

# NEWTON N. MINOW

Former Chairman of the Federal Communications Commission

## equal time

The Private Broadcaster  
and  
The Public Interest

EDITED BY LAWRENCE LAURENT

## EQUAL TIME

No Chairman of the Federal Communications Commission has had quite the same impact on the American public as Newton Norman Minow. A series of speeches, beginning with the celebrated "Vast Wasteland" speech of 1961, triggered a national dialogue over the proper role of television in American society. That dialogue has continued.

Those speeches and writings have been edited for their enduring content. They cover a range from the responsibility of the federally licensed broadcasting stations to the effects of editorializing; from the need for high quality children's programs to the international challenge of space communications.

To the speeches, Mr. Minow has added a thoughtful and provocative essay on the rules—and the needs—of political broadcasting in the United States. The politician's need for television will grow and, Mr. Minow contends, some major changes are needed to prevent the erection of a "dollar wall" between the worthwhile but poor candidate and the television receivers of the land.

In another essay, Mr. Minow advocates a new system of advertising support for broadcasting, a system that would give the broadcaster—not the advertiser—the final word on program form and content. He recites a long list of evils that have hampered and restrained American broadcasting to its ultimate damage.

The speeches and essays have been edited by Lawrence Laurent of the *Washington Post*, a serious student of mass communications and a teacher who is in constant demand for his thoughtful speeches. Mr. Laurent has added comment that provides the setting for each speech and has given an assessment of the effect each speech had on American broadcasting.

This is a book of advocacy. It argues for changes in American broadcasting and it outlines the challenges of the future.

(continued from back of jacket)

Adlai Stevenson, then Governor of Illinois, and in 1955 he became a partner in Mr. Stevenson's law firm. He was designated chairman of the Federal Communications Commission by President-elect Kennedy in 1961 and served in that post until 1963. He has received a number of awards for his efforts to advance higher standards in television, including the George Foster Peabody and National Audience Board awards, as well as the Lee DeForest Award of the National Association for Better Radio and Television. Upon leaving government service, Mr. Minow was elected Executive Vice President, General Counsel and a Director of Encyclopaedia Britannica. He is also a member of the Board of the National Educational Television network. He has represented the United States at international conferences on communications and has served on the board of the national commission for UNESCO by appointment of Secretary of State Dean Rusk. Mr. Minow lives in Glencoe, Illinois, with his wife and three children.

**LAWRENCE LAURENT** has been the television-radio editor and columnist for the *Washington Post* since 1953 and is also chairman of the editorial board of *Television Quarterly*. He holds the rank of Professorial Lecturer at The American University in Washington, D.C., teaching programming in both broadcast media. Mr. Laurent contributed to *Television's Impact on American Culture* and to *The Eighth Art* published in 1956 and 1962 respectively. For more than a decade he has covered virtually every investigation or hearing on communications, in the Congress and at the Federal Communications Commission. From the Washington Newspaper Guild he received a Front Page Award for his interpretative coverage of the 1963 hearings on audience ratings which were held before the House Special Subcommittee on Investigations.



## NEWTON N. MINOW

Newton N. Minow was born in Milwaukee, Wisconsin, in 1926. He studied engineering at the University of Michigan, and saw military service at various army stations in the United States and in the China-India-Burma theatre during World War II. He received his law degree from Northwestern University in 1950, and in 1963 was awarded honorary Doctorates of Law from the University of Wisconsin and Brandeis University. Mr. Minow practiced with a Chicago law firm until his appointment in 1951 as law clerk to Chief Justice Fred M. Vinson of the United States Supreme Court. In 1952 he was appointed administrative assistant to

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First Edition

TO  
JOHN F. KENNEDY  
1917-1963  
FOR WHOM THERE WAS SO LITTLE TIME

**NOTE:** The author is contributing a royalty from  
this book to the John F. Kennedy Memorial Library.

## AUTHOR'S NOTE

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Before he became President, John F. Kennedy once told a group of broadcasters:

You are aware that a private industry which utilizes public airwaves and TV channels—and which is necessarily regulated by public agencies—has a tremendous responsibility for public service.

The public service broadcaster and the public servant—we have a great deal more in common than we might at first realize. In the last analysis, we are both dependent in large measure on the same factor—public approval. The broadcaster who offers shows that are neither seen nor heard is not offering a public service, no matter how high the quality of his show. The politician whose indifference to public opinion costs him his seat will no longer be able to perform effective public service, no matter how high principled his courage or independence might have seemed.

We both need, in short, public approval—not necessarily instant, or unanimous, or easily identified—but enough in the long run to keep us on our course.

The question facing us both is: will that desire for public approbation become dominant? Will Gresham's law operate in the broadcasting and political worlds wherein the bad inevitably drive out the good? Will the politician's desire for reelection—and the broadcaster's desire for ratings—cause both to flatter every public whim and prejudice—to seek

the lowest common denominator of appeal—to put public opinion at all times ahead of the public interest?

For myself, I reject that view of politics, and I urge you to reject that view of broadcasting. . . .

Because I deeply agree with President Kennedy's analysis, I was honored to accept his appointment as Chairman of the Federal Communications Commission in 1961.

I had some strong convictions, not about the FCC, but about television, one of the industries which the FCC regulates. With many millions of other citizens, I was an avid television viewer, and so were my wife and children. And I often wondered about the effect television might be having on other Americans.

I believe television is the most powerful instrument ever created to reach the minds and hearts of man; an instrument which any President or dictator, any Congress or army must reckon with forevermore.

I believe that the future of this nation—of the democratic ideal—and the world depends on an enlightened electorate, on an informed citizenry. And I believe that nothing in the history of man approaches the potential of television for information and misinformation, for enlightenment and obfuscation, for sheer reach and sheer impact.

Stalin once said: "If I could control the medium of the American motion picture, I would need nothing else in order to convert the entire world to Communism." What might he have said of the more pervasive and dominating medium of television?

A television channel is America's most scarce natural resource. As many as a dozen applicants plead for the privilege of using one channel. And because television



channels are so scarce, because they can be used by such a small percentage of those who would like to have channels entrusted to them, their allocation and the supervision of their use rests with the federal government. Thus the government, not by choice but by absolute necessity, is ultimately responsible for the effect this medium has on the public. What is this effect? Boredom? Escape? Wisdom? Understanding? Inspiration? Condescension? Tolerance? Indifference? All of these? None of these?

I took on the assignment as Chairman of the FCC because I care about these things. I had the disturbing feeling that this elevating medium was on the way to being debased and demeaned. I had an equally uneasy belief that the FCC was not doing enough to halt this gradual debasement.

I was sure that the sad by-products of this debasement—the payola and the quiz scandals and the influence peddling—could be reversed by FCC action. I wasn't sure that the good things about American television could be encouraged and stimulated by a governmental agency.

But I was determined to try.

My motives were neither unusual nor complicated. Our country had been generous to my family and to me. With unbounded respect for President Kennedy, and in total agreement with his conviction that it is better to light a single candle than curse the darkness, we made the move to Washington.

Very early I decided that of all the routes I might take to the best performance of my job, the most effective and the wisest road in the long run was to speak out in the hope of influencing public opinion about television. I knew that the people were generally unaware that broadcasting was a public trust, and most of them did not know the extent of their rights to this public resource. I felt that many broadcasters, who naturally had a vested interest

in the medium, had, in the flush of enormous financial success, too quickly grown complacent and closed their eyes to their responsibilities and trust. I decided to disturb their sleep—and to encourage these trustees to entertain and yet to inform, to make us laugh but also to make us think.

Hopefully, I tried also to awaken the public mind.

And so I went to the people with public speeches.

In preparing these speeches I had much help from people both inside and outside the FCC. I owe special debts to my dear friend Ambassador John Bartlow Martin and to my trusted advisor Stanley A. Frankel. My own devoted staff at the FCC contributed indispensably to whatever I had to say: to Gloria Coe Klein, Henry Geller, Ted Meyers, John Cushman, Jim Sheridan, Joel Rosenbloom, Lou North and Dorothy Counts, I give warmest thanks for gallantry beyond the call of their regulatory duties; and to LaVerne Kruggel, my gratitude for her patient, devoted help in preparing the manuscript for this book. And from time to time some people involved in broadcasting and communications also made valuable suggestions. Among them were old friends and clients, Burr Tillstrom, Maurice B. Mitchell, Louis Cowan, and Peter Wyden. There are others, but I have good reason to believe they would prefer to remain ghostly figures even now.

I am grateful to Simon Michael Bessie of Atheneum for suggesting that some of those speeches be published here, and I thank Lawrence Laurent for editing, organizing and commenting on them.

My mother and father continuously inspired me with love of country and the responsibilities of citizenship.

In my service at the FCC, as in all my life, my wife, Jo, constantly strengthened my spirit, stiffened my backbone, warmed my heart and gave me some of my best lines.

While in Washington, our daughters, Nell, Martha and Mary, were, as always, an unending source of fresh wonder and keen opinions on television trends. For the future, I promise them equal time.

Henry L. Stimson wrote in 1915: “. . . history is not often changed by speeches. . . . The course of history is made up by a long patient series of humble acts which gradually form the opinion and character of a nation and not by dramatic utterances.”

My hope is that this book may be a part of that “long patient series of humble acts.” Most of all, I hope that there will be more public debate and discussion about broadcasting and its impact on our time.

NEWTON N. MINOW  
GLENCOE, ILLINOIS

## EDITOR'S NOTE

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Newton N. Minow came to Washington in the hope-filled days of the New Frontier, and when he left, twenty-eight months later, he was the best-known Chairman of the Federal Communications Commission in history. He was very much a part of the vigor that gave great excitement to the administration of the late President Kennedy, and this vigor helped to move much needed legislation that had been mired in congressional committees for several years.

The details of his accomplishments are in the pages that follow. First, there was the passage of the all-channel television receiver requirement that lighted seventy unused television channels and made true competition possible in the American marketplace; there followed a bill that brought federal aid for the construction of educational television stations. And in the years ahead we may look back in admiration at the wisdom of early passage of a Communications Satellite Act that gave the United States a clear advantage in some future international struggle, when America's message must be heard.

Of course there had to be frustration. There are times when our federal government appears to operate like the friction-powered toy automobiles that are sent to the United States by Japan; one has to spin the wheels many times before enough force is generated for the automobile to propel itself. In Washington some of this propulsive friction comes from compromise, inactivity and the earnest clash of the activists and the traditionalists.

Still, Mr. Minow managed to advance the decision-making process for the laws that govern broadcasting's

role in political campaigning. He managed also to enunciate a clear public policy on the obligation of a radio or television station to become involved in the life and the controversy of its own community.

These movements in the regulatory field are important, but they take second place to another phenomenon that happened during Mr. Minow's tenure at the FCC. With his very first speech, Newton N. Minow created a public dialogue about television, a questioning instead of merely passive acceptance, and the television industry—providers of electronic wonder—began to realize for the first time that the mere presentation of pictures and sound would not be enough.

There are many ways to tell this story with its excitement, conflicts and occasional sorrows. The final decision was to permit Mr. Minow to speak for himself, using edited versions of the speeches that created and kept alive the first great public dialogue about American broadcasting. In the editing I have frequently omitted Mr. Minow's warm humor and ad-lib remarks for the particular occasion, but I have preserved the substantive thrust of his addresses. I have added introductory notes, explaining the settings and the circumstances of each speech, and generally some follow-up commentary to enable the reader better to assess the impact of the speeches.

This volume, then, is at one moment a history and a body of advocacy; a set of pleadings and commentary; a combination of a newspaper reporter's opinions and the public statements of a federal agency's head. Mr. Minow has written his own evaluation of his term of office, explaining the background of the conflicts in which he became involved and setting forth the reasons for his stand.

I feel compelled to express my gratitude to the executives of The Washington Post Company: to the late Philip L. Graham, who gave the primary blessing to this

project; to Executive Editor J. R. Wiggins, who concurred in the decision and made helpful suggestions; to Managing Editor Alfred Friendly, who adjusted the staff to meet complications caused by my absence and who lent continued encouragement; to Assistant Managing Editor Joseph Paull, who gave me sound advice on difficult material; and to Sunday Editor Harold D. Kneeland, who never complained about the strange working hours I was impelled to keep. I feel an obligation, also, to state the obvious: The Washington Post Company is in the broadcasting business, operating stations that I consider to be of unusually high quality. While I worked on this book, as when I have written daily columns for eleven years, no executive has ever intruded this broadcasting part of the company's business into my attempts to evaluate or assess the programs or public policy decisions. My gratitude for this attitude grows greater with each passing year and reinforces my conviction that I am most fortunate to have such employers.

My greatest debt is to Mr. Minow. When he held the most important office on the beat that I cover, he never complained about differences of opinion over policy questions. Through the long preparation of this book, when we were beset by my illness and harrowing delays, he kept his good sense of humor and he did more than his share of the work.

In *The Future as History* Robert Heilbroner wrote: ". . . every event in history has a Januslike quality—one face which regards the past, and one which looks ahead; one aspect which is the culmination of what has gone before, and another which is the point of departure of what is to follow." This same "Januslike quality" will be apparent in the pages of this book. Mr. Minow's public career was deeply imbedded in the past that shaped the accident of American broadcasting into a major force in our

society. Others, surely, spoke more quickly about the power of mass media to determine what our citizens are and the opinions they hold; he was first, however, in showing us what it could become and in charting a course that would benefit generations in the decades that follow.

Before Professor Dallas Smythe, a researcher in communications, described the mass media as "the agenda setter for society," Mr. Minow was telling broadcasters that when they merely accept us for what we are, they deny us what we might become.

As to what we shall become because the mass media set the agenda for what our society will consider important—well, there will be failings for which Mr. Minow should not be blamed. And there has been a successful improvement, for which he must be given credit.

LAWRENCE LAURENT  
WASHINGTON, D.C.

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**EQUAL TIME**  
**THE PRIVATE BROADCASTER**  
**AND**  
**THE PUBLIC INTEREST**

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## INTRODUCTION

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# The Barrel Without a Bottom

Governor Adlai E. Stevenson said, early in 1961, "I regret that I have but one law firm to give to my country." This was his way of commenting on the federal appointments that eventually broke up our Chicago law office. Governor Stevenson had just become United States Ambassador to the United Nations. W. Willard Wirtz had accepted appointment as Under Secretary of Labor (and moved up, two years later, to Secretary of Labor when Arthur J. Goldberg was elevated to the Supreme Court). William McC. Blair, Jr., had been appointed U.S. Ambassador to Denmark (and is now U.S. Ambassador to the Republic of the Philippines).

As we wound up the affairs of our law firm, I prepared for my confirmation hearing before the Senate Commerce Committee. I intensively studied communications history and communications law. The members and the staff of the FCC gave me a warm welcome, complete cooperation, and comprehensive briefings on the responsibilities of the job.

I found, immediately, that I would have one great advantage over most of the thirteen men who had preceded me as FCC Chairmen since 1934. Because of my active participation in three presidential campaigns, I would go into office on easy, personal terms with President Kennedy and many other members of the administration. Of my

predecessors, only Paul Porter and Wayne Coy had enjoyed this kind of relationship with a President.

Since congressional relations is one of a Chairman's most important duties, I had another advantage in knowing many members of the Senate and House of Representatives. Congress must approve the FCC's budget and it sets the broad public policy for regulation. The Commerce Committees in the House and Senate are charged with watching over the six independent agencies, to make sure that they serve as "arms of the Congress." In theory at least, Congress wanted the six agencies to operate as continuing experts, regulating and reporting to the Congress on the problems of such industries as aviation, surface transportation, gas and electric power, the securities markets and communications.

Before a new Commissioner takes his post, he must be confirmed by the Senate. In the case of the regulatory agencies, the Senate Commerce Committee conducts public hearings on each nominee.

I decided to speak out right at the start. At the hearing on my confirmation I said I believed the Commission has a role in elevating and encouraging better television programs. Since I believed television was underestimating the taste level of the American public, I expressed the hope that we could have "more wide open spaces between the Westerns and more public affairs than private eyes."

I also stated that because the airwaves belong to the people, the government necessarily had to make sure that those licensed to use the people's property served the public rather than their own private interest.

The Senators nodded in agreement when I promised that the FCC would check stations closely before renewing a license. Little that I said later in public speeches had not been said on the record at the Senate hearing.

It was a friendly, pleasant session, and the Senate con-

firmed my appointment without dissent.

One of the first calls any new Commissioner of one of the independent agencies should make is one on the Speaker of the House of Representatives. Before being sworn in, I went to see Sam Rayburn of Texas, the man most responsible for the creation and supervision of the regulatory agencies.

While Chairman of the House Commerce Committee in 1934, Mr. Sam had taken the leading role in creating the modern form of the independent agencies. His nephew, Robert Taylor Bartley, is one of the most experienced FCC Commissioners.

At the time of my first visit, Mr. Sam was seventy-seven years old, but his interest in the FCC was still keen and informed. To my surprise, he remembered meeting me before. "You were Fred Vinson's law clerk around ten years ago," he said. This was a reference to his dear friend, the late Chief Justice of the United States. "And I remember that you came to Texas with Governor Stevenson in 1955 to spend the night at Lyndon's ranch," Mr. Sam continued. "I remember riding with you in the car from Austin to Johnson City."

Mr. Sam had some advice for me about the FCC: "There's been a lot of trouble up there and a lot of pressures. You just be firm, be tough and be fair." I stood up to leave and he had a final word: "And don't ever forget that you're an arm of the Congress."

In the waiting room outside Speaker Rayburn's office I was introduced to Thomas G. Corcoran, who had been congressional liaison man for President Roosevelt, handling the flood of legislation that passed in the early days of the New Deal. Mr. Corcoran asked how I felt about heading the FCC and I said, "Everybody tells me this job is like trying to hold a barrel of snakes."

Tommy the Cork, as F.D.R. had called Corcoran,

laughed. "Son, you've got a barrel of snakes all right. Only, there's no bottom in the barrel."

This barrel without a bottom affects the life of each American citizen, from birth to death. An ambulance speeding toward a hospital with a woman in labor pains is dispatched by a radio. So is the hearse that carries a man to a cemetery. Both operate under licenses from the FCC. So do radios in fire trucks, police cars, taxicabs, heavy industrial trucks, railway systems, aircraft, small boats and large ships. The radio amateur with his home-made rig must pass an FCC test before he begins calling to other ham operators, and the vice president in charge of engineering for a major television network will have demonstrated his technical competence to the FCC. The FCC has over five million licensees and each year acts on over 500,000 applications. In a single year the FCC will process 40,000 complaints about interference with radio signals.

The FCC is constantly appearing before Congress. In 1961 and 1962, for example, we participated in fifty-two congressional hearings. These dealt with: political broadcasting and the requirement of equal time for political candidates under Section 315 of the Communications Act; educational television; patent practices; international telecommunications conventions and radio regulations; television boosters; FCC reorganization; juvenile delinquency; horseracing and gambling; all-channel receiver legislation; the merger of common carriers; space communications and communication satellites, wiretapping and eavesdropping; appropriations; crime and racketeering; efforts to influence FCC decisions by improper means and off-the-record contacts; consent decree and antitrust matters; problems involving daytime broadcasting;

the licensing of radio station operators (subversive activities);\* clear channel broadcasting; various FCC legislative proposals dealing with forfeitures, oaths, permissive early renewals; and foreign embassy radio stations.

If this were not enough, there are thousands of letters from the public, many raising provocative new questions. My favorite letter came from a lady in California, who wrote to me in 1962, "Dear Mr. Minow: I do believe the programs on television are getting a bit better. Now what can be done to improve TV dinners?" Another letter I remember well came from an extremely conscientious broadcaster in the Midwest. His letter was in reply to a complaint from a female radio listener objecting to a commercial for an automobile dealer which featured the football slogan, "I'm too pooped to punt!" The lady objected to the word "pooped" as being in bad taste and offensive to her family. The broadcaster's six-page single-spaced typewritten reply was a learned dissertation on the derivation of the word "pooped"; and after reading his exhaustive—and exhausting—reply, I simply wrote to him, "I'm too pooped to comment!"

But not all the letters and work are so lighthearted. Most of it is trouble. And that is why each day about 1300 FCC employees dig away at paper mountains, growing higher all the time.

For most of its life the FCC has been an orphan or, at best, a stepchild of the federal government. It is out of sight, and most people in the government itself are not aware of its staggering assignment. Seven men with terms lasting for seven years are appointed by the President of the United States and approved by the Senate to administer and keep order in the new technology of mass

\* Spies and espionage agents nearly always use radio to communicate with their bosses. Congress has always feared that the frequencies might be used for espionage. [Ed.]



electronic communication. To keep order in the new world of the atom and electron demands a mastery of the grammar of the new technologies; but the statutory requirements of the Radio Act of 1927 and the Communications Act of 1934 are vague about the qualifications of a Communications Commissioner. He must be a citizen of the United States, own no stock in the communications companies he will regulate, and he must swear he will uphold the laws of the republic. Not more than four of the seven may belong to one political party, and each is presently paid \$20,000 a year. The Chairman, designated by the President, is paid \$20,500.\*

About the only guarantee given to an appointee to the FCC is that he will work in a jungle of procedural red tape that flowers wildly out of the quicksands of constantly changing public policy. This is a quixotic world of undefined terms, private pressures and tools unsuited to the work.

The basic tool is the Communications Act itself. Its language is purposely vague and open to all kinds of interpretation. The FCC is supposed to look after the "public interest, convenience and necessity"—but this term has never been satisfactorily defined. To a broadcaster with highly rated programs, the "public interest" is defined as "that which interests the public." This definition has a rhythmic ring—but little else.

One may ask with some reason why Congress based its laws on the phrase "public interest, convenience and necessity." The real answer comes from former Senator Clarence C. Dill of the State of Washington. He was Chairman of the Senate Committee that handled the legislation in the early 1930's.

Senator Dill, a distinguished legislator, visited me one

\* A 1964 bill has raised these salaries to \$28,000 and \$29,000 for the Chairman.

day in 1961 at the FCC. I asked him where the words "public interest, convenience and necessity" came from.

He told me that the draftsmen of the legislation reached an impasse in attempting to define a regulatory standard for broadcasting. Broadcasting at that time was new, uncharted and risky. The government wanted to encourage people to invest in the construction of stations without fear of rate regulation as a public utility or ceilings on profits for their risk taking. At the same time, Senator Dill reminisced, the government knew that a firm measure of public control was needed.

Senator Dill had a young man (Albert C. Stephan, now a Seattle attorney) assisting his Committee in writing the new legislation. Stephan, on loan to the Senate from the Interstate Commerce Commission, proposed that because the words "public interest, convenience and necessity" had provided the regulatory standard in the Interstate Commerce Act, these same words could be used in communications as well.

And so history was made.

But it is not that simple. The Interstate Commerce Act explicitly provides that rail and other surface carriers are public utilities, subject to rate and other forms of comprehensive regulation. The Federal Communications Act provides that broadcasting is *not* a public utility; yet the legislative standard of regulation is one historically applicable to public utilities. And for thirty years since enactment, "the public interest, convenience and necessity" has provided the battleground for broadcasting's regulatory debate.

What do the words "public interest, convenience and necessity" mean for American broadcasting? In the speeches which follow, I have tried to set out why there is a Federal Communications Act and a Federal Communications Commission and what I think the FCC's

assignment under the law means. In these speeches I have tried to take up specific problems and opportunities for television in the next decade: ultra-high-frequency television, educational television, subscription television and international television. One speech is an effort to reappraise radio after television pushed radio from the living room. Another deals with an issue growing more vital each year: the handling of controversial issues and editorializing on the air.

These speeches all involve broadcasting although broadcasting is but a part of the FCC's concern. The regulation of interstate and international telephone and telegraph service is another massive assignment. The single achievement at the FCC of which I am most proud is the reduction of long-distance interstate telephone rates after 9 P.M. to a maximum charge of \$1.00 for a three-minute station-to-station call between any two points in the United States. Yet few people seem to know this is the FCC's responsibility; nor do they know that the FCC also supervises four million nonbroadcast licensees and also has the vital task of administering communications for national defense purposes. While I was at the FCC, the most satisfying experience I had was helping to arrange with cooperating commercial broadcasters the special radio frequencies which the Voice of America used to carry President Kennedy's words to Cuba during the October, 1962, crisis. To describe these undertakings would require another book, for the collection assembled here is basically limited to speeches and articles during my service as FCC Chairman.

I should like to say a few things about two special aspects of the current debate about television: the place of advertising in broadcasting and the relationship of politics and electronics. In each case we are still endeavoring to separate the private interest from the public inter-

est—and to articulate what the “public interest, convenience and necessity” really means.

#### ADVERTISING AND BROADCASTING

When broadcasting began, its pioneers never anticipated that it would be financed through selling time for advertising. Before World War I the general plan was that the programs would be supplied by the radio-set manufacturers. This was the way the BBC originally operated in England. In 1922 Herbert Hoover (then Secretary of Commerce and in charge of existing broadcast regulation) warned, “It is inconceivable that we should allow so great a possibility for service, for news, for entertainment, for education, and for vital commercial purposes to be drowned in advertising chatter.”

It was quite by chance that advertising entered radio.

WEAF, one of the first radio stations in New York, faced financial difficulties. On August 28, 1922, WEAF permitted a real-estate developer to purchase ten minutes of time on the air to promote Hawthorne Courts, a cooperative apartment development in Jackson Heights, New York. WEAF insisted, however, that the ten minutes could not be used for any hard selling but must rather be limited to extolling the joys of suburban living. Even so, the commercial was so successful in producing apartment purchasers that other advertisers were quick to follow.

The dramatic success of advertising through broadcasting soon made what Mr. Hoover thought to be “inconceivable” actually happen within a decade.

For a while the broadcasters struggled to maintain control. First, there was a restriction to “indirect” or “institutional” commercials. Merlin Hall Aylesworth, president of the newly formed National Broadcasting Com-

pany, explained the system to Congress in 1928 this way: "These clients neither describe their products nor name its price but simply depend upon the good will that results from their contributions of good programs to bring back to them a favorable reaction from the radio audience."

In the years that followed, this policy began to stretch. Two years later Aylesworth again appeared before the same Committee. Although he was still opposed to "direct advertising over the air," he said, ". . . I feel that where a few years ago a sponsor was willing to spend considerable money on the air in a chain broadcast, so called, because his name would appear in that program, that has somewhat passed as a novelty, and his natural inclination is to try to merchandise a little more, to make it more effective."

It was in 1930 that William Paley, president of the Columbia Broadcasting System Inc., told the Senate Commerce Committee that CBS devoted approximately 75 per cent of its time on the air to public service, as contrasted with sponsored programs. Through voluntary cooperation, Paley continued, CBS sought to restrict advertisers to the "briefest possible announcement of sponsorship."

The "hard sell" came to radio in the 1930's and early 1940's. The change came with the realization that radio (like television subsequently) could be used most effectively to move the low-ticket items, such as soap, cigarettes, toothpaste, food products and drug preparations.

Big names came to radio, and as the costs increased, the advertising agencies played an increasingly important role. The most popular radio programs were created, packaged, staffed and cast by advertising agencies. The radio network's role was largely to furnish the pipeline to the public.

Many of the habits developed in radio were carried into television. Why not? The groups that dominated radio became, for the most part, the leaders of television, and the early days of television were filled with talented entertainers who had become famous in radio. Even after the television networks, with some early reluctance, assumed leadership of the entire industry, the ground rules of radio continued to apply.

These accidental rules profoundly affected the nature of the television service offered to the public. The well-being of the advertiser took precedence over the wishes of the broadcaster and those of the writers and artists creating the programs. All this happened so quickly that the viewer was unaware of the consequences. Advertising, by paying the piper, called the tune. In the inelegant phrase of Frank Edwards when he described the growth of broadcast advertising in the early days, "the camel got his nose under the tent, and was now proposing to brush his teeth!" And once the camel was in the tent, he usually brushed others out of his way.

Today, at professional football games, the most important man on the field does not wear shoulder pads or football cleats; nor is he dressed in the striped shirt and white duck pants of a game official. This most important man is easy to identify because he wears a bright red hat and upon his signal activity begins or stops. The man in the red hat is on the field to make certain that competitive action never interferes with the television commercial messages of the sponsors. He nearly always removes the red hat after one team has scored, and he does not put it back on his head until a television director tells him, through a portable telephone, that the commercial is completed. When the red hat returns to his head, the referee allows the game to continue.

Even Presidents of the United States, as well as foot-

ball referees, bow to the inexorable time slots imposed by television. A presidential press conference is timed to begin at a precise moment so that radio and television commercials suffer no interference from important matters of state. And sometimes, immediately before or after a presidential address on television, the viewer is instantaneously returned to the real world through the offer of a product which will end offensive underarm odor.

On such oddities hang the \$1.6 billion of gross annual revenue of commercial television. There are other peculiarities which make up the strange world in which the advertising of goods and services has become more important than the creative forces of television.

A classic tragic example of this lopsided emphasis occurred during a showing, sponsored by the natural-gas industry, on the program "Playhouse 90" of a drama dealing with the Nuremberg war trials, under the title "Judgment at Nuremberg." Viewers noticed that a speech by actor Claude Rains about the killing through cyanide gas of thousands of concentration-camp prisoners by Adolf Hitler's Third Reich was abruptly interrupted by a deletion of words. The editing was done by a CBS television network engineer while the videotape recording of the drama was on the air. The words eliminated were "gas chamber." This editing, called "blipping," was done to accommodate the sponsor. A broadcasting executive later explained: ". . . we felt that a lot of people could not differentiate between the kind of gas you put in the death chambers and the kind you cook with. . . ."

Such taboos insult the intelligence of the public. Other policies reflect on the common sense of both sponsors and networks. For example, this exchange took place in 1961 during the FCC's Network Program Procurement investigation:

FCC QUESTIONER: When you say you have a responsibility expressed contractually regarding business policy, can you expand that for us? What do you mean by that?

SPONSOR: Well, I can give you what I hope will not be an indiscreet example which is amusing in its way. Last year, two tobacco companies had similar programing. Each issued a tobacco policy for his show. These were two separate shows. One company manufactured a filter cigarette, and his policy indicated that the heavy must smoke nonfilter cigarettes.

FCC QUESTIONER: The heavies are villains?

SPONSOR: Villains. Whereas, the manufacturer of the nonfilter cigarette insisted that the heavy smoke a filtered cigarette. It sounds ridiculous, but it's not at all . . . it's amusing but not ridiculous. The association of the product that might be recognized as the client's product with a villain, a murderer, or whatever, is certainly something to be avoided. . . .

Sometimes the folkways of television advertising mutilate the creative spirit.

Robert Alan Aurthur was in charge of a production several years ago of Budd Schulberg's novel, *What Makes Sammy Run?* It was in two parts, each part an hour long, to be shown on successive Sunday nights. Aurthur had approved a script, but then the trouble began. Mr. Aurthur told it to the FCC this way:

"There was one experience on '*What Makes Sammy Run?*' where the sponsor insisted on cutting the show into four acts instead of the usual three, because they had a Crest commercial that needed a certain number of spots. And I remember going up to the agency while the show was in rehearsal and begging them not to do it, because I thought that the drama of the show was more important in



its continuity. And as I looked into their cold slitted eyes, I knew I was fighting a losing fight; because as they told me, the Crest story is very important.

"And I agreed that the Crest story was very important, but I wondered why it wasn't advertised, for example: Tonight, eight o'clock, we present the Crest Story.

"They didn't do that. They say: We present *'What Makes Sammy Run?'*

"The strange thing about television is that the Crest Story is really more important, and the drama is something that goes in between the commercials, and will be sacrificed at any given time for that purpose."

Sponsor interference has been with us for a long time. Fred Allen once told the story about his attempt to use a joke based on the "Call for Philip Morris" slogan. Allen's punch line was to have a man answer the bellboy (a corporate character for the tobacco company) and to be told, "You've just been drafted." An account executive, representing the advertising agency that handled Mr. Allen's own pharmaceutical sponsor and a rival cigarette brand, didn't get the joke. He suggested a change: "Make it 'Call for Lucky Strike.'" Allen sighed and recalled, "He never did see the difference."

In the television age of 1962 a superior dramatic actor, Lee J. Cobb, went West to take a continuing role in a series called "The Virginian." In working up the part, Cobb decided that his explosive, irascible character needed to chew and puff a cigar; in stepped a production executive and said this character bit just would not do. "After all," it was explained, "we might land a cigarette sponsor."

One of television's finest writers, Rod Serling, has also recounted the changes in a script that an advertising agency can force. Mr. Serling had based a one-hour

drama on the lynching of a Negro boy in the deep South. By the time the agency had finished with the story, the chief character was a former convict, living in what one could decide was New England.

These incidents, which can be multiplied by the hundreds, show how under our present system broadcasters often abandon their own judgments and their creative people to an advertiser or his agency. The advertiser is not licensed or required to serve the public interest. Often when a broadcaster abdicates to the advertiser, the private interest takes priority over the public interest.

The creative writer who turns to television drama will meet frustration many times. Automobile sponsors do not like shows involving automobile accidents; or even stories that use "chase" scenes with cars driven at high speed to the sound of squealing brakes. Detective Michael Shayne might be an authority on cognac, but if he discusses this specialty, no beer company wants sponsorship.

Sherlock Holmes' love of the pipe rules out a cigarette company or a cigar maker for sponsorship. A coffee sponsor would not allow the comic scenes in "Gunsmoke" in which Chester makes such dreadful coffee for Marshal Matt Dillon. A company manufacturing shaving tools would never permit a bearded hero, and a soap company does not want a hero who wears dirty clothes.

Above all, writers such as Serling and Reginald Rose have complained that most sponsors want only happy stories about happy people. One large company commissioned a consumer study that tended to prove that a "low level of involvement" for the viewer was best for the sponsor. After all, if one is really involved deeply in a dramatic story, he resents the interruption from the sponsor. One producer told the FCC that sponsors "want a strong, hard-hitting, fascinating, dramatic show

that won't offend anybody. . . ."

Television's largest sponsor is Procter & Gamble, which spends approximately \$3 million each week on television advertising. A company spokesman told the FCC that its policy was to review television scripts "ahead of time . . . [and] to go over them with a view to enforcing [the company's] policies." Among the company's policies is the following:

There will be no material that may give offense, either directly, or by inference, to any organized minority group, lodge, or other organizations, institutions, residents of any State or section of the country, or a commercial organization of any sort. This will be taken to include political organizations, fraternal organizations, college and school groups, labor groups, industrial, business and professional organizations, religious orders, civic clubs, memorial and patriotic societies, philanthropic and reform societies (Anti-Tobacco League, for example), athletic organizations, women's groups, etc. which are in good standing.

When complaints from writers and producers about such policies were mentioned during an FCC hearing to one network president, he dismissed such complaints as "merely flyspecks."

Some flies. Some specks.

As long as serious problems are brushed off as flyspecks, there is little hope for artistic freedom in television. The tragedy is that radio and television did not inherit the proud tradition of the free press: that there must be a wall of separation between the advertiser and the editorial content. In a newspaper or magazine the advertiser buys space for his commercial coverage; he does not influence the stories or articles. His agency

writes copy and draws the illustrations for the ads, but that is all.

Radio commercial practices developed out of expediency and, sometimes, desperation. Radio had a problem in its newness: it had to win from advertising agencies appropriations that had previously been spent on newsprint, magazines and other media. In the continuing fight for the advertising dollar, radio stations willingly offered what print would rarely concede: control over nonadvertising content. Following the path of least resistance, television followed the same pattern.

This trend led to advertisers' placement of their commercials within programs without regard to the continuity of a drama, the mood of a song or the seriousness of the news. Unlike other countries, our broadcasters permit commercials to interrupt programs at the moment of greatest impact. How often have we seen high drama interrupted by an offer of a painkiller—or an end to dishpan hands?

There are workable alternatives.

The English recognize by law the fact that commercial broadcasters cannot be independent if control rests with the advertisers. Under the English system a sponsor buys time for his commercial only, in the so-called magazine concept, which divorces the advertiser from the program. The commercials are placed—as in a magazine—by the broadcaster where they fit most logically into a program. In a drama the commercials come between the acts. The news is never interrupted with a message from the sponsor.

For, with the magazine concept, it is none of a sponsor's concern whether the villain smokes filtered or non-filtered cigarettes. He can be involved only in the one thing that is his legitimate concern: the sale of his goods and services to consumers through the use of television

to stimulate desire in his potential customers.

Networks and stations operating under the magazine concept could be left free to use the best possible creative forces for programs. In the long run, both broadcaster and advertiser would benefit, for television would become a more honest, more attractive medium for the creative artist. And more honesty, creativity and truth for the artist means more service to the public interest for the viewer.

Under a new system exceptions could be allowed for special programs in which one sponsor takes full responsibility for the production. The "Hallmark Hall of Fame" drama series is the most conspicuous example of a first-rate artistic program, where the sponsor takes pride in bringing quality to the public, with freedom to the artist. But for the advertiser interested only in exposure for his commercials to the maximum audience, at the least dollar cost, the basic system of separation of advertiser and editorial content in the tradition of the free press should govern.

