the road, and album-oriented rock.(note 104) There are some government-operated stations that broadcast nothing but time signals, and others that provide weather information, twenty-four hours a day. There is perhaps no more

powerful refutation of the philosophy underlying the Fairness Doctrine than to compare today's radio reality with the *Red Lion* reasoning, mired as it was in the outmoded concept of every station having a duty to serve the entire listening public.

When commercial television began after World War II, the pattern of development from general to particular programming that occurred in radio repeated itself. At first, with only one or two television stations in any market, broadcasters felt they had to serve a wide variety of programming tastes by presenting a menu of program types designed to appeal to a variety of audience subgroups.(note 105)

The first instance of stations devoting themselves to specialized programming in television was the 1950s development of educational TV stations, which evolved into what we now call public broadcasting.(note 106) The use of UHF channels led to more stations with varied programming, including some stations that adopted programming designed to serve minority interests, foreign-language viewers, or the religiously devout.

The large channel capability of cable television, coupled with the distributional ease afforded by satellites, has already produced not just stations, but entire television networks devoted to specialty concerns.(note 107) There are cable networks exclusively devoted to news, sports, religion, public affairs,(note 108) minority interests, ethnic culture,(note 109) home shopping, new movies, old movies, erotic titillation, and weather.

Narrowcasting, both in radio and television, now provides an important service to the listening and viewing public. It provides predictability and continual availability of desired programming. A country music devotee knows where on the dial to tune at any time of the day or night to find the service he or she desires. No longer must one wait until the regular newscast to hear about the weather. It is there whenever it is needed.

A corollary advantage of such specialization of formats is that, because a given media outlet does not have to be all things to all people, it can deal with a specific subject in greater detail without fearing massive tune-outs. Weather channels give not only the daily local forecast, but also the national forecast, the marine forecast, the aviation forecast, and the long-range forecast. Classical music stations can devote a full day to a performance of Wagner's *Ring Cycle*. NPR's *All Things Considered* frequently spends the major part of an entire half-hour segment on an in-depth examination of a particular news story or public issue. C-SPAN, NPR, and CNN have provided live coverage of the Iran-Contra hearings, confirmation hearings for Judges Bork and Thomas, Lani Guinier, Zoe Baird, and the Whitewater hearings.

The radio industry is already dedicated to the programming philosophy of narrowcasting. Television is unquestionably headed in the same direction. With narrowcasting, market forces "move the key resourcetime on an exclusive broadcasting frequencytoward its highest and best use."(note 110) Commercial

broadcasters maximize profits by providing the service they believe consumers most desire.(note 111)

B.The Overall Market Concept

The phenomenon of narrowcasting leads us to look at the question of fairness as it applies to an entire medium in a given geographical market. In practice, an overall market paradigm has already largely replaced the outmoded requirement of the Fairness Doctrine that mandated complete balance in the programming of each individual station.

Development of the overall market paradigm supports an inescapable conclusion: The Fairness Doctrine approach is unnecessary and any residual attempts to revive it should be permanently abandoned.(note 112) Stations should further develop their distinctive programming personalities to appeal to specific listening constituencies. Choices should be made not only in the kinds of music or entertainment programs they broadcast, but also in whether or not they offer programming that delves into public controversies or features candidates for public office. Stations should be free to take a particular political posture without fear of coercion, constraint, intimidation, or reprisal.

Some stations will program no discussions of public issues at all. Nonetheless, that does not justify the Fairness Doctrine's paternalistic attitude of forcing such programming on listeners who have little or no interest in it. When listeners have unwanted programs thrust upon them, they "tune-out," either mentally by paying no attention, or literally by changing stations or simply turning the radio off. As former FCC Commissioner Mark S. Fowler and colleague Daniel L. Brenner stated, "The public's interest, then, defines the public interest."(note 113)

The possibility of some stations ignoring public issues is balanced by recent experience which shows that narrowcasting is also leading certain stations to air little else than issue-oriented programming. The proliferation of radio talk formats has already shown how stations in sufficiently large markets, when unfettered and uncontrolled, tend to develop programming that consistently appeals to particular political, ethnic, or economic partisans. The limiting factor is not availability of frequencies, but rather, the existence of enough listeners to justify a particular programming format. Granted, there may not be adequate listeners to justify accommodating every fringe or splinter faction. However, is it really necessary to the proper functioning of a democracy that the federal government assure platforms in every medium, in every community, for the rantings of bizarre conspiracy theorists, paranoid delusionists, flat-earthers, anarchists, and others without any significant constituency?

No responsible viewpoint is in danger of being stifled simply because it is denied

access to a particular stationso long as there are other available stations. If a demand for a product exists, someone will eventually undertake to cater to that demand. If all television stations in a given area shut out a specific viewpoint, there is always radio. In the even more unlikely event that access to radio is denied as well, there are still newspapers, magazines, pamphlets, and billboards. As Philip B. Kurland writes, "If there is, in fact, an audience for the message, one form of the media or another can be counted on to exploit it. If there is no such audience, there is no need to compel one form of the media to be a voice crying in the wilderness."(note 114)

Conclusion

Allowing the "invisible hand" of market forces to operate in the marketplace of ideas accommodates all viewpoints with enough proponents to warrant attention, and achieves the goals of the First Amendment without intrusive governmental intervention. As predicted by the FCC's 1985 Fairness Doctrine Report, the dynamics of the information-services marketplace assures the public more than sufficient exposure to controversial issues of public importance.(note 115)

However, the matter is far from settled. Some desire a return to the Fairness Doctrine as a part of federal communications regulatory policy. Others fear those advocating such a policy change may seek to achieve their goal of media content regulation by using the issue of violence on television to open the door. Once the door is ajar, something looking very much like the Fairness Doctrine may be able to slip in unnoticed.

Rather than oppose a move to regulate program content, broadcasters are succumbing to federal intimidation. While the networks have agreed to "voluntary" advisories on violent programs, the American Civil Liberties Union (ACLU) opposes them because broadcasters accede to them under the threat of harsher governmental regulation. ACLU President Nadine Strossen says she is re-examining the ACLU's traditional position on the Fairness Doctrine

in light of the technological changes recently, the proliferation of channels of communication. My personal view has long been that we should oppose the Fairness Doctrine as being inconsistent with free speech principle. The reasons originally given for allowing that kind of regulation of television when nobody would allow it of the print media, if they were ever correct, they're certainly no longer correct.(note 116)

The ACLU is making sure it is up to speed on challenges presented by the race to the information superhighway.

With its information superhighway proposals, the Clinton administration has declared its intention to create an environment to stimulate a private system of free-flowing

information conduits. The administration's proposals would add $100 billion to the economy during the next ten years and would create 500,000 new jobs by the end of 1996.(note 117) Vice President Gore stated that the administration sees market forces replacing regulations and judicial models that are no longer appropriate. The administration's "goal is not to design the market of the future. It is to provide the principles that shape that market."(note 118) One of those principles should be to trust in an overall market concept in the coverage of public issues with the obvious First Amendment advantages it provides. However, some in the communications industry are uneasy with what they see as White House demands for excessive surveillance rights; "There's a lot of resentment and fear about government intrusion," said Paul Somerson, editorial director of *PC/Computing*.(note 119) Senate Minority Leader Bob Dole has questioned the FCC's regulation powers. He said the FCC could not be trusted to regulate the information superhighway. "I must question the Congress's judgment when it considers granting the FCC greater regulatory control of the communications industry, especially when the FCC doesn't seem to realize that it dropped the ball with the implementation of the Cable TV Act . . . ." (note 120)

In the end, it comes down to a matter of whether one believes that the principles underlying a free market economy are equally applicable to the marketplace of ideas. The alternative is to believe people must be spoon-fed whatever ideas the government decides are right. Some call it regulation, but in reality, it is censorship.

In 1644, electronic media did not exist. Still, John Milton was able to denounce the principle that government should be able to dictate what information and ideas could be disseminated.(note 121) He said:

Nor is it to the common people less than a reproach; for if we be so jealous over them, as that we dare not trust them with an English pamphlet, what do we but censure them for a giddy, vicious, and ungrounded people; in such a sick and weak state of faith and discretion, as to be able to take nothing down but through the pipe of a licenser?(note 122)

The American people are much the same as the English citizens of whom Milton spoke.(note 123) They have an almost intuitive feeling for what is fair and what is not. They neither need, nor deserve, governmental censorship masquerading in the guise of fairness.

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Notes

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Author acknowledges the valuable research assistance of interns Kim Trager (Indiana University) and Julie Ann Slocum (Texas A&M University).Return to text

1. Professor William F. Baxter of Stanford University notes that "in various ways Congress has taken note of and ratified the Commission's `fairness' requirements." William F. Baxter, *Regulation & Diversity in Communications Media*, 64 Am. Econ. Rev. 392, 394 (1974). Return to text

2. Among the exceptions to the requirements of the Fairness Doctrine were bona fide news coverage of any legally qualified candidate. 47 U.S.C. 315(a) (1988). Return to text

3. *In re* Inquiry into Section 73.1910 of the Commission's Rules and Regs. Concerning Alternatives to the Gen. Fairness Doctrine Obligations of Brdcst. Licensees, *Report of the Commission*, 2 FCC Rcd. 5272, para. 2 (1987). Return to text

4. *Id.* paras. 89-90. The Fairness Doctrine is distinct from the equal time rule. Although the personal attack and equal time provisions are codified in 47 C.F.R. 73.123 (1967), "the more sweeping implications of the `fairness doctrine' cannot be found in any single written document but must be inferred from a series of rather obscure opinions." Baxter, *supra* note 1, at 394.

> Albeit technically distinct, the two policies are similar in that they both stem from the same view of the airwaves as a scarce public resource, and, more often than not, are spoken of as though they were the same thing. Under Section 315 of the Communications Act of 1934, "[i]f any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office." 47 U.S.C. 315(a) (1988).
>
> Both concepts derived from similar attitudes and were developed over the years side by side, and, although they are distinct and separate, they both represent governmental intrusions into the programming content of broadcasting. Return to text

5. News reporter Bill Monroe told a Senate subcommittee:

> [T]here are stations that don't do investigative reporting. There are stations that confine their documentaries to safe subjects. There are stations that don't editorialize. There are stations that do editorialize but don't say anything.
>
> There are stations that do outspoken editorials but are scared to endorse candidates. My opinion is that much of this kind of caution, probably most of it, is due to a deep feeling that boldness equals trouble with Government, blandness equals peace.
>
> *Freedom of the Press: Hearings Before the Subcomm. on Const. Rts. of the Comm. on the Judiciary*, 92d Cong., 2d Sess. 561 (1972) [hereinafter *Freedom of the Press Hearings*] (statement of Bill Monroe). Return to text

6. *If You Can't Stand on Principle, Think About the Money*, Broadcasting & Cable, Sept. 6, 1993, at 11, 11 [hereinafter *Think About the Money*]. Return to text

7. *Miami Herald*, 418 U.S. 241 (1974); *see also* Thomas W. Hazlett, *The Fairness Doctrine and the First Amendment*, Pub. Interest, Summer 1989, at 103, 108. Return to text

8. Hazlett, *supra* note 7, at 108. According to the FCC, the "*functional similarities*" between the two media lead to the conclusion that "the constitutional analysis of government control of content should be no different" for electronic media than for print media. In Re Complaint of Syracuse Peace Council against TV Station WTVH Syracuse, N.Y., *Memorandum Opinion and Order*, 2 FCC Rcd. 5043, para. 82 (1987) (emphasis in original) [hereinafter *Syracuse Opinion and Order*], *recons. denied*, 3 FCC Rcd. 2035 (1988), *aff'd sub nom.* Syracuse Peace Council v. FCC, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 493 U.S. 1019 (1990).

> Professor Coase likened the present American system of broadcast regulation to:
>
> that which would be found if a commission appointed by the federal government had the task of selecting those who were to be allowed to publish newspapers and periodicals in each city, town, and village of the United States. A proposal to do this would, of course, be rejected out of hand as inconsistent with the doctrine of freedom of the press. But the broadcasting industry is a source of news and opinion of comparable importance with newspapers or books and, in fact, nowadays is commonly included with the press, so far as the doctrine of freedom of the press is concerned.
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> R.H. Coase, *The Federal Communications Commission*, 2 J.L. & Econ. 1, 7 (1959). Return to text

9. *Think About the Money*, *supra* note 6, at 11. Return to text

10. Interview with James Quello, FCC Commissioner, in Washington, D.C. (May 5, 1994). Return to text

11. Les Brown, The New York Times Encyclopedia of Television 139 (1977). Return to text

12. Ford Rowan, Broadcast Fairness 163 (1984). Return to text

13. In its 1985 report, the FCC stated:

> [T]he broadcast industry is one which is characterized by pervasive regulation. The fact of this pervasive regulatory authority, including the intrusive power over program content occasioned by the fairness doctrine, provides governmental officials with the dangerous opportunity to abuse their position of power in an attempt either to stifle opinion with which they disagree or to coerce broadcasters to favor particular viewpoints which further partisan political objectives.
>
> *In re* Inquiry into Section 73.1910 of the Commission's Rules and Regs. Concerning the Gen. Fairness Doctrine Obligations of Brdcst. Licensees, *Report*, 102 F.C.C.2d 143, para. 74 (1985) (proceeding terminated) [hereinafter *FCC Fairness Doctrine Report*], *petition for review sub nom.* Radio-Television

News Directors Assoc. v. FCC, 809 F.2d 860 (D.C. Cir.), *vacated*, 831 F.2d 1148 (D.C. Cir. 1987).

Professor William F. Baxter looked at the history of our governmental regulatory agencies: "Vigorous, purposeful intervention is a frightening prospect unless the levers are in the hands of saints with great wisdom, and such men are in very short supply, particularly in government agencies." Baxter, *supra* note 1, at 397. Return to text

14. Hazlett, *supra* note 7, at 112-13. Return to text

15. Edward W. Chester, Radio, Television and American Politics 235 (1969). Return to text

16. *Syracuse Opinion and Order*, *supra* note 8, para. 2. Return to text

17. Within the first month of the Clinton administration, Senator Ernest Hollings, chairman of the Senate Commerce Committee, introduced a bill (S. 334) to write the doctrine into law amid speculation the President might support the effort. *Fairness Doctrine*, Quill, Mar. 1993, at 7, 7. Return to text

18. In Re Arkansas AFL-CIO v. KARK-TV, Little Rock, Ark., *Petition for Reconsideration* of Tracy Westen (petition date Feb. 5, 1992) (copy on file with the *Federal Communications Law Journal*). Return to text

19. Tracy Westen v. FCC, *Petition for Writ of Mandamus* (9th Cir. July 28, 1994) (copy on file with the *Federal Communications Law Journal*). Return to text

20. *In re* Enforcement of the Fairness Doctrine, *Petition for Emergency Declaratory Ruling* of the Coalition for a Healthy Cal. (petition date Aug. 11, 1994) (copy on file with the *Federal Communications Law Journal*). Return to text

21. In Re Arkansas AFL-CIO v. KARK-TV, Little Rock, Ark., *Contingent Petition for Reconsideration* of the Coalition for a Healthy Cal. (petition date Aug. 11, 1994) (copy on file with the *Federal Communications Law Journal*). Return to text

22. *In re* Enforcement of the Fairness Doctrine, *Joint Opposition to Petition for Emergency Declaratory Ruling* of Radio-Television News Directors Ass'n (petition date Aug. 22, 1994); In Re Arkansas AFL-CIO v. KARK-TV, Little Rock, Ark., *Joint Opposition to Contingent Petition for Reconsideration* of National Ass'n of Broadcasters (petition date Aug. 22, 1994) (copies on file with the *Federal Communications Law Journal*). Return to text

23. The Clinton administration has called for elimination of many regulatory barriers and calls its proposals "the most major surgery on the Communications Act since it was enacted in 1934." Vice President Al Gore, Remarks at the National Press Club (Dec. 21, 1993) (copy on file with the *Federal Communications Law Journal*). Return to text

24. The Clinton administration recognizes that, just as new communications technologies transcend international boundaries, they also transcend other old boundary lines "which have long defined different sectors of the information industry." Vice President Al Gore, Remarks at the Television Academy at UCLA (Jan. 11, 1994) (copy on file with the *Federal Communications Law Journal*). Return to text

25. Coase, *supra* note 8, at 1. Return to text

26. Act of Aug. 13, 1912, ch. 287, 37 Stat. 302, *repealed by* Radio Act of 1927, ch. 169, 44 Stat. 1162; *see also* Coase, *supra* note 8, at 2, 4. Return to text

27. Coase, *supra* note 8, at 4. Return to text

28. *Id.* at 6. Return to text

29. *Id.* at 5, 31-32. Return to text

30. *Id.* at 23. Return to text

31. *Id.* at 4. Return to text

32. Nicholas Johnson, *Towers of Babel: The Chaos in Radio Spectrum Utilization and Allocation*, 34 Law & Contemp. Probs. 505, 505 (1969). Return to text

33. Charles A. Siepmann, Radio, Television and Society 5-6 (1950). Return to text

34. Radio Act of 1927, ch. 169, 44 Stat. 1162, *repealed by* Communications Act of 1934, ch. 652, 602(a), 48 Stat. 1064. Return to text

35. Part of the 1927 Act read:

> Nothing in this Act shall be understood or construed to give the licensing authority the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications.
>
> *Id.* at 1172-73; *see also* Mark S. Fowler & Daniel L. Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 Tex. L. Rev. 207, 217 (1982) ("The first amendment to the Constitution and section 326 of the Communications Act both forbid censorship of broadcasters."). Return to text

36. Radio Act of 1927, ch. 169, 44 Stat. 1162 (repealed 1934). In 1921, long before there had been any consensus about the government's right to control broadcasting or the manner in which they could do it, Herbert Hoover, without any statutory authority, began to issue station licenses. What is little known is that Hoover allotted only a single frequency to all commercial broadcasters: 833 kilocycles. All stations were forced to occupy the same channel. There was bedlam as stations tried to drown each other out. While everyone looked to the government to impartially control the chaos, the government exacerbated the problem and then pointed to the result as justification for further governmental control of broadcasting. By either omitting or burying this critical piece of information, many broadcast historiansincluding the respected but anti-corporate Erik Barnouwlead the unwary reader to assume there were as many frequencies to choose from then as there are today. The natural but incorrect inference is that chaos would result even now without benign governmental intervention to assign spectrum space. L.A. Powe, American Broadcasting and the First Amendment 58 (1987). Return to text

37. Radio Act of 1927, ch. 169, 44 Stat. 1162, 1170 (repealed 1934). Return to text

38. Coase, *supra* note 8, at 9. Return to text

39. *Id.* Return to text

40. *Id.* (quoting Edward C. Caldwell, *Censorship of Radio Programs*, 1 J. Radio L. 441, 473 (1931)). Return to text

41. *In re* Mayflower Brdcst. Corp., *Decision and Order*, 8 F.C.C. 333 (1940). Return to text

42. *Id.* at 339-41. Return to text

43. *Id.* Return to text

44. Baxter, *supra* note 1, at 393. Return to text

45. NBC v. United States, 319 U.S. 190 (1943). Return to text

46. *Id.* at 213 (emphasis added) (footnote omitted). Return to text

47. FCC, Public Service Responsibility of Broadcast Licensees 55 (1946). The report became known as the "Blue Book" for the color of its binding. The Blue Book combined governmental concerns over service to local communities with a curious hostility to the profit motive. It cautioned that, thereafter, the Commission was going to look more closely at stations' programs and would view more favorably those stations that avoided "advertising excesses" and carried sustaining programs, local live programs, and discussions of public issues. The FCC suggested sustaining programs be used for:

> (a) maintaining an overall program balance, (b) providing time for programs inappropriate for sponsorship, (c) providing time for programs serving particular minority tastes and interests, (d) providing time for non-profit organizationsreligions, civic, agricultural, labor, educational, etc., and (e) providing time for experiment and for unfettered artistic self-expression.