The so-called magazine concept does not offer fast, fast relief for all of television's problems. It will not solve the basic problem caused by the broadcaster's desire to reach most of the audience all of the time. (I believe this situation can be cured only by using more television channels to provide diversity and choice for smaller audiences; I have discussed this elsewhere in this book, in my speeches about ultra-high-frequency television, educational television and subscription television.) But it would take a long step toward placing broadcast responsibility where it belongs: on the broadcaster rather than on the advertiser. And it would help to free the creative people in the medium from noncreative interference.

A series of accidents, which took place when broadcasting was in its infancy, must not be permitted to stunt

the growth of mass electronic media and deny to their owners, the American people, the soaring potential of television. This potential will never be achieved until the artists and writers are free to contribute their best to the medium, uninhibited by enervating taboos and unrestricted by commercial formulas aimed at selling more soap and toothpaste.

Thousands of years ago Alexander the Great asked Diogenes what he could do to help the famed teacher. Diogenes replied, "Only stand out of my light."

Let the television sponsor pay heed.

#### POLITICS AND ELECTRONICS

A disappointed, weary and unhappy Richard Milhous Nixon held a news conference the day after the 1962 elections. His audience of restless reporters had waited while the conference was scheduled, called off, rescheduled and delayed. Word had passed among the reporters that Mr. Nixon was determined—against the advice of his aides—to meet with reporters. The press quickly learned why the advice had been given. Mr. Nixon began by saying that "all members of the press, I know, are so delighted I lost." Later he said: "I think it's time that our great newspapers have at least the same objectivity, same fullness of coverage that television has. And I can only say 'Thank God' for television and radio for keeping the newspapers a little more honest."

In what was to be an embittered farewell to California politics, Mr. Nixon then struck out at the Federal Communications Commission for having reached "its long arm out to California when one lonely voice is raised for me, a whole lot of voices are raised for somebody else. Who picked them," Mr. Nixon asked, "to silence the one

and not the other?"

Mr. Nixon was understandably tired after being up most of the night listening to election returns of his losing contest with Governor Edmund G. (Pat) Brown, and perhaps he was only repeating the story as it had been told to him. The real facts were that the managers of Los Angeles television station KTTV were told by the FCC that they could permit their on-the-air personalities to say whatever they wished; but under the FCC thirteen-year-old "Fairness" doctrine, those persons attacked must be given an opportunity to answer.

The FCC had acted unanimously in response to complaints from the California State Democratic Committee that two KTTV employees (Tom Duggan and George Putnam) had repeatedly made highly partisan remarks on at least twenty programs. After reviewing the programs, the Communications Commission notified the manager of KTTV on October 19 that the programs appeared to have involved "continuous" and "repetitive" opportunity for the presentation of one-sided views as compared to a "minimal opportunity afforded to opposing viewpoints."

The FCC also notified KTTV that from time to time "personal attacks on individuals and groups involved in the gubernatorial campaign and specifically on Governor Brown" had been made. The station was advised that, like any other licensee, it was free to allow a commentator or "any person other than a candidate to take a partisan position on the issues involved in a race for political office and/or to attack one candidate or support another by direct or indirect identification." But, the FCC went on, this privilege goes hand in hand with several responsibilities. The station should immediately send a transcript of the remarks on each program to the attacked candidate, and it should offer him a comparable

opportunity for an appropriate spokesman to answer the broadcast.

Then, asked the station's attorneys, had the Commission changed its policy of "no censorship" over a station's programing?

The FCC answered: "There has been no change in our policy on this important matter. There is no question as to your complete and unfettered right to carry the views of Mr. Duggan, Mr. Putnam, and any others you choose to present. But neither has there been any change in the Commission's long-standing 'Fairness' policy and its standard procedures thereunder."

The result was an opportunity for California Democrats to go on KTTV and argue their side.

This example is cited as an indication of the growing complexity in the relationship between politics and electronics. Television has fundamentally changed political campaigning, and I predict that in the future the problems will multiply and become ever more perplexing.

During the 1960 campaign, 233 complaints were filed with the FCC by the public. But during the 1962 political elections, the Commission received a total of 856 complaints of unfair treatment. The 856 complaints were prompted by differences of opinion over stations' treatment of sixty-three specific issues. Of those, forty were concerned with treatment of candidates and twenty were concerned with issues on ballots. With the public becoming increasingly aware of its rights in these areas, one may be certain that the number of complaints will continue upward in future years. A brief historical review will help us to understand the subtleties of the tangled questions which arise.

The complications were created in 1927 when the Radio Act was passed. Legislators of the twentieth century dealing with electronic communications were con-



fronted with a different situation than the unlimited print medium which faced the constitutionalists of the eighteenth century. The first article of the Bill of Rights wisely guarantees that Congress shall make no laws impinging upon freedom of the press. It was an amendment demanded by a people who had seen a revolution started and won with the help of print. Such pamphleteers as Thomas Paine, Alexander Hamilton and James Madison had helped strengthen American patriots during the Revolution; and pamphleteers convinced a majority of the population that a loose confederation of states had to be bound into a strong federation if the union were to survive.

This attitude was summarized best by Thomas Jefferson when, in 1787, he wrote to Edward Carrington: "The basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." Mr. Jefferson added a sentence that has particular application to our own time: "But I should mean that every man should receive those papers and be capable of reading them."

Jefferson thought in terms of his own time—a tiny, struggling, agrarian nation in which the social lines were drawn more strictly than we would now sanction. He believed that each citizen needed equal access to the medium of print and that the availability of many opinions could enable a free-holder to make up his mind on any issue.

Any man with a "shirt tail full of type" and the inclination could get into the print business. But in the twentieth century the very lack of access into broadcasting led lawmakers to insist that Section 315 be written

into the Radio Act and be carried forward into the Communications Act. Section 315 required the policy of equal time.

Here is the exact language of the famous Section 315 of the Communications Act of 1934 (with the 1959 amendments):

(a) If 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 in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from

the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

By passing Section 315, Congress required that each licensed station treat all candidates for a particular office in the same way: sell time, but sell an equal amount to all at the same price; or give time, but make certain that the same kind of time and the same amount is available to all. A station cannot censor the remarks a candidate wishes to make, and the station is not permitted to charge higher rates to politicians than are charged to nonpoliticians.

It is here that the seeming simplicity of legislation for broadcasting is dangerously deceptive. For Section 315 is not entirely clear about insuring a candidate access to the electronic forum.

We had a case at the FCC in 1962 which resulted in some differences of opinion with members of Congress. In some states, as we all know, the real election contest is the primary election to win the nomination. To win the Democratic nomination in Mississippi, for example, usually assures election. In the spring of 1962, the general manager of WLBT-TV, Jackson, Mississippi, received a request to sell political prime time during the primary campaign to a Negro candidate, duly qualified.

The request came from the Reverend Robert L. T.

Smith, aspirant to the Democratic nomination for the House of Representatives from Mississippi's Fourth Congressional District.

One might expect that considerable public interest would be created by any Negro with enough courage to run for Congress in Mississippi. The station manager told Reverend Smith he could purchase the time, but as election day approached, he became evasive and refused to sell time to the candidate. When Reverend Smith complained to the FCC, we asked the station for its reason. The answer came this way: "Our decision not to sell time to Reverend Smith was primarily based on the fact that there is no interest in this race being manifested in the district, and less than 20 per cent of our coverage is within the area comprising the Congressional district which Reverend Smith aspires to represent."

We next asked the station to "set forth in detail the basis for your conclusion that station WLBT-TV . . . would not be acting in the public interest or properly discharging its responsibilities as a broadcast licensee in the event that it were to make its facilities available. . . ." The station then decided to make available to Reverend Smith "the thirty minutes prime time requested by him." Time was also made available for the incumbent, Representative John Bell Williams.

Simple justice? Well, nearly a year passed before I heard of the matter again. Then, while testifying one day before the House Commerce Committee, questions were raised about simplicity and doubt was cast on the justice. Committee Chairman Oren Harris of Arkansas, with the Committee's ranking Democrat, Mr. Williams, on his right, reviewed the case with us.

MR. HARRIS: . . . The situation in Mississippi is highly explosive, is it not?

MR. MINOW: Yes, sir.

MR. HARRIS: And it has been for some time?

MR. MINOW: Yes, sir.

MR. HARRIS: And the particular candidate that was running down there was a colored person. The station on its own was endeavoring to stay away from that question. And the station so advised the Commission. It decided not to have anything to do with the race for that particular office at all.

Now, that being true, what else could anyone imply than that to send a letter of this particular kind down there to that particular station had certain implications in it?

MR. MINOW: Mr. Chairman, the U.S. Supreme Court has said that one of the major obligations of a broadcaster is to carry political discussion. To me it makes no difference what his color is, or where his state is. This is an obligation of a broadcaster.

I still think a broadcaster is obliged to carry political discussion on the air if he is to serve the public interest.

In deciding such cases, the FCC—an “arm of the Congress”—is in an exceedingly sensitive position. Congressman John Bell Williams is second in seniority only to Chairman Oren Harris on the House Commerce Committee. The election contest involving this issue was his own contest. The complainant was Congressman Williams, and it is no surprise that broadcasters, politicians and FCC Commissioners, like ostriches, might simply wish that political campaigns and Section 315 would go away.

But such an eventuality is hardly likely. A new problem, a new twist in the relationship of politics and electronics, is always coming up, and our democratic process demands that we rise and meet these problems, not run and hide.

Here are a few more recent examples:

In Waco, Texas, Jack Woods worked as a weather reporter for KWTX-Radio and KWTX-TV. When he decided to run for a seat in the Texas legislature, his opponent demanded that the station give him equal time for every appearance by the weather reporter. The FCC said no equal time, ruling that Mr. Woods was not appearing as a candidate, but was working at his regular job, reporting on the weather. The courts upheld the FCC's decision.

From Gary, Indiana, in April, 1963, the FCC received a complaint that a judge, who was a candidate for mayor, was making political use of a radio program called "Gary County Court on the Air." This complaint, against Judge A. Martin Katz, was made by the rival mayoralty candidate, Thomas R. Fadell. He charged among other things that Judge Katz was able to control the content of the program and the persons who appeared on the program; that the Judge was able to see that a favorable impression of himself was always broadcast; and that "during the last several months there has been a marked increase in the number of suspended sentences, and fatherly talks to the defendants, on-the-air." Mr. Fadell asked for equal time. The request was denied, with the FCC ruling that "coverage of the Gary County Court would appear to be a news program, and thus, under the law, exempt from the equal time requirement." Again, the courts agreed with the FCC.

One of the trickiest questions to come to the FCC in recent years left the Commission equally divided in a tie vote. A few days before the 1962 election for Senator in Ohio, the Republican candidate, John Marshall Briley, presented a unique complaint. Unsuccessful in trying to get incumbent Senator Frank T. Lausche, a Democrat, to debate with him, Mr. Briley prepared a simulated debate.

He put together filmed excerpts of Senator Lausche's statements on various issues and proposed to debate on television with the films. Mr. Briley's proposed format was to go on the air, to tell the viewers that Senator Lausche would not appear personally and that he would, therefore, present Senator Lausche's views on film and then reply with his own views on the same issue—and repeat the process for the half hour or hour of the program.

Some Ohio stations refused to carry the program, on the ground that the filmed excerpts might be taken out of context and also because Mr. Briley had not obtained the clearance or rebroadcast rights to the films which had been originally broadcast on other stations. Mr. Briley's answer to this was simple and direct: no station could censor what he wanted to present to the electorate and, under a Supreme Court decision, no station could be held responsible for any libel or defamation committed by a candidate on a political program.

The case came to us the Friday afternoon before the election, and three Commissioners were out of town on other business. Our staff presented the problem to the four Commissioners present. The presentation was made by our Broadcast Bureau, which agreed with those stations rejecting Mr. Briley's proposed program. Our general counsel, on the other hand, agreed with Mr. Briley that the stations could not censor or interfere with his presentation.

After deliberation and discussion, we Commissioners could not agree, and we divided on our vote, 2 to 2. As a result, I sent a telegram to Mr. Briley advising him of our failure to resolve the issue. The election was held a few days later, and Mr. Briley was defeated by 692,000 votes.

The fact that the election was not close fortunately made the issue academic. But what if the candidates were

only a few thousand votes apart? What impact might the program have had on the voters?

This was the only case I remember where the FCC did not reach a decision in time. For the FCC gamely tries in these decisions not only to act wisely but, what is equally important, to act promptly.

Shakespeare's Hamlet, in his most famous soliloquy, ticks off a long list of complaints against the organized society of his time. One of these complaints is against "the law's delay." With the exception of the Ohio senatorial case, the speed with which the FCC today processes political complaints is jet-propelled when compared to the tedious red-taped procedures that frustrated broadcasters and politicians in 1952 and 1956.

The commitment to speed comes from the realization that a decision made after election day has no value to those in a race. Ordinarily a government agency is not well equipped for swiftly made decisions. It takes time to gather all the pertinent facts, and talented manpower must be harnessed to make certain that each procedural step required for due process of the law is taken. Against these requirements one must account to the candidate who is convinced that he has been wronged by a broadcaster. The candidate does not need justice after the votes have been counted; in an election, *ex post facto* justice is justice denied.

As little as the FCC likes Section 315, most broadcasters like it even less.

Broadcasters have begged for outright repeal of Section 315, but Congress has not done much more than to provide a polite audience. The sole exception, of course, has been the temporary suspension for the presidential debates of 1960. Congress still finds the guarantees of Section 315 the least objectionable answer to the question of how all broadcasters are kept fair and honest in the



realm of politics and electronics. The battle about equal time will not be resolved for a long time, but it is vital to an ultimate solution that the debate continue and that the FCC stay in the ring.

With the ever-increasing importance of campaigning through television, I believe another question affecting political television needs serious attention soon: the problem of spiraling campaign costs, largely resulting from the use of paid television time to reach the voters.

In 1962, station charges for political broadcasting totaled \$20,194,982. In California alone, the bill for radio and television was over \$2 million (\$2,243,066, to be exact).

In the national elections of 1960, the Citizens Research Foundation at Princeton, New Jersey, estimated the total cost at \$25,014,000. The bill for radio and television came to about \$14 million. The Republican party spent \$7.5 million, and the Democrats spent \$6.75 million.

Television has become the biggest single expense of any major political campaign. An hour of prime time on a New York television station sells for as much as \$10,000. In Los Angeles, the price goes as high as \$4,300 for an hour, and the rate is about the same in Chicago. For an appeal involving national office, one hour on one network (CBS-TV) comes to \$137,745. This means that we will soon be limited either to very wealthy candidates or to not-so-wealthy candidates in debt to well-financed elements, either of business or labor or other special interests.

I second the suggestions made in the past few years that we look once again to Great Britain and borrow one more facet of that government's policy. Political parties in Britain are given a certain amount of free political time. The precise number of hours and minutes can be

left to negotiators for the parties. As a starter, I suggest that each station give each major party at least one hour a week for one month before election. The amount given to minority parties can be related to the exact proportion of votes the party commanded in the preceding election. No votes, no time—except upon presentation of a petition bearing enough (negotiation, again) signatures to prove, conclusively, that some public support exists for the party.

One way or another, the citizens already pay for the election of public officials, and the price is always too high when the inept, the listless or the incompetent assume office. The general public pays in another way when candidates must go to special-interest groups to raise campaign expenses. Such a practice sets an arbitrary limit on an officeholder's concern for the public welfare.

Through television this nation has moved a long way toward fulfilling an ideal of representative government, with each responsible citizen able to cast a vote with full information and knowledge. We have also stumbled into this electronic evolution with almost no forethought, and we most urgently require a modern map with careful markings on areas that contain quicksand and rock slides.

It is time for a reappraisal of the present system under which stations and networks regard free time as a generous "gift" from them to the candidates and the public. The "gift" is the other way around: it is the public which has given the stations and networks the use of a scarce public resource. Surely the public and candidates seeking high public office are entitled to some access to this resource without paying heavy tribute to the trustees of their own property.

I believe that the question of payment for broadcast

time by political candidates must be reexamined promptly. As changes are required, they should be made in the spirit of change articulated by Thomas Jefferson: "I am not an advocate for frequent changes in laws and Constitutions. But laws and enlightenment must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, and manners and opinions change, with the change of circumstances, institutions must advance with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors."

In that spirit, let us take a new look at politics and electronics.

The most valued asset of representative government is access to public office for the most skilled, best equipped and most dedicated men and women the society produces. Television's soaring costs have created a monumental danger that a dollar wall will be stretched across ready access to the public airwaves. This wall can create obstacles to the most able candidates—while helping the election of the most obligated candidates. Such an event would be a catastrophe.

I believe that this can be prevented by making the obligation of minimal amounts of free political time an explicit responsibility of those privileged to hold a broadcast license. Some politicians believe that television sells candidates as well as soap. But we cannot stack the deck in favor of the candidate able to buy the most time.

#### WHAT CAN BE DONE?

The speeches that follow present my ideas about broadcasting and its relationship to government. Now

that I have left the FCC, I would add a few observations about what I learned there and also some suggestions for the future. What can be done to improve broadcasting? What can be done to improve the FCC?

Speaker Rayburn urged me to be firm, to be tough and to be fair. That is exactly what I tried to do. He also warned me to expect a lot of trouble and a lot of pressure. He was right. What he did not tell me was that most of the pressure would come from the Congress itself.

The concept of the independent agency is that it reports, not to the President, but to the Congress. And it is easy—very easy—to confuse the voice of one congressman, or one congressional committee, with the voice of Congress.

Take, for example, the action of the House Commerce Committee in December, 1963, on the question of limiting commercial time for broadcasting. The FCC has a policy against "overcommercialization." Acknowledging that it had never defined "overcommercialization," the FCC proposed in the spring of 1963 to clarify its policy by conducting a public proceeding which would hopefully reach a definition that was fair to the public and fair to the broadcaster. To balance the public and the private interest, the FCC proposed using the already established limits of the broadcasting industry's own association, the Code of the National Association of Broadcasters—a code written by no bureaucrat, a code the broadcasters designed for themselves.

The broadcasters organized energetically to stop even any public consideration of the question. On the very day that the FCC was conducting public hearings to consider the issue, broadcasters' pressure succeeded in persuading the House Commerce Committee to report out a bill which would deny the FCC's authority to adopt any limitation by rule of commercial time. Under this bill, if a station devoted *all* of its time to commercials, the agency

charged with the responsibility of protecting the public interest would have no power to establish a rule against such a disservice to the public.

Yet even this startling approach is understandable when you have served at the FCC. You learn that a congressman is under terrific pressure from his local broadcaster. Chances are that the broadcaster "gives" him some time on the air for a program to report to his constituents. The broadcaster may or may not support his campaign for reelection, and the broadcaster may own the local newspaper as well—and if this is the case, there is probably not another constituent in his district who means more to the congressman, and that may even include his wife!

Under the circumstances, the congressman is generally bound to heed the broadcaster's urging—and the message is transmitted loud and clear to the FCC through the Congress. When I was Chairman, I heard from the Congress about as frequently as television commercials flash across the television screen.

Now, there is nothing wrong with this course, provided that other interests also make themselves heard. What is wrong is that on an issue such as the limitation of commercial time, the P.T.A.'s, the church groups, the League of Women Voters and other civic organizations are mainly conspicuous for their silence. This is how the private interest of the broadcaster can drown out the public interest of the viewer.

And this is why I urged the FCC to speak out for the public and to enlist more public participation in broadcasting. We suggested that when a broadcast license is pending for renewal, this fact be made known by the broadcaster on his own station in good air time so that the public could register its views. Prior to our proposal, this announcement was inconspicuously tucked away in

fine print in the want-ad section of the local paper. Now the public has a chance to know of its right to be heard.

Will the public exercise its rights? Only if the bedrock facts about broadcasting are understood by the public. To understand, we must gain some perspective on the past. Those who do not study the past, warned Santayana, are doomed to repeat it.

Broadcasting did not come full bloom onto the domestic scene; nor did government regulation spring unexpectedly from a dark closet to ensnare an unsuspecting and unwilling band of broadcasting pioneers.

Indeed, broadcasting and its regulators followed what appears to be an inevitable sequence of events linking any regulated business and the regulating government—a sequence which a succession of scholars have unerringly charted.

The sequence begins with benign government guidance and sometimes government subsidy, both of which the industry not only welcomes but sometimes demands. As the regulated industry prospers, its leaders become rich and powerful enough to win increasingly respectful hearings from the Congress. Thereupon the spokesmen for the regulated industries attempt to dictate the terms under which they are now willing to accept government regulation. Having won a *privilege*, often at government expense and with government accommodation, they now demand freedom from interference with their *rights*.

This sequence is particularly noticeable at conventions of broadcast licensees. Any speaker who seeks mechanical applause has only to demand that broadcasting be “freed from government restrictions.” Thirty-seven years ago, it was the broadcasting industry that demanded government regulation. The curious student of regulatory history has only to read the *Congressional Record* of the sessions preceding the passage of the Radio Act of

1927. The demand for strong regulation came, not from government, but from those persons who wanted to operate broadcasting stations and to manufacture broadcasting equipment.

Weak regulation had brought a kind of chaos into broadcasting. The powers given the Department of Commerce under the Radio Act of 1912 were not sufficient for the orderly development of commercial radio. If a certain radio frequency happened to win public favor, several station operators were likely to shift to the same frequency. Sometimes the interlopers boosted their broadcasting power and drowned out a popular station. The Commerce Department tried to enforce its rules, but a federal court ruled that Congress had given the Commerce Department the right only to grant licenses, not to punish violators of the traffic rules of the radio spectrum.

Broadcasters developed a powerful lobby in Congress in the mid-1920's, and the lobby generated enough heat to propel passage of the Radio Act of 1927. The act introduced strong federal regulation which gave new, higher values to a radio station license for the simple reason that it guaranteed an approved monopoly on a radio frequency in a geographic area. This action immediately reduced competition—and ended for all time classic free enterprise in broadcasting.

Today many broadcasters argue with some passion that a broadcaster has an unrestrained "right" to perform in any manner he pleases. This view requires a rewriting of history as well as a rereading of those impassioned pleas of the 1920's for government regulation.

Thirty years ago the public pressured Congress to require each station to set aside specific portions of time for educational groups and other nonprofit public service organizations. There was also public demand for Congress to set aside 25 per cent of all station frequencies

for the use of educational institutions.

Representatives of the broadcasting industry met these proposals with the defense that the Communications Commission *already* had such powers. Spokesmen for the industry contended that the Commission was then properly insisting that broadcasters render public service including "broadcasting of considerable proportion of programs devoted to education, religion, labor, agriculture and similar activities concerned with human betterment."

But as time went on—and as the industry's revenues from advertising increased—broadcasters revised their contention and in an unblushing about-face now declared that the FCC had no legal authority to consider the programs or commercials a station put on the air. This revision was undoubtedly adopted to protect a valuable property right each owner now felt he possessed.

Meanwhile, the FCC was itself following a path often observed by scholars of governmental regulatory bodies. The Commission frequently echoed the arguments of the industries it was regulating, simply because it was in constant contact with its representatives. Until a few years ago it was customary for FCC Commissioners to go to broadcaster meetings at broadcasters' expense—a condition hardly likely to produce independent views. Moreover, the mingling of judicial functions within the agency required a Commissioner to vote on a judicial record within a few days after a meeting with a broadcaster in nonjudicial circumstances. Reappointment to the agency usually required that a Commissioner develop no powerful enemies in the industry who might argue against his continuing on the job—a situation hardly likely to develop strong Commissioners. And frequent indications from members of Congress that broadcasters, not regulators, were the only true guardians of the public interest



is hardly likely to inspire vigorous action by Commission staffers and members.

For these reasons, upon leaving the Commission, I proposed some changes in the organization of the FCC. In a letter to President Kennedy, which appears in this book, I suggested a fundamental reorganization of the FCC to enable it to do its job more effectively, more fairly and more expeditiously. Without these changes, I doubt that the FCC can fully measure up to its massive responsibilities—and I doubt that it can carry out its assignment to protect the public interest in the never-ending debate with the private interest.

This debate is itself one of the FCC's most vital tasks. I firmly believe that the continuing debate in and of itself well serves the public interest.

This is not because I have any strong faith in the cliché that out of conflict comes consensus. Rather, I am convinced that the broadcasting industry, necessarily accountable to stockholders, has a vested and narrow interest in achieving and preserving maximum profits. Broadcasters are irrevocably committed to do battle whenever profit is threatened, and they have the resources and the manpower and the talent to keep on fighting indefinitely. If debate and controversy ever cease, it will be because the government has departed from the field of battle and the public interest has knuckled under to the private interest. Since the broadcasters will never let their champions get out of the ring, the sight and sound of battle are the public's best evidence that their rights are being protected.

As the debate progresses, it will examine ever more deeply the relationship of freedom of expression and broadcasting. In a speech at Northwestern University which appears in this book, I tried to trace the evolution of this relationship. Now, rereading it several years later,

I find no perceptible progress in that evolution.

We are still in the process (a never-ending one in a free society) of adapting our concepts of freedom to the new technology. Much as we may wish, the government-industry relationship with the printed word cannot be applied in parallel form to broadcasting.

Because broadcasting is a medium of expression, I doubt if there is any relationship between government and its citizens which is more sensitive than that between the FCC and its broadcasting licensees. As a result of this sensitivity, there is a failure of real communication between the two. Instead, there are conditioned responses and slogans and myths. And the reason is that the two start from different basic premises. A broadcaster is a creature of privilege. He often finds it convenient to delude himself into believing that the privilege granted by an agent of the people can, given the passage of sufficient time and a shortness of recall, suddenly transform itself magically into a "right."

A "right" cannot be regulated. It is part of the power the people refuse to give to a government. Only a privilege can be regulated.

Attempts to identify with a free press are just as flimsy, and they disappear at a touch. Any person who is willing to make an investment can get into the newspaper or magazine or book publishing businesses. There is free access into this business. You can even distribute your ideas by cranking a mimeograph machine.

The same kind of access to the electronic medium simply does not exist. And that simple fact is what the whole argument is about. Anybody can get into print, but there is a federal law that requires more than an electric generator, a transmitter and an antenna to go into the broadcasting business. As long as we have a short supply of broadcasting frequencies, the government

will have to regulate broadcasting.

When the range of each man's voice is limited by his lung power, all are relatively equal. But a radio or a television station gives one individual a tremendous advantage over those who lack this facility. To grant a permit for a station to one man means that the power must be denied to many persons. How, then, can the public be assured that the man in control of a gigantic, electronic voice will not abuse the power? In many countries the people—through government—have answered this question with public ownership and public operation of radio and television. In the United States we as a people have decided to entrust this staggering power to private individuals.

We thus have created an uneasy alliance of private ownership and public regulation. We built contradictions and paradoxes right into the system and we set off an eternal war between those who must regulate and those who must be regulated. We decided to give tremendous freedom to the holder of a license, but we demand that he must give a periodic accounting to the representatives of the people as the price he must pay for this license.

What I sought at the FCC was to encourage the people to participate in broadcasting more directly. I deeply recognize the dangers in having government agencies developing vested, bureaucratic interests of their own. I tried to extend the debate beyond the words exchanged at broadcaster conventions. Broadcasting is too important to be left to the broadcaster—or to the FCC.

As the debate expands in coming decades to larger arenas, there will be growing awareness of the ever-increasing responsibility of television in our time.

Television educated a whole nation when it focused on the flight of astronauts into space. It opened up a whole world when it transmitted the Ecumenical Coun-

cil from Rome. And when the tragedy of a great President's assassination shattered our hearts and hopes, it pieced back together a great nation by providing an unprecedented link between the public and history. While the cameras brought to a saddened world the moving funeral ceremonies, they also revealed to a frightened world the steady transition of government. The torch passed from one hand to another, and hundreds of millions in all parts of the world watched the firm grasp which, while not stilling our sadness, stifled our fears.

Aristotle believed that a democratic community could not exist if it contained more than 30,000 people. With television binding us together into a single community, the fears growing out of suspicion and ignorance and superstition and rumor were dispelled by knowledge and truth, values best disseminated by the live marriage of sight and sound on our television screen. The millions of people who shared this truth were sustained and reassured during critical hours when our destiny may well have been hanging in balance. Confronted with immense challenge, television has invariably risen to meet it. Faced with incredible tragedy during the black weekend in November, television found its mission of uniting us and enabled us to survive.

An instrument of the people which can rise to such heights must never fall to the depths. As a people, we must insist on television's fulfillment and we must reject its debasement.

With more public understanding of the infinite responsibility of those entrusted with the medium, television will continue to grow up. But only if each of us insists that those involved in broadcasting—in industry and government alike—ceaselessly go to the people.



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## The Vast Wasteland

**THE TIME:** Newton N. Minow made it plain from the beginning that he was not to be a part of the *laissez-faire* attitude that had been a hallmark of most Chairmen of the Federal Communications Commission.

I had been covering the FCC for more than seven years when Mr. Minow took office, and I went up for a private talk. He was busy and I tried not to waste his time. "Mr. Minow, just what makes you think you are qualified to be Chairman of the FCC?"

The answer came quickly: "Two things. First, I'm not looking for a job in the communications business, and second, I don't want to be reappointed."

I stood up and we shook hands. "Mr. Minow, you're the best-qualified man I've ever met around here."

This reaction requires some explanation. The very first person appointed to the old Federal Radio Commission resigned to accept a job with one of the industries he had been appointed to regulate. Later, Chairman Charles Denny quit as FCC Chairman to become vice president of the National Broadcasting Company.

The remark about not wanting a reappointment showed a sophistication one does not expect to find from a new man. If a presidential appointee decides he would like to stay on the job, the smartest method is to offend no one. In practice, this means that one should avoid all controversy, guard his words and propose no regulatory changes.

The broadcasting industry was wary. It had been fright-

ened by the quiz-show scandal and by the unhappiness of Congress over "payola." (This practice was best described by a Boston disc jockey as "The American way of life: you scratch my back and I'll scratch yours.") This fear, however, had not yet been translated into the programs that reached the television screens. The three major networks had found in the scandals a perfect reason for assuming command and control of the production of programs, and before the period was over there were only a dozen programs in which a network did not have some share of their future profits.

Major broadcasters have been reviled by some critics for their obeisance to large advertisers and for their willingness to bow to small pressure groups on such things as blacklisting of performers suspected of connections with disloyal factions. There has rarely been any fear, however, of the federal regulators. This lack of fear comes from the broad political power that goes with ownership of a radio or television station. A broadcaster gets a respectful hearing when he talks with a congressman.

For the annual convention of the National Association of Broadcasters, a pattern has been set. The convention is usually held in Chicago for three years but takes place in Washington when a new administration takes office. (The convention meets in other places from time to time, but the pattern of a quadrennial meeting in Washington is rather well fixed.)

The NAB Convention is a lavish affair. Major film producers come to sell their wares, and so do the manufacturers of broadcasting equipment and those who supply musical services. Sales representatives of broadcasting time, advertising agency personnel and job seekers also come and join with members of the daily and trade press in making the rounds of "Hospitality Suites." Much serious discussion takes place in a carnival atmosphere of affluence and throbbing hangovers.

Throughout the 1950's it had become customary for the Chairman of the Communications Commission to make a speech and to tell the broadcasters that they were doing a splendid job. Usually, a Chairman promised that he wanted

the industry to continue on its way and that he would do everything possible to preserve "free enterprise." (The term "free enterprise" always triggers applause at an NAB convention.)

The 1961 convention in Washington spread over two of the city's largest hotels, the Shoreham and the Sheraton Park, and it gave early promise of being one of the Association's most memorable gatherings. President Kennedy and Vice President Johnson appeared with astronaut Alan Shephard (Mr. Minow had accompanied them in the car to the Sheraton Park) and things got off to a cheering start.

The 3000 delegates got their first shock when their own new president, LeRoy Collins, spoke. He broke all the rules by suggesting that broadcasting was something less than wonderful and by saying there was room for improvement. But if Collins surprised his members, they got a shock from the mild-appearing new Chairman of the Communications Commission. Geniality in the audience changed to sullenness; the air became blue with tobacco smoke, and while the applause automatically arose at a mention of "free enterprise," some of the broadcasters were straining for a closer look at this plain-talking man from Illinois.

Anyone not familiar with broadcasting history will call it a conciliatory speech. There are promises to defend the honest pioneer who gets into trouble. There is a resolution that the free enterprise aspects of broadcasting will be preserved by permitting tests for new kinds of broadcasting service. There is also the forecast that the pledges made by a broadcaster when he applies for a license would be checked against his performance.

What was long remembered from this speech were two words: "vast wasteland."



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ADDRESS TO  
THE 39TH ANNUAL CONVENTION OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS  
WASHINGTON, D. C.  
May 9, 1961

Governor Collins, Distinguished Guests,  
Ladies and Gentlemen:

Thank you for this opportunity to meet with you today. This is my first public address since I took over my new job. When the New Frontiersmen rode into town, I locked myself in my office to do my homework and get my feet wet. But apparently I haven't managed to stay out of hot water. I seem to have detected a certain nervous apprehension about what I might say or do when I emerged from that locked office for this, my maiden station break.

First, let me begin by dispelling a rumor. I was not picked for this job because I regard myself as the fastest draw on the New Frontier.

Second, let me start a rumor. Like you, I have carefully read President Kennedy's messages about the regulatory agencies, conflict of interest and the dangers of *ex parte* contacts. And of course, we at the Federal Communications Commission will do our part. Indeed, I may even suggest that we change the name of the FCC to The Seven Untouchables!

It may also come as a surprise to some of you, but I want you to know that you have my admiration and respect. Yours is a most honorable profession. Anyone who is in the broadcasting business has a tough row to hoe. You earn your bread by using public property. When you work in broadcasting, you volunteer for public service, public pressure and public regulation. You must compete with other attractions and other invest-

ments, and the only way you can do it is to prove to us every three years that you should have been in business in the first place.

I can think of easier ways to make a living.

But I cannot think of more satisfying ways.

I admire your courage—but that doesn't mean I would make life any easier for you. Your license lets you use the public's airwaves as trustees for 180 million Americans. The public is your beneficiary. If you want to stay on as trustees, you must deliver a decent return to the public—not only to your stockholders. So, as a representative of the public, your health and your product are among my chief concerns.

As to your health: let's talk only of television today. In 1960 gross broadcast revenues of the television industry were over \$1,268,000,000; profit before taxes was \$243,900,000—an average return on revenue of 19.2 per cent. Compare this with 1959, when gross broadcast revenues were \$1,163,900,000, and profit before taxes was \$222,300,000, an average return on revenue of 19.1 per cent. So, the percentage increase of total revenues from 1959 to 1960 was 9 per cent, and the percentage increase of profit was 9.7 per cent. This, despite a recession. For your investors, the price has indeed been right.

I have confidence in your health.

But not in your product.

It is with this and much more in mind that I come before you today.

One editorialist in the trade press wrote that "the FCC of the New Frontier is going to be one of the toughest FCC's in the history of broadcast regulation." If he meant that we intend to enforce the law in the public interest, let me make it perfectly clear that he is right—we do.

If he meant that we intend to muzzle or censor broad-

casting, he is dead wrong.

It would not surprise me if some of you had expected me to come here today and say in effect, "Clean up your own house or the government will do it for you."

Well, in a limited sense, you would be right—I've just said it.

But I want to say to you earnestly that it is not in that spirit that I come before you today, nor is it in that spirit that I intend to serve the FCC.

I am in Washington to help broadcasting, not to harm it; to strengthen it, not weaken it; to reward it, not punish it; to encourage it, not threaten it; to stimulate it, not censor it.

Above all, I am here to uphold and protect the public interest.

What do we mean by "the public interest"? Some say the public interest is merely what interests the public.

I disagree.

So does your distinguished president, Governor Collins. In a recent speech he said, "Broadcasting, to serve the public interest, must have a soul and a conscience, a burning desire to excel, as well as to sell; the urge to build the character, citizenship and intellectual stature of people, as well as to expand the gross national product. . . . By no means do I imply that broadcasters disregard the public interest. . . . But a much better job can be done, and should be done."

I could not agree more.

And I would add that in today's world, with chaos in Laos and the Congo aflame, with Communist tyranny on our Caribbean doorstep and relentless pressure on our Atlantic alliance, with social and economic problems at home of the gravest nature, yes, and with technological knowledge that makes it possible, as our President has said, not only to destroy our world but to destroy

poverty around the world—in a time of peril and opportunity, the old complacent, unbalanced fare of action-adventure and situation comedies is simply not good enough.

Your industry possesses the most powerful voice in America. It has an inescapable duty to make that voice ring with intelligence and with leadership. In a few years this exciting industry has grown from a novelty to an instrument of overwhelming impact on the American people. It should be making ready for the kind of leadership that newspapers and magazines assumed years ago, to make our people aware of their world.

Ours has been called the jet age, the atomic age, the space age. It is also, I submit, the television age. And just as history will decide whether the leaders of today's world employed the atom to destroy the world or rebuild it for mankind's benefit, so will history decide whether today's broadcasters employed their powerful voice to enrich the people or debase them.

If I seem today to address myself chiefly to the problems of television, I don't want any of you radio broadcasters to think we've gone to sleep at your switch—we haven't. We still listen. But in recent years most of the controversies and crosscurrents in broadcast programming have swirled around television. And so my subject today is the television industry and the public interest.