Id.; *see also* Coase, *supra* note 8, at 1; Fowler & Brenner, *supra* note 35, at 215. These proposals were never actively enforced. Return to text

48. *In re* Editorializing by Brdcst. Licensees, *Report of the Commission*, 13 F.C.C. 1246, para. 7 (1949); *see also* Baxter, *supra* note 1, at 393-94; Coase, *supra* note 8, at 10. Return to text

49. 47 U.S.C. 315(a) (1988). Return to text

50. *In re* The Handling of Pub. Issues Under the Fairness Doctrine and the Pub. Interest Stds. of the Comm. Act, *Fairness Report*, 48 F.C.C.2d 1', para. 28 (1974) [hereinafter *1974 Fairness Report*]. Return to text

51. Telecommunications Research and Action Ctr. v. FCC, 801 F.2d 501, 517-18 (D.C. Cir.), *reh'g en banc denied*, 806 F.2d 1115 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987). Return to text

52. 47 C.F.R. 73.123 (1968). Return to text

53. Red Lion Brdcst. Co. v. FCC, 395 U.S. 367, 401 (1969); *see* Brown, *supra* note 11, at 359; Fred W. Friendly, The Good Guys, the Bad Guys, and the First Amendment 61-77 (1976). Return to text

54. *Red Lion*, 395 U.S. at 388-90. The Supreme Court in *NBC* and *Red Lion* introduced a new principle

into our First Amendment jurisprudence: When only a few interests control a major avenue of communication, those able to speak can be forced by government to share their access to that avenue. Return to text

55. James Quello, veteran FCC Commissioner and former acting chairman, has consistently opposed the idea of the Fairness Doctrine. "It doesn't belong in a nation that is dedicated to freedom of speech and of press." His opposition to the Fairness Doctrine comes, at least in part, from his early experience as a broadcast executive where he encountered concrete examples of the doctrine's chilling effect. Interview with James Quello, *supra* note 10. Return to text

56. *See Freedom of the Press Hearings*, *supra* note 5, at 560-61. Return to text

57. *Red Lion*, 395 U.S. at 393. Return to text

58. *Id.* Return to text

59. *League of Women Voters*, 468 U.S. 364, 378-79 n.12 (1984) (quoting *Red Lion*, 395 U.S. at 393). Return to text

60. *FCC Fairness Doctrine Report, supra* note 13, paras. 74-76. Return to text

61. *Id.* para. 130. The Commission determined that the net effect of the Fairness Doctrine was to reduce coverage of controversial issues of public importance. *Id.* para. 29. Return to text

62. *Syracuse Opinion and Order*, *supra* note 8, para. 2. Return to text

63. Four years after the Commission ceased enforcing the Fairness Doctrine, the FCC made evidence public indicating that the marketplace was providing expanded choices of news and information and even more sources for such programming. *Broadcasters' Public Interest Obligations and S. 217, The Fairness in Broadcasting Act of 1991: Hearing Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 102d Cong., 1st Sess. 9-14 (1991) (statement of Alfred C. Sikes, Chairman, FCC). Return to text

64. Jim Cooper, *Talkers Brace for `Fairness' Assault*, Broadcasting & Cable, Sept. 6, 1993, at 44, 44. Return to text

65. Some see overwhelming sentiment in Congress to bring back the Fairness Doctrine. As one communications lobbyist, Gigi B. Sohn, deputy director of the Media Access Project, put it, "What there isn't is the courage to do it. Basically they've been inundated by followers of conservative talk-show hosts who've been calling them up and telling them not to. And that's been enough." Rod Dreher, *Congress Cowers To Conservatives On Fairness Doctrine*, Wash. Times, July 3, 1994, at A4. Return to text

66. Congress attempted to indisputably codify the doctrine with the Fairness in Broadcasting Act of 1987. H.R. 1937, 100th Cong., 1st Sess. (1987); S. 742, 100th Cong., 1st Sess. (1987). President Reagan vetoed it. 133 Cong. Rec. S8438 (daily ed. June 23, 1987). President Bush's threat of a veto caused a similar attempt to codify the Fairness Doctrine to fail in 1989. Return to text

67. Chairman Markey told reporters that he is committed to "putting fairness back on the books." He added that although Congress is currently preoccupied with the issue of cable rates, it will eventually focus on the issue of restoring the Fairness Doctrine. Kim McAvoy, *Who's to Blame for Cable Rereg Mess?*, Broadcasting & Cable, Oct. 4, 1993, at 60, 60. Return to text

68. "Both Telecommunications Subcommittee Chairman Ed Markey (D-Mass.) and Energy and

Commerce Committee Chairman John Dingell (D-Mich.) are making the fairness bill a priority." Kim McAvoy, *Fairness Doctrine On a Roll*, Broadcasting & Cable, Aug. 2, 1993, at 39, 39. "And with Bill Clinton in the White House, they're no longer concerned about a presidential veto." *Id.* at 40. Return to text

69. "The presumption has been since 1987 that the next time we get a Democratic president, there is going to be a Fairness Doctrine," stated Thomas W. Hazlett, an economist at the University of California at Davis. Dreher, *supra* note 65, at A4. The question at hand is, will President Clinton follow in the footsteps of President Reagan and President Bush? David Bartlett, president of Radio-Television News Directors Association, was pessimistically watchful of the new administration. "While Mr. Clinton may not have content regulation at the top of his personal agenda, don't count on him to pick fights with the powerful Democratic congressional leaders who see it as their mission in life to control what goes out over radio and television." David Bartlett, *Monday Memo*, Broadcasting, Jan. 25, 1993, at 18, 18. Return to text

70. *Washington Watch*, Broadcasting & Cable, Sept. 20, 1993, at 44, 44. Return to text

71. *Id.* Limbaugh is, perhaps, the most recognizable of the talk show hosts who rail on the Fairness Doctrine. As evidence of Limbaugh's reputation for opposing the doctrine, attempts by Congress to codify the doctrine have been referred to in the popular media as "Hush Rush" legislation. Gigi B. Sohn & Andrew Schwartzman, *Fairness Not Silence*, Wash. Post, Jan. 31, 1994, at A21. In point of fact, though, a large number of other talk show hosts also helped to generate mail against the Fairness Doctrine. Former Watergate conspirator G. Gordon Liddy, now one of the country's top radio personalities said of attempts to reinstate the Fairness Doctrine, "If they did try to, Rush and I and [Pat] Buchanan would be all over them like a blanket." Dreher, *supra* note 65, at A4. Return to text

72. "I take my hat off to Rush Limbaugh and the other conservative talk-show hosts," said Gigi B. Sohn, deputy director of the Media Access Project. "I think they're absolutely wrong on the Fairness Doctrine, and I think they know it, but they've done a spectacular job of cowing Congress into not taking action."

    Dreher, *supra* note 65, at A4.

    Although most of the media attention seemed to center on talk radio, it should be noted that religious broadcasters also lobbied agressively against such legislation. Harry Jessell, *Congress Urges FCC to Deal with Fairness Doctrine*, Broadcasting & Cable, Mar. 14, 1994, at 14, 14. Return to text

73. "Clinton advisor George Stephanopoulos assails radio's `tear-it-down attitude' and calls for `more of a balance.' The doctrine is `not on the front burner right now,' he says. `But there's always a chance that it's something people might want to look at.'" Amy Bernstein, *The Hush-Rush Law*, U.S. News & World Rep., June 27, 1994, at 12, 12. Return to text

74. It has been suggested by some that the Fairness Doctrine will pave its way back into the legislative arena masked behind politically correct movements concerned with "indecent programming" and "responsible journalism." Bartlett, *supra* note 69, at 18.

    A few see a sinister government seeking more and more control of mass communications. Actor Michael Moriarty states that he quit NBC's *Law and Order* because he was being written out of the series due to his stand against

the Clinton administration's efforts to halt TV violence. Moriarty claimed "[Attorney General] Reno wants to control mass communications using the oldest ploythe children." Joe Flint, *Moriarty Quits, Blames Violence Backlash*, Broadcasting & Cable, Feb. 7, 1994, at 22, 22.

Moriarty may be prescient, or he may simply be a good legal scholar. The Children's Television Act of 1990 forced the FCC to reinstate restrictions on advertising during programming aimed at children and imposed an obligation on broadcasters to provide programming that affirmatively addresses the "educational and information" needs of young viewers. Pub. L. No. 101-437, 104 Stat. 996 (codified at 47 U.S.C. 303a-303b, 393a, 394 (Supp. IV 1992)).

The 1992 Petition for Reconsideration of the Commission's abandonment of the Fairness Doctrinefiled by the Arkansas AFL-CIO and the Committee Against Amendment 2points out the Children's Television Act "regulates broadcast content in a way that arguably requires much greater discretion than the fairness doctrine." They imply that, for this reason it would be fitting and proper to restore the doctrine. Some of the recent filings of August 1994, discussed *supra* notes 20-21, incorporate this argument. Return to text

75. The fairness doctrine works inherently to defeat its own purpose, for as soon as a broadcaster arouses public passion by covering a controversial issue, he will receive an avalanche of complaints alleging a fairness violation. Even if the complaints are invalid, the broadcaster is subject to costs of time, energy, and legal fees in order to answer the complaints. Such costs deter the small broadcaster from covering controversial issues; and it is the small broadcaster, not CBS, ABC, or NBC, who operates in small localities who must carry varying viewpoints if the United States is to make intellectual progress.

Bruce Fein, *First Class First Amendment Rights For Broadcasters*, 10 Harv. J.L. & Pub. Pol'y 81, 82 (1987). Return to text

76. *But see* Fowler & Brenner, *supra* note 35, at 247 ("[T]he reasonable expectation of license renewal enjoyed by broadcasters today comes close to a property right, in reality if not in name."). Return to text

77. Professor Coase traces the origin of the phrase "public interest, convenience, and necessity" to public utility legislation. He points to its lack of any definite meaning and suggests that "the many inconsistencies in Commission decisions have made it impossible for the phrase to acquire a definite meaning in the process of regulation." Coase, *supra* note 8, at 8-9. The phrase "means about as little as any phrase that the drafters of the Act could have used and still comply with the constitutional requirement that there be some standard to guide the administrative wisdom of the licensing authority." *Id.* at 8 (quoting Louis G. Caldwell, *The Standard of Public Interest, Convenience or Necessity as Used in the Radio Act of 1927*, 1 Air L. Rev. 295, 296 (1930)). Return to text

78. Professor Baxter has pointed out how a

system of private ownership and private enforcement [similar to property rights

> in land] might have been adopted with regard to the radio spectrum, the initial allocation being made on the basis of historical priority as to use, unused portions being left subject to future private appropriation, as was done with the unclaimed lands of the Western territories.
>
> Baxter, *supra* note 1, at 392. Return to text

79. "Support for the 1927 Act came, in part, from a belief that no other solution was possible, and, as we have seen, the rationale which has developed since certainly largely reflects this view." Coase, *supra* note 8, at 31. Return to text

80. Metro Brdcst., Inc. v. FCC, 497 U.S. 547, 567 (1990). Return to text

81. *Syracuse Opinion and Order*, *supra* note 8, para. 80. Return to text

82. Fowler & Brenner, *supra* note 35, at 228. Return to text

83. *1974 Fairness Report, supra* note 50, para. 28. It should be noted how philosophical disagreement rages over the relativistic concept that opinions on either side of any question are always equally valid. Commissioner Quello likes to suggest that under the Fairness Doctrine, any station that editorializes for God, Mother, and Country should give some response time to atheism, bastardy, and subversion. Interview with James Quello, *supra* note 10. Return to text

84. *1974 Fairness Report*, *supra* note 50, para. 28. Return to text

85. *Id.* Return to text

86. *See* Telecommunications Research and Action Ctr. v. FCC, 801 F.2d 501, 517-18 (D.C. Cir.), *reh'g en banc denied,* 806 F.2d 1115 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987). Return to text

87. *1974 Fairness Report*, *supra* note 50, para. 28. Return to text

88. *Id.* Return to text

89. *Id.* (emphasis in original). Return to text

90. Fowler & Brenner, *supra* note 35, at 221. Return to text

91. *In re* Application of Great Lakes Brdcst. Co., 3 F.R.C. Ann. Rep. 32 (1929), *rev'd in part on other grounds*, 37 F.2d 993 (D.C. Cir. 1930), *cert. dismissed*, 281 U.S. 706 (1930). Return to text

92. Christopher H. Sterling & John M. Kittross, Stay Tuned: A Concise History of American Broadcasting 633 (2d ed. 1990). Return to text

93. Red Lion Brdcst. Co. v. FCC, 395 U.S. 367, 389-90 (1969); *see also* Baxter, *supra* note 1, at 394. Return to text

94. A number of courts are now recognizing the profusion of media outlets available in almost all markets. In *Arkansas AFL-CIO*, the court predicted the Supreme Court would be likely to reconsider *Red Lion* "now that broadcast frequencies and channels have become much more available." Arkansas AFL-CIO v. FCC, 11 F.3d 1430, 1442 n.12, 1443 (8th Cir. 1993) (Arnold, J., concurring).

> In a subsequent case, the Eighth Circuit quoted *Arkansas AFL-CIO* pointing out that "technological changes since the Supreme Court decided *Red Lion Broadcasting Co. v. FCC* in 1969 have largely undermined the basis for the existing pervasive federal regulation of the broadcasting industry as a whole and, as a result, `raise a significant possibility that the First Amendment balance struck in *Red Lion* would look different today.'" Forbes v. Arkansas Educ. TV Comm. Network Found., 22 F.3d 1423, 1431 (8th Cir. 1994) (McMillian, J., concurring in part and dissenting in part), *reh'g denied*, 1994 U.S. App. LEXIS 14,717 (8th Cir. June 14, 1994).
>
> The D.C. Circuit also invited the Supreme Court to revisit *Red Lion*, observing how such analysis "inevitably leads to strained reasoning" and concluding "the line drawn between the print media and the broadcast media, resting as it does on the physical scarcity of the latter, is a distinction without a difference." Telecommunications Research and Action Ctr. v. FCC, 801 F.2d 501, 508 (D.C. Cir.), *reh'g en banc denied*, 806 F.2d 1115 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987). Return to text

95. NBC v. United States, 319 U.S. 190, 213 (1943). Return to text

96. *Red Lion*, 395 U.S. at 367.

> [I]t is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves.
>
> *Id.* at 388-89. Return to text

97. Newton N. Minow, *Being Fair to the Fairness Doctrine*, N.Y. Times, Aug. 27, 1985, at A23. Return to text

98. *Id.* Return to text

99. *Id.* Return to text

100. *Id.* Return to text

101. *Id.* Return to text

102. Don R. Le Duc, *Deregulation and the Dream of Diversity*, J. Comm., Autumn 1982, at 164, 164 (emphasis in original). Return to text

103. The relationship between station and community envisioned in those early days is similar to the way the Armed Forces Radio Service (AFRS) now serves American military personnel overseas. In some foreign countries, the AFRS station may be the only source of information, education, and entertainment available by radio for those who do not speak the native language. Hence, the AFRS

station must be "all things to all persons" by offering a wide variety of programs designed to appeal to all listener tastes. It is instructive to see how this programming philosophy parallels the duty imposed on 1930s broadcasters by the Federal Radio Commission.

> [T]he tastes, needs, and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program, in which entertainment, consisting of music of both classical and lighter grades, religion, education and instruction, important public events, discussions of public questions, weather, market reports and news, and matters of interest to all members of the family find a place.
>
> *In re* Application of Great Lakes Brdcst. Co., 3 F.R.C. Ann. Rep. 32, 34 (1929), *rev'd in part on other grounds*, 37 F.2d 993 (D.C. Cir.), *cert. dismissed*, 281 U.S. 706 (1930). Return to text

104. *See I* Broadcasting and Cable Y.B. B-511 (1994). Return to text

105. *See generally* Erik Barnouw, The Sponsor 9-41 (1978) (tracing the development of radio and television). Return to text

106. Erik Barnouw, Tube of Plenty: The Evolution of American Television 140-43 (1975). Return to text

107. Pundits predict that compression techniques combined with fiber optics will result in exponentially greater channel capacity for cable systems. One figure frequently cited is 500 channels, although this is a totally arbitrary number that has caught the fancy of the popular media. Far more channel capacity than 500 is already possible with present technology. Return to text

108. One cable network, C-SPAN, provides continual live coverage of congressional hearings and floor debates. Return to text

109. It is interesting that although foreign-language stations do program for a specific audience, that audience itself is segmented by programming preference. Although the programs are all in, for example, Spanish, they run the gamut of programming types from music to drama to news. Foreign-language narrowcasting may be on the horizon. Return to text

110. Fowler & Brenner, *supra* note 35, at 233. Return to text

111. *See id.* at 241 ("In basing editorial and program judgments on their perceptions of popular demand, broadcasters enforce the paramount interests of listeners and viewers."). Return to text

112. The FCC said, "[T]he growth of traditional broadcast facilities, as well as the development of new electronic information technologies, provides the public with suitable access to the marketplace of ideas so as to render the fairness doctrine unnecessary." *FCC Fairness Doctrine Report*, *supra* note 13, para. 82. Return to text

113. Fowler & Brenner, *supra* note 35, at 210. Return to text

114. George H. Shapiro et al., `CableSpeech': The Case for First Amendment Protection at xii (1983). Return to text

115. *See FCC Fairness Doctrine Report*, *supra* note 13, para. 5. Return to text

116. Jon Lafayette, *ACLU Chief Strossen Sees TV as Pre-eminent Battleground*, Electronic Media, Dec. 13, 1993, at 1, 54. Return to text

117. Harry A. Jessel, *Gore Stumps for Superhighway Bill*, Broadcasting & Cable, June 20, 1994, at 36, 36. Return to text

118. Vice President Al Gore, Remarks at the National Press Club, *supra* note 23. Return to text

119. *See April Fool's Day on the Data Superhighway*, Wash. Post, Mar. 30, 1994, at C3. Return to text

120. *Dole Questions FCC's Regulatory Prowess*, Broadcasting & Cable, Apr. 18, 1994, at 13, 13. Return to text

121. John Milton, *Areopagitica*, *in* Complete English Poems of Education, Areopagitica 573 (Gordon Campbell ed., 1990) (1644). Return to text

122. *Id.* at 601. Return to text

123. Americans take a dim view of governmental restrictions on news coverage. "[O]nly a minority (29%) said they favored restrictions on news organizations in response to the question: `Generally, do you favor or oppose putting restrictions on what newspapers and TV news programs can report?'" Christopher Stern, *Viewers Trust TV News, Support Censorship*, Broadcasting & Cable, Mar. 21, 1994, at 32, 32. Return to text

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Radio Regulation Revisited:
Coase, the FCC, and the Public Interest

David A. Moss and Michael R. Fein

It is now more than forty years since Ronald Coase's seminal article on the Federal Communications Commission first appeared in the pages of the *Journal of Law and Economics*. [1] The article remains important for a number of reasons, not least of which is that it offered his first articulation of the Coase Theorem. [2] Of even greater importance for our purposes, the article literally redefined the terms of debate over American broadcast regulation, in both historical and contemporary treatments of the subject.

Focusing particularly on the development of radio regulation, Coase rejected the prevailing notion that the establishment of the Federal Communications Commission (FCC) served the public interest. Rather, he concluded that its creation had been a mistake, the product of faulty economic reasoning. The complex regulatory apparatus developed under the Federal Radio Act of 1927 and recodified in the Federal Communications Act of 1934 was built on the flawed assumption that scarce resources—in this case the radio spectrum—had to be allocated by government fiat. A more efficient solution, Coase maintained, would have been to allocate the spectrum like any other scarce resource, on the basis of well-defined property rights and a free market guided by the price mechanism. Indeed, this is why he suggested that the spectrum ought to be cut up and sold at auction rather than regulated by the federal government. [3]

While Coase's economic reasoning and policy conclusions have since gained wide acceptance, the historical work on which the article **[End Page 389]** was based has taken quite a beating. Thomas Hazlett, in particular, has demonstrated that federal lawmakers of the 1920s were in no way blind to the property-rights option, but rather knowingly rejected it in favor of far-reaching regulation. [4] In Hazlett's view, radio regulation was the product not of ignorance or mistaken reasoning, but rather of an implicit deal between policymakers on the one hand and incumbent broadcasters on the other, both of whom had much to gain from a regulatory solution. "That the political marketplace pointedly vetoed a property rights solution that would bypass regulators and legislators while holding entry open into broadcasting," Hazlett asserted, "was not a reflection of technical incompetence but of self-interested rationality." [5] Yet even after contradicting Coase's rendition of the historical record, Hazlett applauded Coase's central policy conclusion—that a well-conceived plan to auction the spectrum would better serve the public interest than did the existing regulatory regime. [6]

At the heart of Hazlett's critique was not only a rejection of what he called the "error theory" of broadcast regulation, but also a rejection of the public-interest theory of policymaking that lay behind it. [7] In Coase's version of the story, policymakers seem to have meant well: they failed to adopt a property-rights solution—and thus failed to serve the public interest, according to Coase—only as a result of bad reasoning, not bad motives. In Hazlett's version, by contrast, lawmakers were fully aware of the property-rights option but rejected it on the basis of "self-interested rationality." [8]

Like Hazlett and others who have studied the history of radio regulation in recent years, we find considerable evidence that proponents of the "error theory" (including Coase himself) mischaracterized the historical record. Unlike most other students of the subject, however, we do not believe the available evidence proves that lawmakers were guided mainly by self-interest, as opposed to their own sense of the public interest, in fashioning a regulatory regime for radio. According to our reading of the legislative record, American lawmakers presented a

perfectly reasonable and logically consistent case for federal regulation of broadcasting. Their often-repeated concerns about limited spectrum, which so fascinated Coase, had less to do with their interest in finding an economically efficient allocation of scarce bandwidth than with *their determination to prevent a potentially dangerous concentration of political power*. Coase's mistake, we believe, was not in assuming that lawmakers were guided by a concern for the public interest, but rather that efficiency **[End Page 390]** considerations were (or ought to have been) paramount in assessing the public interest.

What the record reveals is that democratic principles came into conflict with—and ultimately eclipsed—economic ones in the legislative debate, a result that was contextually specific to broadcasting. Had radio been more like newspaper, where there was no obvious limit on the number of independent voices that could be heard, policymakers might well have anticipated Coase's advice in adopting a market approach to spectrum allocation. [9] But, given the (apparent) reality of a limited radio spectrum *and* the extraordinary political influence that the right to broadcast seemed to convey, federal lawmakers turned fiercely against a market solution. It was not that they regarded regulation as the only way to prevent interference on the airwaves (as Coase maintained), but rather that they saw regulation as the best way to prevent the airwaves from being dominated by just a small number of voices.

These findings obviously raise questions about Coase's normative claim that spectrum auctions would better serve the public interest than regulation. As the early legislative record suggests, much depends on one's conception of the public interest. But these findings also pose a clear challenge to those who, in recent years, have reinterpreted the history of radio regulation from a rent-seeking perspective. Perhaps the officials who supported regulation fashioned arguments about concentrated political power merely as a means of covering up their true—and far more selfish—motivations. But perhaps not. The point here is that the legislative record offers little reason to doubt either their competence or their sincerity, and it thus offers little contradiction to the so-called public-interest theory of policy formation. While in no way denying that rent seeking may have played a role in the rise of radio regulation, we maintain that the public-interest theory of radio regulation has been too easily dismissed in the wake of Ronald Coase.

Coase and the History of the FCC

Ronald Coase's reading of the historical record led him to believe that the "main reason for government regulation of the radio industry was to prevent interference." [10] First with ship-to-ship and ship-to-shore communication, and later with radio broadcasting, the cacophony of voices transmitted over a limited radio spectrum threatened **[End Page 391]** to undermine the utility of the entire medium. Convinced that regulation was the best (and perhaps the only) way to bring order to this otherwise chaotic technology, federal lawmakers passed the Radio Act of 1927, which created the Federal Radio Commission, the forerunner to the FCC.

Coase supported this account with numerous quotes from public officials. Perhaps most striking was an extended passage from a 1943 Supreme Court decision, in which Justice Felix Frankfurter (writing for the court) characterized the history and logic of radio regulation precisely as Coase had described it:

> The plight into which radio fell prior to 1927 was attributable to certain basic facts about radio as a means of communication—its facilities are limited; they are not available to all who may wish to use them; the radio spectrum is simply not large enough to accommodate everybody. There is a fixed natural limitation upon the number of stations that can operate without interfering with one another. Regulation of radio was therefore as vital to its development as traffic control was to the development of the automobile. In enacting the Radio Act of 1927, the first comprehensive scheme of control over radio communication, Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential. [11]

Resource scarcity and the potential for interference, in other words, are what necessitated an aggressive regulatory response.

Satisfied that this was indeed the logic by which radio regulation had been (and continued to be) justified, Coase proceeded to rip it apart. "Notwithstanding the general acceptance of these arguments and the eminence of the authorities who expound them," he wrote, "the views which have just been quoted are based on a misunderstanding of the nature of the problem." The notion that radio required special economic treatment merely because of a dearth of usable frequencies struck Coase as absurd. It was, after all, "a commonplace of economics that almost all resources used in the economic system . . . are limited in amount and scarce." Since most scarce resources were allocated privately in the marketplace, rather than through government edict, why should radio be any different? "It is true," Coase conceded, "that some mechanism has to be employed to decide who, out of the many claimants, should be allowed to use **[End Page 392]** the scarce resource. But the way this is usually done in the American economic system is to employ the price mechanism, and this allocates resources

to users without the need for governmental regulation." [12]

Though radio interference may have seemed like a novel problem at the time, particularly given the newness of this "mysterious technology," Coase insisted that the same essential problem affected every scarce resource, including land. [13] "The use of a piece of land simultaneously for growing wheat and as a parking lot," he noted, "would produce similar results. . . . [T]he way this situation is avoided is to create property rights (rights, that is, to exclusive use) in land. The creation of similar rights in the use of frequencies would enable the problem to be solved in the same way in the radio industry." [14] Had the nation's lawmakers simply thought more clearly and soberly about the challenge at hand, they would have recognized that well-defined property rights and the price mechanism—not regulation—were all that was needed to allocate the radio spectrum in a socially optimal manner. As it was, federal radio regulation was nothing more than the unfortunate product of poor economic reasoning.

Finding Error in the "Error Theory" of Radio Regulation

Although the historical treatment of radio regulation evolved considerably in subsequent years, Coase's reading remained largely intact until 1990, when Thomas Hazlett published a devastating critique—once again in the *Journal of Law and Economics*. [15] Characterizing the prevailing interpretation as the "'error theory' of federal licensing" (since it held that radio regulation was mostly attributable to muddled thinking), Hazlett provocatively argued that there was really no error at all. [16] Federal policymakers had known exactly what they were doing in 1927. In fact, in Hazlett's view, the Federal Radio Act represented an explicit rejection of a recent judicial attempt to craft precisely the sort of property-rights regime that Coase would later recommend.

The key case upon which Hazlett relied was *Tribune Co. v. Oak Leaves Broadcasting Station,* a 1926 decision that addressed the interference problem by creating a homesteading right for existing stations. The defendant in the case, described as a "wave jumper," was ordered not to broadcast within 50 kilocycles of the plaintiff, a more established station with a longer record on the contested frequency. **[End Page 393]** "It was on this homesteading principle," Hazlett explained, "that the judge found a common-law remedy to the potential 'tragedy of the commons.' Relying on established law . . . the opinion granted a priority-in-use property-rights rule the force of law in radio broadcasting. Private rights in the ether under common law were immediately recognized as a solution to the interference problem." [17]

As Hazlett tells the story, the *Oak Leaves* decision was received like a lightening bolt at the U.S. Commerce Department, where Secretary Herbert Hoover "had been advocating broadcasting legislation since the early 1920s." [18] What Hoover wanted was federal authority to grant radio franchises based on a "public interest" standard. A believer not only in big business but also in corporate service to the commonweal, Hoover insisted that every prospective radio licensee should be "compelled to prove that there is something more than naked commercial selfishness in his purpose." [19] His vision, however, was profoundly threatened by the *Oak Leaves* decision, which promised to create a true property-rights regime tied neither to Hoover's regulatory authority nor to his expansive notion of the public interest. [20]

Until 1926, Hoover's Commerce Department had been in the business of assigning broadcast licenses. Though the authorizing legislation (the federal Radio Act of 1912) was originally created to cover point-to-point communication, federal regulators took it upon themselves to extend its coverage to broadcasting as well, once radio broadcasting began to take shape around 1920. Yet in 1923 and again in 1926, federal courts ruled against the Commerce Department's licensing policy, denying that Congress had granted the department any real discretion over the allocation of radio licenses. The 1926 decision, announced several months before *Oak Leaves,* proved particularly debilitating, since it rejected the department's authority even to assign wavelengths and times of operation. [21] Rather than try to appeal the case or encourage voluntary cooperation among broadcasters, Secretary Hoover seemed to throw in the towel, apparently content to allow chaos to consume the airwaves. "By any nonstrategic standard," Hazlett observed, "the regulatory reaction to market confusion was inexplicable." [22] One possible answer is that Hoover's actions *were* in fact strategic. "Chaos," explains Hazlett, "was strategically introduced into the political process" to "pressure Congress for action." [23]

By most accounts, the strategy—if that is what it was—appears to have worked. Congress moved quickly in late 1926 and early 1927 **[End Page 394]** to craft a comprehensive regulatory solution. Signed into law on 23 February 1927, the Radio Act created a new Federal Radio Commission and authorized it to grant broadcast licenses whenever it determined "that public interest, convenience, or necessity would be served." [24] Far from being fashioned out of ignorance, Hazlett maintains, the Radio Act represented a conscious rejection of the property-rights approach that was just then emerging in the courts. [25]

In place of the flawed "error theory" of radio regulation, Hazlett has offered his own "franchise-rents" theory, which characterizes American radio law as the product of "self-interested rationality," in which the major players—particularly federal policymakers and the leading radio broadcasters—each achieved advantages that would have been unattainable in an unregulated market. [26] "The bargain instituted was a classic regulatory quid pro quo wherein incumbent radio broadcasters agreed to be subject to 'public interest' licensing requirements in exchange for barriers to new entry." Leading broadcasters were assured of increased rents (since the new regulatory regime would deny upstart competitors the right to "homestead unoccupied bands"), while Congress "gained some measure of authority over this newly evolving medium of expression." [27]

There can be no doubt that Hazlett's work has dramatically advanced our understanding of the origins of broadcast regulation in the United States, overturning the "error theory" and underscoring the critical role of strategic and rent-seeking behavior on the part of broadcasters and lawmakers alike. Yet several important questions still remain unanswered. Why did Coase (and others who followed him) get the history so wrong? If, as Hazlett contends, "interference was not the problem," what led Coase to believe that it was in fact a problem of central importance? [28] And if the economic viability of the property-rights option was indeed plainly visible at the time, why were American lawmakers (well known for their anti-statist sentiments) so intent, as Senator C. C. Dill put it, on "prevent[ing] private ownership of wave lengths" and asserting the "full sovereignty over radio by Congress"? [29] Hazlett maintains that these lawmakers sought to place themselves at the "nexus of decision making in a brisk competitive rivalry for zero-priced frequency rights" and thus to provide themselves with "a very well understood discretion over the life and death of lucrative and influential broadcasters." [30] But then why did they not choose to regulate every industry to the same extent (or at least to the extent legally—or constitutionally—permissible)? Perhaps radio was special. But if so, why would Hazlett, **[End Page 395]** after correcting Coase's history, ultimately agree with Coase's normative conclusion that broadcast frequencies ought to be allocated in the private marketplace, on the basis of property rights and prices, like any other resource? [31] Was radio special, or not?

The answer, in short, is that radio *was* special. Certainly other nations, which placed strong state controls over the medium, considered it to be so. [32] And American lawmakers, though easing private access to the spectrum and promulgating a tamer version of public oversight, felt no differently about its exceptional nature. Radio was regarded as special, however, not because of some distinctive economic characteristics, but rather because of distinctive political characteristics associated with the power to broadcast and to shape public opinion. Surely some policymakers (though by no means all) understood that radio interference could be solved in the private marketplace once property rights in the spectrum were assigned. But they feared that such a strictly economic solution to the problem of interference could itself create a political problem of vastly greater consequence, permanently concentrating control over mass communication in too few hands. *What drove them toward a regulatory rather than a common-law solution, then, was the combination of spectrum scarcity on the one hand and radio's enormous political significance on the other.* Had either of these characteristics been absent, a property-rights approach would have sufficed. Together, they seemed to pose such a grave threat to the democratic process that lawmakers felt they had no choice but to establish direct regulatory control over the industry.