Like everybody, I wear more than one hat. I am the Chairman of the FCC. I am also a television viewer and the husband and father of other television viewers. I have seen a great many television programs that seemed to me eminently worthwhile, and I am not talking about the much-bemoaned good old days of "Playhouse 90" and "Studio One."

I am talking about this past season. Some were wonderfully entertaining, such as "The Fabulous Fifties," the

“Fred Astaire Show” and the “Bing Crosby Special”; some were dramatic and moving, such as Conrad’s “Victory” and “Twilight Zone”; some were marvelously informative, such as “The Nation’s Future,” “CBS Reports,” and “The Valiant Years.” I could list many more—programs that I am sure everyone here felt enriched his own life and that of his family. When television is good, nothing—not the theater, not the magazines or newspapers—nothing is better.

But when television is bad, nothing is worse. I invite you to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit-and-loss sheet or rating book to distract you—and keep your eyes glued to that set until the station signs off. I can assure you that you will observe a vast wasteland.

You will see a procession of game shows, violence, audience participation shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, Western badmen, Western good men, private eyes, gangsters, more violence and cartoons. And, endlessly, commercials—many screaming, cajoling and offending. And most of all, boredom. True, you will see a few things you will enjoy. But they will be very, very few. And if you think I exaggerate, try it.

Is there one person in this room who claims that broadcasting can’t do better?

Well, a glance at next season’s proposed programing can give us little heart. Of seventy-three and a half hours of prime evening time, the networks have tentatively scheduled fifty-nine hours to categories of “action-adventure,” situation comedy, variety, quiz and movies.

Is there one network president in this room who claims he can’t do better?

Well, is there at least one network president who believes that the other networks can't do better?

Gentlemen, your trust accounting with your beneficiaries is overdue.

Never have so few owed so much to so many.

Why is so much of television so bad? I have heard many answers: demands of your advertisers; competition for ever higher ratings; the need always to attract a mass audience; the high cost of television programs; the insatiable appetite for programing material—these are some of them. Unquestionably these are tough problems not susceptible to easy answers.

But I am not convinced that you have tried hard enough to solve them.

I do not accept the idea that the present over-all programing is aimed accurately at the public taste. The ratings tell us only that some people have their television sets turned on, and of that number, so many are tuned to one channel and so many to another. They don't tell us what the public might watch if they were offered half a dozen additional choices. A rating, at best, is an indication of how many people saw what you gave them. Unfortunately it does not reveal the depth of the penetration, or the intensity of reaction, and it never reveals what the acceptance would have been if what you gave them had been better—if all the forces of art and creativity and daring and imagination had been unleashed. I believe in the people's good sense and good taste, and I am not convinced that the people's taste is as low as some of you assume.

My concern with the rating services is not with their accuracy. Perhaps they are accurate. I really don't know. What, then, is wrong with the ratings? It's not been their accuracy—it's been their use.

Certainly I hope you will agree that ratings should

have little influence where children are concerned. The best estimates indicate that during the hours of 5 to 6 P.M., 60 per cent of your audience is composed of children under twelve. And most young children today, believe it or not, spend as much time watching television as they do in the schoolroom. I repeat—let that sink in—most young children today spend as much time watching television as they do in the schoolroom. It used to be said that there were three great influences on a child: home, school and church. Today there is a fourth great influence, and you ladies and gentlemen control it.

If parents, teachers and ministers conducted their responsibilities by following the ratings, children would have a steady diet of ice cream, school holidays and no Sunday School. What about your responsibilities? Is there no room on television to teach, to inform, to uplift, to stretch, to enlarge the capacities of our children? Is there no room for programs deepening their understanding of children in other lands? Is there no room for a children's news show explaining something about the world to them at their level of understanding? Is there no room for reading the great literature of the past, teaching them the great traditions of freedom? There are some fine children's shows, but they are drowned out in the massive doses of cartoons, violence and more violence. Must these be your trademarks? Search your consciences and see if you cannot offer more to your young beneficiaries, whose future you guide so many hours each and every day.

What about adult programing and ratings? You know, newspaper publishers take popularity ratings too. The answers are pretty clear; it is almost always the comics, followed by the advice-to-the-lovelorn columns. But, ladies and gentlemen, the news is still on the front page of all newspapers, the editorials are not replaced by more comics, the newspapers have not become one long collec-

tion of advice to the lovelorn. Yet newspapers do not need a license from the government to be in business—they do not use public property. But in television—where your responsibilities as public trustees are so plain—the moment that the ratings indicate that Westerns are popular, there are new imitations of Westerns on the air faster than the old coaxial cable could take us from Hollywood to New York. Broadcasting cannot continue to live by the numbers. Ratings ought to be the slave of the broadcaster, not his master. And you and I both know that the rating services themselves would agree.

Let me make clear that what I am talking about is balance. I believe that the public interest is made up of many interests. There are many people in this great country, and you must serve all of us. You will get no argument from me if you say that, given a choice between a Western and a symphony, more people will watch the Western. I like Westerns and private eyes too—but a steady diet for the whole country is obviously not in the public interest. We all know that people would more often prefer to be entertained than stimulated or informed. But your obligations are not satisfied if you look only to popularity as a test of what to broadcast. You are not only in show business; you are free to communicate ideas as well as relaxation. You must provide a wider range of choices, more diversity, more alternatives. It is not enough to cater to the nation's whims—you must also serve the nation's needs.

And I would add this—that if some of you persist in a relentless search for the highest rating and the lowest common denominator, you may very well lose your audience. Because, to paraphrase a great American who was recently my law partner, the people are wise, wiser than some of the broadcasters—and politicians—think.

As you may have gathered, I would like to see televi-



sion improved. But how is this to be brought about? By voluntary action by the broadcasters themselves? By direct government intervention? Or how?

Let me address myself now to my role, not as a viewer, but as Chairman of the FCC. I could not if I would chart for you this afternoon in detail all of the actions I contemplate. Instead, I want to make clear some of the fundamental principles which guide me.

First: the people own the air. They own it as much in prime evening time as they do at 6 o'clock Sunday morning. For every hour that the people give you, you owe them something. I intend to see that your debt is paid with service.

Second: I think it would be foolish and wasteful for us to continue any worn-out wrangle over the problems of payola, rigged quiz shows, and other mistakes of the past. There are laws on the books which we will enforce. But there is no chip on my shoulder. We live together in perilous, uncertain times; we face together staggering problems; and we must not waste much time now by rehashing the clichés of past controversy. To quarrel over the past is to lose the future.

Third: I believe in the free enterprise system. I want to see broadcasting improved and I want you to do the job. I am proud to champion your cause. It is not rare for American businessmen to serve a public trust. Yours is a special trust because it is imposed by law.

Fourth: I will do all I can to help educational television. There are still not enough educational stations, and major centers of the country still lack usable educational channels. If there were a limited number of printing presses in this country, you may be sure that a fair proportion of them would be put to educational use. Educational television has an enormous contribution to make to the future, and I intend to give it a hand along the way. If

there is not a nationwide educational television system in this country, it will not be the fault of the FCC.

Fifth: I am unalterably opposed to governmental censorship. There will be no suppression of programming which does not meet with bureaucratic tastes. Censorship strikes at the taproot of our free society.

Sixth: I did not come to Washington to idly observe the squandering of the public's airwaves. The squandering of our airwaves is no less important than the lavish waste of any precious natural resource. I intend to take the job of Chairman of the FCC very seriously. I believe in the gravity of my own particular sector of the New Frontier. There will be times perhaps when you will consider that I take myself or my job *too* seriously. Frankly, I don't care if you do. For I am convinced that either one takes this job seriously—or one can be seriously taken.

Now, how will these principles be applied? Clearly, at the heart of the FCC's authority lies its power to license, to renew or fail to renew, or to revoke a license. As you know, when your license comes up for renewal, your performance is compared with your promises. I understand that many people feel that in the past licenses were often renewed *pro forma*. I say to you now: renewal will not be *pro forma* in the future. There is nothing permanent or sacred about a broadcast license.

But simply matching promises and performance is not enough. I intend to do more. I intend to find out whether the people care. I intend to find out whether the community which each broadcaster serves believes he has been serving the public interest. When a renewal is set down for hearing, I intend—wherever possible—to hold a well-advertised public hearing, right in the community you have promised to serve. I want the people who own the air and the homes that television enters to tell you and

the FCC what's been going on. I want the people—if they are truly interested in the service you give them—to make notes, document cases, tell us the facts. For those few of you who really believe that the public interest is merely what interests the public—I hope that these hearings will arouse no little interest.

The FCC has a fine reserve of monitors—almost 180 million Americans gathered around 56 million sets. If you want those monitors to be your friends at court—it's up to you.

Some of you may say, "Yes, but I still do not know where the line is between a grant of a renewal and the hearing you just spoke of." My answer is: why should you want to know how close you can come to the edge of the cliff? What the Commission asks of you is to make a conscientious good-faith effort to serve the public interest. Every one of you serves a community in which the people would benefit by educational, religious, instructive or other public service programing. Every one of you serves an area which has local needs—as to local elections, controversial issues, local news, local talent. Make a serious, genuine effort to put on that programing. When you do, you will not be playing brinkmanship with the public interest.

What I've been saying applies to broadcast stations. Now a station break for the networks:

You know your importance in this great industry. Today, more than one-half of all hours of television station programing comes from the networks; in prime time, this rises to more than three-fourths of the available hours.

You know that the FCC has been studying network operations for some time. I intend to press this to a speedy conclusion with useful results. I can tell you right now, however, that I am deeply concerned with concen-

tration of power in the hands of the networks. As a result, too many local stations have foregone any efforts at local programing, with little use of live talent and local service. Too many local stations operate with one hand on the network switch and the other on a projector loaded with old movies. We want the individual stations to be free to meet their legal responsibilities to serve their communities.

I join Governor Collins in his views so well expressed to the advertisers who use the public air. I urge the networks to join him and undertake a very special mission on behalf of this industry: you can tell your advertisers, "This is the high quality we are going to serve—take it or other people will. If you think you can find a better place to move automobiles, cigarettes and soap—go ahead and try."

Tell your sponsors to be less concerned with costs per thousand and more concerned with understanding per millions. And remind your stockholders that an investment in broadcasting is buying a share in public responsibility.

The networks can start this industry on the road to freedom from the dictatorship of numbers.

But there is more to the problem than network influences on stations or advertiser influences on networks. I know the problems networks face in trying to clear some of their best programs—the informational programs that exemplify public service. They are your finest hours, whether sustaining or commercial, whether regularly scheduled or special; these are the signs that broadcasting knows the way to leadership. They make the public's trust in you a wise choice.

They should be seen. As you know, we are readying for use new forms by which broadcast stations will report their programing to the Commission. You probably also

know that special attention will be paid in these reports to public service programming. I believe that stations taking network service should also be required to report the extent of the local clearance of network public service programming, and when they fail to clear them, they should explain why. If it is to put on some outstanding local program, this is one reason. But, if it is simply to carry some old movie, that is an entirely different matter. The Commission should consider such clearance reports carefully when making up its mind about the licensee's over-all programming.

We intend to move—and as you know, indeed the FCC was rapidly moving in other new areas before the new administration arrived in Washington. And I want to pay my public respects to my very able predecessor, Fred Ford, and my colleagues on the Commission who have welcomed me to the FCC with warmth and cooperation.

We have approved an experiment with pay TV, and in New York we are testing the potential of UHF broadcasting. Either or both of these may revolutionize television. Only a foolish prophet would venture to guess the direction they will take, and their effect. But we intend that they shall be explored fully—for they are part of broadcasting's new frontier.

The questions surrounding pay TV are largely economic. The questions surrounding UHF are largely technological. We are going to give the infant pay TV a chance to prove whether it can offer a useful service; we are going to protect it from those who would strangle it in its crib.

As for UHF, I'm sure you know about our test in the canyons of New York City. We will take every possible positive step to break through the allocations barrier into UHF. We will put this sleeping giant to use, and in the

years ahead we may have twice as many channels operating in cities where now there are only two or three. We may have a half-dozen networks instead of three.

I have told you that I believe in the free enterprise system. I believe that most of television's problems stem from lack of competition. This is the importance of UHF to me: with more channels on the air, we will be able to provide every community with enough stations to offer service to all parts of the public. Programs with a mass-market appeal required by mass-product advertisers certainly will still be available. But other stations will recognize the need to appeal to more limited markets and to special tastes. In this way we can all have a much wider range of programs.

Television should thrive on this competition—and the country should benefit from alternative sources of service to the public. And, Governor Collins, I hope the NAB will benefit from many new members.

Another, and perhaps the most important, frontier: television will rapidly join the parade into space. International television will be with us soon. No one knows how long it will be until a broadcast from a studio in New York will be viewed in India as well as in Indiana, will be seen in the Congo as it is seen in Chicago. But as surely as we are meeting here today, that day will come—and once again our world will shrink.

What will the people of other countries think of us when they see our Western badmen and good men punching each other in the jaw in between the shooting? What will the Latin American or African child learn of America from our great communications industry? We cannot permit television in its present form to be our voice overseas.

There is your challenge to leadership. You must reexamine some fundamentals of your industry. You must

open your minds and open your hearts to the limitless horizons of tomorrow.

I can suggest some words that should serve to guide you:

Television and all who participate in it are jointly accountable to the American public for respect for the special needs of children, for community responsibility, for the advancement of education and culture, for the acceptability of the program materials chosen, for decency and decorum in production, and for propriety in advertising. This responsibility cannot be discharged by any given group of programs, but can be discharged only through the highest standards of respect for the American home, applied to every moment of every program presented by television.

Program materials should enlarge the horizons of the viewer, provide him with wholesome entertainment, afford helpful stimulation, and remind him of the responsibilities which the citizen has toward his society.

These words are not mine. They are yours. They are taken literally from your own Television Code. They reflect the leadership and aspirations of your own great industry. I urge you to respect them as I do. And I urge you to respect the intelligent and farsighted leadership of Governor LeRoy Collins and to make this meeting a creative act. I urge you at this meeting and, after you leave, back home, at your stations and your networks, to strive ceaselessly to improve your product and to better serve your viewers, the American people.

I hope that we at the FCC will not allow ourselves to become so bogged down in the mountain of papers, hear-

ings, memoranda, orders and the daily routine that we close our eyes to the wider view of the public interest. And I hope that you broadcasters will not permit yourselves to become so absorbed in the chase for ratings, sales and profits that you lose this wider view. Now more than ever before in broadcasting's history the times demand the best of all of us.

We need imagination in programing, not sterility; creativity, not imitation; experimentation, not conformity; excellence, not mediocrity. Television is filled with creative, imaginative people. You must strive to set them free.

Television in its young life has had many hours of greatness—its "Victory at Sea," its Army-McCarthy hearings, its "Peter Pan," its "Kraft Theater," its "See It Now," its "Project 20," the World Series, its political conventions and campaigns, the Great Debates—and it has had its endless hours of mediocrity and its moments of public disgrace. There are estimates that today the average viewer spends about 200 minutes daily with television, while the average reader spends thirty-eight minutes with magazines and forty minutes with newspapers. Television has grown faster than a teenager, and now it is time to grow up.

What you gentlemen broadcast through the people's air affects the people's taste, their knowledge, their opinions, their understanding of themselves and of their world. And their future.

The power of instantaneous sight and sound is without precedent in mankind's history. This is an awesome power. It has limitless capabilities for good—and for evil. And it carries with it awesome responsibilities—responsibilities which you and I cannot escape.

In his stirring Inaugural Address, our President said, "And so, my fellow Americans: ask not what your coun-



try can do for you—ask what you can do for your country.”

Ladies and Gentlemen:

Ask not what broadcasting can do for you—ask what you can do for broadcasting.

I urge you to put the people's airwaves to the service of the people and the cause of freedom. You must help prepare a generation for great decisions. You must help a great nation fulfill its future.

Do this, and I pledge you our help.



**AFTERMATH:** Newton Minow received the usual congratulatory handshakes and began making his way out of the huge Sheraton Hall. There is a story which Governor Collins later told about what happened before Mr. Minow could leave the rostrum. A convention delegate stopped him and said, “I didn't think that was a very good speech.”

Minow thanked him for his opinion and continued walking. At the red-carpeted steps at the north end of the hall the same broadcaster rushed up to Minow and said, “I didn't like that speech one bit.”

Minow smiled and started up the steps. He was near the lobby exit when the same broadcaster came up a third time. The broadcaster gasped for breath and said angrily, “That was the worst speech I ever heard in my life.” He turned and walked away.

Another broadcaster walked up to Minow and offered comforting words. “Mr. Chairman, I wouldn't pay any attention to that fellow. Everyone knows that he has no mind of his own. All he ever does is repeat whatever he hears.”

Cultural history is like a moving stream. Those who have charted this stream, measuring its depth and calculating the intensity of the flow, tell us that one simply cannot point to one spot and decide, “Right there. That's where it began.”

For this one spot in the swift rush of events came into being because of what came before it, and it, in moving downstream, became a part of the continuum of history, a part of the moving stream.

"Mr. Minow," began a letter from a woman in Des Moines, "I have checked three issues of TV Guide and I have gone through the TV listings in the daily paper. Would you tell me, please, what is the hour and the day for that program you mentioned, 'The Vast Wasteland'?"

"Won't you say something about commercials?" pleaded a mother in South Dakota. "I'm worried about my little boy. Whenever he sees the mouthwash commercials, he roots for the germs."

"Wives with chubby husbands," reported a morning Washington newspaper, "had a little malicious fun. They needled their husbands, 'Now, what about your own vast waistline?' "

One of television's finest European correspondents did not agree with the now famous phrase. He confided: "Television is not a vast wasteland: It is a jungle, inhabited by pygmies."

In the "Phaedrus" Plato has King Theuth advise one of his subjects that an inventor is not the best judge of the usefulness of his own invention. In our time we are often surprised by the results of our own work; it produces unexpected results, and we are astonished by another person's evaluation of what we have done or what we have said.

Communication, said Harold Lasswell, is divided into five stages: Attention, Comprehension, Enjoyment, Evaluation and Action. Attention was focused on Mr. Minow's maiden speech because it was on a subject important to vast numbers of the population. It was delivered at a time when many had become concerned about the possible harmful effects of a new communications instrument. A vague uneasy feeling accompanied the hours spent in front of a television set. No longer did the population marvel at the mere existence of pictures that came through the air, took form and movement before the eyes of the beholder. We had reached a second level, and content was becoming more important than

mere existence. Thus, in Lasswell's terminology, comprehension, for the speech, was no problem.

Enjoyment and evaluation were part of one process. A responsible government official had articulated the unspoken feelings of millions. In the evaluation of his own role, Minow had summed up the very real fears of the great audience.

Thus action was inevitable. Nearly 10,000 messages—letters, postcards, telegrams—made up the largest public response on one topic ever to reach the Federal Communications Commission. Newspapers and magazines were impelled to comment. Editorial cartoonists responded quickly.

One of the smallest agencies in the federal establishment became one of its best-known. The minimal attention previously paid to the agency had been of another kind. As far back as 1947 John Fischer of *Harper's Magazine* had used the FCC as the primary example of the government's inability and unwillingness to regulate a privileged industry. The FCC had been a mute agency in the troubled times of broadcasting scandals, and the communications leaders had completely misjudged the public's eager hunger for an upward thrust in the quality of mass media. Even the quiet effective work of Chairman Frederick W. Ford had gone unnoticed, mainly because it was technical or procedural in nature.

But a single speech by the new FCC Chairman had just the opposite effect. Former Chairman John C. Doerfer had warned sternly that there could be "no turning back" if the government ever began looking at what came out of the television set. He was frightened by charges of "censorship" and had missed the honest disagreement that the FCC has as many reasons to inspect programming as it has to avoid it. Unless one does examine the material that shines on television's face, no true measure of its worth can be found.

The speech set off a dialogue, even among licensed broadcasters. A pattern had been shattered. An old relationship had been destroyed. The "lifted eyebrow" regulatory policy had been replaced by the serious, publicly spoken conclusions. And if the licensed custodians of electronic frequencies

were outraged, others were delighted.

Senator William O. Proxmire of Wisconsin stood in the well of the Senate and described the speech as "courageous and provocative." He continued, "This speech has caused more controversy in the radio-television industry than anything that has happened in a long time. I attended the convention myself, briefly, after Minow's speech. The brave words of the new Chairman were not calculated to make friends. They did not. But this speech may have historical significance. It may mark the beginning of a driving effort by government to improve the quality of television and radio in the public interest."

Senator Proxmire asked for unanimous consent to have the entire speech printed in the *Congressional Record*, and as is usually the custom when such a request is made, not a dissenting voice was raised.

The mail flowing into the FCC created only one of many problems. The numerous requests for speeches had to be turned down. National magazines, alert as usual for elements of controversy, focused on the new spokesman, and the electronic journalists were eager to invite the new Chairman to appear on network radio and television programs.

A rich and powerful industry, however, does not allow itself to be criticized without answering. "Vast wasteland" was droned over the air by an assortment of entertainers. Minow, after a year, would be able to say, "I used the phrase only once. You broadcasters used it thousands of times."

The attractive and articulate defenders of free enterprise broadcasting had other arguments, such as "Minow doesn't know what it means to meet a payroll" (overlooking Minow's past career as the youngest partner in one of the nation's most successful law firms). "He wants to be a censor" became a common, defensive reaction (overlooking the fact that Minow's law firm had successfully defended *Lady Chatterley's Lover* against the censors). Then there was the argument that began, "Minow won't be so definite after he learns more about the broadcasting business" (overlooking any

concern for the *public*—not *private*—interest).

Such was the fascination with the “vast wasteland” phrase that the content of the speech was usually overlooked. Forgotten were the promises that pay television would get a fair test; that educational television would be aided; that stations would be more closely examined before licenses were renewed; and that UHF held the key to expansion of television service. Within two years each of these promises was to be kept.

One of the funniest television shows during the summer of 1961 featured Garry Moore and Jimmy Durante doing comedy sketches. Minow was a favorite target, and many of the sketches poked fun at ideas of excessive violence or at programs unsuited to audiences of children. In a summer filled with reruns, this was by comparison an outstanding example of creative comedy. The critical reaction was good, but none of it provided as much of a surprise as the one in a letter to the show’s producer. The letter congratulated the producer and the performers for an exceptionally good program—and it was sent by the Chairman of the Federal Communications Commission.

Since we cannot look into the minds of those who determine what programs will be seen on television, it is necessary to look to another source to determine what effects this speech had.

One such source is the A. C. Nielsen Media Research Division and its count of “public service” programs. By “public service,” the Nielsen Company refers to “programs which are primarily informational and educational in nature in contrast to regular programs which are primarily entertainment.”

Nielsen Company “public service” records are kept for a four-month period, October to January. Here, then, is the total “public service” record:

1959	94
1960	109

1961	151
1962	152
1963	179

The speech, it would seem, had touched the industry's conscience.

## II

### Free for Nothing?

**THE TIME:** The biographies of big-game hunters describe the instinctive reaction of certain powerful and combative animals when they are wounded—the animal charges the hunter. The scholarly writings in broadcasting are filled with reports of a comparable reaction to hurt: never mind the merits of the charge, and don't bother with logic or facts; the cleanest and swiftest rebuttal comes by counterattacking the enemy.

This attitude was slow in developing in broadcasting. It did not show up, really, until after World War II, when radio station operators began to claim that the First Amendment to the United States Constitution could be extended into broadcasting. "Free speech" was treated, in congressional testimony and public utterances, as a kind of absolute guarantee. Any federal official who expressed doubts that no room was left for improvement in the schedules for a particular season was called "a censor."

The term conjures up an image of thought control, government suppression of intelligence and egregious forms of dictatorship.

Within a week after Newton Minow's first major public speech, the term "censor" was applied to him. It was used with feeling, for between the creation of broadcasting's version of "free speech" in 1947 and Minow's arrival in 1961, radio and television operators had stopped even questioning the magic of their own creation.

Surely the attorneys who counseled the broadcasting industry understood that the abstraction of "free speech" has

never been an absolute, unrestricted practice. Moses came down from Mount Sinai with tablets that proclaimed a sin of bearing false witness against one's neighbor. Later, men added the restraints on free speech of libel and slander. Certain kinds of profanation moved from ethical codes into the criminal codes.

As long as speech was limited to the life of an utterance—a temporary existence of sound waves that traveled at 1100 feet per second and diminished against the friction of the atmosphere—society's problems with free speech were relatively minor. The creation of electronic communication multiplied all parts of the problem. Now the utterance traveled at 186,000 miles per second, and its range, in purest terms, was limited only by restrictions on the heights of antennas and on the power of transmission.

Organized societies must take steps to control giants or run a risk that the giant will crush those of ordinary size. In the United States during the first half of the twentieth century, steps were taken to assure some kind of equality between the broadcaster and his auditors. One of these steps was the periodic review of performance by an authorized federal agency.

The giant, with all of his power, wants to live by the same rules that govern the punier members of the society. While he is different, he insists that he is the same.

Newton Minow had touched off a public dialogue about broadcasting in a dimension that had never previously existed. Mr. Minow's most eloquent response to the charge of "censor" came at Northwestern University, three months after his antenna-shaking talk to the National Association of Broadcasters.

He chose, wisely I think, to avoid any discussion of the persons involved in the "free speech" controversy. As a distinguished lawyer, he turned quite naturally to the codified rules of our society, the glue that holds together the brawling factions. What follows is a superior exposition of the disciplines that govern public utterance over a broadcasting facility.



ADDRESS TO  
THE CONFERENCE ON FREEDOM AND  
RESPONSIBILITY IN BROADCASTING  
NORTHWESTERN UNIVERSITY SCHOOL OF LAW  
CHICAGO, ILLINOIS  
*August 3, 1961*

I was invited to come to this Northwestern conference last February, before I was even sworn in to my new job. Since then, lots of things have happened. A speech which I made last May received a very low rating with some broadcasters. The Commission has taken a series of actions which some broadcasters regard as intrusions into their private affairs. Conversely, many citizens have agreed with me that it was about time to inquire whether the public interest has been adequately served.

Perhaps the most controversial news just happened in the past two weeks. A television station dropped "The Untouchables" from its schedule in favor of a better program balance, replacing it with the Chicago Symphony Orchestra. We can only speculate about the reaction of the television audience when they see what comes out of those violin cases!

So you see, things have changed since I accepted your invitation. *Broadcasting Magazine* had this to say about this conference in its July 24 issue:

From a standing start a few weeks ago unusual interest suddenly is being manifested in the symposium on broadcasting at Northwestern U. School of Law in Chicago next month.

The reason isn't difficult to discern. Broadcasting has been subjected to unprecedented criticism and

the regulatory vise has tightened in the intervening weeks. The symposium, which first had the aspect of a prosaic, legalistic study of communications history, now is being built up as a historic debate on freedom and responsibility of broadcasting—mainly television.

Perhaps this may be an historic debate, but I assure you I have not come here to create sensations nor seek headlines. My own views and philosophy about broadcasting have received wide exposure. This position has been attacked as censorship—despite my specific statement in that May speech as follows:

I am unalterably opposed to governmental censorship. There will be no suppression of programing which does not meet with bureaucratic tastes. Censorship strikes at the taproot of our free society.

Nevertheless the censorship alarm has been sounded, or shouted, or whispered, or printed, and so I want to take this opportunity to discuss it in depth. For many years the word "censorship" has smothered and obscured analysis about the relationship between government and broadcasting. Instead of being the beginning of thoughtful debate, the word "censorship" has inhibited discussion because nobody—least of all me—wants to be put in the role of censor. For that reason, let us calmly discuss censorship: what it is, and what it is not.

When gentlemen cry "censorship," somebody invariably reaches for a law book.

The dictionary says a "censor" is a "person whose task is to examine literature, motion pictures, etc., and to remove or prohibit anything considered unsuitable." The Supreme Court says that the term censorship, "as commonly understood, denotes *any* examination of thought

or expression in order to prevent publication of objectionable material." We see that censorship is *previous* restraint of communications or publications. Even as early as 1644, when John Milton attacked censorship in his "Appeal for the Liberty of Unlicensed Printing," he "vigorously defended the right of every man to make public his honest views 'without *previous* censure.'"

Naturally our concern here is with two special limitations on censorship: the First Amendment, which prohibits abridgement by the government of freedom of speech, and section 326 of the Communications Act, which very wisely proscribes any censorship by the Federal Communications Commission.

I am going to explore these at length—but first I want to make an admission against somebody else's interest: there *is* much censorship—even as it is defined here—there is much censorship in broadcasting today. It is as much to be examined, spotlighted and at times deplored as any form of censorship by a government agency. And since it is done by our own governmental licensees every broadcast day, it violates the spirit of the First Amendment and Section 326 of the Act just as surely as if we had done it ourselves.

The censorship I speak of here takes two forms. First is rating censorship—a result of the almost desperate compulsion of some of our licensees to work and to plan and to live by the numbers, always striving to reach the largest possible audience in order to attract and hold the mass advertising dollar. At best, only the majority interest can be served here and the interests of massive minorities are badly served; and the public interest again is trampled.

The First Amendment embodies the fundamental idea that minority views will and must find their place in a free market of ideas and communications. When the

broadcaster ignores minority tastes and needs to serve only the majority which the advertiser seeks (and this sometimes means rejecting a program which many millions of people want to see), he is unconsciously rejecting one of the fundamental concepts upon which our society is based and upon which, to quote Judge Learned Hand, "we have staked our all." And he is doing so using *public* property and in the role of public trustee.

Let me give you an example. The networks produce some magnificent informative programing. The need for this kind of programing is both urgent and obvious: it deals with many critical issues arising in our troubled times—such as Berlin, colonialism, space, Cuba, medical care, education. Yet often over half the networks' affiliates won't carry these programs. Instead, they substitute a commercial program designed to get a better rating. You can be sure that their schedules aren't over-balanced with public service programing. It's simply that too often, when presented with public service of a high caliber, these "trustees" choose to reject their opportunity to serve that smaller audience—sometimes in the millions.

The other form of censorship I speak of is what Clare Boothe Luce has called "dollar censorship." Here the broadcast licensee simply abdicates his own judgment and turns programing decisions over to an advertiser or his agency. The advertiser is not licensed or required to serve the public interest. His interest is directed almost entirely to increasing the sale of his product—a perfectly legitimate private interest, true. But when a broadcaster defers to the advertiser in permitting the private interest to have priority over the public interest, the result is censorship, and in a most pernicious form.

Sometimes the results can be as serious as in the "rating races" I have talked about. And sometimes they can

be downright silly. Take a look at the testimony elicited at our recent hearings in New York City. An electric company wanted a different title for Kipling's, "The Light that Failed." And the Civil War drama, "The Andersonville Trial" came up on camera as "The Trial of Captain Wirtz" because the advertising agency "wanted to disguise the fact in the South that this was going to be Andersonville." What's more, the agency nudged out President Lincoln's name because Chrysler sponsored the program. As for Edith Wharton's bleak tragedy, "Ethan Frome," the agency inquiry was, "Couldn't you brighten it up a little?"

Now these examples are amusing—but they are also frightening, for it is obvious that the public interest has simply been conveniently forgotten, and that the public's taste and knowledge has been treated with contempt.

I hope that you will keep these forms of private censorship in mind while we examine just what the Commission does that brings its critics to cry "censorship."

First of all, I believe that the Communications Commission clearly does *not* censor anything. We don't censor rock and roll, or Westerns or quiz shows or even overdoses of brutality. Nor do we say, "Put on this program" or "Do not broadcast that program." Even in such matters as obscenity, lotteries and political broadcasts, under Section 315, we are concerned only after the broadcast, not before. We never view a program in advance of broadcast and prevent its being seen by the public.

You surely know that the Commission looks to the applicant's over-all—and I stress the word *over-all*—programming proposal to determine whether granting him a license would serve the public interest. At first we look at his proposals. Later, when the station comes up for renewal, we also examine over-all performance during the license period, and when more than one applicant wants

the same facility, we compare the programing proposals to determine which one would best serve the public interest. It is this that is called "censorship." It is this, they tell us, that violates the First Amendment and the Communications Act.

In the mid-1920's broadcasters had little more than token regulation, as the result of a series of court decisions limiting the scope of the Radio Act of 1912. The result was complete chaos. Stations "jumped" frequencies—interfered with each other at will—and stepped up power to the destruction of other stations' service. Broadcasters petitioned, cajoled and literally begged the Congress to restore order; and the Congress responded with the regulatory pattern we now have.

The government assumed control over the airwaves. Congress set up a regulatory agency—the Federal Radio Commission between 1927 and 1934 and since then the Federal Communications Commission—to give out temporary, not permanent, licenses for the use of frequencies. It directed that licenses be granted or renewed only where it was found that the public interest would be served. It specified that the license vests no ownership right or any right to operate the station or use the frequency beyond its term, which was not to exceed three years. In effect, it authorized the granting of a renewable limited privilege.

The Supreme Court has succinctly stated the basis of government regulation—namely, that radio "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. . . . In enacting the Radio Act of 1927 . . . Congress acted upon the knowledge that if the potentialities of radio were not to be wasted, regulation was essential."

An analogy of broadcasting and newspapers becomes

nonsense. The government does not, cannot and will not ever license newspapers. There is no physical limit on their number; anyone who has the means is free to publish a newspaper. But the government must license radio stations because in radio there is far too little room. In short, the First Amendment requires the government to keep its hands off newspapers. There is no censorship—no “prior restraint.” But the Amendment necessarily works out differently for broadcasting, simply because broadcasting *is* different. There is a “prior restraint”—because it is necessary—but this restraint prevents getting into the business in the first place—unless you have a license.

Is this a denial of free speech? The Supreme Court in the NBC case squarely addressed itself to this point. The networks there argued that the Commission’s Chain Broadcasting Regulations must fail because they abridged the networks’ right of free speech. Here is what the Supreme Court said:

. . . If that be so, it would follow that every person whose application for a license to operate a station is denied by the Commission is thereby denied his constitutional right of free speech. Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it must be denied. But Congress did not authorize the Commission to choose among applicants upon the basis of their political, economic or social views, or upon any other capricious basis. If it did, or if the Commission by these

Regulations proposed a choice among applicants upon some such basis, the issue before us would be wholly different. The question here is simply whether the Commission, by announcing that it will refuse licenses to persons who engage in specified network practices (a basis for choice which we hold is comprehended within the statutory criterion of "public interest"), is thereby denying such persons the constitutional right of free speech. The right of free speech does not include, however, the right to use the facilities of radio without a license. The licensing system established by Congress in the Communications Act of 1934 was a proper exercise of its power over commerce. The standard it provided for the licensing of stations was the "public interest, convenience, or necessity." Denial of a station license on that ground, if valid under the Act, is not a denial of free speech."

I have cited the entire holding because it is the only *ruling* of the Supreme Court directed to this First Amendment argument. It flatly says that the denial of a station license, if valid under the Act, is not a denial of free speech.

And so we must resolve another question: whether under the Act the Commission may validly consider, in making its public interest finding, the station's over-all programing.

The Communications Act itself employs the broad public interest standard and it contains several other explicit references to programing. It gives the Commission authority to "prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class" (303 (b)). It bestows power to make regulations "requiring stations to keep such records of



programs . . . as [the Commission] may deem desirable" (303 (j)). Why "records of programs" if the Commission has no concern with programing? In 1934, Sections 325 (b) and (c) were added for the specific purpose of sustaining the Commission's authority over the programing of stations whose transmitters were located just across the American border but who used American studios. This was to get at border jumping by persons whose licenses had been terminated by the Commission for programing reasons. Are we to believe that the Commission has such authority over programing from foreign transmitters but no authority to consider the over-all programing of American licensees?

The legislative history of the Radio Act of 1927 is important here. None of the men prominent in the hearings or legislative debates showed any doubt as to the power of the Commission to consider programing as one facet of the public interest in the classification of stations and the assignment of frequencies and the renewal of licenses.

Section 29, the "censorship" provision of that act, was intended as a reference to the First Amendment and not as a separate limitation upon the authority of the Commission. It was thought to exclude certain arbitrary judgments by the Commission in considering program content, such as partisan interference with political opinions broadcast on the station. Still, the Radio Commission felt from the very beginning that it was barred from interfering prior to broadcast with any specific program. A contradiction developed right from the outset: the Radio Commission did consider program content when it developed general standards for the evaluation of programing in renewal and in comparative proceedings. (Renewal proceedings were held for 164 stations whose past operations raised questions as to whether they were

serving the public interest. Eighty-one were renewed, twenty-six were denied and the stations were deleted, and the other fifty-seven stations surrendered their licenses. Moreover, the character of programs broadcast was a key factor in deciding which of these stations should be deleted.)

Support for this procedure came quickly from both the Court of Appeals for the District of Columbia and the Supreme Court. In the *Nelson Brothers* case the Supreme Court stated that the "character and quality of services" were relevant elements of the public interest standard. And in the *KFKB* and *Trinity Methodist* cases, where the Commission had denied renewal applications, the Court of Appeals squarely upheld not only the Commission's authority to consider past programming on a renewal application but also its construction that the prohibition of censorship related only to previous restraint of specific programs.

The *KFKB* case was memorable. A station had been licensed to one Dr. Brinkley, who advertised his hospital and prescribed for patients, sight unseen, over the air. One script ran: "Probably he has gall stones. No, I don't mean that, I mean kidney stones. My advice to you is to put him on Prescription No. 80 and 50 for men, also 64. I think he will be a whole lot better. Also, drink a lot of water."