Fear of Concentrated Control over the "Most Potent Political Instrument of the Future"

Many scholars, including both Coase and Hazlett, have noted that federal policymakers often worried about broadcasters obtaining too much influence over public opinion. But it seems that no one has yet demonstrated just how pivotal this concern was in the shaping of federal radio legislation. As the historical record makes clear, a pervasive fear of *political* monopoly—that is, of concentrated control over this new and unparalleled means of political expression—profoundly influenced the legislative process at almost every step of the way. **[End Page 396]**

Such a fear already loomed large in 1924, when Secretary Hoover urged Congress to assert more explicit and expansive public control over the radio spectrum. "It is inconceivable," he declared during a congressional hearing,

> that the American people will allow this new-born system of communication to fall exclusively into the power of any individual group or combination. Great as the development of radio distribution has been, we are probably only at the threshold of the development of one of the most important of human discoveries bearing on education, amusement, culture, and business communication. It

> can not be thought that any single person or group shall ever have the right to determine what communication may be made to the American people. . . .
>
> [T]he fundamental thought of any radio legislation should be to retain possession of the ether in the public and to provide rules for orderly conduct of this great system of public communication by temporary permits to use the ether. It should be kept open to free and full individual development, and we should assure that there can be no monopoly over the distribution of material. [33]

Not surprisingly, a representative of the Radio Broadcasters' Society of America, a group of independent stations, wholeheartedly agreed:

> If [radio broadcasting] is put into the hands of a trust, into the hands of a monopoly—if a monopoly is not stopped now, and they get control in this country—it might well be that some official of the monopoly company, sitting in the quiet of his executive office, surrounded and protected and away from the public, where he can not be seen, will issue the fiat that only one kind of religion shall be talked over the radio; that only one kind of politics shall be talked over the radio; that only one candidate can give messages to the people; that only one kind of soap can be advertised. [34]

When Raymond Asserson, speaking at the same set of hearings on behalf of the New York City Broadcasting Supervisor, expressed concern about superpower stations having "great power of influence over the public," Representative George W. Edmonds of Pennsylvania **[End Page 397]** replied, "The point you are making is this, that if it should get into the control of two or three hands, they could shut out certain lines of conversation, talk, or speeches over the radio, and allow others in, just to suit their purposes." [35] Asserson agreed, claiming that there is a "danger there, in advocating that policy [of allowing high-power broadcast stations], of really advocating monopoly of the air." [36] Although David Sarnoff of RCA insisted that superpower stations would not interfere with other wavelengths, Asserson maintained that the RCA-affiliated superstation in Bound Brook, New Jersey, was already blocking out independent broadcasters. [37]

A related problem that concerned many lawmakers was the emerging secondary market for spectrum rights. By the mid-1920s, it had become commonplace for those seeking access to the spectrum to purchase existing stations and petition federal regulators for license transfers. Cognizant of the substantial investments involved, the Commerce Department typically reassigned licenses with little debate. As Hazlett explained it, Secretary Hoover "relied on market transactions to minimize broadcasting disruptions, à la the Coase Theorem." [38] But many legislators worried that if a license effectively ran with the radio apparatus, then there would be nothing to prevent the concentration of broadcasting rights in a single person or firm. [39]

Believing that it was essential to preempt the creation of any true property rights in the spectrum, Senator Robert B. Howell of Nebraska proposed a bill reasserting the public's right to the ether in 1926. Solicitor Stephen B. Davis of the Commerce Department explained that the bill "would compel the disclaiming of any such claim" of vested rights in the ether. When Chairman C. C. Dill of the Senate Interstate Commerce Committee asked Senator Howell if he knew of any such claims, Howell replied that "such claims are contemplated," and that he introduced the bill "to force to the surface now, and not 25 years from now, any claim of vested right." This would "enable Congress to deal with them now in the infancy of this art." [40]

Lawmakers apparently feared that tradable rights in the spectrum could easily lead to an unacceptable concentration of power in broadcasting. Afraid of precisely such an outcome, Senator James B. Couzens of Michigan quizzed Davis about the Commerce Department's routine approval of license transfers in the overcrowded Chicago market. "[I]f that policy was carried on," Couzens asked, "it could monopolize the whole district by buying up stations, could it **[End Page 398]** not?" Davis noted that there was no evidence as yet of any such monopoly forming, but Couzens persisted.

> Couzens: If priority is ignored in that case then the apparatus controls the situation, and anyone that buys the apparatus can control the situation.
>
> Davis: We have felt this way about it, Senator, that the license ran to the station rather than to the individual. In other words, we have never felt it wise to adopt a policy under which we would say to an individual, "Yes; go in and build this station at whatever cost there may be. If you die it is worth nothing. If you change your mind and want to quit broadcasting it is worth nothing. If you get into business trouble it is worth nothing to your creditors. It has only got a refuse value." We take the position that inasmuch as these licenses are only 90-day licenses anyway, that the license ran to the apparatus; a man can transfer his apparatus, and if there is no good reason to the contrary we will recognize that sale and license the new owner of the apparatus.
>
> Couzens: Well, it seems to me, then, it is up to Congress to provide some means whereby no single interest can control the broadcasting of the district. [41]

Later on in the hearings, when the Chicago market again came to the fore, Solicitor Davis reassured the committee that there was "no absolute right of transfer." [42] With more than forty stations in the Chicago area, there was no chance of one company monopolizing regional broadcasting, so long as no vested property rights were established in the ether. [43] But Couzens maintained that "if and of necessity these stations must be restricted in number, it is perfectly obvious to me that it will only be a short time before it becomes a monopoly, and there is nothing in the law, and there is nothing in your jurisdiction, which would prevent that as long as you have in mind, and somewhat properly so, that the investment itself is entitled to some protection." [44] When Davis explained that the elimination of a right to transfer would impose enormous costs on incumbents, severely compromising the value of their investments, Couzens declared that he did not object to a station owner "selling what rights he has so long as he does not tack on anything for his license from the Government. In other words, I do not believe that **[End Page 399]** we are justified in creating a franchise value for the privilege to broadcast." [45]

As Senator Couzens made clear, the creation of a "franchise value" in radio frequencies ran contrary to the spirit of the proposed legislation. Congress sought to maintain the spectrum as a publicly owned resource because of its special nature. It was not just that radio frequencies were scarce, but that radio was, in Representative Ewin L. Davis's words, "the most potent political instrument of the future." [46] If power over this instrument were ever concentrated in the wrong hands, it could threaten the very foundations of the republic.

Though a great many lawmakers adhered to this logic, Representative Luther A. Johnson of Texas probably articulated it as clearly as anyone ever did during a congressional floor debate in 1926. "There is no agency so fraught with possibilities for service of good or evil to the American people as the radio," he explained.

> As a means of entertainment, education, information, and communication it has limitless possibilities. The power of the press will not be comparable to that of broadcasting stations when the industry is fully developed. If the development continues as rapidly in the future as in the past, it will only be a few years before these broadcasting stations, if operated by chain stations, will simultaneously reach an audience of over half of our entire citizenship, and bring messages to the fireside of nearly every home in America. They can mold and crystallize sentiment as no agency in the past has been able to do. If the strong arm of the law does not prevent monopoly ownership and make discrimination by such stations illegal, American thought and American politics will be largely at the mercy of those who operate these stations. For publicity is the most powerful weapon that can be wielded in a Republic, and when such a weapon is placed in the hands of one, or a single selfish group is permitted to either tacitly or otherwise acquire ownership and dominate these broadcasting stations throughout the country, then woe be to those who dare to differ with them. It will be impossible to compete with them in reaching the ears of the American public.
>
> Subsidy of radio broadcasting would be far more effective and dangerous than subsidy of the press. For if every newspaper in the United States could be purchased by some trust or **[End Page 400]** combination, independent and competing newspapers could be established. But if the broadcasting stations, which are necessarily limited in number, can be acquired, or even a majority of the high-powered stations owned and controlled by a trust, then the public will be helpless to establish others, unless the Government protects them in this right. Freedom of the air will be impossible if the Government either licenses or permits monopoly ownership of radio sending stations. [47]

Johnson's analogy to the newspaper industry went to the very heart of the issue. In his 1959 article, Coase claimed that there was no meaningful distinction between the publication of newspapers and radio broadcasting. [48] But the fact that entry could conceivably be limited in one but not the other, Johnson argued, made all the difference in an arena so critical to the democratic process.

As it turned out, the House and Senate each passed its own version of radio legislation at the end of 1926, prodded by recent court decisions and perhaps by Hoover's supposed chaos strategy as well. According to Senator Dill, while the two bills "differed widely as to who should have the authority to regulate radio [the Secretary of Commerce or the Federal Radio Commission], they both contained provisions to prevent the users of radio apparatus from maintaining or even asserting any claim to the ownership of any vested rights in wave lengths." With no time available to resolve their differences before the end of the legislative session, each house rushed to pass a joint resolution in 1926, negating any private claims of spectrum ownership in the meantime. [49]

The new Congress that convened in 1927 moved quickly to pass a reconciled piece of legislation. An amalgam of

the House and Senate versions, the resulting Radio Act included two strong antimonopoly provisions. One prohibited the unlawful monopolization of radio communication, while another outlawed the ownership of radio and wire systems in combination. [50] With the behemoth AT&T clearly in mind, Congress sought to remove any possibility that radio broadcasting would fall into the hands of this, the nation's greatest communications monopoly. [51] But it was the hallmark regulatory standard of "public interest, convenience, or necessity" that provided the new commission with its most powerful weapon for preempting concentrated control over radio broadcasting—and one that was conceptually distinct from the prevailing standard in antitrust law. **[End Page 401]**

Whereas the objective in antitrust was to bar "restraint of trade," the goal of the Radio Act was to prevent, among other things, restraint of diverse expression over the airwaves. To be sure, some lawmakers who were frustrated with the Justice Department's handling of antitrust matters (particularly Senator William Borah of Idaho, Senator Key Pittman of Nevada, and Representative Ewin Davis of Tennessee) hoped to create a new and far more aggressive antitrust vehicle under the guise of radio regulation. But this covert objective was more the exception than the rule. In its final form, the Radio Act split the power to control monopoly in the radio industry between the radio commission and the Justice department. [52]

Such dual regulation struck Coase as unnecessary. [53] Yet what seemed redundant to Coase was in fact designed to provide critical flexibility in combating concentrated control over a resource that Carl J. Friedrich and Evelyn Sternberg tellingly characterized as a "molder of public opinion and an instrument of political power." [54] Under the Radio Act, if the Justice Department found evidence of monopolistic trade, the commission was authorized to revoke the offender's broadcast license. But that was only the tip of the iceberg. The statute's public-interest standard, in particular, allowed the commission to act *in advance* of specific antitrust violations and to address a much broader class of problematic behavior. [55] As early as 1941, an FCC report on chain broadcasting made clear that while the commission "should administer its regulatory powers with respect to broadcasting in light of the purposes which the Sherman Act was designed to achieve," its power extended beyond that act's narrowly conceived mission. [56] "We do not predicate our jurisdiction to issue the regulations on the ground that the network practices violate the antitrust laws. We are issuing these regulations because we have found that the network practices prevent the maximum utilization of radio facilities in the public interest." [57]

Those who crafted the nation's radio legislation never fully explained why they believed existing antitrust law would be insufficient to achieve their objectives. Presumably, the notion that antitrust law, an economic instrument, would not be optimal for addressing concentrations of *political* power on the airwaves was so obvious that it was simply taken for granted.

Certainly, the notion that radio broadcasting carried special political significance was plain enough. In addition to establishing the public-interest standard, federal lawmakers also imposed a strict prohibition on broadcast licenses being granted or transferred to foreigners, **[End Page 402]** or even to "any company, corporation, or association of which any officer or director is an alien, or of which more than one-fifth of the capital stock may be voted by aliens or their representatives or by a foreign government or representative thereof, or by any company, corporation, or association organized under the laws of a foreign country." [58] As Representative Wallace H. White of Maine explained in 1924, "This means of communication within our borders should be in the hands and control of those loyal to this country." [59]

The resulting prohibition on foreign control over broadcast licenses hardly fits neatly into a rent-seeking model of policy formation, since incumbent broadcasters must have recognized at the time that a legal constraint on the demand for their assets was unlikely to redound to their economic benefit. Nor can the prohibition be explained by appealing to a simple economic-efficiency version of the public-interest model. To be sure, a rule limiting foreign control over broadcasting would have been unnecessary had the radio spectrum merely constituted an economic resource like any other, as Coase later insisted. The truth is that this unusual prohibition was written into the law precisely because the spectrum was regarded as *no ordinary resource*. Indeed, Coase's contention that "there is nothing about the broadcasting industry which would lead us to believe that the allocation of frequencies constitutes an exceptional case" strangely overlooks the medium's enormous political consequence, which was almost universally recognized at the time. [60]

Coase, Radio Regulation, and the Supreme Court

Not surprisingly, the same essential oversight also biased Coase's assessment of the Supreme Court and its take on radio regulation. As will be recalled, Coase dismissed Justice Frankfurter's argument for federal regulation, articulated in *FCC v. National Broadcasting Co.* (1943), as based on nothing more than simple resource scarcity:

"Mr. Justice Frankfurter seems to believe that federal regulation is needed because radio frequencies are limited in number and people want to use more of them than are available. But it is a commonplace of economics that almost all resources used in the economic system (and not simply radio and television frequencies) are limited in amount and scarce." [61] **[End Page 403]**

Yet Frankfurter's opinion was considerably more sophisticated than Coase suggested. The justice clearly explained with regard to the Federal Communications Act of 1934 that its provisions "preclude the notion that the Commission is empowered to deal only with technical and engineering impediments to the 'larger and more effective use of radio in the public interest.'" [62] Indeed, as Frankfurter acknowledged, the FCC was charged with bringing about a *socially* optimal use of the medium that was not likely to be achieved in an unregulated market. Speculating about what might happen in the absence of public control over spectrum allocation, he wrote:

> Suppose, for example, that a community can, because of physical limitations, be assigned only two stations. That community might be deprived of effective service in any one of several ways. More powerful stations in nearby cities might blanket out the signals of the local stations so that they could not be heard at all. The stations might interfere with each other so that neither could be clearly heard. One station might dominate the other with the power of its signal. But the community could be deprived of good radio service in ways less crude. One man, financially and technically qualified, might apply for and obtain the licenses of both stations and present a single service over the two stations, thus wasting a frequency otherwise available to the area. [63]

Citing liberally from an opinion he had written three years earlier, Frankfurter explained that the scarcity of resources was not the single, nor even the most important, motivating factor behind radio legislation. Instead, concern over the concentration of private power in radio broadcasting drove the legislature to act. "Congress," he had observed in 1940, "moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field." [64] The Communications Act, which emerged from this regulatory impulse, was "not designed primarily as a new code for the adjustment of conflicting private rights through adjudication. Rather it expresses a desire on the part of Congress to maintain, through appropriate administrative control, a grip on the dynamic aspects of radio transmission." [65]

If Coase underestimated Frankfurter's understanding of the interference problem and the logic of regulation, he himself relied on **[End Page 404]** a rather particular reading of the First Amendment. "The situation in the American broadcasting industry," Coase wrote,

> is not essentially different in character from that which would be found if a commission appointed by the federal government had the task of selecting those who were to be allowed to publish newspapers and periodicals in each city, town, and village of the United States. A proposal to do this would, of course, be rejected out of hand as inconsistent with the doctrine of freedom of the press. [66]

Yet when applicants for broadcast licenses appealed to the Supreme Court, complaining that a denial of a license constituted an abridgment of free speech, the court was unsympathetic. Not content with the absolutist view of the First Amendment that the broadcasters put forth, the majority concluded in 1943 that "denial of a station license . . . is not a denial of free speech." [67]

The logic behind this distinction became clear some years later in a landmark 1969 decision, *Red Lion Broadcasting Co. v. FCC*. Here the court explained that far from restricting free speech, licensing restrictions actually helped to preserve it. The limited nature of the spectrum prevented all applicants from gaining access to broadcast stations. But in the absence of public regulation, those who gained access could easily use their power to preclude others from being heard. Thus the court determined that "the right of free speech of a broadcaster. . . does not embrace a right to snuff out the free speech of others." [68] It also clarified the essential justification for the FCC's equal-time rule, which the appellants in the case had vigorously protested as a violation of their First Amendment rights. "Where there are substantially more individuals who want to broadcast than there are frequencies to allocate," the court announced,

> it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making **[End Page 405]** radio communication

possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

This has been the consistent view of the Court. . . .

. . . No one has a First Amendment right to a license or to monopolize a radio frequency. . . . It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. [69]

Red Lion made it clear that the First Amendment provided no immunity from the FCC's licensing power. Concern over the monopolization of the airwaves remained paramount in the justices' minds, a trend that was apparent as early as the 1940 *Pottsville* decision. As the court's successive rulings made clear, the needs of private broadcasting companies were subordinate to the public interest as determined by the FCC. Federal regulation of the airwaves was not, as Coase had insisted, equivalent to "selecting those who were to be allowed to publish newspapers and periodicals in each city, town, and village of the United States."

Within this context, moreover, Hazlett's economistic notion that the problem of scarcity would inherently be solved if frequencies were priced in the private market seems oddly out of place. The Court's sense of scarcity—defined presumably as insufficient opportunity for diverse and independent political expression on the airwaves—would hardly be solved by Coase and Hazlett's "price-rationing mechanism," even if "excess demand for licenses" were indeed "eliminated" in the process. [70] Surely, a market for another politically consequential resource, votes, would eliminate scarcity in strictly economic terms, by allowing those most interested in electoral outcomes to obtain the votes of the relatively apathetic. But it would do so only by generating unacceptable scarcity in a political sense, by denying sufficient opportunity for individual input into the democratic process.

Indeed, this was the implicit logic that led policymakers to react so strongly beginning in the 1920s against the notion of permanent property rights in the spectrum and the rationing of broadcast frequencies through the price mechanism. A proposal to allocate votes in the marketplace would obviously have been greeted with even greater alarm, but—and this is the important point—it would **[End Page 406]** have been opposed for many of the same reasons. There are certain places, apparently, where economic and political imperatives simply do not mix.

Radio Regulation and the Public Interest

By viewing the radio spectrum as nothing more than a standard economic resource, Coase missed what was for many lawmakers its defining characteristic. The unprecedented power to communicate and to shape public opinion that radio allowed had profound implications for American politics and, indeed, for the democratic process itself.

In a very real sense, radio broadcasting threatened one of the nation's most trusted bulwarks against tyranny. As James Madison had observed in Federalist 10, it was the cacophony of voices, spread out over vast distances, that served as the greatest guardian of the democratic process in America. Not only would a multitude of disparate factions render it virtually impossible for any stable—and potentially tyrannous—majority to form, but individual factions would find it hard to reach very far beyond their own locales in a nation as large as the United States. "The influence of factious leaders," Madison wrote, "may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States." Because "communication is always checked by distrust, in proportion to the number whose concurrence is necessary," a demagogue's power would necessarily dwindle as it was projected further from its base. [71] Madison's vision of a healthy democratic republic relied on a vigorous and disruptive competition among political interests—or, to put it another way, on intense and continuing *interference* in the political realm.

Radio broadcasting posed little threat to Madison's vision so long as it was filled with a cacophony of competing voices, crammed together on a raft of overlapping frequencies. But once the interference problem was solved through a rational method of spectrum allocation, broadcasting immediately threatened to provide some factions with unparalleled access to the public, based on a technology that collapsed space in the transmission of the human voice. [72] Broadly speaking, this is why policymakers so feared the potential for concentrated control over broadcasting, why so many of them took for granted that spectrum allocation could never be left entirely **[End Page 407]** to the private market, and why the Supreme Court so steadfastly guarded the authority of federal regulators in the years after the FCC was created.

Perhaps because the case for regulation was rarely stated with the kind of logical precision that economists demand of themselves, Coase misinterpreted the impassioned support for radio regulation that he found in the

historical record merely as an expression of mass anxiety about a mysterious new technology. Convinced that the radio spectrum was indeed no different than any other economic resource, Coase refused to believe that the lawmakers' near universal support for a regulatory solution could be guided by anything but a "misunderstanding of the nature of the problem." It was a bit like Herbert Spencer, who claimed in the late nineteenth century that despite all the stories to the contrary, scientists should understand that it was physically impossible to throw a curve ball. Spencer's physics proved faulty because in thinking "scientifically" about the trajectory of a sphere moving through space, he assumed away two critical facts about the problem at hand: that there were stitches on baseballs and friction in the air. [73] We believe that Coase committed a similar error in his work on the FCC by ignoring the crucial political significance of radio broadcasting.

Of course, all of this is not to say that pervasive fear about the potential for political monopolization of the airwaves was the *only* factor that led contemporary lawmakers to adopt the regulatory approach that they did. Hazlett's powerful insights about the benefits that major players derived from the arrangement remain as relevant as ever. [74] Nor are we suggesting that the FCC has fully achieved the legislative objective of assuring diversity of expression on the airwaves that Congress set for it in the 1920s and 1930s.

Indeed, there is little doubt that federal radio policy favored commercial broadcasters over ideologically and religiously charged stations from the beginning. The regulators' chief goal—avoiding the monopolization of a scarce and politically significant resource—did not extend to protecting single-issue stations. Instead, the goal was to promote stations that offered broadly oriented programming.

Although network radio derived great benefit from this regulatory approach (as Hazlett correctly maintains), it is simply too great a leap to interpret this outcome as strong evidence that congressional lawmakers and commercial broadcasters had colluded from the outset. As the relevant historiography makes clear, the regulators' preference for network broadcasters is consistent with an anti-labor **[End Page 408]** thesis, a procorporate thesis, a rent-seeking thesis, and an antimonopoly thesis. It is also consistent with the simple proposition that regulators viewed these commercial broadcasters as especially unlikely to tyrannize the airwaves. [75] The three bland networks that the FCC long tolerated—and even fostered—may not have created the sort of vibrant diversity that Congress originally intended; but neither did they exercise tyrannous control over political speech.

Our point is simply this: that the bulk of the evidence strongly suggests that the fear of concentrated control over mass communication mattered a great deal in the making of American radio regulation. The record also suggests that this concern about concentrated political power provided lawmakers with a perfectly reasonable basis upon which to conclude that a property-rights solution would *not* have been socially optimal. This was because their conception of the public interest—of what actions would be socially optimal—had at least as much to do with democratic principles as with notions of economic efficiency. Even if it arose as a result of purely voluntary market transactions, concentrated control over radio broadcasting could still represent a major threat to the republic. Coase's misreading of the historical record should thus serve as a warning to students of law and economics about the perils of assuming away critical real-life factors that do not fit neatly into our models, like those nettlesome stitches on a baseball.

This story, we believe, should also serve as a reminder that the public-interest theory of policymaking, long dismissed as naive, actually requires further evaluation. [76] The fact that lawmakers advanced coherent arguments in support of federal radio regulation during the 1920s and 1930s is obviously not sufficient to confirm the public-interest theory. But it does provide a good reason to give the theory another look. If the lawmakers' often-repeated claim about the perils of concentrated control over the airwaves really were nothing more than a cover for selfish rent-seeking, then one would have to admit they put on a phenomenal show. We may never be certain about the true motivations of these lawmakers. What should be clear now, however, is that a public-interest reading of federal radio legislation finds little contradiction in the legislative record itself.

In fact, even today, ongoing developments in the arena of radio regulation seem only to bolster the public-interest perspective. As is well known, there has been a major push in recent years to deregulate the airwaves. Proponents of deregulation have sought, in particular, to create more genuine markets for spectrum rights (based **[End Page 409]** initially on government auctions) and to reduce restrictions on media ownership (such as the rule blocking any individual company from owning more than a certain number of television and radio stations in a particular locale). This debate is of interest here for at least three reasons.

To begin with, there can be little doubt that Coase's ideas about the optimality of a market-based approach to spectrum allocation have ended up playing a central role in redefining the "public interest" and, in turn, in driving deregulation of the industry on public-interest grounds. Speaking in support of spectrum auctions to a House subcommittee in 1997, FCC Chairman Reed Hundt emphasized both his pursuit of the public interest and his debt to Ronald Coase:

> Congress and the FCC need to affirm a new paradigm of spectrum policy that relies on market techniques for commercial uses of spectrum. I believe that such a policy is the best way to ensure that spectrum is used to benefit the public. Market-based spectrum policy is not based on new radical economic theories, but rather on sound principles that have been tried and true for 50 years. Nobel Laureate Ronald Coase wrote an article advocating market-based approaches for the FCC more than 35 years ago. [77]

In 2001, thirty-seven economists—among them Ronald Coase himself, two former members of the President's Council of Economic Advisors, ten former justice department officials, and six former FCC officials, including Thomas Hazlett—wrote a brief to the FCC urging "the Commission to advance the 'public interest' by eliminating barriers to the productive use of radio spectrum" (particularly with respect to wireless communications technologies). Noting that "none of us has been retained by any client concerning this submission" and that many economists had "written articles showing the benefits" of their proposed approach, they insisted that "market-oriented rules opening the radio spectrum" would capture "its full potential for society." [78] The current chairman of the FCC, Michael Powell, appears to have been duly convinced, suggesting in a recent interview that "the famous Ronald Coase treatise that won the Nobel Prize was about this—that [the traditional command-and-control] spectrum policy is lunacy. The market could work this out." [79]

The relevant point for this article is that although notions of how best to serve the public interest have changed as a result of **[End Page 410]** Coase's powerful economic arguments, there is no question that ideas about the public interest, however defined, are still of great import in shaping the policy debate. Indeed, there is a certain irony in the fact that many of the same economists who, in their scholarship, are quick to attribute legislative and regulatory outcomes to self-interested, rent-seeking behavior have nonetheless lobbied hard in recent years for deregulation of the spectrum—and, on top of that, that they have done so explicitly on *public-interest grounds* and have proved remarkably influential!

A second intriguing point to emerge from the current debate over deregulation of the airwaves is that the traditional argument about preventing concentrated control over a politically sensitive resource still resonates in the halls of Congress, though certainly not as loudly as it once did. Responding to continued calls for deregulation in 2001, for example, Senators Ernest Hollings and Byron Dorgan wrote in the *Washington Post*, "For decades, our communications policy has imposed sensible restrictions on media ownership to promote and preserve multiple, independent voices. . . . [I]f media consolidation is allowed to continue unfettered . . . local control, local coverage and a robust marketplace of ideas will suffer." Significantly, Hollings and Dorgan explicitly distinguished their goal of promoting "diversity and localism" on the airwaves from "narrow antitrust notions of competition," just as Congress had done in 1927. [80]

Even Hollings and Dorgan acknowledged, however, that this traditional argument in support of radio regulation was facing mounting criticism on the grounds that "current ownership restrictions are outmoded because of the proliferation of new media outlets." Which brings us to the third, and perhaps most fascinating, point about the current debate. According to a growing number of critics, the rise of the Internet, cable and satellite television, and the like have rendered the FCC obsolete, since there is no longer any meaningful limit on the number of independent voices that can be heard. [81] Proponents of the traditional regulatory regime, including Hollings and Dorgan, counter this argument by noting that "most people still get their information from local newspapers, radio and television stations," rather than from the Internet. [82]

What we find most striking, however, is that this newest argument about the obsolescence of radio regulation is in fact perfectly consistent with the logic that was used to justify radio regulation in the first place. As we have shown, the early advocates of the FRC **[End Page 411]** and the FCC rested their case on a *combination* of spectrum scarcity on the one hand and broadcasting's special political significance on the other. There was no need to regulate newspapers in the same way, they believed, because newspapers were characterized by only one of these attributes (political significance), but not both. If it is indeed correct to think about the Internet and other new communications technologies as effectively eliminating spectrum scarcity in broadcasting, as some now argue, then the traditional case for regulation—even if once correct—might now be defunct.

Curiously, all of these goings-on remind us of the old adage that the more things change, the more they stay the same. With respect to spectrum allocation, old conceptions of the public interest are now under attack, by Coasians on the one hand and new communications technologies on the other. Yet much of the debate still revolves around the special political significance of broadcasting. And despite the fact that there are many powerful and influential interests involved, it still appears that the current debate (like the historical one) can be understood fundamentally as a contest of ideas about how best to serve the public interest. How that debate is likely to turn out is a question that lies well beyond the scope of this article. But the very nature of the debate—and the fact that social scientists like Coase and Hazlett are themselves deeply involved in it (as experts, not rent-seekers)—should help to reinforce our historical argument that the public-interest perspective remains highly relevant, even if intensely unfashionable, in the realm of policy studies.

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Endnotes

1. Ronald H. Coase, "The Federal Communications Commission," *Journal of Law & Economics* 2 (1959): 1-40.

2. Ibid., 26-27.

3. Ibid., esp. 12-40.

4. Thomas W. Hazlett, "The Rationality of U.S. Regulation of the Broadcast Spectrum," *Journal of Law & Economics* 33 (1990): 137-38 nn. 12-14.

5. Ibid., 175.

6. Thomas W. Hazlett, "Assigning Property Rights to Radio Spectrum Users: Why Did FCC License Auctions Take 67 Years?" *Journal of Law & Economics* 41 (1998): 529. See also Hazlett, "Rationality of U.S. Regulation," 174.

7. Hazlett, "Rationality of U.S. Regulation," 138.

8. Since 1959, of course, the public-interest theory on which Coase relied has fallen into disrepute, with the study of policy formation focusing increasingly on **[End Page 412]** economic explanations, in which lawmakers are assumed to behave as simple rent-seekers rather than as guardians of the public interest. This change was first evident in the works of Stigler, Posner, and Pelzman with respect to regulation, but it subsequently reached the study of legislation as well. See George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2 (1971): 3-21; Richard A. Posner, "Theories of Economic Regulation," *Bell Journal of Economics and Management Science* 5 (1974): 335-58; Sam Pelzman, "Toward a More General Theory of Regulation," *Journal of Law & Economics* 19 (1976): 211-40; George L. Priest, "The Origins of Utility Regulation and the 'Theories of Regulation' Debate," *Journal of Law & Economics* 36 (1993): 289-23.

9. With regard to the equal-time rule, for example, a Senate report stated explicitly in 1959, the year Coase published his article: "If the number of radio and television stations were not limited by available frequencies, the committee would have no hesitation in removing completely the present provision regarding equal time and urge the right of each broadcaster to follow his own conscience. . . . However, broadcast frequencies are limited and, therefore, they have been necessarily considered a public trust" (Senate Report No. 562, 86th Cong., 1st sess. 1959, 8-9, as cited in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 [1969], 400).

10. Coase, "Federal Communications Commission," 25.

11. *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943), 213, as quoted in Coase, "Federal Communications Commission," 12-13.

12. Coase, "Federal Communications Commission," 14.

13. The phrase "mysterious technology" appears in Coase, "Federal Communications Commission," 40.

14. Coase, "Federal Communications Commission," 25-26.

15. For historical treatments of American radio regulation prior to Hazlett, see esp. Jora R. Minasian, "The Political Economy of Broadcasting in the 1920s," *Journal of Law & Economics* 12 (1969): 391-403; Erik Barnouw,

A History of Broadcasting in the United States: A Tower in Babel, Vol. 1—to 1933 (New York, 1966); Philip T. Rosen, *The Modern Stentors: Radio Broadcasters and the Federal Government, 1920-1934* (Westport, Conn., 1980).

16. Hazlett, "Rationality of U.S. Regulation," 138 (where the first reference to "error theory" appears). A survey of "error theory" literature can be found at 142, notes 25-27. See also Hazlett, "Assigning Property Rights to Radio Spectrum Users."

17. Ibid., 151.

18. Ibid., 152.

19. Herbert C. Hoover, "The Urgent Need for Radio Legislation," *Radio Broadcast* 2 (1923): 211, as quoted in Hazlett, "Rationality of U.S. Regulation," 152.

20. How important the *Oak Leaves* decision was in prompting federal action is a matter of some debate. Charlotte Twight, in particular, has arguedthat the ruling could not have been a pivotal factor since Congress had already begun moving toward enactment months before it was issued. See Charlotte Twight, "What Congressmen Knew and When They Knew It: Further Evidence on the Origins of U.S. Broadcasting Regulation," *Public Choice* 95 (1998): 247-76. Rather more sympathetic to Hazlett's account, Hugh Aitken concedes that it "is a heavy burden to place on a single decision in a single state court. *Oak Leaves*, however, was no ordinary decision. It was widely noted and widely discussed. It had the potential, if accepted as a precedent, to determine the future of the broadcasting industry" (Hugh G. J. Aitken, "Allocating the Spectrum: The Origins of Radio Regulation," *Technology and Culture* 35 [1994]: 712).

21. *Hoover v. Intercity Radio Co.*, 286 Fed. 1003 (1923); *United States v. Zenith Radio Corp.*, 12 F. 2d 614 (1926).

22. Hazlett, "Rationality of U.S. Regulation," 158.

23. Ibid., 158; Rosen, *Modern Stentors*, 93-95. **[End Page 413]**

24. Radio Act of 1927, P.L. 632, 44 Stat. Chap. 169, 23 February 1927, section 11, 1167.

25. Hazlett, "Rationality of U.S. Regulation," esp. 160-61.

26. Ibid., 175.

27. Hazlett, "Assigning Property Rights to Radio Spectrum Users," 541.

28. Hazlett, "Rationality of U.S. Regulation," 162.

29. As quoted in Hazlett, "Assigning Property Rights to Radio Spectrum Users," 542.

30. Hazlett, "Rationality of U.S. Regulation," 172.

31. See esp. Hazlett, "Assigning Property Rights to Radio Spectrum Users."

32. Significantly, no other nation opted for a market-based solution. For a comparative international perspective on radio regulation, see Aitken, "Allocating the Spectrum," 688-89; Morton Keller, *Regulating a New Economy: Public Policy and Economic Change in America, 1900-1933* (Cambridge, Mass., 1990), 82.

33. House of Representatives, Committee on the Merchant Marine and Fisheries, Hearings on H.R. 7357 *To Regulate Radio Communication*, 11-14 March 1924, 8, 10. The first sentence of this passage has been modified to correspond to the version, presumably corrected, that appears in the Congressional Record. See *Congressional Record*, 69th Cong., 2d sess., 1927, 68, pt. 3:2571.

34. House, Hearings, *To Regulate Radio Communication*, 36.

35. Ibid., 201, 202.

36. Ibid., 202.

37. Ibid., 202.

38. Hazlett, "Rationality of U.S. Regulation," 144.

39. See esp. House of Representatives, Committee on the Merchant Marine and Fisheries, Hearings, *To Regulate Radio Communication*, 6, 7, 14, 15 January 1926, 207-8.

40. Senate, Committee on Interstate Commerce, Hearings on S.1 and S.1754 *Radio Control*, Part I, 8-9 January 1926, 34.

41. Ibid., 39.

42. Ibid., 43-44.

43. Ibid., 42-44.

44. Ibid., 46.

45. Ibid., 47.

46. *Congressional Record*, 69th Cong., 2d sess., 1927, 68, pt. 3:2572. Ewin L. Davis was the ranking Democratic member of the radio subcommittee.

47. *Congressional Record*, 69thCong., 1st sess., 1926, 67, pt. 5:5558. Johnson himself ultimately opposed the House bill because he did not think it went far enough in preventing monopoly.