The Commission's remedy: No license. The Court agreed, saying:

It is apparent, we think, that the business is impressed with a public interest and that, because the number of available broadcasting frequencies is limited, the Commission is necessarily called upon to consider the character and quality of the service to be rendered. In considering an application for a

renewal of the license, an important consideration is the past conduct of the applicant, for "by their fruits ye shall know them." Matt. VII:20.

The appellant contended, "Censorship!" The Court answered:

There has been no attempt on the part of the Commission to subject any part of appellant's broadcasting matter to scrutiny prior to its release. In considering the question whether the public interest, convenience, or necessity will be served by a renewal of appellant's license, the Commission has merely exercised its undoubted right to take note of appellant's past conduct, which is not censorship.

When Dr. Brinkley moved his practice to Texas, with a Texas studio and a transmitter located in Mexico, Congress countered with Section 325 (b), expressly, as I have said, to give the Commission control over border-jumping programs.

In the *Trinity Methodist* case the station in question had been used to attack religious organizations, obstruct the orderly administration of justice, defame certain groups and indulge in similar highly personal attacks. The Court held that it was the Commission's *duty* to consider these actions of the appellant in deciding whether to renew its license and that a refusal to renew on the basis of this record was "neither censorship nor previous restraint, nor is it a whittling away of the rights guaranteed by the First Amendment, or an impairment of their free exercise."

Now with full knowledge of these early developments, Congress extended the life of the Radio Commission three times between 1927 and 1934, and in that time it considered many amendments. Here are the words of the

then Chairman of the F.R.C. testifying at a congressional hearing in 1934:

Our licenses to broadcasting stations last for six months. The law says that they must operate in the public interest, convenience and necessity. When the time for a renewal of those station licenses comes up, it is the duty of the Commission in passing on whether or not that station should be relicensed for another licensing period, to say whether or not their past performance during the last license period has been in the public interest.

Still the Congress carried over the identical provisions affecting programing into the Communications Act of 1934, and in so doing it can only have ratified this interpretation.

What did the industry think in 1934? The National Association of Broadcasters in 1934 told a House Committee:

It is the manifest duty of the licensing authority, in passing upon applications for licenses or the renewal thereof, to determine whether or not the applicant is rendering or can render an adequate public service. Such service necessarily includes the broadcasting of a considerable proportion of programs devoted to education, religion, labor, agriculture, and similar activities concerned with human betterment.

In actual practice, over a period of seven years, as the records of the Federal Radio Commission amply prove, this has been the principal test which the Commission has applied in dealing with broadcasting applications.

Instead of being critical of the Radio Commission's examination of over-all programing, much indicates that the Congress thought there wasn't enough. The debates in 1934 indicate a strong dissatisfaction with the Radio Commission in failing "to take the steps that it ought to take to see to it that a larger use is made of radio facilities for education and religious purposes." And so the new Commission was required in the new Act to study this question and report its recommendations to Congress. This was done, and the FCC reported that there was "no need for a change in the existing law" and that "in order for a non-profit organization to obtain the maximum service possible, cooperation in good faith by the broadcasters is required. Such cooperation should, therefore, be under the direction and supervision of the Commission." (Report of the Federal Communications Act of 1934, Jan. 22, 1935; emphasis supplied.)

The Federal Communications Commission, like the Radio Commission, from the beginning accepted the importance of program service in its public interest determinations, and this view has, of course, continued down to the present time and has been consistently sustained in the courts. I am going to review these cases briefly.

In the *NBC* case the Supreme Court rejected the notion that the Commission should be little more than an electronic traffic officer to prevent stations from interfering with one another. The Court pointed out that the Act does not limit the Commission merely to engineering or technical supervision but puts upon it "the burden of determining the composition of [the] traffic." Congress, it said, gave the Commission a very large grant of authority: the public interest, convenience and necessity.

The same Court in the *Carroll* case flatly stated that "the qualifications of the licensee and the character of its

broadcasts may be weighed in determining whether or not to grant a license." In the *Simmons* case the Commission had denied a license to an applicant who proposed to broadcast all of the programs of a national network, irrespective of their quality or the need of the community for other programs; the Court of Appeals affirmed. And in the *Noe* case the Court, citing the *Trinity Methodist* case, pointed out that if the winning applicant in the comparative case should "in the future fall short of the rules and regulations of the Commission in regard to proper programming, the Commission may always review the matter in a renewal proceeding or otherwise."

There are many other decisions to the same effect, and they all boil down to a summation by Attorney General William Rogers in his 1959 report to President Eisenhower (p. 30-31), that "in every case in which the question has been presented, the courts have upheld the Commission's authority to concern itself with a licensee's program policies and practices. *No action by the Commission has ever been held by the courts to constitute censorship or to violate constitutional protections of freedom of speech or of the press.*" (Emphasis supplied.)

And to those of you who think that all the present debate started with the New Frontier, let me read Attorney General Rogers' Fourth Recommendation to the FCC in the 1959 report:

Adopt a program of more intensive scrutiny of licensees' past performances in connection with renewals. It might be appropriate for the Commission to adopt a system similar to that followed by the Internal Revenue Service which chooses a certain number of returns at random for a spot check in depth. The Commission might follow the same course by requiring narrative and detailed accounts

of past operations, and, in addition to acting on specific complaints, choose a certain number of renewal applications or all the licensees in a particular community for close examination, requiring more detailed information where necessary, and setting questionable cases for hearing. The procedure would include consideration of advertising practices, material which has been advertised, and action taken on complaints by the Federal Trade Commission. The procedure should emphasize a comparison of the licensee's actual performance with the promises he made as to his programs and operations when his license was originally granted or last renewed. The licensees would thus be put on notice that from time to time they might have to give a detailed accounting as to their operation in the public interest.

There is one other aspect of the judicial history which I believe must stump the critics, and that is the Commission's practice in comparative hearings. [A "comparative hearing" is held before an FCC hearing examiner when two or more entities compete for a radio frequency or a TV channel. The merits of the competitors are "compared" in order to choose the one that is best qualified.] The Commission has always compared the programming proposals of competing applicants to determine which applicant will best serve the public interest. And the courts have approved this in every case where the issue has been raised. The Court of Appeals has said, "Such a comparison of proposals is not a form of  *censorship*  within the meaning of the statute."

This power of the Commission to compare the programming proposals of mutually exclusive applicants is virtually conceded. Yet our critics balk at the same ex-

ercise of authority in noncomparative cases. Is there any real difference? I think not. Service to the listening public is still the vital element of the public interest, and programs are still the essence of that service. The public interest exists, whether there are competitors for the channel or not.

Finally, some more recent legislative history. In 1952, Congress revised Section 307 (d) so as to simplify the procedure which governs the granting of renewal applications. But in doing so, the Senate Report stated:

It should be emphasized that while the recommended amendment does eliminate the necessity for the type of involved and searching examination which the Commission must make in granting an original license, it does not in any way impair the Commission's right and duty to consider, in the case of a station which has been in operation and is applying for renewal, the over-all performance of that station against the broad standard of public interest, convenience, and necessity. This authority of the Commission is made explicit by specifying that such renewal grants are subject to findings by the Commission that the "public interest, convenience, or necessity would be served thereby."

And, in amending Section 315 in 1959, Congress explicitly incorporated one of the Commission's existing programming requirements—namely, "the obligation imposed upon [broadcasters] to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

There ends my summary of the authorities. The cases, the history of regulation and the legislative history, are consistent, and I think they establish two things: one, that the no-censorship provision refers to previous re-



straints, in the sense that the Commission may not *enjoin* stations from broadcasting any particular program or type of program; and two, that the Commission has the authority and the duty to consider a station's programming in determining whether the grants of applications for construction permits or license renewals are in the public interest.

Well then, how do our critics answer all this? They don't answer it; they ignore it. They argue each time as if the slate were completely clean: "Don't study the law books"; "A station is like a newspaper"; "Getting into programming must inevitably lead to bureaucratic judgment of what constitutes good programming"; "Tastes will obviously be imposed"; "There is simply no way to draw a proper line between permissible review and censorship"; "Freedom of speech cannot be qualified without being destroyed." Therefore, other than in such areas as obscenity or lotteries, "the Commission," they conclude, "cannot concern itself *at all* with programming content." Their argument to the Commission—the very agency charged by law with the protection of the public interest—is often the same one they use against their own critics: "If you don't like it, turn your set off."

If broadcasters are serious, such arguments should be addressed to Congress.

They were addressed to Congress in 1947. After the issuance of the Blue Book, the NAB urged Congress to amend the Communications Act and give radio the same degree of freedom from governmental regulation of content as newspapers. In the hearings before the Senate Interstate and Foreign Commerce Committee on the matter (S. 1333, 80th Congress, 1st Sess.), Senator Wallace White, the Committee Chairman and one of the "fathers" of the Communications Act, said that "there is a vast difference in principle between the absolute right of

anyone who wants to go into the newspaper business, and the necessarily limited right to operate a broadcasting station" (p. 120). He stated (p. 126): "I do not accept in any degree that there is no difference between the power of Government with respect to newspapers and the power of Government with respect to radio communications. . . . If you [radio people] are placing your feet on that foundation, [you] are just indulging in dreams. Because Congress will not stand, in the long run, for any such interpretation." Other Senators were equally critical. Senator Edwin Johnson declared that the notion that "radio presents a direct analogy to the press" is "as far-fetched as comparing an elephant to a flea."

Still, I would like to meet head-on the argument that "you can't draw a line." Just because it is difficult to delineate the exact limits of a law does not mean that a law should not be enforced at all. I wonder what would have been the history of the Sherman Anti-Trust Act and similar "broad" statutes if this false standard had been applied to them.

If the Commission should ever overstep its permissible province in the area of programing, the doors of the courtrooms are open. Any case the Commission decides must be on a public record. Any arbitrary action will meet rejection by the judiciary. The courts will give the full measure of protection to anyone who has a legitimate claim to any intrusion on his freedom. But any broadcaster who would clothe himself with the arguments of John Milton must also be prepared to serve the public interest.

Take the words of Senator White at the 1947 hearings:

But so long as we have in the law that basic conception that an applicant has no absolute right to a license but must establish to the satisfaction of the

Commission that he is serving a public interest or meeting a public necessity or a public convenience, something which seems to me to be basic in our law, I just do not see how there can be any judgment as to whether a station is serving a public interest or not unless there is a chance to view and review the programs which a station has been passing out to the listening ear of the American public.

Now let us suppose that a television station proposes to present no, or almost no, educational, religious or public affairs programing and very little local live programing. I submit that the Commission is free—and indeed obliged—to require such a station to show, in a hearing, how such a proposal can be said to meet the public interest needs of its service area. This requirement is not censorship. The Commission is not prescribing the specific programs to be presented. It has a right to ask why that applicant should have a piece of a precious resource.

“Well, all right,” say the critics. “Maybe the Commission isn’t censoring by prior restraint—but it’s using a device just as awesome: fear of subsequent punishment. Maybe the broadcaster *is* free to air what he chooses, but then you say, ‘If you do not measure up to the Commission’s public interest standard, you may end up without any license.’ You have us groping.”

They certainly would be groping if it were so. But it’s not. The Commission requires applicants to set out their programing proposals. We take those proposals seriously whenever we grant a license. If the applicant did what he said he would do, there obviously can be no controversy between him and the Commission at the time of renewal. But if he fails to honor his own application for reasons of business expediency, then this constitutes bad faith on the part of the applicant. Then there *is* going

to be a controversy, and the issue between him and the Commission will not be programing—it will be his character or fitness to be a licensee.

Finally, I would say to those who argue about “subsequent punishment”: your quarrel is not with the Commission, it is with the law. For the law says that you get only a temporary license, and that at least once every three years you must come back to the Commission and establish that your over-all operation meets the public interest. If Congress wanted to eliminate this fear of a subsequent accounting of your public trust, it would have given you a *permanent* license. But Congress decided upon exactly the opposite course, and we intend to follow it. It wanted an accounting to make sure that those using this valuable portion of the public domain were not getting rich on their promises by shortchanging the public on fulfillment. Frankly, Congress invited an even greater threat: a competing application at your renewal time—and then a comparative hearing where you must prove your ability to better serve the public interest than this new applicant.

A broadcaster making a good-faith effort to serve the public interest can have no real fear of “subsequent punishment” by the Commission. There need be no triennial flirtation with a new flame. For the licensee necessarily has very wide leeway as to programing. If he makes a bona fide effort to meet what he deems to be the needs of his area, there is little chance of controversy between him and the Commission.

Then, why so much controversy? Now I believe we are down to the nub. What’s behind the outcry?

The trouble, in my opinion, is that far too many licensees do not regard themselves as “trustees for the public.” The frequency is regarded as “theirs,” not the public’s; and the license is seen to be not one to operate in

the public interest but rather to get the greatest financial return possible out of their investment. When the Commission, in discharging *its* public interest responsibilities, challenges such operations, the first, almost reflex reaction is the cry of "censorship."

What shall we do? Surrender to the men who "want provocative programs that don't provoke anybody"? Or to the advertising agencies who reportedly "want a strong, hard-hitting, noncontroversial show that won't offend anybody"—and above all, no "gloom"? What is the future of a medium under such influence?

Let's think, for example, what would have been the fate of the world's great dramatists if they were solely dependent upon television for performance of their plays. Under the advertiser's code of censorship, would any of them have made the grade? Ibsen, Shakespeare, Shaw—"Sorry, too provocative," too concerned with morals and conflicts of their times. "Will, how many times do I have to tell you—you can't have a couple of sweet, lovesick kids killed off at the end!" Seriously, I am informed that good creative writers today *are* turning out routine TV shows, but under pseudonyms.

At the same time the amount of violence, murder, mayhem and sadism on TV shows increases because in somebody's opinion—the sponsor's or the agency's or the network's—the ratings demand a jolt. If this is in the public interest, I can only echo the words of Mark Twain, "The more you explain it, the less I understand it."

To answer my own question: no, we are not going to surrender in our efforts. In fact, we've done a few things recently that should make our purpose clear. Some of you will recall that in its July, 1960, Programing Statement the Commission first stressed that licensees must make a good-faith effort to find and fulfill the program-

ing needs of their service areas. We mean just that. On June 28, 1961, we denied an application for a new FM station by a party who had made no effort to ascertain his area's needs but instead had submitted a "standard" programing proposal.

And in doing so, I am sure we will have the support of almost all the broadcasters. Governor LeRoy Collins honorably exemplifies the best in broadcasting. Most broadcasters take pride in their service. They know that broadcasting is more than a business, that it constitutes a vital public service element to their community. They are *proud* of this. And proud people resent those whose only interest in broadcasting is the dollar-and-cents sign, those fast-buck operators, many of them new to the industry and lacking in a traditional dedication to serving the public interest. Thus the Commission, in discharging *its* responsibilities, is serving not only the public but the *responsible* broadcaster also.

On July 13, 1961, we informed every broadcaster of a change in the Commission's renewal policy. In the past we granted renewals even though there had been a substantial failure to live up to the programing representations, where the applicant "up-graded" his proposals and gave reliable assurances that these new proposals would be carried out. This will no longer be the case. We have put our licensees on notice that "proposals versus actual operation" is of vital concern to the Commission, that licensees are not entitled to one or any license period where they do not have to make a good-faith effort to deliver on their public service proposals, and that if they have not been endeavoring in good faith to discharge their representations, they should take *immediate* steps to do so.

Finally, we have issued a proposed revision of the programing sections of our application forms, in order to

obtain greater information as to the applicant's programming efforts, both proposed and in actual operation. We are seeking more information about the opportunities afforded for local expression, on the presentation of controversial issues, and on program categories, with special reference to educational and political shows, local news and programs for children. We have also taken a first step in dealing with the failure of the network affiliate to carry the network public affairs programming. We propose to require the applicant to set out the amount of such programming which it carried. Unfortunately, as I made clear in a concurring statement, this gives us only half the facts. I propose to add another question, calling for the number of hours and time slots of network public affairs programs which were made available to a station, and when not accepted, the general type and source of programs which it did broadcast instead. Surely the public is entitled to know which licenses consistently reject network public affairs programs and whether they were rejected for reasons having to do with ratings and dollars. The valuable grant to use a scarce public channel should go to those who provide more public service in preference to those who choose to provide less.

Now I submit that this pattern of activities is not censorship. It is the very reverse of censorship. We are not seeking government prescription of programming. On the contrary, we are seeking diversity of programming by the licensee as a result of his good faith and diligent efforts to discover and meet his area's needs. Surely, to quote from the *Simmons* case, censorship is "a curious term" to apply to a requirement that licensees make such efforts in living up to their responsibilities.

Broadcasters were given a very apt reminder of those responsibilities by the Court of Appeals recently in the *Television Corporation of Michigan* case:

All too often in cases like the present the broadcasters involved appear to be chiefly interested in the revenues to be derived from operating their stations in the most profitable manner. It seems clear in the present case that WOOD-TV will make more money in its new location than in the old: it is moving to a more prosperous and more highly populated area, and its advertising revenues will no doubt increase. But such considerations, though legitimate, cannot be controlling. Television and radio are affected with a public interest: the nation allows its airwaves to be used as a matter of privilege rather than of right. The interests which today are profiting so handsomely from radio and television may in the end find it in their own best interest to treat their businesses primarily as a public trust.

This important teaching of the Court should be studied by all of us. And while we are studying, let us heed the conclusions contained in the Report of the President's Commission on National Goals which was submitted to President Eisenhower on November 16, 1960:

The American system of broadcasting is deeply entrenched and is founded on the rock of freedom from government interference. It is not, however, beyond critical examination in the light of its performance. It is too easy to say that the people are getting what they want. The fact that large audiences can be attracted by fourth-rate material does not acquit the broadcasting companies or the government, which has an ultimate responsibility for use of this valuable and scarce resource, from asking whether the public interest is being adequately served.



The President's Commission concluded:

Thus far, television has failed to use its facilities adequately for educational and cultural purposes, and reform in its performance is urgent.

To those few broadcasters and their professional associates who would evade the nation's needs and cry "Censorship! Oh, where will it end?" there can be only one answer: "Responsibility—when will it begin?"



**AFTERMATH:** A wise and elderly attorney-at-law once advised a tyro that there were three chief techniques for winning cases in the courtroom: "If the facts are against you, argue the law. If the law is against you, argue the facts. And when that terrible day arrives when both the law and the facts are against you, then you throw away the law books and you scream and pound the table!"

What Newton Minow advised the broadcasting industry in the Northwestern speech is that both the law and the facts were against them in their push for the unqualified, unrestricted right to use the public domain of the spectrum.

The speech did not prevent the broadcasting industry's advocates from a continuance of lofty arguments that the least government is the best government. They continue to exclaim that the man who seeks and gets a federal broadcasting permit becomes at the moment of the grant the only person to decide what shall be broadcast.

Because very few persons have ever been denied renewal of the property right that accompanies this grant, an assumption had been created that a denial was somehow illegal. This was accompanied by a myth that while the agents of the people were able to give, they lacked the power to take away.

What is established in this speech is a firm ratio. The agents of the people are charged with determining the kind of performance that accompanies the privilege of broad-

casting. If one wishes to extend his views beyond the range of his own lung power (and, not incidentally, to profit financially by doing so), then he must make certain that some benefits are given to those who will listen to him. This works out to a seemingly simple definition of broadcasting in the United States: it is a relatively free industry, bound by the publicly approved rules of a relatively free society.

Jean-Jacques Rousseau's "noble savage" could come quite close to complete freedom, but when he entered into an organized society, he had to give up some of his freedom; he had to pay a price for law and order. The weak were given a measure of protection against the strong who ruled the jungle.

A price had to be paid for law and order in the radio spectrum. It was defined as public property, an intangible possession of the entire population of the nation. Those who would harness the energy of this spectrum were required to abide by the rules made with the consent of the property owners.

This concept had been hammered out of shape, stretched to suit a developing industry and squeezed to fit the proclaimed needs of broadcasting license. All that was needed to return to the sweet reasonableness of sound public policy was for one informed, articulate and convinced man to speak the right words, and the remarkable resiliency of sound doctrine returned the concept to its proper shape. And then the dialogue could continue, with the debaters equipped with a sound definition of terms.

### III

## Programs for Children

**THE TIME:** Programs for children have always been part of television's never-never land. A child becomes acquainted with television while he is still in the crib. Usually the electronic babysitter offers ancient animated cartoons that were created to divide the showings of a movie in a theater. The child's relationship to this medium of communication begins with fantasy.

A remarkable team of researchers at Stanford University conducted a large-scale test of children who were exposed to television viewing had merely replaced the learning experienced to have some advantage in the beginning of school, but the advantage disappeared in measurable terms by the sixth grade. This finding led the researchers to conclude that television viewing had merely replaced the learning experiences the child would have had without TV. In simpler terms, no real effect resides in television.

Could there possibly be a more damning indictment of a communications marvel? Can one imagine a more terrible waste of the child's time, talent and potential? The conclusion of the Stanford researchers implies that the maturing individual could be developed just as fast through the plain glass of his living-room window as he is developed through television's window on the world.

Worst, perhaps, is the existence of a void, a blank space, in the programs for the adolescent. Many early-morning and early-evening programs were scheduled to interest the pre-school and grade-school student; for the junior-high and high-

school student almost nothing was offered. Yet these are probably the most important of the formative years; traditionally, in our culture this is the period of yearning for adulthood and the time in which the youngster sets his goals and begins to move toward them.

One cannot successfully point to the inclusion of a recorded music program filled with popular rock and roll and claim this as an answer to the adolescent's tastes. To the contrary, this kind of program merely caters to an existing taste and tends to reinforce the group pressure for conformity and for strengthening the boundaries of a narrow world.

What follows is an exposition of an unusual concept. There had been suggestions that the television industry should combine at times to benefit a particular kind of audience. The usual reply was that such collusion would bring down federal agents with indictments for the violation of antitrust laws.

This broadcaster fear is the reason Mr. Minow first cleared his proposal with the Attorney General and gave assurances that a plan of such general good to the nation would be made an exception to antitrust laws.

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ADDRESS TO  
THE RADIO AND TELEVISION EXECUTIVES  
SOCIETY

NEW YORK, NEW YORK

*September 22, 1961*

For those relatively few of you who came away from Washington last May with nothing but dismay and fear that bureaucratic meddling with broadcasting had arrived, I repeat some words you must have overlooked. I said last May, "I want to see broadcasting improved and I want *you* to do the job."

I meant it then and I mean it now.

Programs are often written, performed and edited a

year or two before they are put on television. You must have much lead time to prepare for new programing—time to create, to dream, to negotiate, to sell, to produce, to schedule. Ten years ago a schedule was announced in September. Later, schedules were “locked in” in July or August. The length continues to grow, and now you announce in March what the public will be offered the following October. Behind these announcements are months and years of debate, in-fighting, false leads to competitors and honest creative effort.

There are tangible indications of an increasing awareness of your responsibilities. With rare exceptions, broadcasters are sensitive to the need for change. The mood for change is *in* the air, and the evidence of change is slowly but surely coming *on* the air.

In 1962 the country will be in your debt for the heavier emphasis on news and public affairs offered in the network schedules. You know better than I how urgent it is to give the public as much information as possible in these terrible times.

I know that some of you are also turning your attention, as we at the FCC have done, to the seventy million children's hours spent each day with television. The FCC is doing its part. In our new broadcast forms, we propose to ask licensees about their efforts to provide programs for children. This is the first time in the history of the FCC that this question has been asked.

I want to talk with you today about television and our children—about the seventy million children's hours spent with television every day.

In the course of our work we at the FCC have read and studied books, pamphlets, printed lectures, speeches and theses on this subject. We have been exposed to all shades of opinion.

I have personally come to the same conclusion as Stan-

ford University researcher Wilbur Schramm, and I quote: "For *some* children under *some* conditions, *some* television is harmful . . . *some* television is beneficial . . . *most* television is neither harmful nor beneficial."

On first reading, this conclusion seems to say nothing. On reflection, it says a good deal. We all know that the potential of television to help or hurt our children is enormous. We know that television occupies more of a child's time each year than school or than church. And in some homes children spend more time with their television sets than with their parents. (Parenthetically, many parents spend more time with their television sets than with their children.)

Since ratings are important in this industry, let's examine what they say. Each day, twenty-seven million children under the age of twelve look at television. Thirteen million will be viewers at 5 o'clock this afternoon, fifteen million at 6, eighteen million at 7, seventeen million at 8. During that especially frantic period in most homes before dinner, when so many mothers are busy, young children spend much of their time before the television screen, often mesmerized and hypnotized by what they see and learn.

At the far end of the spectrum is that minority—and I underline *minority*—of television for children which does them obvious, documented, emotional harm. Some recent testimony before Senator Dodd's Committee included deeply disturbing thoughts about what has guided some few programs developed for children.

For its historic value, to see where we have been, let me quote some recent testimony before the Senate by a brave television packager who frankly described the past. He read a memorandum prepared for a network program executive, describing some program ideas that "will hold the kids." Making the hero "tough and hard to get

against a violent physical-action background with a seductive beautiful girl each week, should get the result we all want." These and similar ideas, the memorandum continues, "will please the critics and the P.T.A. and at the same time be sexier, be more violent, and have more conflict." The memo even includes a definition of "conflict": "He's got his clothes off, he's trying to put them back on and she won't let him: conflict."

The quotations I read from the Senate testimony represent only one end of the spectrum, but I cannot believe they represent a typical approach to children's programming. We can all agree, I hope, that this concept of television fare is inexcusable.

At the other end of the spectrum are those programs, again unfortunately in the minority, which have *some* beneficial effects on *some* children. These programs—and there are hopeful signs that they are increasing in number—are designed to uplift, inspire, illuminate, and inform.

But now in the middle of the spectrum is the larger area of children's shows which neither help nor harm, which neither elevate nor debase, which neither lead nor mislead. These programs—and they are in the majority—stimulate neither sadistic tendencies nor intellectual curiosity. They arouse thoughts neither of mayhem nor of creativity. These are the time-waster shows; they are dull, gray and insipid—like dishwater, just as tasteless, just as nourishing.

The time-waster shows occupy most of the viewing hours of our children. They hold down and babysit. Period.

Is this enough? Are you sufficiently harnessing the vast power for good? Are you providing our children with the unique values of television to educate, to awaken, to enrich their lives?

I don't accept the proposition advanced by some that television itself causes juvenile delinquency. But shouldn't television be a major cause of juvenile development? I am skeptical about the charge that the sex and violence on television cause teenage immorality. But doesn't television have the duty to contribute heavily to teenage responsibility?

Few who have watched the full fare of children's television shows could work up much anger against these time-waster programs for what they *are*; rather, all of us, particularly we parents, could work up much sorrow about these television offerings for what they *are not* when we know what they could be.

What could they be? Permit me to take as a case history a recent example of a children's program. I submit this program as an example only. The decisions as to its future have already been made. But I suggest that this specific reference may serve to make our discussion more meaningful.

The American Broadcasting Company announced in July that this fall it would offer a new children's program called "Discovery." ABC said "Discovery" would be on five days a week for a half-hour each day between 5 and 5:30 in the afternoon.

The idea of the program, which ABC described as "a landmark in children's programing," is summed up in the network's promotional materials this way: "Curiosity is as natural to the growing child as the desire for sweets. The young person's mind reaches out for stimulation. Questions and answers are as vital to its development as good food is to a youngster's body. Kids are interested in everything; their instinct is to learn, to know." "Discovery" proposed each day to be "dedicated to young curiosity; America's 20,000,000 bright, inquisitive, imaginative preadolescents who think it might be fun to take a



trip to the moon; whose greatest immediate concern might be the selection of a puppy; who know more about the planets than their parents; who collect baseball cards, postage stamps or salamanders."

When ABC offered the program to its affiliates, however, it was off to a very late start. Of the 110 markets ordered by the sponsors, stations in 67 of these were able to clear the show, but 43 could not. The program was actually offered in a total of 152 markets, and in these, 76 stations said that they would carry the show. Some local stations had already made commitments elsewhere. Some had local children's shows of their own.

Yet the seventy-six stations which said they would carry "Discovery" would have made the program available in 65.5 per cent of the television homes of America, and the sixty-seven stations which cleared it as part of the sponsors' order accounted for 64.9 per cent of all United States television homes, reaching a potential audience of more than fourteen million children.

This was not enough. Some of the advertisers felt that there would not be sufficient viewers to make their advertising worthwhile, and they dropped out. The result was that the show was canceled, and this year it will not be seen by one child in the country.

Certainly the network should be commended for trying. Certainly those stations that had reasonable local reasons for not clearing the show cannot and should not be blamed. And those advertisers who were willing to invest in this type of program should be applauded.

But assuming with me for the moment that "Discovery" did have all the values suggested, then where does the responsibility rest for killing a children's program with so much hope and promise? Is it enough to shrug our shoulders and say, "Too bad. They started too late." If that is the only excuse, I must suggest that there is

something fundamentally wrong with a system in which the potential of reaching the homes of fourteen million children is not enough to go ahead. No magazine, no newspaper, no other medium of communication could have offered such an audience with an early, or a middle, or a late start. We cannot accept the premise that the chance to reach fourteen million children is not enough to be worthwhile.

Looking further at this gray, pallid area of children's television and "*what they are not*," let us pause for a moment and examine, as we did in the single case of "Discovery," "*why they are not*."

The first excuse, always, is: these are the shows the children want; these are the programs attracting the largest audience. Now I submit to you that there are times in this frenetic country of ours when we do not give the children what they want. I conducted a random survey myself last month among a number of children in the ten-to-twelve age bracket. I discovered—or perhaps better, confirmed—a number of facts about the wants of children:

First, 99 per cent of the respondents preferred candy to spinach.

92 per cent preferred the movies to Sunday School.

79 per cent preferred to stay home and watch the game shows and soap operas on television rather than go to school.

There is nothing wrong with giving these children some candy, in the form of television escape, but there is something wrong in not giving them some spinach, in the form of enrichment. And I have the feeling that most of us parents will send our children to Sunday School, even

against their wishes; finally, even if we were tempted to keep our children home from public school to watch television, there are state laws backing up the principle that you just can't always give the children what they want.

The second excuse for innocuous television fare is: if the parents don't want their kids to watch the time-waster shows, the parents can turn off the television set or switch to another program.

Of course the negative, or veto, power of the parent should be exercised more often, but is that a good enough excuse for the television station to keep on drugging the public air? And as for switching stations, I ask you: switch to what? If the alternatives are merely the lesser of several evils, then we are talking not about illuminating the world for children but rather about varying degrees of darkness.

It is time for you creative television professionals to light a few million candles so that you can take our children out of the darkness.

I shuddered to read a sobering conclusion by a student of television: "So commercial television is a medium that is by its physical nature absorbing, but by its human organization doomed to be repetitious, predominantly shallow, and stereotyped. By its physical nature, it is bound to take up much of the leisure time of people; by its human organization it is bound to be cautious about newness and change. *Indeed, the most likely social effect of television is no effect!*"

If we believed this, none of us should waste our time with broadcasting, either in the industry or in the government. But I refuse to believe it. I hope that you refuse to believe it and that all of us will try to do something about it.

Next, let's go to the third excuse for putting on time-waster television shows for children. This has to do with

sponsors and markets and merchandising. Now, if we agree with the purpose and philosophy of the Communications Act, that the airwaves belong to the people and that broadcasters use them as the people's trustees in the public interest, then the slide-rule measurement of markets and merchandising cannot be controlling. These commercial considerations cannot be controlling generally in the case of the broad public, and particularly in the case of children.

True, in our system of broadcasting you are required to earn your own way. And, as our recent financial report on the industry's figures indicates, you are prospering rather handsomely. I think you can continue to prosper and at the same time do an improved job of programing, particularly in the case of children. I will never concede that improved business and improved children's programing cannot coexist.

We all know about Mr. Mencken's admonition, "No one ever went broke underestimating the taste of the American public." But I do not believe that any nation can stay great by underestimating the capacities of its children.

Some of you have stated that you feel trapped in a competitive situation where you feel you will suffer competitive disadvantage by offering higher levels and standards of programing for children.

All of us share the same purposes: constantly to improve programing for our youngsters. Let us offer to help by making a specific suggestion to the networks.

There are seven days a week and three networks. Let us eliminate Sunday for the time being, as most of you already put on your Sunday best. That leaves six days and three networks. Why not divide the competitive disadvantages, if there are any, by suggesting that each network will be responsible for two days a week at an

agreed late-afternoon hour for offering a children's program in which you take great pride? For example, suppose ABC takes Monday, CBS Tuesday, NBC Wednesday, ABC Thursday, and so on, for the week at, let us say, 5 P.M., and offers a regularly scheduled children's hour representing the best you can do. At periodic intervals perhaps you could agree to rotate the days on any basis you deem fair to yourselves and each other.

Let there be competition between you for quality during that children's hour, so that parents and children can find, on at least one network for at least one hour each day, a program representing the best you can produce for youngsters. Let that program be as lively, as entertaining, as educational, as whimsical as your creative talents may lead. In that way every family can know that at a given time every day (at least in those cities where there are enough outlets available) their children will be able to see a program which will in some way make a meaningful contribution to their imaginations and their minds. Put on whatever you want during that one hour every third day, and be guided only by what *you* in your own minds and hearts think is a good children's program.

If you are worried about the antitrust laws, I bring good tidings from the Attorney General. He has authorized me to tell you that the Department of Justice will give prompt and sympathetic consideration to approving any plan you may devise involving a combined effort to improve children's programs. The Attorney General, Robert F. Kennedy, speaks as the father of seven children. He urged me to be an advocate in this adventure, which could be so meaningful to all children. He emphasized that any plan, any efforts in this direction, are entirely up to you, and any cooperative efforts by the industry should be undertaken only if you want to work

together on a solution. And he added that the size of his own family might make some contribution to the ratings for these programs!

Feel free to ask your government to help you if you want help. We can lift a burden as well as an eyebrow.

You may have some better ideas about how to make progress. I hope you do. You may prefer thinking about half-hour network programs with your affiliates, many of whom make valiant local efforts at enriching children's hours, providing a local children's program during the other half-hour. You may want to make further efforts during the early-morning hours for preschoolers, an important time when some of you have already made distinguished contributions. But the point is to direct your attention, your creative talents and resources, to a national need which demands the best of all of us.

I advance this specific suggestion so that you'll have something to shoot at, something to think about, something to open discussion for service which only you can perform.

I've read that *50 to 75 per cent* of all new television shows fail to make the grade and do not return to the air for a second season.

I refer you to the results of one survey of personal preferences conducted among decision makers in networks, agencies and program-production firms. The men who were polled were described as being "primarily responsible for most network and much local programing through their influence in the selection of programs to be seen or offered for selection." They were anonymous, but I'm sure many of them are here.

Their own preferences as revealed in the survey bear no comparison with the decisions they have made in the past. I wonder what convinces them that 64 per cent of the public might not—like themselves—prefer to see

more general drama; that 50 per cent might not—like themselves—prefer to see more informational programs and documentaries; that 40 per cent might not prefer to see more news.

*Why not try your own taste for a change?* If you prefer the new, the creative, the daring, the imaginative, why not give your audience a chance to share your preferences? Try assuming for a time period that the audience is not really so very different from yourselves. Try to kick the habit of underestimating the public's taste and take a flier on the premise that they are just as knowledgeable, just as ready, just as responsive as you are to the best you have to offer.

There are leaders in every profession, and the leaders of broadcasting are in this audience. It is the leader who will be examining last year's mistakes and looking at next year's possibilities. If some of your colleagues complain that you leaders are rocking the boat, I refer you to some wise words of an advertising man, Charles Brower of Batten, Barton, Durstine and Osborn, in 1955:

If Christopher Columbus, the well-known sailor from Genoa, had applied modern advertising research methods to his proposed voyage, a consumer jury test would have told him in advance that the world was flat; depth interviews with expert seamen would have revealed the impressive monsters that awaited him hungrily at the end of the sea; motivational studies among his crew would have shown that they were only interested in money; Ferdinand and Isabella would have cancelled the appropriation; America would never have been discovered, and you would all be Indians!

Your season of decision is at hand. Use it wisely. No other group of men and women in America will make

decisions which sweep with more penetrating impact upon the American mind. Your decisions will affect more children's hours in America, for good or evil, than the teachers in our schools and, I say with some shame, than many parents in our homes. You will decide what the country's children, and your own children, and all of us will see and hear.

At this hour, when the world watches with dumb fear the testing of the nerves of man and of his weapons, all of us concerned with broadcasting are undergoing a test of our own: a test of our faith in the infinite capacity of the minds of men. How we pass that test in the next few years may well determine how this nation, and how civilization itself, meets the test for survival.

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**AFTERMATH:** The "Discovery" program was later booked on ABC-TV as a feature each weekday, and it lasted for two full seasons before being converted to a Sunday program.

At least partly because of this talk, two networks went to work on a quality children's program for Saturday. The result was the finest of such programs. "Exploring" on NBC-TV, and a worthwhile program on CBS-TV, "Do You Know?"

The over-all merit of the plan is apparent to any reader; yet it is still lost, a plan that probably will not ever be put into effect. The loser, of course, is that group numbered in the millions. We call them children, and one of our most fervent promises is that nothing is too good for them.

It would not be quite accurate to say that nothing is what children are getting from television. It would not be entirely wrong to say it, either.



## IV

### News, Never Enough

**THE TIME:** A cynic once described American broadcasting as a three-headed creature. He called it first a medium of advertising; secondly a source of entertainment; and thirdly, if there is any time left, a medium of news and public affairs programming.

The television networks, however, take great pride in their news and public affairs departments. CBS claims, for example, that it loses many millions of dollars each year on its news department. NBC claims that it possesses the world's largest news-gathering organization and ABC heralded its new prosperity in the 1960's by expanding its news department and by hiring President Eisenhower's news secretary, James C. Hagerty, to oversee the expansion.

A study by Irwin Ephron of the A. C. Nielsen Company concluded that nonfiction reality programs usually attract about 20 per cent of the available audience. This is not large enough to be commercially attractive to a sponsor interested only in the lowest possible "cost-per-thousand viewing homes." However, Ephron took into account the sharp rise in the number of news and public affairs programs in 1961 and 1962 and found that the increase did not diminish the size of the audience. No matter how many documentary or news programs were on the air, the audience remained close to the 20 per cent figure.

If the networks lose money consistently on the news departments, one may wonder why such departments survive. The answer lies in the changing technology of mass media.

With the increased use of filmed programs and videotape recordings, the news programs remain as the only artistically valid reason for having hundreds of stations interconnected for simultaneous transmission. (Financially, of course, there is great advantage in having one sales message broadcast at one moment to millions of consumers. This helps focus a demand for products and it enables a manufacturer to give continuity to his sales campaigns.) One needs an interconnection of stations to cover national political campaigns; for quick reporting of major elections; to inform the public of other major news events; and, on occasion, to permit our political leaders to explain policies or actions to the entire nation.

One does encounter a curious imbalance in the tastes of viewers, as reported by ratings services. There is first the consistent one-fifth of the audience that Mr. Ephron found. Alongside is the nearly universal attention the public will give to an event that is on the television set as the event itself takes place. The ten most popular television programs in history had in common only that each was a live telecast. (Television's largest audience of all time was for coverage of President Kennedy's funeral.)

The largest audiences in the history of television, as reported by the A. C. Nielsen Company, are ranked in this order:

PROGRAM	YEAR	MILLIONS OF HOMES
1. <i>Election Returns</i> (NBC)	1960	27.75
2. <i>Sunday World Series</i> (NBC)	1963	27.75
3. <i>Miss America</i> (CBS)	1963	26.32
4. <i>Miss America</i> (CBS)	1962	25.85
5. <i>Astronaut in Orbit</i> (NBC)	1962	25.68
6. <i>Academy Awards</i> (ABC)	1963	25.65
7. <i>Saturday World Series</i> (NBC)	1963	25.50
8. <i>Rose Bowl</i> (NBC)	1963	25.40
9. <i>Miss America</i> (CBS)	1961	25.37
10. <i>Inaugural Ceremonies</i> (NBC)	1961	25.09

The figures were reported in *Broadcasting Magazine*.

Radio news developed almost entirely as a place for commentary, and the men who captured the most attention were men of pronounced views, liberal or conservative. There are virtually no "commentators" in television, and the men who had enjoyed the greatest success in radio—Walter Winchell, Drew Pearson, Edward R. Murrow, Howard K. Smith—discovered that the more expensive medium of television was passionately insistent on something called "unbiased reporting." This golden goal has a certain public relations value, but in practice it is an impossibility: the moment an individual decides which events he will include in one brief program, he has made an editorial decision. And since no computer system has been devised to edit and write news programs, each program is subject to the individual preferences, education and prejudices of the men who produce and perform.

There is a reference in the following talk to "rip and read" newscasts. This technique is used at many of the smaller radio stations (and sometimes at larger ones, too) and gets its name from the actions taken, often by a disc jockey or staff announcer, to provide a resumé of current events. This station employee is converted into a reporter by a trip to a teletype machine, linked to an office of a news service such as the Associated Press or United Press-International. The station employee "rips" the paper from the teletype and "reads" it to his audience. What this technique lacks in application to the particular audience of the station is compounded by the lack of training of the announcer, who has no real understanding of the reports he is reading.

The "sound effect" newscast may mystify some. This technique was being used in the 1960's by some non-network stations to inject "showmanship" into news reporting. A traffic report was preceded by a tooting of automobile horns; trumpets blared between news items; sirens blasted before the details of a disaster; and some of the microphones were equipped for an "echo chamber effect" (just in case a story, in itself, failed to evoke a sense of doom in the listener).

Under Mr. Minow, the Communications Commission urged stations to editorialize, provided that an individual who was

attacked was given an opportunity to answer on the air. Commentary, also, was subject to the FCC's "Fairness" doctrine. More stations than ever before are now devoting more time to news and information on the air; and more stations are offering opinions on local and national issues.

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REMARKS TO  
THE RADIO TELEVISION NEWS DIRECTORS  
ASSOCIATION

WASHINGTON, D. C.

*September 29, 1961*

The subject tonight is the role of news and public affairs in broadcasting. I subscribe enthusiastically to your own words: "The Radio Television News Directors Association believes that the broadcasting of factual, objective and timely news is the finest public service radio or television stations can perform. An important objective for which every radio and television station should strive is a newsroom competently staffed and honestly operated, with every effort made to give its listeners and viewers complete, prompt and intelligently screened newscasts."

News, information and public affairs programs are the heart of broadcasting in the public interest. How well this service is performed is in your hands—yours and the men and women associated with you in the collection, production, direction and broadcast of radio and television news.

I am sorry that there aren't enough of you. There are around 550 daily newspapers in the country with circulations over 20,000, and 593 members of the American Society of Newspaper Editors. There are around 5000 radio and television stations on the air. You have 691 members, of whom approximately 400 are actually en-

gaged in news direction. May your tribe increase. This is one segment of life that badly needs a population explosion.

More people depend on broadcasting for news and news interpretation than on any other medium of communication. No other medium gives us such a compelling sense of participation in the awesome events that mark our every hour in these troubled days. No other medium leaves millions of Americans so intent upon catching every important word.

From the very beginning, radio broadcasting has been exciting because it was *news*: The Harding-Coolidge election on KDKA; the Fireside Chats; the abdication of Edward VIII; the "phony war" that turned real; the "day that will live in infamy"; V-E and V-J days; the "cold war" and the holocaust it forebodes; the political conventions; the Great Debates; the astronauts; and the life-saving warnings about hurricanes. In our own living rooms, in automobiles and wherever we travel, you provide every American with a sense of participation in history.

On balance, I think you're doing a magnificent job and anyone involved in broadcasting, either in the industry or in government, is proud of you and your work. True, there are still some serious shortcomings. Too many stations slide along with the "rip and read" news broadcast. Some go even farther in the wrong direction and offer up a shout-and-scream sound-effect newscast that is long on noise and short on content. The chairman of your own board, William Small, observed this month: "Some stations lack the willingness to invest their money, though most decent news operations are self-supporting, because the rate of profit is lower than disc-jockery. Some lack the willingness to get decent manpower and prefer trickery to talent in news coverage. And many lack the courage

that journalism needs to be alive.”

Sponsorship of newscasts presents another problem. Many advertisers have unfortunately not yet seen their way clear to help pay for this very special responsibility of broadcasting. Often, when the money is available, it is usually the short news cutaway that receives support. Indeed, sponsorship of five-minute network and of local news broadcasts appears to have doubled or even tripled in the last seven years, while little progress is found in the same period for the ten- and fifteen-minute newscasts.

This seems to me to be especially troublesome. The job of reporting the news is only half done until the pieces are put together. The pattern of the news is often obscure, and you cannot put the jigsaw puzzle of a public issue together without time to report the news in depth, to comment, to analyze. I would hope that more often broadcasting would use the incomparably powerful tools of radio journalism—switching from point to point all over the globe—literally “hopscotching the world” for more than just headlines. From “Hello America” or “Good Evening, Ed” to “So Long Until Tomorrow” or “Good Night and Good Luck,” the long reports and news analyses on radio and television are ideally suited to the interpretation of events and the exploration of issues. Through more backgrounders, documentaries, commentaries you will bring understanding of their world to millions of Americans.

I commend to you Jack Gould’s observation in *The New York Times*:

With journalistic TV the behavior of the industry has virtually attained ideal standards. The management of the networks does not wait for popularity polls to tell them what to do but on their own initia-

tive and judgment exercise exciting leadership. Enlightened sponsors are observing a separation of programming and advertising functions. The creative craftsmen in journalistic TV are receiving their head and wading into controversial issues with growing skill and resourcefulness in the use of word and picture.

Unfortunately too many television stations reject the public affairs programs offered by the networks because they can make more money rerunning old movies. This kind of broadcasting presents serious questions about responsibility and the public interest. The FCC is doing what it can to encourage what the Pilgrims called "better walking" on the part of these stations. After all, the valuable grant to use a scarce public channel should go to those who provide more public service in preference to those who choose to provide less.

Now I have a suggestion I would like to offer for your consideration today. It has to do with the virtual news blackout on television during the prime viewing hours each night. For those of us living in the Eastern Standard Time zone, at least, there is no news on television between 7:15 and 11 P.M. The world goes on during prime evening time, but you wouldn't know it if you were watching television.

I respectfully suggest that you television news directors consider the possibilities of a full-scale news broadcast somewhere in the prime time in the evening. After all, if there is time for teasers and trailers during those hours, there certainly is time for the news.

Finally, I want to put in a plug for editorializing. It is no great trade secret that journalism at its best contains strong, and often controversial, points of view. If you are worried about ratings, then I ask you whether anyone

receives more attention than someone who is embroiled in heated argument about an issue of genuine importance to the public. You must be free to criticize if you are to use your precious freedom to report.

I agree completely with these words of LeRoy Collins:

If radio and television broadcasters are to achieve full stature, stations must begin editorializing on a widespread basis. Those stations that have delayed editorializing because their management felt inadequately prepared are to be complimented for not taking this serious step without proper preparation. However, these stations should not delay further this preparation.

Some stations feel they cannot afford to editorialize. In the present climate, I contend they cannot afford *not* to editorialize.

I'd like to editorialize myself about some of the speeches to your Convention the past few days.

I noticed that your keynote speaker, Russ Van Dyke, asked the other day: "Would a station involved in FCC hearings editorialize against Chairman Minow?"

My answer is that I certainly hope so if this was the station's view and opinion. If not, something is wrong with that station's backbone and its understanding of free speech.

I also noticed that your President William Monroe expressed concern—which I know is sincere—about the government's regulation of broadcasting. He also said: "If I were asked to cite actual cases where this kind of attitude, where fear of government led to seriously distorted TV or radio journalism, I probably couldn't do it. But all of us know the situation is there."

I say to you, President Monroe, that if you ever have an actual case, a specific example of government inter-



ference with radio and television news, I promise and pledge you I will be your advocate in fighting for the fullest freedom of expression. I happen to believe that you have properly won America's confidence in radio and television, and you make broadcasting's major contribution to the public interest.

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**AFTERMATH:** This speech pronounced a pledge that Mr. Minow was to repeat several times while he was in office. He repeated the challenge that a broadcaster produce a single instance of federal interference with a program. None was ever found. (Some stations which editorialized specifically against the FCC offered Mr. Minow time to reply. He always wrote back congratulating the station for expressing its views and declining the time on the ground that his own views had already received wide exposure.)

The FCC several times came to the defense of documentary program producers. A broadcaster does not have a license to ruin the reputations of individuals; but he does have federal backing for an honest and thorough examination of the controversial issues that confront an individual community or an entire nation. Such license may require a careful review of a program and a decision by public officials. This, after all, is one of the reasons for having a Communications Commission.

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# Fish or Cut Minow?

**THE TIME:** Each person who undertakes a serious study of mass media in the United States acquires first a kind of respectful astonishment over their complexity, their size and the scope of their abilities. There is an excitement and mystery inherent in the concept that sounds and pictures move great distances from some central place and carry thoughts, ideas and the experience of events into the homes and minds of millions of citizens.

A second stage for the student begins when he starts to examine the content of these technical marvels. He may begin with a philosopher's contention that doubt is the beginning of wisdom; and he will discover quickly that the elite of mass media regard doubt about unquestioned perfection the same way it was regarded by John Boyle O'Reilly: "Doubt is the brother-devil to Despair."

Newton N. Minow had been assigned to run a federal agency that regulates those who aspire to control the machinery of electronic communication. Little is asked of such persons except that they make a pledge of performance to serve a community well. Now, should the agency check the performances against those pledges? Minow's affirmative answer implied a doubt that put him in league with the devil.

What follows is the philosophical discipline that commanded Mr. Minow to take his stand. It was not the kind of stand that would win friends in the broadcasting business, for it was an exhortation to the consumers—the audience—to play a greater role in mass media.

There is still much to recommend the government's going to the people to determine the performance of a station in a community. The cant phrase of the business is, "We are giving the people what they want." Why not, then, give those people a chance to evaluate whether they are getting what they need, along with what they are adjudged to want?



ADDRESS BEFORE  
THE COMMONWEALTH CLUB  
SAN FRANCISCO, CALIFORNIA  
*December 22, 1961*

Just ten years ago the last electronic spike was driven and the transcontinental relay system reached San Francisco, linking television stations from the Atlantic to the Pacific and opening up a new era of nationwide sight and sound. From San Francisco on September 4, 1951, television presented the nation with President Truman's address at the opening conference on the Japanese peace treaty.

In 1941 millions of Americans learned that we were at war by listening to the radio. In 1951 there was television to provide every citizen with a front-row seat in the conference chamber to witness the end of the war. On that day in 1951 we came within sight of a promised land.

John Cunningham, a most imaginative advertising man, once described the prospects this way: "Now, a man can sit by his own hearth and look around the curve of the earth. He can see his own destiny being shaped. At the moment. Live. On stage! He can peer into the parliaments of men. Sitting in his own armchair, he can view the eternal conflicts taking place that will mold his future and that of his children. All the stored-up knowl-

edge of the ages—science, music, art, culture—can be spilled into his living room.”

That was, and is, the promise. But what of the present? Now, ten years after that first transcontinental broadcast, we are engaged in a thoughtful national discussion of television and its responsibilities. Citizens are weighing television's promise against its performance. There is a national determination that this most powerful and dramatic means of communication, which uses scarce channels on the people's airwaves, must be used in the public interest. It must not be allowed to fritter away its great gifts, to spend its energies on emptiness. And serious, eloquent voices in the industry cry out to warn of government control of program content, of bureaucratic dictation, of official interference with free enterprise and even free speech.

As Chairman of the Federal Communications Commission, I am, as a matter of official responsibility as well as personal philosophy, in the thick of this healthy national appraisal—if not in the middle. I should like today to tell you how I see it.

J. Edgar Hoover, chief of the FBI, concerned about the effect television may be having on juvenile delinquency, has said: “The continuous diet of mayhem, murder and violence served daily to our television audiences constitutes a monumental insult to the genius that developed this medium of mass communication.”

Hubbell Robinson, an eminent television producer and former network vice president, several months ago spoke of television's “endless parade of totally forgettable drama and comedy.” Mr. Robinson commented: “It is in its almost total refusal to cope with themes of depth and significance that television entertainment reduces its audience to the ranks of the emotionally and mentally underprivileged.”

And another of the country's leading advertising men, Fairfax Cone, while acknowledging television's many fine offerings, offered this blunt observation: "The public is getting its television according to the money that is in it for the owners and operators of television stations."

Now, of course, the status quo has its stout defenders and one of them is William B. Lewis, another advertising leader, who told a Detroit audience recently: "Hasn't the time come to fish or cut Minow?" And Mr. Lewis continued: "What other medium of communication has faced so formidable a task as television? What other medium has done its job better—or as well? Why is television singled out for its abuses while the other media go scot-free by comparison?"

That's a fair question. A fair answer is that television has been singled out because of the unique nature of the industry and its obligations under the law.

Under the law, television is a private industry subject to federal regulation because it uses scarce and valuable public channels on the air. Because it is using a public resource, it is obligated to operate in the public interest as well as to earn a private profit. Anyone with enough money who wants to make a movie, start a magazine, or establish a newspaper can do so without a license from the government. But unfortunately, there are not enough television channels for everyone who wants one. They must be allocated, and on some reasonable basis consistent with the public interest. And that is where the government, acting for the people who own this resource, comes in.

Let's take a look at the bone structure of television, which this very day will reach an audience in this country of more than 100 million people.

In 1951 there were 107 stations beamed to 10,600,000 television sets. In 1961 there are 538 commercial stations and 63 educational stations beamed to 47 million televi-

sion homes and 55 million television sets. Theodore White has reported that in 1954, 1955 and 1956, "no fewer than 10,000 American homes had each been installing a new television set for the first time *every single day* of the year."

Television has been an astounding commercial success. In 1960 the nation's 100 biggest advertisers spent 53 cents of every national advertising dollar on television. During the head-cold season of 1961 the makers of cold remedies spent \$32 million advertising their wares on television. When we add it all up, we find that more than \$1.5 billion a year is being spent on television.

To put it in more local terms, let me refer you to the financial results for 1960 in this area. Original investment in tangible broadcast property of the four commercial television stations in San Francisco-Oakland was \$5.7 million, now carried at a currently depreciated basis of about \$2.5 million. In 1960 the total broadcast revenues of these four commercial television stations were slightly more than \$17 million and income before taxes was \$5.6 million. You businessmen can draw your own conclusions on rate of return.

These figures are a matter of public information. I cite them to this business audience not to indicate any dissatisfaction with television's prosperity. We want to encourage this industry to profit, to be strong, to grow, to do well. And television, unlike radio in many cases, is doing extremely well. But you should be aware of your local television station's healthy capacity to serve your community's needs in the way of public service. And I cite these figures to make a point: that owning a television station in a community like this is immensely profitable and is immensely profitable because the owner enjoys a limited monopoly conferred on him by the United States government.

After hearing these figures—which are at least a trifle

better than some of you are doing in your own businesses—you may think of another California gold rush. You may want to apply for a television license. But the FCC's answer would have to be: Sorry—there are no more VHF channels; these are the channels, numbered 2 through 13, available in this area. Not another one can be shoehorned in under our present twelve-channel system.

And even if a new VHF channel did become available, you would have to stand in line and compete in a comparative proceeding with other applicants. When the FCC, in a readjustment of frequencies, opened up three VHF channels in Rochester, Syracuse and Grand Rapids, at last count there were six applicants for Grand Rapids, ten for Syracuse and twelve for Rochester—twenty-eight contenders for three precious channels.

How should the FCC select the lucky three winners out of the twenty-eight applicants? The industry's estimate is that each winner will receive a license worth at least a million dollars. And he won't even have to reimburse his government for the cost of awarding it to him—yet he has to pay for his fishing license and his dog license.

But what shall we do? Flip a coin? Draw lots? Which are the right three out of the interested twenty-eight? Under the law we must require each applicant to demonstrate his technical and financial qualifications, *and to describe the program service he proposes to bring to his community*. This is his proposal, his promise of service to the public. Congress and the courts have told us this is our job. It is our responsibility to select which applicant will best serve the public interest; and we have been doing it for some time. The basic pattern was set in the 1920's by a preeminent Californian, Herbert Hoover. Mr. Hoover, then Secretary of Commerce, established an

enduring government policy when he said in 1925 that the government was entitled to ask an applicant for a radio license "to prove that there is something more than naked commercial selfishness in his purpose."

Constantly we at the FCC hear each applicant contending: "Give the license to *me*; my proposal for a balance of entertainment, news, educational, religious, agricultural and other programs is better than the other fellow's."

We do our best, and award the license. Now we must hold him to his word. When his license comes up for renewal three years later, we must inquire whether his performance has matched his promise.

Taking promises seriously is the least we can do when we have to select a winner on the basis of promises. Otherwise a broadcast license application will be like an oral promise once described—if you will permit an allusion to Hollywood—as "not worth the paper it is written on."

But in holding a licensee to his own word, we come under attack by industry spokesmen. We are censors; we interfere with free speech, and worse. One would think that taking promises seriously is a revolutionary concept. It is not revolutionary. It is not even new. It certainly did not begin with the New Frontier.

Nothing in this country—nothing—is more important than freedom of expression. Freedom of speech, the freedom to think what you please and to say what you think, is the rock-bottom underpinning of every other freedom Americans enjoy. It is the bedrock beneath the American cathedral, and if it is ever cracked, the cathedral will totter. But freedom of speech should not be confused with freedom to make promises in order to secure a television license and then freedom to break those promises in order to exploit that license. Freedom of speech does not mean freedom to propose a carefully



spelled-out plan of balanced programing, accommodating both the majority and the minority of viewers in an area; and then freedom to toss balance overboard and rush off in frantic pursuit of higher ratings and higher profits. Freedom of speech does not mean freedom to fool the people.

To those broadcasters genuinely concerned about government interference with freedom of expression, I respectfully issue a challenge. Be specific. Be precise. Give an example in which the government has interfered or is interfering with the fullest freedom of expression.

It is curious that these attacks on the FCC come in this season when broadcasting is doing a better job than ever before in discussing public issues, public affairs, controversial problems. More stations than ever before are editorializing on the air. This is with the active encouragement of the FCC. The networks and stations are presenting more documentaries and commenting on social, economic, political problems. This is precisely what is needed: that broadcasting use its voice.

So, where is the intrusion on free expression? If there are no examples to document the charges of censorship, then broadcasters ought to stop defending against an enemy who is not there. Instead of spending strength on windmills, it would be better to spend creative talents and voices building programs of vision the people can enjoy and admire.

What some broadcasters want is for the FCC to stand mute and to be alert enough only to rubberstamp license renewals every three years. They would like us to see no evil, hear no evil and speak no evil. But those of us at the FCC have a right to freedom of expression too. I am obliged to speak out, to nudge, to exhort, to urge that those who decide what will go on the air appeal to our higher as well as our lower tastes. And I won't stop tel-

ing the public it can insist on holding the standards high. The broadcasters can no more censor the FCC than the FCC can censor broadcasting.

I say to you with the utmost earnestness: television will not improve unless the public demands that it improve. I intend to stick to my guns. And already there are some signs of arms control on television: fewer killings, shootings and beatings each night.

There is much improvement going on in television. This is because the broadcasters are taking their own do-it-yourself program to heart. Governor LeRoy Collins and the National Association of Broadcasters are constantly, vigorously and successfully persuading the industry to adhere to high standards. And we are doing all we can to create an atmosphere in which the industry can fulfill its potential contributions to this nation.

And public opinion is rising. There is growing recognition that the people own the air and have the most powerful voice in its use. And they are making their voices heard.

Most broadcasters keep their promises, and most licenses are renewed without hearings. There are many, many outstanding station owners and network executives who regard the public interest as a way of life. And some of them have told me it's about time we held their competitors to their promises too. When necessary, when there are substantial complaints and abuses, we are blowing the whistle and holding some license renewal hearings in the broadcasters' own communities. Sometimes we do this over a broadcaster's vigorous protest. For some unaccountable reason, some licensees want to be heard in hard-to-find rooms in Washington, far from the public they serve. We obviously cannot know in Washington whether a community is receiving the service it needs. We want the local P.T.A.'s, Chambers of

Commerce, Civic Leagues, church groups, mothers' groups, Leagues of Women Voters, labor unions and other citizens to have a chance to express their views if they are interested. Any conscientious broadcaster should prefer to have his record examined at home instead of in Washington. Indeed, he should insist on it. We want the public to have its say, to help decide whether a broadcaster has met his legal obligation of public service in return for the franchise the public gave him so freely.

We are about to have an explosion of scientific technology in all forms of communications, not only television. With new means of communicating, the world can unfold at the push of a button for all of us, parents, grandparents, children—to deepen our understanding and lengthen our vision. This fantastic multiplication of the individual's power to see and hear comes at a time when the flourishing of freedom depends on the world having access to the truth.

But before we cheer too much, let us recall what Henry David Thoreau wrote more than one hundred years ago. Said Thoreau:

We are in great haste to construct a magnetic telegraph from Maine to Texas; but Maine and Texas, it may be, have nothing important to communicate. Either is in such a predicament as the man who was earnest to be introduced to a distinguished deaf woman, but when he was presented, and one end of her ear trumpet was put into his hand, had nothing to say. As if the main object were to talk fast and not to talk sensibly. We are eager to tunnel under the Atlantic and bring the Old World some weeks nearer to the New; but perchance the first news that will leak through into the broad, flapping American ear will be that the Princess Adelaide has the whooping cough.

We live at an hour of testing the nerves of man, of testing his awful weapons. It is a complex, not a simple, time. It is a time of trouble, not a time of ease; and yesterday's slogans and answers will no longer suffice. Nineteenth-century colonialism falls like cracked plaster in an abandoned house, and the dire predictions of Karl Marx are crumbling just as fast. From the Caribbean to the Congo, from the Berlin Wall to the shining capital of new Brazil, we live, all of us, in a house afire. And overhead and underground, the bomb ticks away.

What can save us? It has been wisely observed that mankind's saving grace may be just this: our technical capacity for mass communications has kept pace with our mastery of the means of mass destruction. To survive, we can, we must, talk to each other. And we must talk not only of Princess Adelaide's whooping cough. The power of television to shape the American mind, the world's mind, is something new on earth. How that power is used in a free society depends on each of us.

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**AFTERMATH:** The prediction about the shrinking of the world's frontiers by satellite communication became a reality eight months after the talk. The wink of an eye is enough time for a signal to hop across oceans and continents. We can stand in awe once more, and once again we must examine the content of the electronic notations that have harnessed the heavens.

To at least one advertising executive it meant the kind of excitement that comes from new marketing techniques. My advertising friend reached for the ceiling of his office and clenched his fist to make a kind of Telstar satellite. "Just think," he said, "all over the world, at the very same time, people can watch 'Wagon Train.'"

Mr. Minow saw things differently. It was his dream that the new technology could, like Joshua's trumpet, blow down the ancient walls of ignorance and prejudice.

## VI

### All-Channel Television

**THE TIME:** One of the most important campaigns waged by Newton N. Minow during his term as Chairman of the FCC was to unlock the seventy channels of the ultra-high-frequency range. The importance of the campaign was stressed most heavily in a speech before the National Press Club, just before congressional hearings on the question in 1962. This was Mr. Minow's way of dramatizing that half a television set was not enough.

There was severe difficulty getting the bill enacted. To many of those with an investment in television, the industry had already attained something close to optimum efficiency and was returning profits greater than one might have dreamed during the infancy of television.

By now, there is fairly general agreement that the FCC's haste to bring television to the public caused the great troubles of the 1950's and 1960's. The haste rendered almost useless for ten years the seventy potentially valuable channels that are numbered 14 through 83.

More than one angry, frustrated congressman has asked FCC Commissioners just why the FCC committed what *Fortune* magazine called "the engineering botch of the century." The usual response is that the FCC did not know, in 1945, whether television could succeed as a business. A second part of the answer is that the United States was eager to have television and that the FCC had a responsibility to help develop it.

The answers do have merit, but they leave a certain as-

tonishment. Radio, for example, thrived and expanded economically throughout the great depression of the 1930's and demonstrated rather conclusively that there is a vast market for home entertainment and information. The FCC's answer leaves the impression that television had emerged full-grown from World War II technical developments, much as the goddess Athena once sprang full-grown from the head of Zeus. The impression, however, will not stand examination.

A kind of theoretical television system was patented as far back as 1884 by Paul Kipkow in Germany. Modern television is usually dated from 1928, when V. K. Zworykin patented an iconoscope, an electronic scanning system for producing pictures from signals sent through the air. Dr. Zworykin's invention depended on work that had been done by Sir Joseph Thomson on the nature of electrons (1897); on Albert Einstein's sure grasp of the photoelectric effect (1905); on the three-element vacuum tube of Lee De Forest (1906); and on the regenerative circuitry of Major E. H. Armstrong (1912). Two years before Dr. Zworykin's electronic system, mechanical scanning disks had been demonstrated in England by J. L. Baird and in the United States by C. F. Jenkins.

Between 1930 and 1940 television reached perfection in the laboratory, and the Radio Corporation of America's television exhibition at the 1939 World's Fair in New York whetted the public's appetite for this new communications development. Even before Great Britain's 1939 entry into World War II, the British Broadcasting Corporation had a going television schedule. Throughout the war years the safest prediction in broadcasting was that television was certain to sweep across the United States.

We have already noted the great demand for radio frequencies and that there are never quite enough for all who wish to use them. One of the FCC's most difficult jobs is the assignment or allocation of frequencies. In 1945 the FCC was trying to get ready for a boom in frequency modulation (FM) radio and for the explosion of television. For reasons that have never been made clear, the FCC ignored its own

staff's findings on tropospheric interference, and the FM band was shifted upward (88 to 108 megacycles). FM radio was to languish for 15 years before finding in the 1960's the momentum that had been foreseen but thwarted.

But if FM presented difficulties, the allocation of television channels appeared almost an impossibility. Two main groups were pulling and tugging for a favorable FCC decision. One group was led by RCA, Philco and the gifted electronics inventor, Allen B. DuMont. In opposition was a group headed by the Columbia Broadcasting System, Cowles Broadcasting and the Zenith Radio Corporation.

All the prewar research had been done in the very-high-frequency (VHF, then Channels 1 through 13) range, and the RCA group, eager to get television off to a fast start, wanted a television system using these channels. The CBS group, with a color TV system in the future, advocated shifting all of television into the more spacious ultra-high-frequency range. This course would have meant a certain amount of delay while better UHF television equipment and techniques were developed. The RCA group countered with the argument that the public was already eager for television and that there were no valid reasons for a long delay.

The FCC decided in favor of RCA's position. This decision did more than merely restrict television to a mere twelve channels; it also affected the quality of the pictures that could be sent and received in the United States because the sharpness and clarity of a television picture is determined mainly by the width of a band for a single channel. If channels are wide, a much sharper, more detailed picture can be obtained. Conversely, the more narrow the space for a channel, the fewer the number of lines in the image on the face of a tube, and the fewer the number of supplementary qualities to fill out an image.

Adopting a twelve-channel system in the United States meant that a single channel could be only six megacycles wide. Thus, we settled for 525 lines (and it has been called an engineering miracle that this many lines could be packed into six megacycles). In continental Europe the television

picture has 625 lines. Only in Great Britain, keyed to its early research and development, does one find 405 lines. The continent of Africa favors 625 lines, except in Liberia, where power supplies are weak and a 525-line picture is used.

In the United States the narrowly spaced six-megacycle channels immediately proved trouble-ridden. Tropospheric interference caused a channel in Detroit to interfere with one in Cleveland. Sometimes scrambles occurred between stations in New York and Baltimore or between New York and Washington. Such interference caused television pictures to look as if a Venetian blind had been placed over the face of the tube.

The picture at the Federal Communications Commission became scrambled even more severely. The FCC revised its allocations tables in 1947 and in 1948 decided that the safest action would be to "freeze," or stop, all grants of TV licenses until all of these troublesome problems might be solved. It took four years to thaw the freeze, and one immediately apparent result was that the pioneering 108 pre-freeze stations got a tremendous jump on all future competitors. An economy of scarcity—meaning restricted competition—led television toward unnaturally inflated costs, and these in turn have hampered hopes for any development for specialized stations that could be created for the viewing tastes of meaningful minorities.

Even in limited form television proved fascinating for millions of American citizens. Consumers invested more than \$15 billion (now \$20 billion) in television receivers, a rate of consumer investment that is without equal in American industry. Few were concerned at the time over a television receiver that could pick up only twelve channels; and almost no one appears to have thought about the future impact on hopes for true competition or real diversity.

There were pictures in the home; television worked. Who cared if it were only wrestling, or the roller derby, or movies that reeked of senility? The miracle of television had arrived and had become the public's favorite toy.

"So, cheer up," a gloomy man is sometimes advised.



"Things could get worse." With the unfreezing of television station grants that followed the FCC's Sixth Order and Report in 1952, things became much worse. Now, ran the philosophy of the FCC, we shall watch television develop in the same manner as radio. This meant that the older VHF channels would be comparable to a "clear channel" (or regional) frequency of a radio station; the UHF channels were plentiful, and they were supposed to become like the local stations of radio.

Overlooked in the salubrious atmosphere that followed the report were television's already soaring costs. Radio could use telephone lines to receive network programs, and such a service is cheap. But television needed coaxial cables or microwave links, and the rate for "occasional use" was \$1.08 per mile per hour. There is also the vast difference in program costs: recorded music for radio is both cheap and plentiful; but film for television programs was scarce (the big movie producers were holding onto their large libraries, hoping that television would disappear) and the film that was available was expensive. As for "live" programing, the concessions made to unions during the unbelievably profitable years of the 1948-1952 "freeze" had made this the most costly program format of all.

In the speech that follows, Mr. Minow has taken full cognizance of the death rate among UHF stations. He did not mention one additional blunder made by an earlier FCC in the mid-1950's. Since UHF was suffering from a bellyache, the FCC had decided that a proper prescription for the ailment was decapitation. On the theory that some people could not watch television because UHF was failing, the FCC decided to serve the public better by permitting VHF stations to increase their effective radiated power. This meant that existing VHF stations could reach farther out, and it meant that even less reason would exist for a consumer to buy a UHF receiver.

Another result of these decisions was the creation of Community Antenna Television Systems (CATV) that were to provide headaches and bellyaches in the 1960's. This problem

will be covered in detail in a later chapter.

In the bitter honor of the bankruptcies in UHF and the profits that fell to VHF stations, broadcasters were able to decide that VHF was a mnemonic for "Very Happy Frequencies." UHF, of course, symbolized "Unhappy Frequencies."

Actually there was no easy way out of this allocations dilemma. What follows is an exposition on the least objectionable solution—one that holds enormous benefits for the American public.

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ADDRESS BEFORE  
THE NATIONAL PRESS CLUB  
WASHINGTON, D. C.  
*January 11, 1962*

One of the most hopeful signs for the future of television is that the public's voice is being heard with increasing volume. Indeed, it's becoming almost as loud as the commercials!

In our increasing national discussion no one has seriously advocated that we alter the underpinnings of our television system. No one I know of has proposed governmental control or ownership of television. We are determined to preserve our own unique mixture: a television industry based on freedom of expression, privately owned and operated for a private profit; but which, because it uses scarce channels on the public's airwaves, must also operate in the public interest.

We wind up with a quasi-public industry regulated by a quasi-judicial agency called the FCC. When we search for ways to improve our television system we often wind up with quasi-solutions.

The line between private right and public interest is

often difficult to draw. But, even so, after ten years' experience with television, and after nearly a decade of private and public discussion about its role and its future, we should be reaching some fundamental conclusions about what must be done to realize the full promise of this powerful and effective means of communication.

What I want to discuss is one particular fundamental conclusion I have reached. Although the details will take some explaining, the conclusion can be stated quite simply: what this country needs is *more* television, not *less*.

For example: Americans now own fifty-five million television sets. More homes have television sets than indoor plumbing. Television this day will reach an audience of 100 million people. Perhaps you think: enough already, there's plenty of television. But we can marshal another set of figures that point to a serious scarcity of television.

Since 1952 the FCC assigned enough frequencies to television to accommodate more than 1900 commercial stations and 175 educational stations. Twelve channels (Numbers 2 to 13) were assigned in the VHF (very high frequency) range and seventy channels (Numbers 14 to 83) were assigned in the UHF (ultra high frequency) range. The plan provides for 591 VHF and 1362 UHF commercial stations. Yet today we have only 543 commercial stations, 458 in VHF and 85 in UHF. In the case of the educational stations, the plan envisaged 92 VHF and 184 UHF; yet today we have only 44 educational VHF stations and 18 educational UHF stations.

The reason for this gap is the failure of UHF broadcasting to develop alongside VHF. And that's the heart of the problem.

We have about reached saturation on the VHF band. There are, in general, no more unused VHF channels in the populous areas. The case with UHF is diametrically opposite. We have an abundance of UHF channels avail-

able for assignment, but in the absence of a substantial number of homes equipped to receive UHF, there is little demand for these channels.

In language used by the industry, the country is divided into 272 television markets. Of the 272, 132—or almost half—are one-station markets; 69—or about one-fourth—are two-station markets; 54 are three-station markets; and 17 are markets with four or more stations. Under these industry marketing terms, three-fourths of the television markets do not even have a choice of three stations.

The markets with the most stations are naturally in the larger population centers. Even so, only 56 per cent of the population has a choice of four or more channels.

As you all know, we now have three networks, and despite efforts to squeeze the twelve-channel VHF system to the limit to provide room for all three of them, there are still sizable communities—such as Toledo, Ohio; Augusta, Georgia; or Jackson, Mississippi—where you cannot now obtain the full range of programs that the three networks offer, simply because one or two stations cannot broadcast three network schedules.

Again let's be specific. Recently one network put on an hour interview with President Eisenhower. It was on at the same hour as two popular entertainment shows. As it happened, President Eisenhower was then in Augusta, Georgia (a two-station market) and his program was not to be seen there. At the last minute, when it was realized that President Eisenhower was in Augusta, some special arrangements were made. So if President Eisenhower had not happened to be in Augusta that day, the 280,000 television homes in the Augusta area would never have had a chance to see this splendid public service program. This is one example of why we need more television in this country, more stations, more outlets, more voices.