48. Coase, "Federal Communications Commission," esp. 7, 12, and 38.

49. Clarence C. Dill, *Radio Law: Practice and Procedure*, (Washington, D.C., 1938), 82.

50. Radio Act of 1927, sections 13 and 17. The Radio Act is reprinted in Dill, *Radio Law*, 255-71. As former FCC chief economist Dallas Smythe explained, "Congress was impressed with the dangers of monopoly control over broadcasting by means of patents or any of the other devices which the fertile human mind might concoct, and wrote special sanctions into its broadcast policy. Ordinary private enterprise was subject to the Anti-trust laws. Additional penalties were prescribed for broadcasters who violated those laws" (Dallas W. Smythe, "A National Policy on Television?" *Public Opinion Quarterly* 14 [1950]: 465).

51. Legislators of the time frequently worried about industrial monopolies, and kept a particularly close eye on AT&T. According to Ithiel de Sola Pool, the "frequent alarms [in the mid-1920s] about the threat of broadcasting monopoly" often had more to do with the specter of AT&T than with the nascent broadcasting networks. See Ithiel de Sola Pool, *Technologies of Freedom* (Cambridge, Mass., 1983), 136. **[End Page 414]**

52. See Donald G. Godfrey and Val E. Limburg, "The Rogue Elephant of Radio Legislation: Senator William E. Borah," *Journalism Quarterly* 67 (1990): 214; Marvin Bensman, *The Beginning of Broadcast Regulation in the Twentieth Century* (Jefferson, N.C., 2000), 189.

53. Coase, "Federal Communications Commission," 16.

54. Carl J. Friedrich and Evelyn Sternberg, "Congress and Control of Radio-Broadcasting I," *American Political Science Review* 37 (1943): 809.

55. Ibid.

56. Report cited in *National Broadcasting Co. v. United States*, 223.

57. Ibid., 224. See also discussion in section IV *infra*.

58. Radio Act of 1927, section 12.

59. *Reaffirming the use of the ether for radio communication, or otherwise, to be the inalienable possession of the people of the United States and their government*, House Report No. 719, 68th Cong., 1st sess., 13 May 1924, 3.

60. Coase, "Federal Communications Commission," 19.

61. Ibid., 14.

62. *National Broadcasting Co. v. United States,* 217.

63. Ibid., 217-18.

64. Ibid., 219, citing FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940), 137.

65. *FCC v. Pottsville Broadcasting Co.,* 138.

66. Coase, "Federal Communications Commission," 7.

67. *National Broadcasting Co. v. United States,* 227.

68. *Red Lion Broadcasting Co. v. FCC,* 387.

69. Ibid., 388-90. On Red Lion and the structure of radio regulation, see Edwin C. Baker, "Turner Broadcasting: Content-Based Regulation of Persons and Presses," in Dennis J. Hutchinson, David A. Strauss, and Geoffrey R. Stone, eds., *The Supreme Court Review* 1994 (Chicago, 1995), 57-128.

70. Hazlett, "Assigning Property Rights to Radio Spectrum Users," 568.

71. Clinton Rossiter, ed., *The Federalist Papers,* "No. 10," (New York, 1961), 77-84.

72. The Federal Radio Commission, for example, declared in 1928, "There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some, it gives them an unfair advantage over others. . . . As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience, or necessity, particular doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well-founded complaint will receive the careful consideration of the Commission in its future action" (Great Lakes Broadcasting Company, unpublished 1928 report of the Federal Radio Commission, as quoted in "The Federal Radio Commission and the Public Service Responsibility of Broadcast Licensees," *Federal Communications Bar Journal* 11 [1950]: 8).

73. This story comes from the institutional economist John R. Commons, who claimed that it played an important role in inspiring his distinctive approach to economics. "Ever after," Commons wrote in his autobiography, "I looked for the omitted factors, or the ones taken for granted and therefore omitted, by the great leaders of the science of economics. That was how I became an economic skeptic" (John R. Commons, *Myself* [New York, 1934], 28).

74. Importantly, several particulars of the history of radio regulation cannot be explained by our fear-of-monopoly logic and instead are more consistent with Hazlett's franchise-rents framework. For instance, the failure to increase the spectrum available to broadcasters, in accordance with the wishes of big radio corporations, **[End Page 415]** suggests that more than anxiety over concentrated control of radio was at play. In addition, all users of radio waves, and not solely broadcasters, were subjected to extensive regulation. If *only* fear of political monopoly were at work, then nonbroadcast uses of the spectrum could have been left to the private market. Yet it appears from recent history that broadcasting is still regarded as special and that the fear of monopoly is still operative when it comes to the federal government's treatment of the spectrum. In the 1990s, Congress enthusiastically backed the auctioning of portions of the nonbroadcast spectrum but placed severe limits on the auctioning of broadcast licenses (Hazlett, "Assigning Property Rights to Radio Spectrum Users," 560-70; Aitken, "Allocating the Spectrum," 716; Keller, *Regulating a New Economy,* 81-85). As Hazlett himself acknowledged, "The broadcasting sector was pointedly singled out for special treatment" and "broadcasting license auctions have been authorized such that they will not much matter" (Hazlett, "Assigning Property Rights to Radio Spectrum Users," 565, 568).

75. On criticism of the FCC, see, e.g., Hazlett, "Assigning Property Rights to Radio Spectrum Users," 540-41, 544. On the preference for commercial broadcasters, see Robert Horwitz, *The Irony of Regulatory Reform: The Deregulation of American Telecommunications* (New York, 1988), 167-74; Robert McChesney, *Telecommunications, Mass Media, and Democracy: The Battle for the Control of U.S. Broadcasting, 1928-1935* (New York, 1993), chap. 2; Rosen, *Modern Stentors,* 12-13; Nathan Godfried, *WCFL, Chicago's Voice of Labor, 1926-78* (Urbana, 1997).

76. See also Joseph P. Kalt and Mark A. Zupan, "Capture and Ideology in the Economic Theory of Politics," *American Economic Review* 74 (1984): 279-300.

77. Statement of Reed E. Hundt, Chairman, Federal Communications Commission, on Spectrum Management Policy, before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, U.S. House of Representatives, Federal Document Clearing House Congressional Testimony, 12 February 1997. See also Gregory L. Rosston and Jeffrey S. Steinberg, "Using Market-Based Spectrum Policy to Promote the Public Interest," Federal Communications Commission Report, January 1997. Available at http://wireless.fcc.gov/auctions/data/papersAndStudies.html.

78. Gregory L. Rosston and Thomas W. Hazlett et al., "Comments of 37 Concerned Economists," in the Matter of *Promoting Efficient Use of Spectrum Through Eliminating Barriers to the Development of Secondary Markets,* Federal Communications Commission, WT Docket No. 00-230, 7 February 2001, 2, 4, 7.

79. As quoted in Nicholas Lemann, "The Chairman: He's the Other Powell, and No One Is Sure What He's Up To," *New Yorker,* 7 October 2002, 48.

80. Ernest F. Hollings and Byron Dorgan, "Your Local Station, Signing Off," *Washington Post,* 20 June 2001, A27.

81. See, e.g., Yochai Benkler and Lawrence Lessig, "Net Gains," *The New Republic,* 14 December 1998, 12; Yochai Benkler, "Overcoming Agoraphobia: Building the Commons of the Digitally Networked Environment," *Harvard Journal of Law & Technology* 11 (1998): 287; Eli Noam, "Spectrum Auctions: Yesterday's Heresy, Today's Orthodoxy, Tomorrow's Anachronism. Taking the Next Step to Open Spectrum Access," *Journal of Law & Economics* 41(1998): 765; Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York, 1999), 182-85; Cass R. Sunstein, "Television and the Public Interest," *California Law Review* 88 (2000): 511-12; Neil Hickey, "Power Shift: As the FCC Prepares to Alter the Media Map, Battle Lines Are Drawn," *Columbia Journalism Review* 41 (March-April 2003): 26-31.

82. Hollings and Dorgan, "Your Local Station, Signing Off."

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ave the Internet

ongress is now pushing a law that would end the free and open Internet as we know it. Internet providers like AT&T and Verizon are lobbying ongress hard to gut Network Neutrality, the Internet's First Amendment and the key to Internet freedom. Net Neutrality prevents AT&T from ioosing which websites open most easily for you based on which site pays AT&T more. So Amazon doesn't have to outbid Barnes & Noble for e right to work more properly on your computer.

any members of Congress take campaign contributions from these companies, and they don't think the public are paying attention to this issue. et's show them we care - please sign this petition today.

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- AT&T, Verizon, or Comcast is my home Internet provider.
- AT&T, Verizon, or Comcast is my home long-distance phone service provider.

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- [ ] I have a blog.
- [ ] I blog on other people's sites.
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Imagine Yahoo opening at a faster speed on your computer than Google because they paid AT&T a premium price. Or some music provider that AT&T owns moving quickly while iTunes downloads at a snail's pace. That's what's at stake in a battle heating up in Congress. Internet operators like AT&T, Verizon, and Comcast want Congress to permanently eliminate "Net Neutrality," the Internet freedom that prevents these companies from deciding which Web sites open easily on your computer. It's a plan to erect tollbooths on the information superhighway. As organizations dependent on a free Internet to speak with our members and with the world, we adamantly oppose the elimination of Net Neutrality.

New York Times editorial, May 2, 2006:

"This democratic Internet would be in danger if the companies that deliver Internet service changed the rules so that Web sites that pay them money would be easily accessible, while little-guy sites would be harder to access and slower to navigate. Providers could also block access to sites they do not like."

The free and open Internet has empowered everyday people across the political spectrum to speak out, to be heard, and to effect change. Imagine an Internet operator which didn't like the views of MoveOn.org Civic Action or the Christian Coalition. Without Internet freedom, they could legally slow down our sites or block them altogether.

The SavetheInternet.com Coalition is led by Free Press and includes the Christian Coalition, MoveOn.org Civic Action, Gun Owners of America, Craig from Craigslist, small businesses, consumer advocates, and hundreds of other organizations. More than 700,000 people have signed a petition to Congress. Sign the petition. Call your representative and senators. Join us. This isn't an issue of Right or Left. It's an issue of Right or Wrong.

For more information, or to join 700,000 Americans in signing a petition to Congress, visit:
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http://www.chicagotribune.com/business/chi-0702230143feb23,0,2687819.story

Videos have Net bursting at the seams

As Web's capacity nears its limits, debate rages over what to do next

By Jon Van
Tribune staff reporter

February 23, 2007

Those amusing YouTube video clips that Internet users send to friends gobble up large chunks of bandwidth and may cause the Net to crash, some elements of the telecom industry warn.

It's an admonition many dismiss as political posturing intended to dissuade lawmakers from restricting the freedom of phone companies to manage Internet traffic as they wish.

But no one disagrees that the Web's capacity is being pushed to its limits.

"We don't see anything catastrophic near term, but over the next few years there's this fundamental wall we're heading towards," said Pieter Poll, chief technology officer at Qwest Communications International Inc., one of the operators of the Internet backbones, which are the big pipes at the network's center.

The problem, Poll said, is that traffic volumes are growing faster than computing power, meaning that engineers can no longer count on newer, faster computers to keep ahead of their capacity demands.

A recent report from Deloitte Consulting raised the possibility that 2007 would see Internet demand exceed capacity. Worldwide, more users every day join the 1 billion people who now use the Internet. Popularity of bandwidth-hungry video makes far greater demands on the network than more basic applications like e-mail, Web browsing or even voice over the Internet.

"For some service providers," the Deloitte report said, "video-chat traffic already exceeds voice volumes, and given that a minute of video requires 10 times the bandwidth as voice, the threat to bandwidth becomes clear."

David Tansley, a London-based Deloitte partner, said that "so many business models assume Internet capacity to be ubiquitous and inexpensive that capacity isn't seen as a limiting factor in applications.

"Yet little thought is given to how infrastructure providers may be [enticed] to keep investing."

While the network was famously overbuilt during enthusiasm of the 1990s Internet bubble, much of that capacity is being used now or soon will be, Tansley said, and network operators are faced with making significant investment to expand capacity further to meet growing demands fueled largely by video applications.

"2007 may be the year of the tipping point where growth in capacity cannot cope with use," Tansley said.

The Deloitte report, along with comments earlier this month by a Google executive at a technology conference in Amsterdam about Web capacity problems, have been cited as examples why telecom companies shouldn't face new regulations.

Walter McCormick Jr., chief of US Telecom, the trade group representing dominant phone companies, wrote to lawmakers arguing that the need to manage capacity would be impeded if "network neutrality" legislation passes.

Backed by several consumer groups as well as large Internet enterprises such as Google, network neutrality legislation forbids phone companies from managing the network to favor one Internet user's content over another's.

Network managers need flexibility in order to provide needed capacity as demand grows, McCormick contends.

That logic is tortured at best, said Andrew Odlyzko, director of the University of Minnesota's digital technology center.

"It's posturing for political reasons," said Odlyzko. "The telecom industry opposes network neutrality and uses any pretext to fight it."

Having monitored Internet growth for a decade, Odlyzko said he sees parallels now to earlier ploys from telecom executives. Nearly five years ago, when computer users started to hold voice conversations using Internet telephony, industry insiders fretted that bandwidth demands would exceed capacity, he said.

"Local phone companies started fighting Internet calling," he said. "They tried to get regulators to impose access charges on those calls. In a certain sense, what the industry said was plausible because the Internet was small at that time, compared to the voice network.

"If all calling had shifted to the Internet, it would've crashed the network. But that didn't happen. The shift took place more slowly. Today the giants like AT&T and Verizon carry most of their voice traffic as Internet protocol, and it's just a fraction of total traffic."

Telecom executives focus on possible broadband capacity shortfalls because of their heritage, said

David Isenberg, an independent industry analyst who once worked for the Bell System.

"They want to manage the Internet as a scarce resource," Isenberg said. "Internet executives want to manage it as an abundant resource. It's a basic philosophical difference."

A major obstacle for telecom managers in planning future capacity needs is that much of the Web's video traffic is generated by individuals who send clips to friends.

This contrasts to the broadcast model, where one source sends the same program to many recipients, said Bill Kleinebecker, a senior consultant with Austin-based Technology Futures Inc.

"People's changing habits drive demand instead of just sending out TV channels," Kleinebecker said. "It's much less predictable."

A growing appetite for high-definition video is certain to keep broadband demand rising, he said, noting that even inexpensive digital cameras available to consumers increasingly have high-definition video capability.

While keeping ahead of bandwidth demand is challenging and expensive, it's not impossible, said John Ryan, a senior vice-president at Level3 Communications, which operates part of the Internet backbone.

"With appropriate continuing investment, the Internet is capable of handling any applications," Ryan said. "What we're starting to see is a distinction between those operators who have the capital to fund expansion and those that don't."

Any service degradation will be spotty and transient, predicted Ryan, who said that underinvestment by some operators may "drive quality traffic to quality networks."

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jvan@tribune.com

Nixon's Top Radio-TV Adviser Would Drop Fairness Doctrine

Associated Press

President Nixon's top adviser on the radio-television industry says the fairness doctrine has caused so much chaos and confusion that it should be abolished.

Clay T. Whitehead, director of the White House Office of Telecommunications Policy, said the requirement that all sides in controversial issues be given equal air time also intimidates broadcasters.

In an interview, Whitehead suggestead that a broader approach linked with license renewal should replace the present enforcement of the fairness doctrine.

Asked for his reasons for proposing an end to the fairness doctrine, Whitehead said:

"Let me say that that proposal was part of a package of proposals. It was made for the purpose of getting the industry and the public and government to start discussing some of the problems we have in radio and television regulation

"What we felt was needed was some specific proposal for people to focus on as an alternative to the way things are being done now. It's worked out pretty well. We have been getting a lot of discussion.

"The reason we proposed abolishing the fairness doctrine was not that we felt fairness was not important, because, of course, we do, but rather that the fairness doctrine, as it has come to be administered, is so confusing, so chaotic and so highly detailed and complex that it really is not a doctrine at all. Nobody knows what it means, no one knows how it would apply in various cases.

"I think it is safe to say it intimidates the broadcaster, who is constantly worried what Washington is going to do if he opens his mouth about anything or puts anyone on his television station. In short, it's just not producing the intended result of the broad, over-all fairness that we want to get.

"So we proposed that we do away with the fairness obligation of the broadcaster, but rather than enforce it on a case-by-case, day-by-day basis here in Washington, that we enforce it as originally intended—at the time we renew the broadcaster's license.

"In his coverage of controversial affairs, has he been fair in covering all sides of all the important issues in his community?

'So you see it was a proposal to get rid of this very complex doctrine as it has come to be applied and move to a more sensible way of enforcing the fundamental fairness obligation."

It was put to Whitehead that there have been indications that he doesn't think public television should be offering public affairs or national news programs. He replied, "That's not correct at all. Public television stations do have a responsibility to supply news and public affairs. What we have been concerned about is the tendency of the Corporation for Public Broadcasting, the organization that receives the federal dollars, to focus so much of their money and attention on things that the commercial networks already are doing."

earlier article on A1?
by John Carmody?

W Post archives re: "Whitehead" before 1/1/72

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News Search

FREE Article Preview

The Washington Post

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Whitehead: Words of Advice for the ANPA

" While urging the press to oppose efforts to restrict its activities, Whitehead asked the publishers to stand up for independence in other areas of communication."

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By Philip Greer
Date:	Apr 28, 1972
Start Page:	B5
Section:	MEDIA THE ARTS
Document Types:	article
Text Word Count:	675

NEW YORK -- Efforts to prevent new spapers from owning radio and television stations are "a great mistake," the White House director of telecommunications policy said yesterday.

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News Search: Archive Search

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FREE Article Preview

The Washington Post

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Public TV Confrontation

Upcoming Public TV Hassle

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By John Carmody
Date:	Apr 15, 1972
Start Page:	E1
Section:	STYLE People The Arts Classified
Document Types:	article
Text Word Count:	854

The cffectiveness of the Nixon administration's six-month campaign against public television's emphasis on public affairs programming will get its first lest Monday in New York.