Fortunately, this is not a hopeless case. We have in the

UHF section of the television spectrum seventy channels which we can use, and the time has come to start using them fully. We are currently using some UHF channels in certain parts of the country with great success—success enough to show that UHF is feasible, practical and not to be put off. Fort Wayne, South Bend, and Elkhart, Indiana; Peoria, Illinois; Wilkes-Barre and Scranton, Pennsylvania; and Youngstown, Ohio, are all cities in which the local channels are *all* in UHF.

We are trying to achieve the same success in other cities. Moreover, if we were not using UHF in the cities I've just named, the people living there would have no local television service because there are just no VHF channels available. Well, why haven't those seventy UHF channels been put to use? I'll explain.\*

First, there is the VHF television set. This is the television set most of us own. There are forty-five million of them in American homes. See the dial? No room for anything more than twelve channels.

Second, there is a minor cure for the existing VHF set. It is called "strip conversion." One single UHF channel is routed through the set, making it capable of receiving thirteen channels. It's used when a community finds a way to open up such things as educational television or one commercial UHF broadcaster decides to take a chance. But Americans move about. And the conversion for, say, Channel 20 is useless if the next town has Channel 44. The set, in effect, returns to twelve channels unless the owner has a new strip conversion done.

So we try again. We take a regular VHF set and this time we add a little black box, to achieve what is called a "converted receiver." Here a converter has been added to

\* Mr. Minow brought television sets with him to the Press Club (as he later did to the congressional hearing rooms) to demonstrate VHF and UHF television during his speech. [Ed.]

bring in all UHF signals operating in the area and to convert each of them to an impulse suitable for VHF reception. But to do this, it was necessary to bring about a major cure: the addition of a converter.

Why? Because almost all the television sets being manufactured today leave the factory with a part missing. It's the UHF tuner—a simple key to the full, rich promise of television.

When this key is put into the set at the factory on the assembly line, we then have the set that will receive eighty-two channels. No strippers and no converters; just eighty-two channels of choice. We call this the all-channel receiver, and you can buy it right now. The all-channel set is born complete to serve every station in every market.

Why should any television set leave the factory incapable of receiving 85 per cent of American television allocations? If we could have all-channel sets, we can fulfill the promise of the FCC's 1952 plan—a total of 2229 television stations in the United States: 683 on VHF, 1546 on UHF.

Before I joined the FCC, the Commission reached the conclusion that we should seek legislation to help achieve this plan. This legislation would unlock UHF by requiring that future television sets be manufactured to receive all channels. I wholeheartedly agree with this view, and our chief legislative proposal for 1962 is the All-Channel Television Receiver bill.

Best estimates are that in mass production the all-channel set will cost about \$25 more than the twelve-channel set, varying with the style and size of the unit. This is a small price to pay for unlocking another seventy channels.

Last year bills were introduced by Chairman Warren Magnuson and Chairman Oren Harris in the Senate and

House. These bills would require that every set manufactured for interstate shipment be capable of receiving all the television spectrum and not just a part of it.

Since you entered this room about an hour and a half ago, around 3000 television sets were sold in this country. That will indicate why we think this is the solution. We believe that if this proposal becomes law, we will in a reasonable time solve the fundamental problem of television. We will broaden the viewer's choice—by lighting up the vacant channels.

A great deal is at stake. First, the future of educational television is tied to UHF. Educational television now holds 92 VHF assignments. But the educators estimate they will need a total of 158 VHF channel assignments to develop a national educational television system through a fourth network devoted to classroom instruction during the day and to adult programing during the evening hours. We want to bring such an educational network to life, but most of the remaining channels assigned for educational use are UHF channels. We can pinch, pry, and prod the twelve-channel VHF system, but we will not get educational stations into more than a fraction of the communities that want and need them.

Second, the communities now served by less than three stations have a stake in the development of UHF. It is their only chance of getting more service. There are now some eighty-three areas in which one or more UHF stations were once in operation but are now silent because of lack of UHF sets to receive their signals. Twenty-five of those areas now lack any local station, and fifty-eight lack the choice of service which a second, third or fourth station once brought. If you are a candidate for local office in Allentown, or a proponent of a local school bond issue in Atlantic City, or a local advertiser in Battle Creek—you can no longer turn to a local tele-

vision station. And there are scores of other communities where capital has never been risked to build a local station because of the chilling example of the Allentowns, the Battle Creeks and the others. Communities such as these will never have a fair chance unless UHF gets a fair chance.

Finally, the fundamental future of commercial television is at stake. The present tight twelve-channel system is already too small. Yet, the country has already grown by three and a half million people since President Kennedy was elected. (I might add that we Democrats do not claim all the credit for this contribution to the national interest!) We will in just a few years have a nation of 200 million people, and if we do not expand television, we will have unnecessarily few people deciding what larger and larger numbers of people will be seeing on television. This is just inconsistent with the way our country has grown.

A free, open, competitive system has brought us to the highest standard of living. It has given us the opportunity to achieve the highest standard of life. I think that all of us would insist that the sinews of this system be extended to every phase of our lives—and I see no reason why television should be excluded from its benefits.

In television we have found a situation where we are physically able to go a lot further toward free enterprise, and I fail to understand why so many otherwise staunch defenders of our way of life resist this direction.

Surely the broadcasters who are most sensitive to what they regard as tightening regulation should welcome this growth and should be willing to accept this competition. A wider field means a rich variety of services for many tastes, and more voices to share the resistance to government.

But to resist both competition and regulation is indeed



short-sighted. For just as surely as a commercial is wrapped around a station break, the television industry in the long run faces one result or another: *more competition or more regulation.*

My own vote is for more competition. And my faith is in the belief that this country needs and can support many voices of television—and the more voices we hear, the better, the richer, the freer we shall be.

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**AFTERMATH:** It is accurate to say that the FCC drafted the legislation that became known as the "All-Channel Television Receiver Law" before Mr. Minow joined the Commission. But it was Newton Minow who dramatized the issue and who successfully led the push for passage by Congress and acceptance by the President. Beginning on May 1, 1964, all television sets shipped in interstate commerce were required to have all-channel tuners; that is, they had the capacity to receive all channels, 2 through 83.

By the most conservative estimate (one that was issued by the National Association of Broadcasters), the legislation was expected to add about 200 stations in the United States. Others, less conservative, predicted that the number would double and give the United States about 1200 television stations. The optimists made the forecast after looking at the rapidly increasing population and a continuously booming economy geared to automation. In simplest terms, future projection indicates more people with more leisure time for television.

As a side issue in the long fight over the all-channel legislation, the members of the Electronics Industries Association (a trade group, representing nearly all TV set manufacturers) charged that the bill was unconstitutional, a clear infringement of a manufacturer's freedom, and an unnecessary burden on the purchaser of a TV set. Senator John O. Pastore of Rhode Island, Chairman of the Communications subcom-

mittee, requested a ruling on the constitutional issue from the Department of Justice. The legal questions were answered in a brief from Deputy Attorney General Byron R. White (later, Associate Justice of the Supreme Court). Mr. White cited ten Supreme Court decisions to back the legality of the bill and concluded that the bill "is clearly valid under the commerce clause" of the Constitution.

Only a fool would expect the all-channel requirement to solve the many problems of television. Some of the errors (admittedly viewed here with the perspective of hindsight) will continue to affect American mass media for decades to come; and perhaps this legislation is only one major alteration in a woefully inadequate garment. But most certainly it offers the hope that the dark side of the television spectrum will be illuminated, bringing true competition to television and benefits to the viewing public.

## VII

### Editorializing: The Second Mayflower

THE TIME: Temerity by one broadcaster and diffidence by many created most of the problems that arose out of broadcasting editorials. The temerity came from a Boston radio station, operated by the Mayflower Broadcasting Corporation, that used the airwaves for supporting political candidates and for broadcasting the personal views of the owner. His boldness led to the FCC's famous 1941 "Mayflower Decision" ordering stations to refrain from editorializing.

The decision caused a small storm in the Congress, led to FCC public hearings and, ultimately, to a reversal of the decision. Thus the term "Mayflower Decision" is a confusing one, meaning, unless one makes a distinction between the first and the second decision, two different things. The first forbade editorials; the second said editorials would be permitted if "Fairness" to all parties in a conflict were practiced by a station.

It is most assuredly in "the public interest" for the management of a station to be concerned about community problems. Better, he should be involved in the crucial issues and, best, he should make certain that a public dialogue is created to resolve the issue.

Ideally the station management would state its own point of view and offer time to those personally attacked or who support an opposite view. Such a practice leads to increased

public awareness of issues and, in time, should lead to an increased audience for the station.

Editorializing must be distinguished from news commentary. The former is a statement by that abstraction called the licensee of a station and it carries, by implication, the support of the corporation or individual who owns the station's physical equipment. Commentary, or news analysis, comes from an individual, although, under FCC regulations, the station is responsible for anything it broadcasts.

The number of radio and television stations holding opinions and points of view for public consumption rose to an all-time high in the early 1960's, and one of the main reasons for the increase was the continued encouragement given to the practice by Newton N. Minow.

The speech that follows was delivered at the National Association of Broadcasters' first conference on public affairs and editorializing. The conference began with a statement of policy from the Chairman of the Federal Communications Commission.

Any broadcaster who came to the Conference expecting one of those "on the other hand" speeches that are often made by bureaucrats got a surprise. Mr. Minow did more than approve editorials on the air; he exhorted and encouraged responsible and active involvement of the stations in a community's problems, voiced in station editorials. Advocacy coupled with fairness, he argued, could serve the public in a time when other sources of opinion and strong views were drying up.

After the speech the number of stations that regularly broadcast editorials showed an increase.

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ADDRESS BEFORE  
THE NATIONAL ASSOCIATION OF  
BROADCASTERS PUBLIC AFFAIRS/  
EDITORIALIZING CONFERENCE

WASHINGTON, D. C.

*March 1, 1962*

A cardinal article of faith in a free society is, to use the words of Judge Learned Hand, "the dissemination of news from as many different sources, and with as many different facets and colors as possible."

This was never more true than now, when the world orbits somewhere between global war and global peace. As President Kennedy once said:

Freedom and security are but opposite sides of the same coin—and the free expression of ideas is not more expendable but far more essential in a period of challenge and crisis. I am not so much concerned about the right of everyone to say anything he pleases as I am about our need as a self-governing people to hear everything relevant. . . .

We need to receive reports from all parts of the world; to know the facts in all agencies of the government. We need to be able to go everywhere we can get in, and to see things for ourselves. We need to keep our doors open to visitors from around the world. Above all, we must keep our minds open to criticism and to new ideas—to dissent and alternatives—to reconsideration and reflection.

Only in this way can we as a self-governing people choose wisely and thoughtfully in our task of self-government. And it is only in this way that we

can demonstrate once again that freedom is the handmaiden of security—and that the truth will make us free.

President Kennedy said that in 1959; it has even more application now. For these are the days we wake up to find the course of our lives affected by men whose names we can't pronounce, acting in countries that didn't exist the day before yesterday. Now, as never before, we need more news—not less; more voices—not less; more sources of information—not less; more viewpoints and opinions—not less.

Above all, we desperately need insight to find our proper way through the staggering flow of developments which mark our time. In his remarkable book *The Future as History* Robert Heilbroner identifies our century as the first to be catapulted from the relatively stable sense of the past into the troubling and insecure sense of the future.

It is up to the American broadcaster to fulfill the country's need for many voices, many sources of information and many viewpoints.

The plain and unhappy fact is that our traditional avenues of communication are contracting, not expanding. We are witnessing an odd, and distressing, phenomenon. The population is increasing at an explosive rate; the big cities are now metropolitan areas; and suburbs are spreading like ink spilled on a blotter. But in the eye of this hurricane, the number of metropolitan newspapers which traditionally have served our people is decreasing. The population and newspaper birth rates are moving in opposite directions—more people, fewer printed sources of information. Some of the most startling social statistics I know are that since 1945 the daily newspaper circulation has increased from forty million

to sixty million, while in the same time period the number of cities with dailies under competing ownership has decreased from 117 to 60. Today in America there are just slightly more than 1440 cities with daily newspapers—but there are only 60 cities with competing papers. The others are either one-newspaper towns or cities with several newspapers under the same ownership.

But when we turn to the newest of the media of communication these are the social statistics we find: In 1945, there were 965 AM and FM radio stations on the air and 6 television stations. Now there are 4847 AM and FM radio stations, 543 commercial television stations and 62 noncommercial television stations. More than that, there is the entire seventy-channel UHF television band waiting to be used, and the possibilities of FM radio are only beginning to bear fruit. And to protect the public interest, we have rules which restrict the number of stations any one individual or group can own, so that we have an effective bar against concentration of control of the broadcast media.

The arrival of radio and television are something almost providential in this age when, as Fred Friendly of CBS News has observed, "What the American people don't know can kill them."

I believe it to be a matter of urgent national importance that radio and television reach out increasingly for their greatest potential; for broadcasting opens up a dimension in communications which the more traditional processes of the printed word cannot achieve.

Broadcasting has traveled a long distance since that disastrous day in 1935 when Alexander Woollcott's "Town Crier" was tossed off the air because a sponsor complained that Mr. Woollcott had criticized Hitler and Mussolini and might offend some listeners. Mr. Woollcott was found guilty of editorializing; and now, twenty-

seven years later, what broadcaster would not be proud to have similar "guilt" on his record? The time has come at this Conference to find ways and means to follow this illustrious example.

Radio and television have often demonstrated their power as a source of news and of the background of the news. But that's only half the mission of communications.

If broadcasting is to take its rightful place in the communications firmament—if it is to become a force as well as a service, *if* it is to accept the responsibilities as well as the protections of the First Amendment—then broadcasting should be willing to express a point of view about the news it provides.

Let me frankly acknowledge there was a period when the climate was not favorable to editorializing. In 1941, in the Mayflower Decision, the industry was told by the FCC that "the broadcaster cannot be an advocate." The question was opened up again in the late 1940's, leading to the 1949 Report on Editorializing. The Commission decided then that, while a broadcasting station cannot simply be the broadcaster's private mouthpiece, the broadcaster has as much right to express his views as any other member of the public and is often much better prepared to do so than others.

That was the green light. A small number of stations saw it blinking and took off. Each year a few more start gingerly moving. But the majority still are negative or undecided. One estimate is that today, thirteen years after the green light, only about one-third of the broadcasters are exercising either their rights or their courage.

But even so, we are in the beginnings of a movement that has profound implications. Broadcasters are no longer simply purveyors of news and entertainment. They are becoming journalists.



Since the development of an informed public opinion is our objective, we have consistently held that some allotment of time must be made to news and programs devoted to a discussion of public issues. In such allotment of time, there must be over-all fairness through the expression of contrasting views of all responsible elements, with the licensee playing a "conscious and positive role" in achieving a balanced presentation. It is against this background that licensee editorialization serves the public interest. The broadcaster has the opportunity to express his own views as part of an over-all presentation of varying opinions on controversial issues.

It is not only the licensee's freedom of speech that we are anxious to protect. It is the right of the public to be informed and at the same time to maintain radio and television as a medium of freedom of speech and freedom of expression for the people of the nation as a whole. As the FCC's 1949 Report states: "The most significant meaning of freedom of the radio is the right of the American people to listen to this great medium of communications free from any governmental dictation as to what they can or cannot hear and free alike from similar restraints by private licensees."

There are some general propositions I want to lay before you. The very first is that the men engaged in this enterprise, the broadcasters, are men of responsibility and good will. When the FCC grants broadcast licenses, the most basic criterion is the character of the applicant, his integrity. In the almost sacred field of news and public affairs, we do not have to concern ourselves with hidden persuaders or men who would put their convictions up for sale. If we did, the news would have been slanted, the documentaries would have been distorted, and editorializing would be fated for disaster.

You should know that the Commission stands behind

you. We recognize that a station with a strong voice can be a prime target for pressure groups and that the pressure groups may try to put the squeeze on through the FCC. I suggest that the absence of such a pressure-group squeeze may indicate that your editorials are milk-toast. Complaints prove you are communicating, not toe dancing with issues.

So if you get a letter from the Commission asking about a complaint, don't panic. Integrity will protect you better from the federal troops than a regiment of lawyers. If you have a fair and equitable position, then state it and don't be intimidated. You'll find us cheering you on, not heading you off. It is only when you fail to live up to your responsibilities to present the pros and cons of an issue that you invite headaches. There is no lack of formats, methods and techniques to ensure fairness. If the will is there, you'll be fair.

The really difficult cases presented to the Commission usually do not involve station editorials. Rather, they involve stations that thought they were presenting a non-controversial program, only to learn from the furor that they had touched a raw nerve in the community.

What we need—the FCC and the noneditorializing broadcaster alike—is some way to tap into the hard-won experience of the broadcasters who already have taken a plunge into the sea of controversy.

Take, for example, WTVJ, in Miami, believed to be the first television station to offer editorials on a regular basis. It demonstrated the power of television to affect public issues. It started on a Wednesday—July 19, 1961—when three of the five city commissioners suddenly, and unexpectedly, voted to fire the city manager, Melvin Reese. Ralph Rennick, WTVJ's vice president in charge of news, was on the air with an editorial even before the city commission had adjourned its session.

Among the things he said was, "Apparently Reese was too good for his own good." The city knew where WTVJ stood.

The next day Rennick reported that because of a legal hitch, the firing was going to have to be repeated at the next meeting of the city commission, scheduled for the following Tuesday.

On Friday, the station began with an editorial statement to the effect that "Rarely in the history of this city has the public decency and respect for the orderly processes of good government been so outraged." WTVJ then announced that it would carry the Tuesday commission meeting live. Which it did. And the city commission, acting in full view of the citizens of Miami, reversed the dismissal. There is a moral in this story. You can fight city hall—and most effectively, too—with television cameras.

Let's return to radio for a moment and to WMCA in New York. The late Nathan Straus, a leader in the campaign to change the Mayflower Rule, began broadcasting regularly scheduled editorials in 1954, and his son, Peter Straus, carries on the tradition. WMCA has broadcast editorials on subjects ranging from crankcase blow-bys to colonialism—and it has added some pioneering innovations. In October, 1960, WMCA became the first station to endorse a candidate for President. Last year the station endorsed candidates of different parties for Mayor of New York and Governor of New Jersey. Most recently WMCA has started a new kind of editorial campaign which combines legal action with its broadcasting efforts. Tackling the problem of legislative reapportionment, WMCA editorialized against reapportionment legislation in New York State and then filed suit, as a taxpayer, to force the issue into court.\*

\* This ultimately led to the U.S. Supreme Court decision on June 15, 1964, which is a constitutional landmark on reapportionment.

Westinghouse Broadcasting has also pioneered in combining editorializing with community action in Baltimore. This is service to the public interest in the best sense.

WDSU and WDSU-TV in New Orleans faced the segregation crisis in that city with dignity, firmness and leadership. For a period of about two years, both before and following the segregation crisis in New Orleans, WDSU broadcast editorials which stood behind law and order. To measure the achievement, let me read this statement by the Louisiana State Advisory Committee to the United States Commission on Civil Rights: "The editorial leadership that did exist in New Orleans during the school crisis was provided by television station WDSU-TV and its companion radio station, WDSU. In about a year and a half these two media have presented more than 50 editorials relating to the complex problems of desegregation. Their editorial position has seemed to be a full acceptance of the concept of editorial responsibility to interpret the facts and to advocate constructive lines of action." This is broadcasting making its voice ring! This is the new world of communications in which broadcasting both informs and leads public opinion.

But let us consider the situation of the majority of broadcasters who say they are not yet ready to accept "editorial responsibility to interpret the facts and to advocate constructive lines of action."

We accept their judgment and are sure they are right. Every station that now editorializes in a significant manner emphasizes that the first requirement is a competent staff: at the very least, a good reporter and research man, capable of getting the facts, getting all of them and getting them right. This is the first requirement, and I'm sure the station that cannot meet it is wise to delay raising its voice. The alternative is the station that only pretends to editorialize; the station that's in favor of greener grass, mother love, canoe safety and milk for children.

While the Federal Communications Commission wants to encourage editorializing, we do not say you must editorialize. Nor, since 1949, do we say you must not editorialize. But the day is coming when the broadcaster who aspires to stature and influence in his community will have to see, hear and speak about evil. He will not be able to plead that he does not have the staff to find out what's going on in front of his microphone and his lens.

John Crosby once observed: "A TV station that has a mind to harbor an opinion and the courage to utter it just seems more important than a station that won't dare open its mouth."

The broadcaster who has an intense interest in his community must by the very nature of things also have intense opinions about local issues. If he cares about his community, then he must care enough to do something for his community. If he expresses these opinions, he is going to command interest and respect. And the "Fairness" tradition of the broadcasting industry, which gives the opposition its chance, enhances rather than diminishes this respect.

If I stress editorializing at the local community level, it is because this is where broadcasters are finding the greatest need, and it is here they are building the great new tradition.

Indeed, most broadcasters who are editorializing are dedicated to the proposition that they should limit themselves to local issues and events, where they have the facts and feel of the situation.

Certainly a broadcaster would spread his air time and broadcast talents thin if he began prescribing for all ills, foreign and domestic. But Main Street now goes all the way around the world. National and international issues can be as immediately important as local issues. And

there is a great compelling need for breaking the sound barrier between local, national and international events.

On the radio side, WMCA in New York has covered the range of comment—continental and international—and here in Washington we have a television station, WTOP, which has been breaking the barrier. Jack Jurey, WTOP's editor, made a count for last year and found that 60 per cent of the daily editorials had been on national and foreign affairs, while 40 per cent had been comments on events in the Washington metropolitan area.

Broadcasting of the kind we describe as public affairs—news, views and documentaries—will each year become an increasingly important part of our lives as the public increasingly turns to broadcasting to satisfy its hunger for information. This is broadcasting's great challenge and opportunity. As traditional means of communication diminish, and as fewer men decide what more and more people will read, we have as the counterbalance a precious resource which is reaching maturity, 5000 new voices enriching the oldest of our country's freedoms, practicing the youngest of our industry's traditions.

We share a deep and abiding faith in the intelligence of the American people. Theirs is the intelligence which, given the facts, invariably reaches a decision in the best interest of our country. Since facts are often clouded and subject to degrees of interpretation, the more voices heard debating these facts, the better. The gradual disappearance of the second editorial voice among the local press threatens the very cornerstone of our democratic process. Only by replacing our opportunities to hear other points of view can we maintain our democratic way of life. Broadcasters, then, have little moral choice in the matter. Though they can legally evade their responsibility to provide second and third choices to their people, mor-

ally they are compelled to answer the compelling need for more information, more opinions and, of grave import, more courage.

I hope that you will pay particular attention to so-called unpopular positions. Minority views which are right have the happy faculty of growing to majorities when they are cultivated in the soil of freedom of information and expression.

Toynbee has written that civilizations rise or fall as they respond to challenge. Those which respond with apathy, lethargy, disinterest or cowardice wither away and die; those which respond with courage, strength and determination expand and grow.

So it must be with your business. You are faced with this challenge to let the people know. If you meet it with courage, integrity, wisdom, then there are no limits to where your stations will grow, and there are no limits to where our free nation and its democratic traditions will expand.



**AFTERMATH:** Broadcasting has always been a business that thrives on controversy, but this does not mean that editorials have not caused trouble. Some members of the Congress are unhappy over stations that broadcast editorials, particularly when candidates are endorsed or when viewers are urged against voting for a candidate. The congressional unhappiness sometimes seeps over into hearings with members of the FCC, and occasionally legislation to forbid editorials is contemplated.

For that part of the future that one can foresee, however, the American system of broadcasting now has a commitment to editorials. The protection of the public rests with the "Fairness" doctrine and with the very practical theory that the presence of many voices of advocacy tends to help the

listeners choose what is best.

Wrongs may occur as a result of station opinions, but they are likely to be outweighed and outnumbered by the good that results from having the citizens more aware and more concerned about the great issues of our time.



## VIII

# Radio, from the Living Room to Your Pocket

**THE TIME:** Newton N. Minow made his second appearance at a convention of the National Association of Broadcasters in April, 1962. This time the location had shifted to the Conrad Hilton Hotel in Chicago.

Mr. Minow was no longer a stranger to the communications business. Now the broadcasters knew him as a man who spoke his mind; who had no interest in the old ritual of unfeigned praise and those applause-triggering references to "free enterprise broadcasting."

This time Mr. Minow wanted to talk about radio, a subject infinitely more complicated than television; more complicated because of the greater number of stations, the greater number of formats being used and the narrow profit margins. He demonstrated first that he had done his homework well, and he further showed that the state of radio was something less than perfect.

For the reader who is not familiar with the curious lexicography of broadcasting, at least two terms require amplification. One is "spot" and the other is "duplication," used in connection with amplitude modulation (AM or "standard") radio stations and frequency modulation (FM) radio stations.

"Spot" is an anachronism, a holdover from the time when there were few stations. To an advertising agency, a brief commercial announcement (as opposed to sponsorship of a program) was placed in a geographic "spot." That is, the

time buyer designated the areas in which he would buy time by picking "spots" on a map. The term survived this original meaning to continue in use in advertising and in broadcasting to indicate commercials placed within and around programs.

"Duplication" arose in the 1940's, after the FCC made licenses available for FM broadcasting. Because FM had superior sound-carrying characteristics, there was a popular assumption that all radio would eventually move from the AM band to the static-free FM band. Persons who were already in AM broadcasting were therefore permitted to operate FM stations as well. This added costs—for equipment, for engineering and performing personnel and for programing; but the sale of FM receivers was slow, and thus there was little demand for advertising. To cut operating costs, and to keep FM broadcasting alive, licensees were permitted to "duplicate" their programing; that is, the programs on AM radio were run simultaneously on FM as well.

The question Mr. Minow raised about this practice is whether it is an efficient use of the limited number of radio frequencies. Many arguments can be made against duplication and, at this writing, the FCC is seriously considering ending the practice.

As will be noted in material that follows Mr. Minow's third NAB speech in Chapter 14, observance of the Radio Code has since improved.

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ADDRESS TO  
THE NATIONAL ASSOCIATION OF  
BROADCASTERS  
CHICAGO, ILLINOIS  
*April 3, 1962*

Last year, as some of you will recall, I submitted to your convention some ideas that seemed to strike a few sparks. I like to think that one was the spark of heightened broadcaster responsibility.

My speech in 1961 ran about six thousand words. Only two of those words seem to have survived. Since last May those two little words about television have been repeated over and over again—on the air, in the press and, some of you broadcasters tell me, in your sleep. All of you know the two words I mean—"public interest."

Thinking about the public interest is a healthy occupation for all of us. But for those of us directly concerned with broadcasting, it is more than just healthy; it is mandatory. That you here have been thinking about the public interest has become increasingly apparent on the television tube. We at the Federal Communications Commission have also been thinking about it and increasingly doing something about it.

I want to discuss with you today a subject I passed over last year when I spoke about television. I'm told that some of you involved in radio didn't like it. This shouldn't have bothered you radio broadcasters. Most of the television broadcasters didn't like it either.

Let us examine the problems, the triumphs and the future of radio in this country. A few years back it was predicted that radio was doomed to oblivion. The reports of radio's decline and fall were grossly exaggerated. Television drove radio from the living room, but with characteristic flexibility, radio quickly headed for the kitchen, the bedroom, the study, the workbench, the office, the automobile, the outdoors and, with the development of the pocket radio, to the garden, the grandstand, the subway, the fishing camp, and the mountain trail. And I hear from some of my professor friends that radio even shows up in the back of the classrooms during the more boring lectures, especially during the World Series. Motorized or on foot, we've become a nation wired for sound. Radio became America's roommate, America's traveling companion and America's best medicine for loneliness and

boredom, wherever you are.

Radio survived television because of its unique gifts: intimacy, immediacy, accessibility and portability. But radio has not survived unscathed; it has been subjected to drastic changes, changes still occurring. Radio has found a place, many places, in today's crowded schedule. It has flowed into many small and large vacuums, wherever a gap existed. But many of us wonder if radio has really found its proper place, its most suitable, most valuable service. Some radio veterans tell me that the industry today is undergoing troubles reminiscent of the chaotic days of the 1920's.

What are the facts? In 1946, when our population stood at 141 million people, there were 34 million radio homes. An average of 32 per cent of the sets, reaching about 11 million homes, were used at night. An average of 16 per cent, reaching 5.5 million homes, were in use during the day. By 1961, when the population was almost 184 million, we had 50 million radio homes. But sets in use during the evening averaged only 6 per cent and reached only 3 million homes. By day, sets in use averaged 9 per cent, reaching 4.5 million homes.

These figures do not, however, reflect the enormous increase in the number of car radios. Indeed, over 20 per cent of radio listening today is in automobiles. There are now more cars with radio—over 40 million—than there were total United States homes with radio just eleven years ago. But when we compare the total radio audience with television's average audience of over 27 million homes in the evening prime viewing hours and over 10 million homes in the daytime, it is clear that a massive section of the mass audience has deserted radio for television.

This is only part of radio's trouble.

In 1946 there were 996 AM stations, excluding those owned and operated by the networks. These stations re-

ported income before taxes of \$57 million. In 1960 there were 3451 AM stations, excluding those owned and operated by the networks, and they reported income before taxes of \$51 million. This adds up to a simple but depressing equation: more people, more radios, more stations, but smaller audiences and smaller profits.

Obviously some of you radio broadcasters—too many of you—are losing money. Specifically, in 1960 about one-third of the radio stations reported a loss. Furthermore, of those stations showing a profit, almost 30 per cent were barely in black ink, reporting a profit of less than \$5000.

Paradoxically, we find radio in a peculiar state of financial health. Despite these thin-ice marginal figures for so many stations, our backlog of new applicants piles up today even as we meet in this convention. And the prices of stations continue to spiral up, a contradiction of red ink and rising values.

Let's look now at the product, the service radio is giving.

The basic format, of course, has become music plus news plus commercials—or perhaps it should be the other way around. Some of the results have been astonishingly good. Sometimes a listener is treated to exceptionally varied fare of well-prepared newscasts, imaginative entertainment, a drama, a children's program, enlightening commentary, breath-taking variety. But in too many cases the results are incredibly bad. In too many communities to twist the radio dial today is to be shoved through a bazaar, a clamorous Casbah of pitchmen and commercials which plead, bleat, pressure, whistle, groan and shout. Too many stations have turned themselves into publicly franchised jukeboxes. Elmo Ellis, of WSB, Atlanta, who has given several penetrating speeches about radio the past year, reminds us:

. . . you have all driven from one city to another in your cars, with your radio on, listening to one station after another—some are dull—dreary—full of decay and desolation. Others are wild as a hurricane—blasting off continually with an insane symphony of sound and fury—signifying what? How are they helping the broadcaster himself, who is plagued by too many bills, too few accounts and too little audience? Is this the wave of the future? Is radio destined to sink into a rut of raunchy records, tasteless chatter by adolescent disk jockeys, and rip-snorthing inaccurate news reports?

But there are encouraging signs that this kind of operation has seen its worst days and nights. In most areas of the country, and certainly in the larger cities, the listener today who is willing to look for it can usually find what he wants in the way of music. He can find serious music, light classic, the standard popular repertoire, or even rock and roll. Radio's function as a news medium is of essential value to this country. More people are apt to hear of a major news event from radio than from any other medium of communication. Radio brackets and punctuates the day, enabling a listener to participate in events both great and small.

Added to this, radio now has become an intensely local service, and the stations that set the pace and return the highest profits are the stations most closely identified with their communities. Radio is finding its voice, not only for news, but also for expressions of opinion about important issues. Each year a few more stations begin to editorialize, to become a force in shaping events as well as reporting them.

Radio is slowly developing a new personality, its own unique personality. It is trying on new clothes. It is sow-

ing seeds of a creative rebirth. But the question facing the Commission is whether we have created conditions that will encourage the maturing of this new personality or will stifle and warp it, whether we are compounding rather than solving radio's problems.

Let me state the general dilemma as I see it. We believe in free enterprise and all the benefits that flow from a competitive system. We believe the nation benefits from as many voices and as many choices as the airwaves permit. The Commission's highest duty is to encourage as wide a diversity of service to the public as is possible. But we find that radio stations, in our competitive system, seem to have no mortality rate. Few radio stations decide voluntarily to leave the air. Radio stations do not fade away; they just multiply.

Many seem to figure this way: what have I got to lose if I can't make it? If I can't sell commercial spot announcements for \$1, I can always find a buyer who'll try selling them for 50 cents. And if he can't make it, there will always be someone else who'll try selling spots for 25 cents. We'll work out a long-term pay-out deal, so I don't need much cash to give it a try.

The result is too familiar: a string of I.O.U.'s to several past owners who went through the same process; more and more raucous commercials for the public; and a licensee so preoccupied with servicing his debts that he can't give much attention to servicing his listeners' needs and interests.

Is this the business of the Commission? If there are "jungle" markets, overpopulated by quick-buck operators, where you have to scream at the listener to survive, is the Commission responsible? Or is this the price all of us should willingly pay for our free, competitive system of broadcasting? I say to you clearly that my vote is for our competitive system, with all of its short-term draw-

backs. Its advantages are much more basic and enduring, and the Supreme Court wisely told us in the *Sanders* case, twenty-two years ago, to be concerned with the economic implications of competition only when competition harmed the public interest.

The question before the house, as always, is the public interest. The public interest is very much the Commission's business. Indeed, it is the Commission's only business.

Although we know something should be done to protect the public interest, we also know there is no simple answer to the dilemma.

Last year I said to you that I hoped the FCC would not become so bogged down in the mountain of papers, hearings, memoranda, orders and the daily routine that we closed our eyes to the wider view of the public interest. But we continue to be bogged down in paper work. We face the largest backlogs in Commission history for new or improved AM radio facilities. If you file an application for a new AM station today, you'd be lucky if our engineers could pick it up for processing a year from now. We continue to regulate case by case, kilowatt by kilowatt, transfer by transfer. We continue to spend at least six times as much time on radio matters as we do on television. All seven of us debate whether an increase in power of a 250-watt station will interfere too much with another station, in a community already well served with many stations. We are so busy grinding out grants of new licenses that we need to step back and take a look at why we're doing it.

An intensive search for answers is overdue, and a search for policies that conform to the answers is imperative. This year marks radio broadcasting's fortieth anniversary as an advertiser-supported medium. Colonel John Glenn has shown us that life not only begins at



forty; it is also a good age for venturing to new horizons.

How to make a start? It was also forty years ago, in the radio chaos of the 1920's, that Herbert Hoover, then Secretary of Commerce, convened four landmark radio conferences in four successive years. These conferences produced constructive and enduring results. I propose to the National Association of Broadcasters another such radio conference. During the past year we had one informal conference and it proved to be most helpful on some questions before us. What I suggest now is an informal face-to-face shirtsleeves working conference at which all sections of the radio industry would be represented.

The first question I would ask of such a conference would be whether a breathing spell is in order. Should we pause in issuing new AM licenses while we study the inflation on our airwaves?

The second question is one well stated by Commissioner Frederick W. Ford in a recent significant speech. Commissioner Ford asked: ". . . should our engineering standards be altered? Should our processing line rules be modified in such a way that priority would be given to processing applications in areas where the number of services or the number of stations is minimal, or should the economic question be met head on in every case?" My own view is that AM engineering standards must be tightened and our processing priorities sharply revised.

The third question is whether we should encourage mergers in some communities and then delete stations, to permit operation based on sounder engineering standards. I find great merit in this suggestion if it is guided by the principles of no significant loss of service and an avoidance of monopoly or undue concentration of control.

Fourth, we must be concerned about the future of radio networks. The networks remain the stalwart back-

bone of radio's own national and international news-gathering organizations. Would the networks be encouraged to expand, rather than contract their services, if they were permitted to own more radio stations? The present rule limiting to seven the number of stations a network might own was adopted when there were 2509 AM stations. What if they now owned ten or twelve? What effect would this have on service to the public? What effect would it have on concentration of power in the medium of radio which has undergone such convulsive change?

Fifth, what about the number of commercials?

There are many of you here today to whom the public interest is a way of life. For you, maintaining high standards on the frequency and volume of commercials comes naturally and you advocate self-regulation. But I quote to you your own Robert Swezey, Director of your Code Authority, on self-regulation. The NAB has made great progress in this the past year, for as Bob Swezey reminds you, "Human nature being what it is, its interest in self-regulation is generally in direct proportion to the immediate pressures for outside regulation." But, and I quote Mr. Swezey again:

In radio broadcasting, for example, our subscriber-ship at the present time totals 1,155 AM stations and 320 FM stations. We actually have 55% of the NAB membership itself and 32% of all of the stations in the industry. We have tremendous holes in our membership in practically every community in the country. Even if our entire membership conforms religiously to the spirit and letter of the Radio Code, such a substantial part of the industry is completely outside of the jurisdiction of self-regulation that it is virtually impossible for us to maintain in-

dustry standards in any practical sense. The public is still being victimized by the poor programming and shoddy practices of a large segment of the industry which has no interest in standards and feels no compulsion to observe them.

The time is past due, again quoting Mr. Swezey, to "put up or shut up" on self-regulation. If you are unable to achieve self-discipline, we may have to adopt a rule on commercials which does apply to everyone. To those who would ask what limits would be set, I say perhaps the NAB Code provision could be a guideline. If our studies show prospects of improvement in the broadcaster's economic position, I believe it would be in his interest, and clearly in the interest of the listening public, to consider some reasonable regulations imposing clear and certain limits on commercial time.

Sixth, what about financial qualifications? We approve transfers where the buyer's resources make a shoestring look like a mooring line. Are we kidding ourselves when we expect a tiny AM station with a staff of a combo man and the owner to serve as a communications medium serving the public interest? We must face up to it: a high standard of public service cannot be maintained by an understaffed station operating at a loss.

I haven't mentioned FM radio because we already have proceedings under way to guide us in making some decisions about FM's future. FM is beginning to flourish after a dark decade. We are determined not to let FM engineering standards degenerate as they did in AM. One question talked about for years is the FM-AM duplication of service with the resulting waste of frequencies. We've reached no conclusions and these questions and other FM problems are being studied by our staff. Perhaps the conference I have in mind should consider FM

too, though I would presently suggest it be confined largely to AM service.

The questions outrun the answers. I'm sure you can suggest other questions too, and this will indicate to you why I suggest a conference to search together for solutions.

Whether such a conference is desirable and effective will depend on the spirit brought to it by both industry and government sharing a common goal—the development of policies that will preserve, enhance and encourage the fullest possible use of radio in the public interest.

So much for radio—at the moment.

Last year I invited you to sit down in front of your television set when your station went on the air and to stay there with your eyes glued to the screen until your station signed off. As far as I am aware, no broadcaster accepted my invitation, although some criticized the “television watch” as an unfair test, and some critics termed the challenge cruel and inhuman.

But I suspect the local audience can provide a cross section of opinion about every segment of the broadcast day, from sign-on to sign-off. We want to know if these people detect any signs of change and improvement. Do they see some sprouts of greenery, some blossoming of creativity, more evidences of conscience, deepening portents of responsibility?

The public certainly is seeing an increasing number of public affairs programs, being offered by networks and stations. There has been comment that this is the result of some broadcasters' interest in improving their images in Washington rather than in improving their programs for the public. Is it true that the American audience has an aversion for the real world in which they live—the world of clashing viewpoints and divergent opinions, of hard solutions—in this time of trouble and national dan-

ger, and national achievement?

I don't think so. And I don't think you do either. If it were true, how would we explain last February 20? That was the day radio and television brought terrestrial activity to a halt during the flight in space of Colonel John Glenn. Broadcasting enabled every American to share Colonel Glenn's new perspective of our planet. Through radio and television, you made every one of us a partner in the encounter of courage and science in outer space. And you put every one of us in your debt for this service in the public interest. Something happened to America that day. A handy way of measuring it is to go to your nearest elementary school and ask to see the pictures drawn by the kindergarteners and first-graders the week before Colonel Glenn's flight, and the week after. This will give you some measure of the power of broadcasting on even the youngest minds. And it will give you some sober second thoughts about your gravest responsibility: the kind of programing you are providing for our children.

We have much to learn from the great American audience. Television spends a great deal of time and effort measuring that audience. While this has been going on, the audience has been taking the measure of television, and I think the audience is ahead of you.

Let us get this in perspective. The healthy, national appraisal of television now going forward is part of a larger appraisal that we as a people are making of our total means of communication. Everything you do well, and everything at which you fail, is the object of enormous attention. The larger issue is the use—or misuse—of man's power to merge sight and sound.

Dr. Bernard Berelson, of Columbia University, has pointed out that we debated political democracy almost 200 years ago, and debated its preservation 100 years

ago. We debated educational democracy 75 years ago, and economic democracy 25 years ago. But Dr. Berelson tells us that more education, more leisure, and the development of the mass media have now shifted the focus to a "great debate on cultural democracy; how well does the system of mass communication serve the cultivation of cultural values in America, in the broadest sense?"

You broadcasters are at the center of the national debate. You are in the eye of the hurricane.

Your public trust is the obligation to move forward—here, now, today—to perfect this magnificent instrument of broadcasting. The public must have its say in your planning and your building. It must, because you are much more than an industry.

For the nation, you are our theater, our concert hall, our newsroom, our stadium, our picture window to the world. You shape the national conscience, you guide our children and you have it in your hands and hearts to shape history. Am I guilty of asking too much of broadcasting? Or, are you guilty of asking too little?

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**AFTERMATH:** Mr. Minow had now completed his investigation of the two great forces under the regulatory powers of the agency he headed. He had found great shortcomings in each, and he had enunciated these shortcomings to those persons responsible for the operation of the stations. Both times he had urged the licensees to aim higher, to attempt to gain higher quality in programing and to make an honest effort to learn of the honest wants, needs and aspirations of the community.

This time broadcasters listened more carefully, for they had learned that the Illinois lawyer carried more than a popgun. Stations had lost licenses—an action that had happened but rarely since passage of the Communications Act of 1934.

Other stations violating the rules had been fined; others were put on probation. The courts consistently upheld the Commission's decisions. Plainly Mr. Minow had the support of President Kennedy, and evidently his views were winning more respect in Congress.

Mr. Minow's call for a shirtsleeve radio conference was immediately accepted by the broadcasters and led to a searching reappraisal of existing rules by the FCC and the industry.

By now it was evident to the most dense broadcaster that Mr. Minow was not merely a carping critic. In each public appearance he was careful to acknowledge the contributions of radio and television. He was just as careful, however, to demonstrate the failings and the shortcomings.

To a reporter covering broadcasting each day of the year, a new attitude was apparent. Broadcast licensees might never embrace Newton N. Minow as they had become "lifelong friends" of other FCC Chairmen, but it was obvious that he had won something even more important: respect.

# IX

## Federal Service

**THE TIME:** One of Washington's most pleasant sights is created by the summertime invasion of student employees. They come to get a taste of working for the federal government, to compare theories learned in courses on government with the practical operation of agencies or bureaus, and to have fun while earning money. If the tasks are the kind that require only semiskilled labor, this really doesn't matter. The students bring brightness and verve, a sense of excitement and an enormous capacity for learning. Often their attitudes will affect the regular employees and make the miserable, muggy Washington summer bearable.

As part of their training, the students are invited to hear speeches by the President, members of the Cabinet and the heads of a few federal agencies. They make a hip, surprisingly sophisticated audience and are not a group to whom one should talk in platitudes or aphorisms.

For his seminar talk, Newton N. Minow chose to tell them in detail just how the Federal Communications Commission is operated. The result is a talk which takes the problems of an independent regulatory agency out of the classroom into the realm of personal day-to-day experience.



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ADDRESS BEFORE  
THE WHITE HOUSE SEMINAR FOR  
STUDENT SUMMER EMPLOYEES  
CONSTITUTION HALL  
WASHINGTON, D. C.  
*July 24, 1962*

At the Federal Communications Commission we have a group of summer students working in one of our numerous blind rooms, a room completely without windows. Unwilling to let this go unregulated, one of our more enterprising young coeds taped a large piece of paper on the wall and painted a window on it, complete with curtains, a vase of flowers and a bowl of goldfish on the windowsill. To be sure we full-time bureaucrats got the message, she added a sign. In basic English, the sign simply says: "A Window."

Although only one summer student created a window, all of you 6000 students have been busily opening windows in Washington. I suspect the reason I was asked to address you is that so many FCC student trainees are in the audience. The FCC is, after all, one of the smaller government agencies. Our permanent staff in Washington numbers about 1000; yet we have 116 summer students. Proportionately, we have more students than any other agency, a proud distinction we intend to maintain next year.

In opening windows for us, you are bringing the fresh air of a new spirit. It comprises not only gaiety and a measure of irreverence, but also a generous helping of analysis and criticism.

A regulatory agency presents some problems which

can correctly be called unique, and I'm honored to be here today to discuss these agencies: what they are, how they got here, what they're supposed to do.

You have undoubtedly heard a college lecture about administrative agencies more recently than I have. So I'll not try today to rehash what your political science professors have told you already. Instead, I'll try to supply some insights after a year and a half of life in a regulatory agency, packed with controversial slings and arrows, periodic frustration and occasional triumph.

More than fifty regulatory agencies are spread throughout the federal government. There is a so-called "Big Seven," including the Interstate Commerce Commission, the Federal Trade Commission, the Federal Power Commission, the Securities and Exchange Commission, the National Labor Relations Board, the Civil Aeronautics Board and the Federal Communications Commission.

According to the textbooks, these agencies are independent. What does that really mean? Congress created these agencies, and we often say the agencies are "creatures" or "arms" of Congress. We are dependent upon Congress for many things. Congress controls the purse strings; it is the job of the agencies to carry out the broad policies Congress lays down. But we are not a part of the legislative branch of government.

Similarly, the executive branch cannot claim us. We are not in a Cabinet department, nor are we subject to the policy supervision of the President. The President, with Senate consent, appoints the agency members. But the Supreme Court flatly told President Roosevelt that he could not fire a Commissioner during his prescribed term on the Commission, despite President Roosevelt's plea that he wanted someone who agreed with presidential policy. For many purposes—such as civil service, national security and the like—we are subject to presi-

dential control. But we are not a part of the executive branch.

While Congress and the executive sometimes quarrel about us, the judicial branch makes no claim that we are part of the judiciary. Yet, through the process of judicial review, the courts in fact exercise substantial control over our cases, practices and procedures.

So, we are "independent" in a very interdependent way. We are the government's middlemen, and our independence varies with our backbones.

To further complicate our lives, the independent regulatory agencies themselves combine under one roof executive, legislative and judicial functions. For an agency to be at once investigator, prosecutor and judge has at times been sharply criticized. I personally share some of the views of our critics on this score. Yet the fact is that we have been assigned these powers by law and we exercise them daily. To make it more palatable we speak of "quasi-judicial" or "quasi-legislative" powers. This means "not exactly": it helps to soften the blow, if not sharpen the analysis.

For all these reasons, the agencies have become the "headless fourth branch of government." A lifetime student of the agencies, former Chief Judge E. Barrett Prettyman of the Court of Appeals here, colorfully summed it up when he said: "To a purist in the theory of American government, an administrative agency is a hybrid, indeed a monstrosity. . . . It is part elephant, part jack rabbit, and part field lark."

The elephant-rabbit-lark system is intended to protect you against excessive prices for gas, power or telephone calls and from fraudulent or deceptive advertising; to insure against unreasonable rates and services of buses, trains and air carriers; to see to it that radio and television stations operate in the public interest; to safe-

guard against unfair labor practices; to protect you from excessive prices resulting from unlawful conspiracies in restraint of trade. One of the newer administrative agencies, the Atomic Energy Commission, is concerned with the military and peaceful uses of atomic energy. The mission of the agencies runs the entire flow of the national economy.

You may believe that there are too many federal agencies doing too much regulating. There have always been supporters of this view. When in 1927 Congress was debating the creation of the Radio Commission, the predecessor to the FCC, Congressman Larsen of Georgia, stated: "Our national commission octopus is already too large; his legs are too long. I am in favor of lopping them off instead of trying to grow more." Thirty-five years later, we find the legs of the octopus still growing.

This has not come about because some eager bureaucrat in Washington thought it was a good idea. Each agency was created by Congress in response to a public need. Swirling technology in a complex society required some form of regulation for certain industries affecting the public interest. In our case, the Radio Commission and the FCC came into being because the broadcasting industry itself recognized the need for, and asked for, government regulation. Without regulation, stations interfered with each other. The situation in the 1920's had become intolerable. As one writer described the 1920's, there was "a mad scramble to get on the air . . . and a broadcast of bedlam resulted."

When Congress was considering the Investment Company Act of 1940, Senator Taft, who certainly disliked the idea of giving the government the power to tell a man how to run his business, observed that in many cases "the businessmen themselves seem to want that kind of regulation."

The truth is that many industries have grown and prospered under government regulation. They have benefited, our economy has benefited and the public has benefited.

With these benefits have come very tough problems—for the regulators and the regulated. As *Fortune* magazine's George Bookman reported last year, these agencies

. . . were invented for an inherently difficult task: to lay down practical rules for business, under broad policy statutes from Congress, without taking over from businessmen functions that are rightfully theirs in a free market place. . . . The agencies were supposed to be as weighty and dispassionate as courts, yet not so rigid in procedures; as active as the executive branch, but not so political in outlook; as responsive to the public interest as Congress, yet able to dart quickly into the details of the changing industrial scene.

This peculiarly American, uniquely pragmatic concept of the regulatory agency is essentially a conservative idea. Though many businessmen do not realize it, the regulation of certain industries is usually what stands between them and public clamor for government operation of the business. Justice Brandeis recognized this fifty years ago. After defeating the giant railroads in behalf of the shippers in a case before the Interstate Commerce Commission, Justice Brandeis observed that the ICC decision: ". . . will tend to convince the people that there is power in our government to create a body which can successfully resist the demands of great corporations, and it must therefore tend to allay not only hostility and suspicion, but the demand for government ownership of national monopolies. It tends therefore in the direction of

popular contentment and peace.”

Fifty years later, Justice Brandeis' hope for contentment and peace about the agencies has not been fulfilled. It probably never will be. The problems given to the agencies do not lend themselves to contentment and peace.

Public regulation is directed at particular industries and services essential to the public welfare and critical to the national defense. Our job is to protect the *public* interest. This is no job for the thin-skinned or the doctrinaire or the dogmatic. In this mixed relationship between government and enterprise, the task is to find out what will work, and black-and-white rules usually don't work.

One thing that often does not work is the internal organization of the agencies. Much of what we do takes much too long. When the public has to wait months and sometimes years for the institution of air service or the approval of a local television application, something is fundamentally wrong. No one, least of all the agencies, is satisfied with this. We are searching now for ways out of this dilemma.

The agencies are too much preoccupied with petty details. At a time when our railway system and our air carriers are having financial troubles, agency members must be free to develop broad policies necessary to assure that the initiative of our free enterprise system and the technological advances of our scientists are translated into effective programs. This is a “thinking-man's” task; but we are too busy voting on specific matters a hundred times a week and have too little time to think.

What do we do at the FCC?

Our primary job is to regulate interstate and foreign commerce in communications by wire and radio, except that conducted by the government itself.

Radio is possible because of a great natural resource,

the public airwaves. In technical terms, we call this the electromagnetic spectrum. Demands for use of the available channels far exceed the supply. We must presently find room for two million radio transmitters used by nearly three million operators. Last year alone, we added 500,000 new users of radio to the list of our licensees.

Much of the Commission's time is devoted to broadcasting. Government regulation of broadcasting poses the most sensitive relationship possible between business and government. Broadcasting is the only medium of expression under regulation. Freedom of expression is the very essence of what this country is all about. And the FCC's mission is to insure that broadcasting serves the public rather than the private interest. How to insure "Fairness" in the discussion of controversial issues? How to insure equal access to the air for political candidates? How to provide a diversity and variety of programming to serve all parts of the audience? The country is engaging in a healthy debate on such questions and your generation will continue to reach for the answers.

From all this, you will see why an agency like the FCC needs people of first-rate talent and dedication. We have trouble getting—and keeping—them.

I have such strong feelings and firm convictions about this that I'll end this talk with some frank plugola for the public service.

The 6000 of you working here this summer will leave with 6000 different impressions about what life is like in what the stuffed shirts among us like to call "the Federal Establishment."

But there is one impression many people have about the federal service which I hope gets washed away for all of you by the end of the summer. And that is the impression that the federal government is as monolithic as the buildings that line Pennsylvania Avenue; that all

corridors lead to the same kind of offices where the same kind of people perform the same kind of endless routine.

The federal service is really less like Dracula's Bride than she is like Cleopatra, and you'll remember that Shakespeare described her as a woman of "infinite variety." Underground we've got the Bureau of Mines, and overhead there's NASA; we've got the Fish and Wildlife Service, if you like the great outdoors, and the Urban Renewal Administration if you prefer the city's limits; we've got the FCC, which encourages talking, and the CIA, which doesn't.

Aside from a few highly skilled but socially unacceptable activities like counterfeiting, there is not a skill, a talent or profession which the federal service cannot use and which it does not desperately need. We need the newcomer, the innovator, the imaginative cutter of red tape, the young men and women who are not afraid to rock a boat or milk a sacred cow.

When a person signs up for public service, he should not necessarily sign up for life. Quite the reverse. One of our great needs is more flexibility between public and private careers, of a greater movement between public and private employment. David E. Lilienthal once spoke of the "moral obligation to engage in the public service during a part of every qualified man's best years." Mr. Lilienthal was speaking to your generation, which must devote a share of its talent to public as well as private endeavor.

In private employment there is a continuing measure of achievement, and that's the statement of profit and loss, the difference between red ink and black. This generates a never-ending search for new and more efficient ways of doing things, a search for the best utilization of men and materials.

In public employment there is no such handy meas-



ure of success or failure. Ultimately the standard is whether or not a program or policy advances the general welfare, "the public interest." This is a vague standard. It is subject to differences in judgment from the coolest heads, and where there are conflicting interests involved there are often angry differences between hot heads. It is complex. It also is one of the elements which lends fascination to a public career.

When you weigh the possibility of a public career, I would ask you to ponder what Ed Murrow calls "the pleasure and pain" of serving your country. And I would leave with you an eloquent statement which moved me deeply when I heard it expressed earlier this year in a speech to young men by President Kennedy's assistant Theodore Sorensen. He said:

Ours is a generation under pressure engaged in a struggle we did not start, in a world we did not make. We hold to the old hopes of freedom and peace, but first we must halt new terrors of tyranny and war. And our generation has been chosen to usher in either a new generation of terror, or a new generation of hope. For if the world cannot be saved by the spirit of youth, it cannot hope to save the spirit of the ages. And we who are young among men serve our society to preserve what is as old as man, his quest for peace and freedom.

And we do not despair, for that ancient quest today is the ocean crest of tomorrow. No hand of iron can stay it. No wall of stone can confine it. A single breaker may recede but the tide is coming in.

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AFTERMATH: College students, more than ever before, are enrolling in courses about radio and television. "Com-

munications" is replacing the more traditional courses in print journalism, and often the enrollment is far greater than the number signed up for the older courses. The students of television, for example, know that the medium is too young to have any veterans, that no one has been "born" to television.

In too many places such courses are taught in terms of camera focusing, cable coiling and television acting. These are largely trade-school skills, and they must be taught along with courses in the fuller meaning of the electronics revolution of our time.

I learned something about this process after agreeing to teach a course at the American University. My predecessor had taught eight students an elective course in programing. Twenty-one signed up for a second semester, and they got some major surprises. Much of the material in this volume was used, a second time, as the basis for classroom lectures and for written assignments. One might reasonably expect that such an approach—mass media in terms of its effect on our social structure—would quickly extinguish interest in what seemed to be a "glamour course."

Experience proved just the opposite. Classroom attendance remained extraordinarily high, with a frequent collection of auditing visitors. We studied radio and television programing in terms of public policy, in terms of changing technology and in terms of the changes wrought in radio by television itself.

Interest was heightened, to be sure, by bringing in persons who were known to the students. These included Howard Bell, Director of the Code Authority of the National Association of Broadcasters; David Brinkley of NBC News; E. William Henry, Mr. Minow's successor as Chairman of the Federal Communications Commission; and Sol Taishoff, editor and publisher of *Broadcasting Magazine*. One of our most fascinating sessions came with the study of property rights in broadcasting, and a successful patent-copyright specialist, Karl Flocks of Washington, added to the excitement.

What I discovered, along with the students, is the widespread fascination of the complex subjects that make the

mass media what they are and what they may become. The same might be applied to the jobs given to the summer students. They found themselves a privileged group; and if their work did not ennoble, it most certainly did enrich and enlarge their lives.

# X

## Educational Television: The Greatest Gift

**THE TIME:** Distinguished citizens of the United States gathered in Houston, Texas, on June 8, 1953, for an event of great future significance. The group gathered for the beginning of operation of television station KUHT, the world's first to be committed by law to programs that are both non-commercial and educational. The proper switch was moved, but nothing happened until a technician supplied one of the world's best-known therapeutic techniques: he kicked a balky piece of electronic equipment, and the station stuttered into life.

KUHT, licensed to the University of Houston and the Houston Independent School District, was one of the offspring of what is probably the most successful lobbying effort ever conducted at a federal level by educators.\* As a result, scarce, potentially valuable television channels were excluded from economically profitable business and were committed in perpetuity for teaching and informing, for extending the range of a teacher, and for broadening the horizons of a classroom.

Educators had been pushed aside in the 1930's when the best radio frequencies were handed out, and the teachers re-

\* The editor wishes to acknowledge a debt for legal research in this chapter. The work was originally done by attorney Robert B. Glenn when he and the editor were working with Dr. William Yandell Elliott in a project that produced *Television's Impact on American Culture* (Michigan State University Press, 1956).

membered this tragic history. In the 1950's, two groups—the Joint Council for Educational Television (JCET) and the National Citizens Council for Educational Television (NCCET)—borrowed a technique from commercial broadcasters. They cast this fight in terms of an unbeatable challenge: if no television channels were reserved for education, then those in charge of public policy were opposed to education.

This attitude is in sharp contrast with events that took place in the Senate in 1934. In that year the Senate had little trouble voting against education by radio. By a 42 to 23 vote, the Senate killed the Wagner-Hatfield Amendment to the Communications Act which would have required that the Communications Commission “. . . shall reserve for and allocate to such radio broadcasting facilities as will reasonably make possible the licensing of such stations on a self-sustaining basis, and to that end the licensee may sell part of the allotted time to make the station self-supporting.” The announced purpose of this amendment was to set aside 25 per cent of all radio frequencies for educational purposes, and to allow these educational stations to sell some commercial time.

After defeat of the Wagner-Hatfield Amendment the only reward educational lobbyists could get was an FCC study, one that ended in defeat for educators. A committee's study outlasted available, desirable frequencies.

The “freeze” on television channel allocations that lasted from 1948 to 1952 gave educators a chance to organize. They also found a sympathetic FCC Commissioner in the late Frieda Barkin Hennock, and she made educational television (ETV) her own special interest.

Miss Hennock prodded educators at every opportunity, and the school leaders took action. Earl J. McGrath, United States Commissioner of Education, petitioned the FCC to schedule hearings on allocation of channels for educational use.

The *Ad Hoc* Joint Committee on Educational Television was formed after thirty educators came to Washington at the request of broadcasting pioneer Dr. Franklin Dunham. (The

late Dr. Dunham had quit a good job at NBC to become Chief, Radio-Television, U.S. Office of Education.) As its chief advocate, the JCET hired a distinguished lawyer, *Telford Taylor*, and when the FCC opened its hearings on November 27, 1950, Taylor was ready with a series of startling proposals. In the light of education's earlier failure in broadcasting, the JCET's demands were bold and they were calculated to convince the FCC that it faced a formidable force.

First Mr. Taylor set forth the demands in the very-high-frequency range. The FCC should reserve one VHF channel for education in each of the 168 metropolitan centers having a population of at least 30,000, plus an additional channel for each of the nation's forty-six major educational centers. And in communities where no VHF channel was available, the FCC should require that an existing station guarantee a sharing of time for educational programs. In the ultra-high-frequency portion of the spectrum, Taylor asked for a flat 20 per cent of all available channels.

In summary, the JCET wanted a guarantee of 214 VHF channels and what would have been a total of over 300 UHF stations (not to mention a guarantee of shared time on some commercial stations).

Only one of the seventy-one pro-ETV witnesses made the old 1934 mistake of asking for the privilege of selling advertising time. The list of impressive witnesses included Commissioner of Education *McGrath*; United States Senators *Leverett Saltonstall* of Massachusetts, *Clinton Anderson* of New Mexico and *Owen Brewster* of Maine; *George Meany*, president of the American Federation of Labor (AFL); and prominent officials of the American Medical Association. Accepted for inclusion in the official record of the hearing were letters from former president of Harvard *James B. Conant* and the then Governor of Illinois, *Adlai E. Stevenson*.

Opposition from commercial broadcasters was restrained. In fact, only five of the over-all total of seventy-six witnesses opposed setting aside channels for educational television.

The JCET's boldness and skillful organization paid off rather handsomely. With issuance of the Sixth Order and Report in 1952, the FCC did set aside 11.5 per cent of all

channels for education.

The biggest drawback, although few could foresee it, was that 184 of the channels would be UHF while fewer than 15 per cent of the receiving sets ten years later would be equipped to receive UHF pictures and sound.

The history of educational television might be an even bigger success story if one could write that educational and community groups immediately snapped up all the reserved channels and flooded the nation with high-quality programs and culturally significant television schedules. By the winter of 1955, however, only eighteen educational TV stations were in operation.

The educational stations' slow start led to some requests to cancel the educational channels. But this opposition was abolished in a stroke by the late, Bible-quoting Republican Senator from New Hampshire, Charles W. Tobey. With Republicans in control of the Eisenhower Congress, Tobey became Chairman of the Senate Commerce Committee and when he spoke the FCC listened.

Senator Tobey recognized that commercial broadcasters were pressuring the FCC to convert some of the valuable VHF channels back to commercial use. The Senator applied reverse pressure of his own with threats that he personally would make members of the FCC exceedingly regretful if policies toward ETV were changed. Or if the announced deadline went into effect, he continued, there would be great sadness in sessions before his committee. For the next eleven years the FCC showed no eagerness to make wholesale changes in the channels that had been reserved for education.

Meanwhile commercial broadcasters were basking in a glow of golden profits and had reached a better understanding of the economics of television. They understood that a channel that is reserved for noncommercial educational television cannot be operated by a competitor for the advertising dollar; it was therefore simply good business to help the educators get started. Millions of dollars in equipment and hundreds in cash were contributed to ETV by commercial broadcasters.

At the same time, many of the donations were made for the simple, altruistic purpose of improving the community. Whatever the motive, educators were delighted with the help.

The greatest single source of money was the Fund for Adult Education of the Ford Foundation. Probably its biggest single contribution was made on December 16, 1955, with a grant of \$6,250,000 to the Educational Television and Radio Center in Ann Arbor, Michigan. The grant was to extend over three years, beginning in 1957, and carried an additional grant of \$90,500 for continuation of informational services previously carried on by the National Citizens Committee for Educational Television. This center acted as a coordinator for the exchange of programs among ETV stations and also gave out contracts for the production of series of programs. Still later, as technology improved, the Ford Foundation gave each ETV station an immensely valuable videotape recording unit.

Even with such help there was no boom in educational television. Educators are often the most conservative—the most resistant to change—of any major occupational group. Some educators were openly hostile to the use of television, claiming that it threatened “traditional” methods and that the use of this new technology was certain to destroy the “teacher-pupil relationship.” Some teachers worried about “technological unemployment”—a fancy way of saying some teachers might lose jobs.

One of the greatest innovations, however, was made in the Hagerstown, Maryland, school system. With a Ford Foundation grant, School Superintendent William N. Brish hooked up the entire educational system to television and began using these new tools of education. To a Television Conference at Harvard in 1956, Mr. Brish explained: “Television is not a teacher. Television won’t replace the teacher. The facts of life, however, are that not enough people were born into the 1930’s and 1940’s who went into teaching to care for the great number of children born during World War II and since.” Mr. Brish indicated that no real choices were available: if we want to maintain quality in the educational



system, we will have to use television to extend the range of the teacher.

Yes, the growth of educational television has been slow and, to some, disappointing. It became obvious that ETV was badly in need of three things: (1) the all-channel receiver legislation discussed in another chapter; (2) federal appropriations as a spur to state legislatures to appropriate funds and as an added incentive to community groups; and (3) an outlet in New York City, our largest city and the location of the biggest pool of the finest performing, artistic and creative talent in the United States.

What follows is an article Mr. Minow wrote for *The New York Times* in 1962 as the first VHF New York educational television station went into operation. The channel had shifted from commercial to educational use, making it unique in the world. The FCC had a key role in the sale of the station to educational interests, and five of the other six commercial stations had given financial support to this shift.

In this article Mr. Minow discusses the Acts in Congress that helped educational television. He was present when President Kennedy made the following splendid statement on signing the Educational Television Act on May 1, 1962:

One hundred years ago, with the enactment of the Morrill Land Grant College Act, higher education was made a matter of national concern while, at the same time, state operation and control were retained. Today, we take a similar action. The Educational Television Act of 1962 will provide the vitally needed Federal support for the construction of educational television stations while assuring, at the same time, state and local operation. The Morrill Act reduced old barriers to education and offered new opportunities for learning. This Act gives equal promise of bringing greater opportunities for personal and cultural growth to every American.\*

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**ETV TAKES A GIANT STEP\***

NEWTON N. MINOW

WNDT (Channel 13), transmitting from atop the Empire State Building, today becomes our nation's sixty-fifth educational television station.

WNDT's debut is of particular importance because it makes educational television programming readily accessible to viewers in the vast metropolitan area encompassing parts of New Jersey and Connecticut as well as New York. It came in the wake of two new major pieces of federal legislation that aid educational television's growth by providing financial aid and by opening to the public all eighty-two of the television channels which the public owns.

What is educational television (ETV)? First of all, educational TV programs must be distinguished from ETV stations. Educational programs do turn up sometimes on commercial television—either sponsored or unsponsored. "Continental Classroom" is one obvious example, but such varied series as "Mr. Wizard," "Play of the Week" and "Expedition" must be included too.

An ETV station is something else again. It is non-profit; it sells no time and carries no advertisements. It may be owned by a private community association (as with WNDT), a college or university (Wisconsin or Michigan State, for example), a city school system (such as Denver or Miami) or a state education department or television commission (as in Alabama or Oregon).

The average cost of equipping it runs about \$500,000 with even minimum facilities, and its yearly budget runs close to \$300,000 for even a minimum program service. The money comes from many sources: hard-won state,

county and city appropriations; contributions by foundations, civic organizations, individuals and corporations. One station, San Francisco's KQED, raises money (\$108,000 this year) with an annual auction of goods and services contributed by local merchants.

To the viewer, the most important characteristic of the ETV station is that it provides an alternative to the usual service of commercial television whose minority programming becomes ETV's majority. In general it seeks to blend daytime classroom instruction with evening programming for an adult audience more interested in cultural and public affairs than in light entertainment.

A typical well-established community station, for example, is on the air about eight hours a day, Monday through Friday. The morning and early-afternoon hours are given over to classroom instruction—courses in mathematics, elementary science, history or a foreign language, carefully planned to harmonize with the work of classroom teachers.

In the late afternoon, usually after an hour-and-a-half break, may come a talk on safety guides or home economics. Before dinner children at home may share in nature study or a graphic account of the development of currency from wampum to dollar bills or another in the popular series of "How It Began" programs.

For those who enjoy music with dinner, a symphony may be played, the station's camera unobtrusively picturing only the record album. After dinner comes a group of adult programs: possibly a science lecture, a portrayal of folk dancing, or a repeat of "Open End" or of one of the BBC-produced "Age of Kings" plays. At least once a week there will be an hour-long discussion of local controversial issues presenting many points of view.

ETV's regular viewers are by no means all "double-

domes." No one knows just how large its national adult audience is, since ETV stations cannot afford to subscribe to the rating services, such as Pulse and Nielsen. But there is evidence that ETV is steadily attracting a growing part of the mass audience to some of its programs. A comprehensive study by Stanford University's Institute of Communications Research shows that, where ETV stations are accessible, they reach up to one-fourth of the community's set owners with at least four programs a week. This finding, projected for WNDT, indicates that this station may attract a million or more additional viewers to ETV's national audience.

Why has ETV not come forward faster? The answers lie back some ten years, in the time when commercial television began its explosive, almost incredible, growth.

In 1952 the Federal Communications Commission reserved space in the television spectrum for 242 educational stations, a number later increased to 309. It sought to provide an independent, noncommercial service for the American people.

In holding back this block of assignments from other services, the commission took a bold and farsighted gamble. ETV at the time was something of a mystery. With comparatively little experience to draw on, it largely lacked a production cadre, let alone teachers familiar with the new medium. Commercial television itself was still feeling its way, but it had already won advertiser support, whereas influential sections of the academic community looked upon ETV with apathy, if not outright derision.

But lack of money and broad enthusiasm were by no means the only handicaps. Of the 242 ETV channel reservations, 162 fell in the portion of the spectrum known as the ultra-high-frequency band (UHF; channels 14 through 83). Commercial television's early development

was in the very-high-frequency band (VHF; channels 2 through 13), and virtually no sets capable of receiving the UHF channels were being manufactured. Thus, of technical necessity, ETV at the very outset became television's "wallflower."

The experience of ETV in Washington, D.C., illustrates the problem. Through the efforts of a group of devoted citizens, the capital in 1961 finally got ETV when WETA-TV began telecasting on UHF Channel 26. But, as in most of the country, the TV sets in most Washington homes were built to receive only the twelve VHF channels. To pick up Channel 26, the householder had to go to the trouble and expense of equipping his VHF set with a converter—a gadget capable of receiving a UHF signal.

A heartening number of people have "converted" (New Yorkers do not have to do this for WNDT), but still not enough to provide a solid communitywide base of viewer support for WETA, which struggled *through its entire first year on a budget less than the cost of one hour of commercial network prime-time programming.*

Yet, in nine years of experimentation in situations frequently as trying as Washington's, only one station has failed and gone dark. And now federal action gives promise of alleviating ETV's major problems.

With the Educational Television Act of 1962, Congress finally has recognized ETV's uphill struggle. Senator Warren Magnuson had successfully led the campaign for similar legislation to Senate passage twice before, in 1958 and 1959; this time Congressmen Oren Harris and Kenneth Roberts were able to lead the way in the House of Representatives too. The Act, no less a tribute to its congressional supporters than to the growing maturity of the educational broadcasters, will give ETV over five years a \$32 million federal stimulus. It allows

any one state up to \$1 million if the state matches the grant. Reflecting the variety of today's ETV, eligible applicants may be state or local school systems, state-supported colleges or universities, nonprofit foundations or private, communitywide associations.

A vital companion piece of legislation is the All-Channel Receiver Act. This empowers the FCC to require that all television sets manufactured for shipment in interstate commerce be capable of receiving UHF as well as VHF channels. The effect will be to bring to electronic life educational channels in many large metropolitan areas which ETV has been unable to exploit adequately for want of an audience.

At the FCC we believe that some 150 new ETV stations will come on the air by 1968. The educational broadcasters are somewhat more bullish: they estimate their channel requirements at a thousand UHF assignments for the next ten or fifteen years. And once every home set can pick up UHF as well as VHF, it should be possible to realize the dream of a nationwide ETV "fourth network."

The base of a "fourth network" is firmly set. As early as 1952, the National Association of Educational Broadcasters, together with other groups mindful of ETV's needs for program exchange and production, organized the National Educational Television and Radio Center, known as NET. Through its own hard, often frustrating, work, through contracts with independent producers, through the efforts of individual ETV stations and through the generosity of some of our largest corporations, NET now offers from its New York headquarters ten hours of programing a week to each of its eighty-two affiliates.

NET has already achieved distinction with such programs as "Prospects of Mankind," with Eleanor Roose-

velt as moderator; the BBC-produced Shakespearean series "Age of Kings," underwritten by the Humble Oil Company; and the memorable Pablo Casals concerts. Offerings for the 1962-1963 season included a Dave Garroway show, "Exploring the Universe," underwritten by the National Science Foundation, and "The Lotte Lehmann Master Classes," a series showing the great singer in her final working sessions with students at the Music Academy of the West.

Neither NET nor the individual ETV stations are yet completely on their own. The commercial television networks and many individual commercial TV stations, including all of those in New York City, have helped educational television with both money and equipment. Foundations have been generous with their support (indeed, it has in no small measure been due to the Ford Foundation's vision and assistance that ETV is today a going concern), and in the past year or so public-spirited corporations have given NET more than a million dollars to underwrite programs on educational stations.

A word should be said here about a basic function of ETV—classroom instruction. An academic critic undoubtedly voiced the opinion of many of his colleagues not long ago when he dismissed televised instruction with the remark, "An electronic tube can't understand a child." He was right; but other educators, more sensitive perhaps to growing teacher shortages in the face of rising school enrollments, have examined the tube from both ends and realized its potential value as an academic tool.

They have conducted hundreds of extensive experiments: in the public schools of Washington County, Maryland; at Pennsylvania State University; in Chicago, where the municipal junior college is giving the major portion of its curriculum to off-campus students; at four colleges and universities in Oregon; in New York State,

whose Board of Regents' Project in 1960 reached a million students with fifty-five programs; and at all levels in many other states and cities throughout the country.

They have found that ETV instruction can match, and on occasion surpass, conventional teaching. At its best, it expands and equalizes educational opportunities by enormously extending the range of the superior teacher—as in Alabama or Maine—from a university center to a remote rural schoolhouse.

In the future, throughout many parts of the nation, teachers and students will be welcoming ETV. Regional and state networks are already active or in the making in the East, South, Midwest and Far West. Over central Indiana a lazily circling DC-6, lowly forerunner of an advanced Telstar, is again beaming videotaped instruction to thousands of children in six states. (Its sponsor, the Midwest Program on Airborne Television, reports that, during last winter's storms, the plane had a better classroom attendance record than live teachers.)

ETV is, without a doubt, in the process of shedding an old television skin and growing a new one. In this patient step-by-step process, it has a chance to fulfill great expectations.