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The Washington Post

New Ford Grant For NPACT

Grant for NPACT

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By John Carmody
Date:	Apr 5, 1972
Start Page:	B1
Section:	SPORTS Racing Business Finance
Document Types:	article
Text Word Count:	971

In a strong display of support for the National Public Affairs Center for Television (NPACT), top officials of the Ford Foundation came to town yesterday to announce that the center here will receive $1.4 million for fiscal 1973.

News Search: Archive Search

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FREE Article Preview
The Washington Post

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U.S. Alters Emergency Broadcasts

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Date:	Apr 5, 1972
Start Page:	A3
Document Types:	article
Text Word Count:	400

A White House agency disclosed yesterday that the government is abandoning the emergency broadcast system as a backup procedure to warn the nation of any enemy attack.

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FREE Article Preview

The Washington Post

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PBS Programming

PBS Action

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By John Carmody
Date:	Mar 7, 1972
Start Page:	B1
Section:	STYLE People Leisure Comics
Document Types:	article
Text Word Count:	659

Under fire from the Nixon administration and from within its own industry, the Public Broadcasting Service moved yesterday to beef up its supervision of the public affairs programming the network sends out weekly to 220 public television stations around the nation.

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News Search: Archive Search

News Search

FREE Article Preview

The Washington Post

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Apollo to Take Rock to Moon

Apollo to Return Rock to Moon

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By Thomas O'Toole Washington Post Staff Writer
Date:	Mar 5, 1972
Start Page:	A1
Document Types:	front_page
Text Word Count:	710

The Apollo 16 astronauts will return a moon rock to the lunar surface next month to try to prove once and for all that the moon has its own magnetic field. The Apollo 16 astronauts will return a moon rock to the lunar surface next month to prove once and for all that the moon has its own magnetic field.

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The Washington Post

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Public Broadcasters Under Fire

" PBS officials insist the upcoming moves are not in response to industry or White House pressures."

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By John Carmody
Date:	Mar 2, 1972
Start Page:	B1
Section:	STYLE People The Arts Leisure
Document Types:	article
Text Word Count:	747

A top aide in the White House telecommunications policy office sharply criticized the nation's non-commercial broadcasters yesterday for failing to back the administration's stand against a centralized public TV network.

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FREE Article Preview

The Washington Post

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FTC Chairman Defends Plan for Counter-Ads

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By Carole Shifrin Washington Post Staff Writer
Date:	Feb 29, 1972
Start Page:	D7
Section:	SPORTS Racing Outdoor Finance
Document Types:	article
Text Word Count:	484

Federal Trade Commission Chairman Miles W. Kirkpatrick defended the agency yesterday against critics of its proposal that some free time be granted to those who want to challenge commercial advertising claims.

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Administration Hits FTC Counter-Advertising Plan

The Washington Post, Times Herald (1959-1973) - Washington, D.C.
Author: By Carole Shifrin Washington Post Staff Writer
Date: Feb 20, 1972
Start Page: K1
Section: BUSINESS & FINANCE
Document Types: article
Text Word Count: 838

Clay T. Whitehead, one of President Nixon's top advisers on communications, last week turned his wrath on the Federal Trade Commission.

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FREE Article Preview

The Washington Post

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PBS Drops Nixon Satire

The Washington Post, Times Herald (1959-1973) - Washington, D.C.	
Author:	By Tom Shales
Date:	Feb 12, 1972
Start Page:	C1
Section:	STYLE People The Arts Leisure
Document Types:	article
Text Word Count:	563

A political satire by humorist Woody Allen aimed at the Nixon administration has been dropped from the schedule of the Public Broadcasting Service. The show, according to PBS general manager Gerald Slater, would cause "major legal problems" for the network and its local stations.

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FREE Article Preview

The Washington Post

TV Hearings

The Washington Post, Times Herald (1959-1973) - Washington, D.C.	
Author:	By Tom Shales
Date:	Feb 4, 1972
Start Page:	B11
Section:	STYLE People The Arts Leisure
Document Types:	article
Text Word Count:	626

The administration presented its proposals on funding public television yesterday to a House communications subcommittee, at a hearing that became an informal inquiry into the operations of the White House Office of Telecommunications Policy (OTP).

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FREE Article Preview

The Washington Post

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Attack on Public Broadcasting

Attack on Public Broadcasting

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By Sanford J. Ungar
Date:	Feb 3, 1972
Start Page:	B1
Section:	STYLE People The Arts Leisure
Document Types:	article
Text Word Count:	1254

The director of telecommunications policy for the Nixon administration charged yesterday that the establishment of a national news show on public television is "contrary to the spirit" of the legislation which created the Corporation for Public Broadcasting.

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News Search: Archive Search

News Search

Hearings On CPB

The Washington Post, Times Herald (1959-1973) - Washington, D.C.	
Author:	By John Carmody
Date:	Feb 2, 1972
Start Page:	B7
Section:	ENTERTAINMENT THE ARTS
Document Types:	article
Text Word Count:	437

The chairman of the Corporation for Public Broadcasting told Congress yesterday the corporation was "determined to take a more active role" in keeping public affairs programming objective but warned that whatever method of review is adopted will "be resisted and resented by some people."

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The Washington Post

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Public Broadcasting Bill

Public Broadcasting Bill

The Washington Post, Times Herald (1959-1973) - Washington, D.C.

Author:	By John Carmody
Date:	Feb 1, 1972
Start Page:	B1
Section:	STYLE People The Arts Comics
Document Types:	article
Text Word Count:	640

The Nixon administration will ask Congress for a $10million increase in public broadcasting funds today -- but for the first time they'll have a string on them.

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CTW + Fairness Doctrine

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:26 AM
To: Susan Burgess
Subject: fairness doctrine

12/17/70 NYT-ABS 95

12/17/70 N.Y. Times (Abstracts) 95
1970 WLNR 48829

New York Times Abstracts

December 17, 1970

White House Office of Telecommunications Policy dir C T Whitehead criticizes FCC as 'pretty vague' arbiter of communications and calls for re-exam of Govt communications policy; is particularly critical of FCC's Fairness Doctrine , s, du Pont-Columbia broadcast journalism awards ceremony, NYC

---- INDEX REFERENCES ----

COMPANY: CBS INC

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Internet Regulatory (1IN49); Internet (1IN27); Internet Infrastructure (1IN95); Internet Infrastructure Policy (1IN62))

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (FERRETTI, FRED; FREED, FRED; LAURENCE, JOHN; WHITEHEAD, CLAY T) (COX, KENNETH A; MCI COMMUNICATIONS; DU PONT, ALFRED I; 1865-1935) (FCC; NYC; WHITE HOUSE) (AWARDS, DECORATIONS AND HONORS; FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; NEWS AND NEWS MEDIA; PROGRAMS; STATIONS AND NETWORKS; TELEVISION AND RADIO; WOOD AND WOOD PRODUCTS) (UNITED STATES (1970))

COMPANY TERMS: CBS INC; COLUMBIA UNIVERSITY; EDUCATIONAL BROADCASTING CORP; NATIONAL BROADCASTING CO INC (NBC); WCCO

12/17/70 NYT-ABS 95
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

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Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:10 AM
To: Susan Burgess
Subject: fairness doctrine

10/7/71 NYT-ABS 94

10/7/71 N.Y. Times (Abstracts) 94
1971 WLNR 9803

New York Times Abstracts

October 7, 1971

White House Telecommunications Office head C T Whitehead, urging major revision of '34 Communications Act to get Govt out of broadcast programing and begin de-regulation of radio, urges license renewals be based on totality of community service, not on case-by-case complaints, s, Internatl Radio and TV Soc; urges licenses be extended beyond current 3 yrs; says FCC should accept competing bids only for channels whose licenses were revoked or not renewed;
says he proposed that Chmn Burch pick 1 or more big cities in which radio assignments and transfers would not be subject to present regulatory inquiries, claiming procedure is superfluous in most cases; says Nixon agrees with 'gen tone' of his proposals; NBC, ABC comment; proposes Cong substitute for fairness doctrine act providing for individuals to use airwaves and assurances that pub will have adequate coverage of pub issues; TV stations approve

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Internet Regulatory (1IN49); Internet (1IN27); Internet Infrastructure (1IN95); Internet Infrastructure Policy (1IN62))

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (BURCH, DEAN; GOULD, JACK; NIXON, RICHARD MILHOUS; WHITE, CLAY T; WHITEHEAD, CLAY T) (FCC; NBC ABC; TV; WHITE HOUSE TELECOMMUNICATIONS OFFICE) (Chmn Burch; Nixon) (COMMUNICATIONS ACT (US); FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; LICENSES; NEWS AND NEWS MEDIA; PROGRAMS; STATIONS AND NETWORKS; TELEVISION AND RADIO) (UNITED STATES (1971))

COMPANY TERMS: AMERICAN BROADCASTING COS INC (ABC); NATIONAL BROADCASTING CO INC (NBC); RADIO AND TELEVISION SOCIETY INTL

10/7/71 NYT-ABS 94
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Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

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Sent: Monday, February 05, 2007 10:35 AM
To: Susan Burgess
Subject: fairness doctrine

4/28/72 NYT-ABS 37

4/28/72 N.Y. Times (Abstracts) 37
1972 WLNR 123072

New York Times Abstracts

April 28, 1972

White House Office of Telecommunications dir C T Whitehead condemns as 'tyranical' proposals that fairness doctrine compelling broadcasters to present various sides of controversies be imposed on newspapers, ANPA meeting; holds such proposals to be 'affirmative censorship'; Council of Better Business Burs pres H B Palmer calls for self-regulation as alternative to actions by Cong and Govt agencies to combat decreasing credibility for both business and press; Reprs Reid and Crane rept they share concern about legislating against press but cite problems of getting news coverage

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (PALMER, H BRUCE; REID, OGDEN R; WHITEHEAD, CLAY T) (CRANE, PHILIP M; REPR) (ANPA; CRANE; OFFICE OF TELECOMMUNICATIONS; WHITE HOUSE) (Cong; Council; Reprs Reid) (FAIRNESS DOCTRINE; NEWS AND NEWS MEDIA)

4/28/72 NYT-ABS 37
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Susan Burgess

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Sent: Monday, February 05, 2007 10:31 AM
To: Susan Burgess
Subject: fairness doctrine

1/21/73 NYT-ABS 217

1/21/73 N.Y. Times (Abstracts) 217
1973 WLNR 110454

New York Times Abstracts

January 21, 1973

Section: 2

E W Taylor lr on White House Telecommunications Policy Office Dir C T Whitehead recent article contends either FCC or telecommunications office should be abolished; says Fairness Doctrine and freedom of airwaves could be enforced under existing rules with only minor changes if FCC was freed of pol manipulation

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (TAYLOR, EDWARD W; WHITEHEAD, CLAY T) (FCC; HOUSE TELECOMMUNICATIONS POLICY OFFICE; TAYLOR) (Fairness Doctrine) (CENSORSHIP; FAIRNESS DOCTRINE; PROGRAMS; TELEVISION AND RADIO)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC); TELECOMMUNICATIONS POLICY OFFICE OF

1/21/73 NYT-ABS 217
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Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

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Documents:	1
Images:	0

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Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:30 AM
To: Susan Burgess
Subject: fairness doctrine

2/21/73 NYT-ABS 86

2/21/73 N.Y. Times (Abstracts) 86
1973 WLNR 119911

New York Times Abstracts

February 21, 1973

White House Telecommunications Policy Office Dir C T Whitehead, under intense questioning on Feb 20, adheres to his proposal that broadcasters be made responsible for content of network newscasts, Sen Commerce (Pastore) subcom on communications hearing; says he should have explained proposal better and used less colorful language when he first presented it; contends broadcasting legis that Nixon Adm will propose soon is aimed at lessening Govt control, not increasing it; says citizen who has complaint about TV programing has no place to go under present system; says broadcasters must take responsibility for their programing; maintains that Adm's legis will be 'clarification of the process' under which FCC hears complaints and renews licenses; indicates there will be extensive clarification of Fairness Doctrine , which requires broadcasters to give equal time for dissenting views
United Press International

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Internet Regulatory (1IN49); Internet (1IN27); Internet Infrastructure (1IN95); Internet Infrastructure Policy (1IN62))

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (NIXON, RICHARD MILHOUS; PASTORE, JOHN O; WHITEHEAD, CLAY T) (FAIRNESS DOCTRINE; FCC; TV; WHITE HOUSE TELECOMMUNICATIONS POLICY OFFICE) (Nixon Adm) (FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; LICENSES; NEWS AND NEWS MEDIA; NEWS PROGRAMS; PROGRAMS; STATIONS AND NETWORKS; TELEVISION AND RADIO)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC)

2/21/73 NYT-ABS 86
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Documents:	1
Images:	0
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Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:28 AM
To: Susan Burgess
Subject: fairness doctrine

6/9/73 NYT-ABS 67

6/9/73 N.Y. Times (Abstracts) 67
1973 WLNR 87353

New York Times Abstracts

June 9, 1973

White House office of Telecommunications Policy dir C T Whitehead reasserts on June 8 his belief that broadcasters alone must determine what goes on air without any interference from Govt, speech, Indiana Broadcasters Assn; renews his attack on fairness doctrine and other rules of FCC that have required broadcasters to air both sides of controversies and to carry programming that is at least somewhat diversified; says that trend toward expended role for Fed Govt in broadcasting 'reached its peak' when FCC and cts ruled against Rev Dr C McIntire in his application for license renewal for station WXUR in Media, Pa, essentially for violations of fairness doctrine ; expresses some concern that Adm's bill, chaging rules under which broadcaster;s licenses are renewed, might not be enacted

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Internet Regulatory (1IN49); Internet (1IN27); Internet Infrastructure (1IN95); Internet Infrastructure Policy (1IN62))

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); Indiana (1IN12); North America (1NO39))

OTHER INDEXING: (WHITEHEAD, CLAY T) (MCINTIRE, CARL D; REV DR) (FCC; FED GOVT; WHITE HOUSE) (C; Indiana Broadcasters Assn; McIntire; Rev Dr) (CENSORSHIP; FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; NEWS AND NEWS MEDIA; PROGRAMS; TELEVISION AND RADIO)

COMPANY TERMS: BROADCASTERS ASSN INDIANA; COMMUNICATIONS COMMISSION FEDERAL (FCC)

6/9/73 NYT-ABS 67
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Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

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Documents:	1
Images:	0
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Effect of FD

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Sent: Monday, February 05, 2007 11:48 AM
To: Susan Burgess
Subject: fairness doctrine

4/26/69 NYT-ABS 16

4/26/69 N.Y. Times (Abstracts) 16
1969 WLNR 31850

New York Times Abstracts

April 26, 1969

Westinghouse Broadcasting ends cigarette ad on its 5 TV and 7 radio stations; pres Donald H McGannon says co could not comply with FCC demands that it run 1 free antismoking message to every 3 cigarette ads; NBC says its 200 affiliated stations will run 4 more 30-second antismoking messages a wk

---- INDEX REFERENCES ----

NEWS SUBJECT: (Cigarettes (1CI04))

INDUSTRY: (Entertainment (1EN08); Traditional Media (1TR30); Consumer Products & Services (1CO62); Radio (1RA81); Radio Stations (1RA51); Tobacco (1TO65); Manufacturing (1MA74))

OTHER INDEXING: (KING, SETH S; MCGANNON, DONALD H) (FCC; NBC) (Westinghouse Broadcasting) (ADVERTISING; FAIRNESS DOCTRINE; TELEVISION AND RADIO; TOBACCO, TOBACCO PRODUCTS AND SMOKERS ARTICLES)

COMPANY TERMS: NATIONAL BROADCASTING CO INC (NBC); WESTINGHOUSE BROADCASTING CO

4/26/69 NYT-ABS 16
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Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
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Lines:	24
Documents:	1
Images:	0
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Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:53 AM
To: Susan Burgess
Subject: fairness doctrine

2/24/76 NYT-ABS 20

2/24/76 N.Y. Times (Abstracts) 20
1976 WLNR 100785

New York Times Abstracts

February 24, 1976

Sup Ct refuses to listen to plea made on behalf of Polish-Americans for chance to go on TV to respond to 4 derogatory Polish jokes that were told by comedian Bob Einstein on Dick Cavett show in '73. Plea was made by atty Thaddeus L Kowalski and Polish-Amer Cong (M).

---- INDEX REFERENCES ----

INDUSTRY: (Entertainment (1EN08); Celebrities (1CE65))

OTHER INDEXING: (EINSTEIN, BOB; KOWALSKI, THADDEUS L) (Bob Einstein; Ct; Dick Cavett) (CASES REFUSED; CAVETT, DICK, SHOW; FAIRNESS DOCTRINE; HUMOR AND WIT; MINORITIES (ETHNIC, RACIAL, RELIGIOUS); POLISH-AMERICANS; PROGRAMS; TELEVISION AND RADIO)

COMPANY TERMS: POLISH AMERICAN CONGRESS; SUPREME COURT (US)

2/24/76 NYT-ABS 20
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Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
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Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 10:18 AM
To: Susan Burgess
Subject: fairness doctrine

1/30/74 NYT-ABS 70

1/30/74 N.Y. Times (Abstracts) 70
1974 WLNR 99712

New York Times Abstracts

January 30, 1974

FCC fines radio station WMCA $1,000 because interviewer Bob Grant referred to Repr Benjamin S Rosenthal as 'coward' after having been told that Rosenthal would not consent to int in Mar '73 concerning meat boycott. Charges Grant failed to give Rosenthal opportunity to respond. WMCA pres R Peter Straus cannot be reached for comment (S).

---- INDEX REFERENCES ----

INDUSTRY: (Entertainment (1EN08); Traditional Media (1TR30); Radio (1RA81); Radio Stations (1RA51))

OTHER INDEXING: (GRANT, BOB; STRAUS, R PETER) (ROSENTHAL, BENJAMIN S; REPR) (FCC; ROSENTHAL; WMCA) (Bob Grant; Charges Grant; Peter Straus) (BOYCOTTS; FAIRNESS DOCTRINE; MEAT; STATIONS AND NETWORKS; TELEVISION AND RADIO)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC); WMCA

1/30/74 NYT-ABS 70
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
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Images:	0
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To: Susan Burgess
Subject: fairness doctrine

7/26/72 NYT-ABS 73

7/26/72 N.Y. Times (Abstracts) 73
1972 WLNR 96900

New York Times Abstracts

July 26, 1972

Allstate Ins Co vp D L Schaffer tells Sen Commerce Comm on July 25 that his co was refused by 3 major TV networks when it attempted to buy time for commercial praising effectiveness of airbags as auto safety devices; says networks held commercials were 'controversial'; comments of co spokesmen noted; NBC spokesman says FCC held in Jan that airbag is controversial and subject to fairness doctrine ; CBS exec R D Wood says commercials were rejected because no airbag had been demonstrated on driver's side of car; Schaffer tells com's acting chmn Sen Hartke that Allstate offered to pay networks for time used in broadcasting replies from 'responsible' critics of commercials; Sens Hartke and Cook see commercials, which show series of tests Allstate made with airbag-equipped cars; commercials described

---- INDEX REFERENCES ----

COMPANY: ALLSTATE CORP (THE); CBS INC

INDUSTRY: (TV (1TV19); TV Stations (1TV23); Entertainment (1EN08); Traditional Media (1TR30))

OTHER INDEXING: (COOK, MARLOW W; SCHAFFER, DONALD L; WOOD, ROBERT D) (HARTKE, VANCE; SEN) (ALLSTATE; CBS; FCC; NBC; SCHAFFER; TV) (Sen Hartke; Sens Hartke) (ADVERTISING; AIR BAGS; AUTOMOBILE SAFETY FEATURES AND DEFECTS; ROADS AND TRAFFIC; TELEVISION AND RADIO) (UNITED STATES (1972 PART 1))

COMPANY TERMS: ALLSTATE INSURANCE CO; AMERICAN BROADCASTING COS INC (ABC); CBS INC; COMMUNICATIONS COMMISSION FEDERAL (FCC); NATIONAL BROADCASTING CO INC (NBC); UNITED BRANDS CO

7/26/72 NYT-ABS 73
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Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 09:34:00 Central
Client Identifier:	CLAY WHITEHEAD

Database:	ALLNEWS
Lines:	33
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:33 AM
To: Susan Burgess
Subject: fairness doctrine

8/16/70 NYT-ABS 63

8/16/70 N.Y. Times (Abstracts) 63
1970 WLNR 40954

New York Times Abstracts

August 16, 1970

CBS pres Jencks, Westinghouse pres Shapiro and other broadcasting indus leaders say antismoking messages will be reduced significantly or ended after cigarette ban becomes effective next yr; say ban will relieve them of 'fairness obligation;' Prof Banzhaf says he plans campaign to persuade TV stations to continue to carry messages, int; hopes to enlist support of Reader's Digest and such ch groups as Christian Scientists and Mormons; contends TV has responsibility to make up for 2 decades when smokings ads went unanswered; says many stations will run messages if they are entertaining; broadcasting and cigarette indus vehemently oppose campaign

---- INDEX REFERENCES ----

COMPANY: CBS INC

NEWS SUBJECT: (Cigarettes (1CI04))

INDUSTRY: (Consumer Products & Services (1CO62); Tobacco (1TO65); Manufacturing (1MA74))

OTHER INDEXING: (JENCKS, RICHARD W; LYDON, CHRISTOPHER; SHAPIRO, MARVIN L) (BANZHAF, JOHN F 3D; PROF) (CBS; READER; TV) (Banzhaf) (ADVERTISING; CHRISTIAN SCIENCE; FAIRNESS DOCTRINE; TELEVISION AND RADIO; TOBACCO, TOBACCO PRODUCTS AND SMOKERS ARTICLES) (UNITED STATES (1970))

COMPANY TERMS: CBS INC; MORMONS (CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS); READERS DIGEST (PUB); WESTINGHOUSE BROADCASTING CO

8/16/70 NYT-ABS 63
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Date/Time of Request:	Monday, February 05, 2007 10:32:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS

Lines:	31
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:26 AM
To: Susan Burgess
Subject: fairness doctrine

3/23/71 NYT-ABS 13

3/23/71 N.Y. Times (Abstracts) 13
1971 WLNR 10858

New York Times Abstracts

March 23, 1971

Scheduled TV debate between Sen Proxmire and SST project dir Magruder cancelled after White House complains opponents were allowed unfair amt of time by ABC and that program would have violated fairness doctrine

---- INDEX REFERENCES ----

COMPANY: ABC INCO

REGION: (District Of Columbia (1DI60); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (MAGRUDER, WILLIAM M; 1923-77; PROXMIRE, WILLIAM; SEN) (ABC; SST; WHITE HOUSE) (Scheduled TV) (AIRPLANES; CAVETT, DICK, SHOW; FAIRNESS DOCTRINE; PROGRAMS; SST (SUPERSONIC TRANSPORT); TELEVISION AND RADIO)

COMPANY TERMS: AMERICAN BROADCASTING COS INC (ABC)

3/23/71 NYT-ABS 13
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:25:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	22
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:17 AM
To: Susan Burgess
Subject: fairness doctrine

6/8/71 NYT-ABS 78

6/8/71 N.Y. Times (Abstracts) 78
1971 WLNR 65813

New York Times Abstracts

June 8, 1971

FCC hearing examiner recommends radio station KAYE, in Puyallup, Wash, be deprived of its license for violations of ' fairness doctrine '; 69 citizens of Tacoma area charge station, which is licensed as KAYE Broadcasters Inc, with broadcasting right-wing propaganda and remarks against minority groups without providing those attacked with opportunity to reply; petitioners are organized under name Puget Sound Com for Good Broadcasting, have been joined by other groups; decision to deny license renewal will take effect in 50 days unless appeal is filed in 30 days; station's atty says appeal will be filed on grounds that examiner is 'higly prejudiced' and denied station sufficient time to present its petition; United Ch of Christ aide Dr E C Parker hails decision against station

---- INDEX REFERENCES ----

NEWS SUBJECT: (Social Issues (1SO05); Minority & Ethnic Groups (1MI43); Economics & Trade (1EC26))

INDUSTRY: (Entertainment (1EN08); Traditional Media (1TR30); Radio (1RA81); Radio Stations (1RA51))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39); Washington (1WA44))

OTHER INDEXING: (GENT, GEORGE; 1925-74; PARKER, EVERETT C; REV DR) (FCC; KAYE BROADCASTERS INC; PARKER) (CHURCH OF CHRIST, UNITED (CONGREGATIONAL CHRISTIAN AND EVANGELICA; FAIRNESS DOCTRINE; LICENSES; MINORITIES (ETHNIC, RACIAL, RELIGIOUS); NEWS AND NEWS MEDIA; PROGRAMS; STATIONS AND NETWORKS; TELEVISION AND RADIO)

COMPANY TERMS: KAYE BROADCASTERS INC; PUGET SOUND COMMITTEE FOR GOOD BROADCASTING

6/8/71 NYT-ABS 78
END OF DOCUMENT

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Your Search: "FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)

Date/Time of Request: Monday, February 05, 2007 10:16:00 Central

Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	36
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:14 AM
To: Susan Burgess
Subject: fairness doctrine

7/7/71 NYT-ABS 75

7/7/71 N.Y. Times (Abstracts) 75
1971 WLNR 72280

New York Times Abstracts

July 7, 1971

NBC drops Standard Oil TV ads promoting its oil drilling operations in Alaska; decision made in response to last wk's FCC ruling that Esso ads promoted 1 side of issue and as result conflicted with ' fairness doctrine '; Friends of the Earth and Wilderness Soc had filed complaints charging that Standard Oil ads raised issue by discussing need for development of Alaskan oil and claiming that it can do so without environmental damage; argued controversial questions are pending before cts and exec branch

---- INDEX REFERENCES ----

INDUSTRY: (Oil (1OI41); Upstream Oil (1UP67); Environmental (1EN24); Oil & Gas Exploration (1OI11); Nature & Wildlife (1NA75); Oil & Gas (1OI76))

REGION: (Alaska (1AL32); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (GENT, GEORGE; 1925-74) (ESSO; FCC; NBC) (Standard Oil; Wilderness Soc) (ADVERTISING; FAIRNESS DOCTRINE; OIL (PETROLEUM) AND GASOLINE; PIPELINES; TELEVISION AND RADIO) (ARCTIC REGIONS; UNITED STATES (1971))

COMPANY TERMS: EARTH FRIENDS OF THE (ORGN); NATIONAL BROADCASTING CO INC (NBC); STANDARD OIL CO (NJ); WILDERNESS SOCIETY

7/7/71 NYT-ABS 75
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:13:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	27
Documents:	1

Images: 0

Recipient(s): susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:13 AM
To: Susan Burgess
Subject: fairness doctrine

7/17/71 NYT-ABS 22

7/17/71 N.Y. Times (Abstracts) 22
1971 WLNR 74268

New York Times Abstracts

July 17, 1971

Ed backs FCC decision upholding contention that Standard Oil Co ads on Alaskan pipeline are controversial issue and directing NBC to rept on what material it intends to present which will permit viewers to see other side of argument

---- INDEX REFERENCES ----

REGION: (Alaska (1AL32); USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (FCC; STANDARD OIL CO) (Ed) (ADVERTISING; EDITORIALS; FAIRNESS DOCTRINE; OIL (PETROLEUM) AND GASOLINE; PIPELINES; STATIONS AND NETWORKS; TELEVISION AND RADIO) (ARCTIC REGIONS)

COMPANY TERMS: NATIONAL BROADCASTING CO INC (NBC); STANDARD OIL CO (NJ); WNBC

7/17/71 NYT-ABS 22
END OF DOCUMENT

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Date/Time of Request:	Monday, February 05, 2007 10:13:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	20
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:12 AM
To: Susan Burgess
Subject: fairness doctrine

8/17/71 NYT-ABS 1

8/17/71 N.Y. Times (Abstracts) 1
1971 WLNR 75815

New York Times Abstracts

August 17, 1971

US Appeals Ct, 2-1, overturns FCC decision involving Friends of the Earth demand for free TV time to counteract ads for high-powered autos and leaded gasoline under fairness doctrine ; rules TV stations must broadcast information outlining pollution effects of autos if they carry promotional ads; orgn had argued in Feb '70 that spot ads for autos and gasoline bombard viewers with descriptions of products as efficient, clean and high-performing; said that under fairness doctrine , station is required to broadcast information that would make pub aware of pollution hazards of autos and leaded gasoline; FCC had later ruled in favor of station, drawing distinction between cigarette ads and auto pollution; rejects comm argument that ads are not controversial because Govt had not advocated that everyone stop using cars; ct rejects comm's argument, saying that it does not see such a distinction

---- INDEX REFERENCES ----

INDUSTRY: (Gasoline (1GA40); Oil (1OI41); Automotive Fuels (1AU95); Downstream Oil (1DO72); Oil & Gas (1OI76))

OTHER INDEXING: (SMITH, ROBERT M) (FCC; TV) (Appeals Ct) (ADVERTISING; AIR POLLUTION; AUTOMOBILES; FAIRNESS DOCTRINE; NEWS AND NEWS MEDIA; STATIONS AND NETWORKS; TELEVISION AND RADIO; TOBACCO, TOBACCO PRODUCTS AND SMOKERS ARTICLES)

COMPANY TERMS: EARTH FRIENDS OF THE (ORGN); WNBC

8/17/71 NYT-ABS 1
END OF DOCUMENT

Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:12:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	30
Documents:	1

Images: 0

Recipient(s): susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:34 AM
To: Susan Burgess
Subject: fairness doctrine

8/13/70 NYT-ABS 28

8/13/70 N.Y. Times (Abstracts) 28
1970 WLNR 40057

New York Times Abstracts

August 13, 1970

Repr Farbstein introduces legis to extend FCC fairness doctrine to newspapers in communities of 25,000 or over that do not have 2 separately owned papers
United Press International

---- INDEX REFERENCES ----

OTHER INDEXING: (FARBSTEIN, LEONARD) (FCC) (Repr Farbstein) (FAIRNESS DOCTRINE; NEWS AND NEWS MEDIA; POLITICAL BROADCASTS, ISSUE OF) (UNITED STATES (1970))

8/13/70 NYT-ABS 28
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Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	19
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 11:11 AM
To: Susan Burgess
Subject: fairness doctrine

9/18/71 NYT-ABS 60

9/18/71 N.Y. Times (Abstracts) 60
1971 WLNR 83449

New York Times Abstracts

September 18, 1971

FCC Chmn Dean Burch says NBC newsman Edwin Newman was within his rights when he ejected George Jessel from Today Show for referring to The NY Times and The Washington Post as 'Pravda', reply to Repr William H Harsha who protested that Newman violated FCC fairness doctrine ; Harsha says he will ask Cong coms to take further action
United Press International

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39))

OTHER INDEXING: (BURCH, DEAN; HARSHA, WILLIAM H; NEWMAN, EDWIN) (JESSEL, GEORGE; ?-1981) (FCC; FCC CHMN DEAN BURCH; HARSHA; NBC) (Edwin Newman; George Jessel; Repr William) (CENSORSHIP; FAIRNESS DOCTRINE; GOVERNMENT NEWS POLICIES; INTERNAL SECURITY; NEWS AND NEWS MEDIA; PENTAGON PAPERS; PROGRAMS; TELEVISION AND RADIO; TODAY SHOW (TV PROGRAM)) (VIETNAM)

COMPANY TERMS: NATIONAL BROADCASTING CO INC (NBC); NEW YORK TIMES; WASHINGTON POST (DC)

9/18/71 NYT-ABS 60
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Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 10:11:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	27
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:51 AM
To: Susan Burgess
Subject: fairness doctrine

3/30/77 NYT-ABS 326

3/30/77 N.Y. Times (Abstracts) 326
1977 WLNR 67855

New York Times Abstracts

March 30, 1977

Section: 3

FCC chmn Richard E Wiley, addressing annual conv of Natl Assn of Broadcasters, voices his disapproval of 2 rules, equal time requirement for pol broadcasts and fairness doctrine , that give radio and TV less freedom under 1st Amendment than is enjoyed by newspapers and magazines. CBS commentator Eric Sevareid and former FCC member Lee Lovinger also attack same 2 rules. There are also defenders of rules who staunchly oppose Sen bill, introduced by Sen William Proxmire to repeal limitations. Wiley called for outright repeal of equal-time law. FCC member Abbott Washburn and 2 former members Nicholas Johnson and Kenneth Cox argue for retention of fairness doctrine (M).
BROWN, LES

---- INDEX REFERENCES ----

NEWS SUBJECT: (Economics & Trade (1EC26))

INDUSTRY: (Internet Regulatory (1IN49); Entertainment (1EN08); Radio (1RA81); Internet (1IN27); Internet Infrastructure (1IN95); Internet Infrastructure Policy (1IN62))

OTHER INDEXING: (BROWN, LES; WASHBURN, ABBOTT M; WILEY, RICHARD E; JOHNSON, NICHOLAS; LOVINGER, LEE) (COX, KENNETH A; MCI COMMUNICATIONS) (CBS; FCC; NATL ASSN OF BROADCASTERS) (Abbott Washburn; Eric Sevareid; Kenneth Cox; Lee Lovinger; Nicholas Johnson; Richard; William Proxmire) (CONSTITUTIONS AND CHARTERS; EQUAL-TIME ISSUE; FAIRNESS DOCTRINE; FIRST AMENDMENT (US CONSTITUTION); NEWS AND NEWS MEDIA; TELEVISION AND RADIO)

COMPANY TERMS: COMMUNICATIONS COMMISSION FEDERAL (FCC)

3/30/77 NYT-ABS 326
END OF DOCUMENT

Lines:	34
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com

Analysis of proposal to cut FD

Susan Burgess

From: westlaw@westlaw.com
Sent: Monday, February 05, 2007 9:43 AM
To: Susan Burgess
Subject: fairness doctrine

6/12/78 NYT-ABS 319

6/12/78 N.Y. Times (Abstracts) 319
1978 WLNR 68555

New York Times Abstracts

June 12, 1978

Section: 3

Analysis of plan proposed by HR Communications Subcom to revise 1934 Communications Act. Says with proposed abandonment of fairness doctrine there would be no requirement either for broadcasters to examine controversial issues or to present various contrasting views when they deal with such issues. Views held by Rev Dr Everett C Parker and Repr Lionel Van Deerlin noted (M).
BROWN, LES

---- INDEX REFERENCES ----

OTHER INDEXING: (BROWN, LES) (PARKER, EVERETT; REV DR; VAN DEERLIN, LIONEL; REPR) (HR COMMUNICATIONS SUBCOM; REPR LIONEL VAN DEERLIN) (Analysis; Everett) (COMMUNICATIONS; PROGRAMS; STATIONS AND NETWORKS; TELEVISION AND RADIO) (Analysis)

6/12/78 NYT-ABS 319
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Westlaw E-mail Delivery Summary Report for WHITEHEAD,CLAY 5364288

Your Search:	"FAIRNESS DOCTRINE" & DA(BEF 1/1/1980)
Date/Time of Request:	Monday, February 05, 2007 08:42:00 Central
Client Identifier:	CLAY WHITEHEAD
Database:	ALLNEWS
Lines:	23
Documents:	1
Images:	0
Recipient(s):	susan@cwx.com