Free of the commercial imperative to seek the largest possible audience, ETV should tread new ground, take new chances and offer gifted people plenty of creative elbow room. Yet it must be noted that ETV itself is not without "sponsors." They are a doughty group: the state and local appropriating committees, the foundations, the civic organizations and business concerns, the school boards and others who pay the piper. ETV's station management must not permit its independent judgment to be colored when sticky issues arise—a provocative news commentary, for instance, or the selection of a panel to discuss a touchy problem, or the production of a con-



troversial play.

ETV should heed the observation of the Pilkington Committee after it completed a two-year study of British broadcasting must be most willing to make mistakes; must be ready and anxious to experiment, to show the new and unusual, to give a hearing to dissent. Here, broadcasting must be most willing to make mistakes; for if it does not, it will make no discoveries."

Equally, ETV must guard against frequent by-products of its noncommercial structure: dullness and pomposity. ETV requires showmanship, whether in a lecture on Senegal, a class in fourth-grade arithmetic, a dance recital, a symphony concert or an experimental drama. Low budgets may dictate Spartan production, but they must not be used as an excuse for pedestrian programing if educational TV is to succeed.

And "succeed" means reaching full growth, realizing its full potential for bringing us a world of sight and sound, experience, enlightenment, stimulation—a world that will remain unseen, unsought and unknown for most of us if it is not delivered with professional competence into our homes and classrooms on the television screen.

ETV can hasten the steadily growing maturity of commercial television by demonstrating that the pursuit of excellence can attract eager viewers, hungry for knowledge and insight about the world and themselves. The history of the democratic process often follows a pattern over a period of years of minorities becoming majorities. This lesson of history in a free society may also apply to television audiences. By making more education readily available, television may expand Thomas Jefferson's hope that free public education would pay for itself by drawing from the populace geniuses who "would serve the states as governors or enlarge the dominions of human knowledge."

Some day a youngster in any classroom in this country may, through educational television, share his dogeared copy of Shakespeare with television productions in which Macbeth will howl, Portia will enchant and Richard will sit down to tell sad stories of the death of kings.

This youngster will see and hear Pablo Casals addressing the cello, or take a tour of the Louvre, or watch electronic gear used in prospecting for oil.

This youngster can't go to the mountain, but at last, because of a communications miracle, the mountain may come to him.

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AFTERMATH: Mr. Minow continuously urged educational broadcasters to put some life and spark into their programs. He chided some of the educators for considering "showmanship" as a dirty word, something to be avoided because it brings to mind gimmicks and cheap tricks. He urged the educators to look into their own classrooms and to observe the work of the great teachers. Such teachers are never boring. They use some form of showmanship in every lecture, harnessing techniques that excite and challenge the students. True showmanship, of course, requires greatness of spirit, a pioneering instinct and a willingness to use creative initiative and courage.

As he was leaving the FCC Chairmanship, Mr. Minow urged educational television to tackle one major assignment: the production of a great program series on American history, with its sweeping built-in dramatic values.

During a televised interview with David Brinkley, Mr. Minow proposed that a memorable television course in American history would harness all the techniques of a marvelous medium. Such a series would utilize dramatic enactment along with photographs, animation, helpful maps and newsreel film. He urged that an organization such as the American Society of Historians help to prepare the programs

with the aid of distinguished authorities.

American history is not a simple subject. But the fact that celebrated historians often disagree would add to the value of the series. Where there are conflicts, let them be passed along to the public. There might be debates between the finest biographers of the great men. A fine historian such as Henry Steele Commager has told us that a biographer nearly always falls in love with his subject; the proposed course would provide a public forum for defense of his subject with all the fire he can command; but he will have to withstand an attack from a historian who disagrees. What could be livelier, or more rewarding, than an open clash between the Confederate historians and those who know and understand the cause of the Union?

Mr. Minow proposed that such a course might be shown on the educational channels three times each week; or even seven times a week, with the hours varied as widely as possible, to give all occupations and all age groups the maximum opportunity to see the programs. As he put it, if a viewer wants to watch "The Untouchables" one evening, he shouldn't have forever missed the Civil War.

Such a series would require, and very likely receive, the greatest possible advance publicity and promotion. Educational television is woefully weak in these categories, and this weakness could be overcome with an opening of such strength that it would gain almost universal attention. The ideal opening could take advantage of the fact that the present is one of the few times in history that four living American Presidents could be brought together. President Hoover, President Truman, President Eisenhower and President Johnson could gather at the White House to launch the series. The four Presidents certainly could agree publicly that the tensions and threats of the 1960's demand that each citizen have the widest possible knowledge of American history and the best possible store of background information on American traditions. Certainly each President would urge all citizens seriously to watch this course, as part of good citizenship.

With such a launching, with proper academic credentials and fine production values, the course could be made available to those who would like to study for academic credit. Precedents for such a procedure abound both in television and in foundation-financed programs, and there is a long list of schools and colleges that are willing to cooperate in such a venture. A special certificate of accomplishment might be awarded as an added incentive for completion of the course. If done well, this course could be a television staple for many years and could be made available eventually to academic institutions. With the dubbing of sound in other languages, it would have enormous value overseas, where there are now more television sets than we have in the United States.

Of course the cost would run to \$3 or \$4 million. But, as Mr. Minow points out, one single soap manufacturer is already spending fifty times that amount in one year of television advertising.

The editor, in agreement with Mr. Minow's deep commitment to the potential and the promise of educational television, feels that this proposal can dramatize the great gift of educational television. It can also offer a practical use of the newest tool of communications for the goal of advancing an understanding of American traditions. ETV ought to be willing to stand or fall, to advance or regress, to grow or to shrink with this transcendental opportunity to demonstrate its merit. In fact, educational television needs such a course—almost as much as do the citizens of this republic.

# XI

## The First Year

**THE TIME:** The luncheon meetings of the International Radio and Television Society in New York provide a good forum for ideas. The audience always contains the men who set policy, who approve and create plans for programs and who speak out most loudly against new kinds of government regulation. The meetings also furnish a valuable audience for a review of an agency's work or for pulling a few noses of the elite who run a mammoth broadcasting industry.

Here is a good review of Mr. Minow's first year in office, coupled with pungent observations about children's programs and a long-range forecast about the meaning of international technical innovations in communication by space satellites.

This is a polite audience, not given to showing anger to speakers; an audience that laughs quickly and easily; an audience that understands the precarious nature of ownership of an executive suite in the broadcasting industry. The talk that follows evoked an enthusiastic response. This was in appreciation of the humor, the terse accounting and plain talk with which few could argue.

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ADDRESS TO  
THE INTERNATIONAL RADIO AND  
TELEVISION SOCIETY  
NEW YORK, NEW YORK  
*September 27, 1962*

I proposed to you last year that some of you might plan together to bring more and better hours of children's programming to the air each day of the week. After the suggestion, meetings were held among the networks, but agreement could not be reached. One network called me and asked my opinion about going it alone; I made it emphatically clear that the way broadcasters went about achieving better programming for children was not the government's business. The choice of means to that end is up to you, and the responsibility for decision is yours.

It is heartening that all three networks and many individual stations and independent producers have announced special efforts in new children's programs this autumn. One network is proposing by itself to meet the need on weekday late afternoons, and this is all to the good. Two other networks, in clear confirmation of rugged independence and arms'-length autonomy, have scheduled their children's series to be broadcast at the identical time on Saturday afternoons. It is certainly desirable to provide television programming for minority groups, including minors. But perhaps my suggestion has been taken a little too literally if the result is programming for that minority group of children who have two TV sets in their playrooms—and who are bifocal!

I want briefly to sum up this past year at the FCC. It's

been an exceptionally busy year, and it has produced some tangible accomplishments. We're proud of our record.

First, educational television. Last year we began an inquiry into the possibility of bringing VHF educational television to New York and Los Angeles. That job is half-done. Educational TV had its premiere in New York. There are events under way out West which indicate that Los Angeles will also develop educational television to meet the needs of its large community. A new office at the FCC assists the educators. Many of you in this room have done much to assist them, too. Congress this year has passed legislation to aid educational television, and 1962 will be remembered as the year of extraordinary breakthrough for this form of the medium.

Our second long-range accomplishment: UHF television, ultra high frequency, channels 14 through 82. Our recommended legislation to Congress, giving the Commission authority to require that all television sets shipped in interstate commerce be capable of receiving all television channels, is now the law. UHF will change the face and voice of television in the present decade; it will provide exciting new opportunities for broadcasters, and it will broaden the viewer's choice in the future by lighting up eighty-two channels—and not only twelve. Our UHF experimental transmission here in New York, in cooperation with the City, is already proving UHF's effectiveness. The City of New York will take over WUHF on a permanent basis, a fruitful example of federal and municipal governments working together to serve the public. We salute our own Commissioner Robert E. Lee for his distinguished contribution to this project. At present it appears that UHF is a technical success; and coupled with the UHF legislation, it will become a commercial success in the years ahead.

In consultation with the Federal Trade Commission, we've tightened up on false, misleading and deceptive advertising practices and clarified policies on the broadcasting of horse-racing information.

We have expedited new television service to the public while applications are pending, permitting joint operation by all applicants until a license is granted. As a result, new stations are already on the air, networks have found new outlets, and the public's choice has been widened in some large cities.

After receiving substantial complaints, we've taken a close look at local television in Chicago, to evaluate just how TV serves the local needs of that community.

Our pay-television experiment in Hartford is now on the air, testing its service in a competitive setting.

We've clamped down on "trafficking" in licenses through the new three-year ownership rules.

We have encouraged stations and networks to discuss controversial issues and have made it plain that we will defend fair discussion against pressure groups. We've encouraged stations to editorialize, and more stations are using their voices than ever before.

We are reexamining our policies about AM and FM radio licensing in order to find ways to ease the crowding in AM and to prevent its happening to FM. We've developed standards for FM stereo to develop into a fine new service.

And we've streamlined the administrative and adjudicative processes of the Commission, delegating many matters to a new Review Board, thereby freeing the Commission to attend to broad policy problems.

We have both preached and practiced station responsibility for fulfilling program promises to the public. We have done more than lift an eyebrow; where warranted, we have lowered the boom. Some broadcast licenses have



been revoked or not renewed, a number of others have been given one-year probationary renewals and still others are being carefully examined.

For this, we have been criticized by some because more broadcast licenses have not been renewed by the present Commission than were not renewed in the FCC's entire thirty-five-year history. We've also been criticized for imposing fines for violations of laws or our rules, laws and rules which have helped take the profit out of deceptive and sharp broadcasting practices.

This kind of criticism is the best evidence that we are doing our job, doing it in the light of the public, not the private, interest as our own conscience and understanding enable us to see the light.

Negative measures of regulation are a distasteful part of our work that no Commissioner enjoys. The role of an umpire is unpleasant and unpopular. Those who blow whistles are bound to be the target of the pop bottles of invective and self-interest. But insuring adherence to the law requires policing and, in cases of lawbreaking, the imposition of adequate penalties. Policing and penalties are intended to work hardships on the small minority of offenders; but they also protect the overwhelming majority who respect and obey the law. This is our system of government, and the responsibility of the FCC under the law is clear.

Any of these subjects I've just mentioned could be the basis of a speech today. But there is another subject of surpassing significance: the promising new era of international communications made possible by space satellites. Especially in view of this distinguished forum's new and particularly relevant name, it is appropriate to discuss this subject with you here today.

Dr. Jerome Weisner, Science Advisor to President Kennedy, recently reported to the Congress that our country

this year will invest more public funds in research and development than the country invested in research and development from the time of the Revolutionary War through the end of World War II. In the space program alone, the budget is more than \$5 billion this year, more than one hundred times what was spent on the space program only five years ago.

I was privileged this month to accompany the President and the Vice President on an inspection trip to some of the centers of our space program's operations. On the plane I happened to sit next to a young man named Brainerd Holmes, a former RCA official now in charge of Project Apollo. His assignment, backed by resources of some \$20 billion, is to send men to the moon and bring them back to earth. On our trip Brainerd Holmes and men like him told us that this mission will be accomplished in this decade.

A few years ago this would all have been so mysterious as to be beyond human comprehension. Today our country's commitment of human life, staggering resources and extraordinary talent, as President Kennedy said, "is one of the great adventures of all time." The Columbuses and Vasco da Gamas of our day wear button-down shirts, have Ph.D. degrees and their spirit and purpose are as exciting as any exploration in human history.

Many thoughtful people wonder why we are doing all this. Why risk so much on the unknown? The wisest answer to that question was given 180 years ago by one of the greatest Americans. When Benjamin Franklin, then American Minister to France, was invited to a scientific experiment, a French observer approached Mr. Franklin to ask, "What good is it? What good is it?" Mr. Franklin's reply is as true today as it was then: "What good is a newborn baby?"

This past summer the technology of space and the technology of communications fathered a newborn baby. It took the form of unprecedented international communications through active space satellites. The first such satellite, Telstar, operates under an FCC experimental license and points the way of the future. This year national policy in space communications has been hammered out through the democratic process.

As citizens involved in communications, you have a special stake. Whatever your own role in communications, you and every firm represented here today will be affected by this new technology. For yours is an industry that seizes opportunity, that is restless for new horizons, new advances.

This requires determination to work together. In the very first live international television program relayed by Telstar last summer, the American networks and stations, the European broadcasters, the USIA and the communication carriers merged their talents in a common cause. The result was a magnificent success, both in Europe and here.

This demonstrated that the real value of space communications in television terms is that it enables the world to see, as James C. Hagerty has pointed out, important human events live as they happen. For even without space satellites, films and tapes jetted across the ocean could continue to fill the world's hunger for international news and entertainment.

More cooperation will be necessary as international television progresses from experiment to regular operation in the next few years. Even on this side of the Atlantic we must search for new ways to work with each other. There may be occasions in the future when the networks may want to join hands and rotate the carrying of some international events live on one network at a time. If you need government help in making such ar-

rangements, it is yours for the asking. What we in Washington would prefer is some leadership on your own initiative—without government prodding—to share whatever burdens there may be in the larger interest of keeping your nation well informed.

The nation has just given a vote of confidence to our private operation of our communications service. With that vote of confidence goes reasonable expectation of responsibility and leadership.

Last week the President of the National Association of Broadcasters, Governor LeRoy Collins, issued a wise and farsighted call for leadership. He said:

If this nation is going to rely upon individual broadcasters and the private networks to create, through international programming, a large measure of the understanding which the people of other nations have of America, then let us resolve by open covenant with the people of America that we recognize this as a trust of great responsibility, and will be true to it.

I propose that we do not leave this to chance, that the broadcasters of America, as an industry, begin to make plans now as to how they best can discharge their responsibilities in the field of international broadcasting.

I agree fully with Governor Collins. It is time to make plans now; time to recognize the great trust that the nation will place in your hands.

Your country will look to you to exercise your trust with responsibility. We will look to you to be concerned not only with commercial check and balance sheets, but also with democratic checks and balances; not only with avoiding red ink, but also with preventing red dictatorship.

Your government will not and cannot monitor or cen-

sor your world programs—either the programs you send or the programs you receive and show to America. That's going to be the job of your conscience and your character. The penalty for irresponsibility will be more serious for the nation than the revocation of a station license. If this is too much responsibility for you, you should not be involved in international television.

Technology does not wait for human maturity. Responsibility for keeping our nation informed and entertained will soon be enlarged to keeping a world challenged and enlightened. With vision and cooperation, international television in the next decade can become the uncommon market for the free exchange of ideas.



**AFTERMATH:** It is almost impossible to chart cause and effect in some areas of broadcasting. One cannot be certain that the broadcasting executives took action on this speech; it is certain only that some might have taken a new look at the preparations they should make for a future that is filled with exciting possibilities.

And certainly the speech helped set in motion some of the plans that resulted in the first transatlantic exchanges, via Telstar, of programs from Europe and the United States.

## XII

### Television: Four New Dimensions

**THE TIME:** It is not always possible for a man who is caught in a revolution to know that a revolution does exist. Often it takes the historian with his long perspective to look back and decide just when a significant change began.

Reading—the ability to decode marks on paper into thoughts, ideas, inspiration—remains the greatest single discipline of education in the West. We are moving quite rapidly toward a time when much of the work of print can be done with greater ease by the electron. This change might widen worlds of thought; shift the techniques of business records; change the methods of studying the immediate past; and transform the techniques of politics.

This is a part of the future that Newton Minow held out to the Tenth Anniversary Convocation of the Center for the Study of Democratic Institutions, Fund for the Republic, in 1963.

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PAPER PREPARED FOR DELIVERY BEFORE  
THE TENTH ANNIVERSARY CONVOCATION  
OF THE CENTER FOR THE STUDY OF  
DEMOCRATIC INSTITUTIONS

NEW YORK, NEW YORK

*January 22, 1963*

Asked not long ago to comment briefly on the mass media, a thoughtful man\* began this way: "Those who have written books on the mass media have taken the easy way out. They should have attempted something more difficult—like writing a paper. One can't say everything, and yet so much needs to be said. It is a question of choice comparable perhaps to the need for choice in the offerings of the media themselves."

This paper makes the conscious choice to concentrate on broadcasting in the United States, more particularly on American television.

The word "television" does not even appear in federal legislation providing for the regulation of broadcasting. What Congress did was to create the Federal Communications Commission with regulatory authority, under the standard of the "public interest, convenience, and necessity," over all forms of radio transmission, in order—in the words of the Supreme Court—to keep "a grip on the dynamic aspects" of this new means of communication.

"Dynamic" is too weak a word to describe television.

After a study of current television growth around the world, Richard Cawston of the BBC concluded, "One thing is certain: two new television stations opened to-

\* Reverend John M. Culkin, S.J., Consultant on Films and Television, National Catholic Educational Association.

day. And two more will begin tomorrow.”

The year 1450 in Mainz, Germany, marked a watershed in history, the introduction of the printing press and with it the beginning of modern communication. A history of mankind in terms of the history of communication has been formulated by the late Professor Harold Adams Innis of the University of Toronto. The Innis thesis is that a major change in the method of communication from oral to cuneiform to papyrus to the codex to paper to printing produces major changes throughout a society. Certainly the printing press has had profound effects on all societies that have used it, whether democratic or dictatorial, Old World or New World, Western or non-Western.

The year 1907 should be regarded as another watershed date because in that year De Forest's invention of the triode vacuum tube led to broadcasting. In these terms, we are still at the beginning of television, the year 1465, so to speak. Even Telstar, with its present technological sophistication, is but a crude version of what will soon be the everyday global marriage of sight and sound. I believe television is now having an impact on society as great as, if not greater than, the printing press had over the course of several centuries.

Are we rising to the profound challenges that television presents? Is our free society keeping what the Supreme Court called “a grip on the dynamic aspects” of this new communications media? Where is television going these next ten years? How should it get there? I would like to set out the present principles from which the next decade's developments in the United States will spring.

Our single most important principle is the availability of broadcast channels to as many commercial and non-commercial broadcasters in as many communities and



areas as is technically possible. We are opening all available channels, with a commitment that broadcasting is a medium of free expression and that the government will not censor any programs. We have chosen that system on fundamental libertarian grounds. We have sought to encourage many *diverse* sources of broadcast programs. Our broadcast system rests on the same premise as does the First Amendment—"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 a condition of free society" (*Associated Press v. U.S.*, 326 U.S. 1, 20).

The present television system in America is a mixed one, comprised of a limited number of advertiser-supported competitors, located mainly in the larger communities, and a smattering of noncommercial educational stations. Its performance is likewise mixed.

Although I believe there are signs of improvement in television's performance, I also believe that our television system has serious flaws. Given the television industry's present structure, the forces of commercial competition undeniably tend to limit the range of programming—particularly in the evening hours when the largest audiences are available. Those whose tastes and desires in entertainment are not shared by overwhelming majorities are often short-changed. So long as this is true, our system may not be a failure, but it is certainly not a success.

Suggested plans for reform have generally tended in one of two directions. The first assumes that there is something wrong with our basic principles and that competition—particularly commercial competition—must necessarily result in the disregard of minority tastes in favor of more profitable majority-taste programming.

We have rejected this assumption and have gone in the

opposite direction. We believe that our problems stem not from too many voices but from too few. We believe that competition has not yet had a fair chance to show what it can do with television. In 1947 the Commission on Freedom of the Press recommended "that government facilitate new ventures in the communications industry." That recommendation is the basis of our plans for the future. Our main hope for healthy growth rests on two bases: UHF television development through the all-channel TV receiver law and methods of financing television other than through advertiser support.

In large part the failure of UHF broadcasting to develop alongside VHF has been a chicken-and-egg problem. There were few receivers capable of receiving UHF signals, and therefore advertisers, networks, educators and other groups shunned the UHF station; but without viable UHF stations presenting programming, the public had little incentive to purchase the so-called all-channel receiver.

The basic solution, we believe, will stem from congressional enactment in 1962 of the all-channel TV receiver law. Under this legislation the FCC has directed that a television receiver manufactured after April 30, 1964, can be shipped in interstate commerce only if it can receive all eighty-two channels, not merely twelve. With the anticipated purchase of some five or six million new sets each year, the sets in the hands of the public will become almost entirely all-channel within a period of roughly eight years.\*

We believe that lighting up eighty-two channels—and not only the twelve VHF ones—will lead to four new di-

\* At the same time our government is requiring the manufacture of sets designed to receive more channels, the East German government has constructed a television wall. The East Germans have directed that sets sold behind the Wall shall be capable only of receiving the East Berlin TV channel—and not that of West Berlin television.

mensions of television service to the public.

1. It will make possible a truly nationwide educational television system through a network of stations devoted to classroom instruction during the day and to broad cultural adult programming in the evening. The future of educational television is clearly geared to UHF: fully two-thirds of the channels reserved for educational television are UHF channels. A first-rate educational network could be the most significant programming development in the broadcast field in the next decade and perhaps the next half-century. Free from commercial inhibitions, it could provide the experiments and discoveries needed in the medium.

2. Lighting up eighty-two channels will make possible nationwide pay television. In its simplest terms, the argument of pay television proponents is that if a minority part of the audience could pay directly for the programming it wishes, then its informational and entertainment needs could be met without detriment to the advertiser-supported TV system aiming largely at majority audiences. We have decided that pay-TV deserves a fair trial in a competitive setting. For that reason, we have authorized pay-TV experiments in Hartford, Connecticut, and Denver, Colorado. If pay-TV passes its tests, the logical place for it would be in the UHF channels. This, again, would enlarge viewer choice.

3. Lighting up eighty-two channels will make possible a fourth commercial television network appealing to higher rather than lower common audience denominators. Until now, a fourth network had no chance to find a local outlet simply because the UHF channels lay fallow. With UHF an alternative national program service may emerge.

Such a new network might concentrate on serving the interests of programming areas not now met in content or

time periods by the three present networks. There are some imaginative men in commercial television who are fully aware of the mounting cultural interests in this country. I believe that the commercial broadcaster will find it profitable to venture into this relatively unexplored territory.

A new network might well direct its programming to this emerging audience which many thoughtful observers think is larger than most present broadcasters believe. And a new network, by aiming consistently at higher levels and standards for less than a majority audience, could stimulate the entire industry to lift its sights.

4. Finally, more channels will make possible new stations to meet local needs. In some areas, they will provide a first TV outlet. It is our hope that, as a result of the all-channel law, many communities will be able for the first time to turn to a local television station.

These are our plans, our ideas and our goals for broader television service during the next decade. The list is not complete; some of the plans may have to be revised or scrapped, and new and better ideas found to take their place. But I doubt any change in the bedrock on which they are founded: enlarging the citizens' range of choice.

In addition to the new possibilities of UHF television, what can be done in the next ten years, through existing and new television channels, to use this medium more wisely and completely? There are many pressing needs for the next decade. I should like to suggest several which seem to be of surpassing importance.

One crucial need is the provision of a sound economic base for educational television. At present *all* educational television stations in this country spend less on programming in a year than the three commercial net-

works spend in a week.

Writing about an educational network, Walter Lippmann once said:

No doubt, this network would not attract the largest mass audience. But if it enlisted the great talents which are available in the industry, but are now throttled and frustrated, it might well attract an audience which made up in influence what it lacked in numbers. The force of a good example is a great force, and should not be underrated.

We should not, I believe, shrink from the idea that such a network would have to be subsidized and endowed. Why not? Is there any doubt that television is a mighty instrument of education—education for good or education for evil? Why should it not be subsidized and endowed as are the universities and the public schools and the exploration of space and modern medical research, and indeed the churches—and so many other institutions which are essential to a good society, yet cannot be operated for profit?

Mr. Lippmann is right. To really advance, educational television must undertake great projects, great challenges. To do this, it must secure an adequate economic base of support. And it must do this in the next decade.

Another pressing need which must be met in the next decade is ensuring fair access to the broadcast channels by candidates for public office. Ways and means to finance the use of broadcasting during political campaigns will be an ever-growing issue in the next decade. Political broadcasting in 1960 cost almost one and one-half times more than it did in 1956. Our FCC reports indicate that in 1960 from September 1 through election day to-

tal broadcast charges were \$14,195,000 with adjusted totals of \$7.5 million for Republican candidates, \$6.2 million for Democratic candidates and \$431,000 for all others. In the 1962 election in New York, 40 cents of every political campaign dollar went to television, with New York stations receiving more than \$1.2 million.

In the simpler society of Athenian democracy, a candidate could reach all the electorate by raising his voice in a large open-air forum. Today broadcasting over the public airwaves, an unparalleled avenue to the voter's mind and heart, is in danger of being limited only to the wealthy candidates, or to the not-so-wealthy candidates who are willing to become dependent on special interests to finance their campaigns. Our democracy cannot afford the commitments—the hostages, as it were—which a politician sometimes assumes if he is going to raise the necessary money to win.

A solution must be found to reduce the financial burden by offering some amount of free time to candidates, enough time so that during the campaign they are free to *raise more issues and less money*—and during their term of office free to vote their inner consciences instead of their overdue obligations.

Finally, much remains to be done in insuring that broadcasters live up to the obligations that their licenses impose. Among our present inquiries is whether the public in some areas is receiving adequate local community television service.

One of broadcasting's main duties is to inform the public about the issues of our time. Broadcasters are doing an ever better job in covering "hard" news. But in today's complex world, "it is no longer enough to report the *fact* truthfully; it is now necessary to report the truth about the fact." \*

\* *Report of the Commission on Freedom of the Press*, 1947, p. 22.

An increasing amount of depth reporting with news analysis is appearing on radio and television. We believe that broadcasting in the 1960's should be encouraged to become even more interested in controversy and to help feed and shape public opinion. This doesn't mean tip-toeing with issues. It does mean the presentation of such vital national issues as tax policy, disarmament and race relations; and it also means presenting strong points of view on local problems such as school bond issues, teenage driving and drinking, and local reapportionment.

The clash of conflicting opinions and attitudes is the true dialogue of a democracy. Television has unique powers to nourish the viewer's mind and to inflame the viewer's spirit and thus help him decide whether Monday's villains are Friday's heroes. But the presentation of controversy on the air carries with it serious obligations. In dealing with controversy, the law wisely requires that the broadcasters "afford reasonable opportunity for the discussion of conflicting views on issues of public importance." Insuring that fairness is the responsibility of the FCC. Perhaps no agency can adequately meet that staggering duty. At the very least, it presents extraordinarily difficult problems, both to broadcasters and their government.

The search for solutions to knotty problems is often discouraging, but our efforts to find sensible answers must go on. The principle of full and fair exposition of controversial issues on the air is too indispensable a part of our free society to be discarded because we lack the courage to protect it. Controversy watered down to avoid offending pressure groups would offend the largest and most important group of all—the mass of our citizenry who by implication cannot be trusted to make up its own mind.

\* \* \*

More freedom to engage in controversy, the sensible financing of political broadcasting and the growth of educational television are but a few challenges of the next decade. I have sought to set out the basic principles guiding present government regulation of broadcasting and to offer some suggestions for the future. In so doing, I have become even more deeply conscious of our needs for outside criticism and independent review of our policies.

More than eleven years ago one farsighted United States Senator—by coincidence today a panelist in this Convocation—proposed a Citizens' Advisory Board for Radio and Television. Senator William Benton on October 20, 1951, invited the nation's attention to the television revolution. He said then: "With the imminent un-freezing of nearly two thousand television channels and their allocation into private hands, the entire future of television, the future of what I call the most extraordinary communications instrument ever devised, surpassing the invention of printing, the invention of the motion picture, or any of the other great strides forward in the possibilities of communication between people, might be crystallized, and possibly irrevocably crystallized, for generations to come."

The Board then proposed by Senator Benton would have issued an annual advisory report to the Congress, to the Federal Communications Commission, and to the public, reviewing the year's progress, or lack of progress, in the public service rendered by radio and television and made suggestions as to how such public service could be developed.

The Board was never created. I think it should have been. It is not too late.

At the FCC, we are trying through a variety of means to stimulate a greater degree of public participation in



decisions about broadcasting. The public must become more aware of its rights, and I believe broadcasters are becoming more aware of their responsibilities. But is each of us doing enough?

The technological explosion in communications leaves those of us concerned with its day-to-day operations with little time to grasp its deeper meaning. I have not even attempted here to discuss the implications of international television. Last year the United States exchanged live television programs with Europe through the miracle of active space communication satellites. In so doing, we achieved something more enduring than launching a man into space. We launched an idea into space—an idea to use communications to build, not a wall sealing in ignorance and prejudice, but a window opening toward truth and freedom.

Are we wise enough to sustain that idea?

I return to the thoughtful man whom I quoted at the beginning of this paper. Father Culkin closed his paper with this: "It is still early in the history of the new mass media but we are already on the brink of simultaneous global television. Someone must assume responsibility for insuring that these media fulfill their promise as instruments in the service of the mind and the spirit. If not us, who? If not now, when?"



**AFTERMATH:** At this writing we are still awaiting the effects of the move to light up the seventy channels of the ultra-high-frequency band. We are also waiting to learn what communications satellites are going to mean to us and to the world.

There is, theoretically, at least, the prospect of a simultaneous viewing around the world of messages that are shot into the universe and scattered to each citizen on the globe.

This may mean that television receivers will be part of mud huts in the Congo or the grass shacks in Archipelago. And what does happen when meaningful messages are made available to each citizen at one point in time? One is tempted to predict a certain kind of assault on the barriers of nationalism that were built in the nineteenth century and perhaps have outlived all usefulness.

Perhaps the earth has been prepared, by the electron, for a universal tongue. One can dream endlessly of changes that would mean a new kind of world.

It is just possible that the electron would arrive with something like a message that was brought to the Fertile Crescent of the Middle East by Jesus of Nazareth. As written in the Gospel according to St. John, the message was: "I am come that they might have life, and that they might have it more abundantly."

# XIII

## Pay Television, or “A Cash Box on Every TV Set”

BY LAWRENCE LAURENT

**THE TIME IS NOW:** The essay that follows is not concerned with one of the critical issues of Newton Minow's chairmanship of the Communications Commission. The rules for tests of pay television—a term that Subscription Television Incorporated's Sylvester L. (Pat) Weaver, Jr., thinks is “pejorative”—had been set before Mr. Minow took office, and no major changes were made while he was at the FCC.

The issue, however, has become increasingly critical during the administration of Chairman E. William Henry, and this book would be incomplete without a discussion of subscription television. For one thing, Chairman Henry has already suggested that the FCC might abandon a historic position and seek authority from Congress to regulate pay television that uses only wires to connect it to the homes of subscribers. Such an attitude would be a major shift, for FCC jurisdiction has previously been limited to television forms that use the airwaves.

The issue is discussed here because it will be a major controversy for many seasons to come.

\* \* \*

The most radiant dream and the most terrifying nightmare in broadcasting come into focus simultaneously with the mention of pay television. It may be mankind's brightest hope for improved television or the most destructive force ever unleashed against mass-media entertainment. These, however, are only the terms of reference used by those who envision a cornucopia sticking out of every television set and, in opposition, those who have already found a gold mine in the heavens.

Nothing in broadcasting's stormy history has caused quite as much name calling or occasioned so many alternating prophecies of cultural paradise and a television dust bowl. The observer is often confused and forced to wonder if the two factions are talking about the same thing.

There is only one way to separate the forecasts of disaster from the promises of greater value—by a test in the marketplace; but over a dozen years, and with limited tests in scattered markets, no one has been able to determine which is truth and which is fiction. We are left with arguments that are full of dogma but lacking in discipline.

Pay television goes by many names. At least fourteen terms have been used, including "subscription television," "fee-see," "coin video," "box office television" and "pay-see"; but by any name only one thing is certain: pay television is a concept for selling programs to viewers at home.

This is a concept as old as an admission charge, but credit for connecting broadcasting and box office is given to the late Commander Eugene F. McDonald, founder of the Zenith Radio Corporation. McDonald was often unhappy with the state of advertiser-supported radio, and as far back as 1931 he began advocating a higher quality

of radio through a subscription fee. He adapted the idea to television, financed a test in Chicago in 1951 and still had not lost hope for fulfilling the form when he died in 1958. For radio listeners, McDonald proposed the sending of "scrambled" programs, a sound of unintelligible gibberish, that could only be "unscrambled" or decoded by a special device on the home receiver. A person willing to pay a price could activate the decoder and receive the program. Those who opposed McDonald's concept listened to the scrambled programs and dubbed them "pig-squeal radio," a derogation that helped stunt any potential growth.

After World War II McDonald turned away from subscription radio to subscription television, and the vision was enlarged. Now he proposed to use telephone circuits for the scrambled pictures, and the idea was called Phonevision. (Opposition spokesmen made a point of pronouncing the term as "Phoney-Vision.")

After Zenith came companies called International Telemeter Company (backed by Paramount Pictures) and the Skiatron Electronics and Television Corporation, headed by the late motion-picture executive Matthew Fox. The Communications Commission and the Congress were bombarded with pleas for federal authorization of subscription television. The opposition was just as busy, and the long series of skirmishes produced one of the biggest paper wars—of press releases, texts of speeches and nonstop telegrams—that Washington has ever seen.

By 1963 there were at least thirteen different companies ready to provide pay television, and there were at least a dozen groups determined to stop authorization. The fight produced a crazy-quilt pattern of advocates and opponents, and one could never be quite certain that any group would remain on one side. Defined loosely, pay television was denounced and opposed most vigor-

ously by the Theater Owners of America (TOA), exhibitors of motion pictures; by established commercial television interests; by such congressional powers as Representative Emanuel Celler of New York, Chairman of the House Judiciary Committee, and Representative Oren Harris of Arkansas, Chairman of the House Commerce Committee; and by some ordinary citizens who like television just as it is. The proponents, as one might expect, were promoters of the numerous pay-TV systems; members of Actors Equity, a performers' union; nearly all of Hollywood's motion picture (and television) producers; many writers; and a lot of persons who owned newspapers and magazines.

During the paper war the name of the game became gamesmanship. Television for all useful purposes was still bound to channels 2 through 13 (very high frequency) and there were not many stations left on these. The National Association of Broadcasters (NAB) therefore became generous with an announcement that its members did not oppose pay television "as such." What they were against, and quite strongly, it developed, was any system that might "deprive the public of programs it now gets for free." In other words, our free society would permit the pauper to compete on equal terms with the millionaire for sleeping accommodations on a public park bench.

Neither the advocates of pay television nor the proponents of the *status quo* were cautious about the tactics that were used. The advocates denounced commercial television whenever possible, stressing the low quality of many programs, decrying the tendency toward overcommercialization and making fun of attempts at high quality. Pay-TV proponents were never shy about promising something better, stressing in particular the probability of opening-night drama from Broadway, first-run feature motion pictures, opera telecast from the Metro-

politan Opera House and such sports events as heavy-weight championship boxing, the best of football competition and major league baseball telecasts for those cities that are at present blacked out by contract from receiving such telecasts on commercial stations. The Theater Owners exhibited a sudden and tender concern for the lowest economic groups, those who would be deprived of "free" entertainment if pay television were to succeed. Veterans groups, hospitalized citizens and other misera- bles were mobilized against pay TV.

Network spokesmen painted a bleak future for televi- sion if pay TV were authorized. Only a great network, it was argued, can cover the nationally important news events (at a loss) for information-hungry citizens. Look what might happen to the gross national product, it was argued, if there were no television commercials to propel the customer into retail shops. At the very least, pay TV would "siphon away" the finest attractions of commercial TV, luring with them the big TV audiences and reducing the advertiser-supported medium to a second-class busi- ness.

Of course, network spokesmen—with one eye cocked toward such an unprofitable future—were careful to hedge the prophecy just slightly. Should pay TV prove successful, they warned, the commercial networks would have no choice but to join the parade. These were strange arguments: if pay TV were authorized, it would be a bad thing for the country; but if it were going to ruin the country, profitably, the commercial network would not stand idle while someone else made money from ruina- tion.

Just how much substance was contained in the claims? No one really knows, for there has been no successful test of pay television; and the conditions exacted by the federal government were not the kind that would

cause promoters to shout with joy. A superb summary of pay-television history appeared in the April and May, 1963, issues of *Television* magazine, and reporter Morris J. Gelman summarized: "Never has a medium been so likely to succeed and so unable to."

Zenith made the first pay-TV test in 1951 after getting FCC authorization. The ninety-day trial used 300 subscribers in the Lakeview district of Chicago. For \$1 a subscriber could watch a telecast of a movie—not a current one, however, but one that was two years old. Part of the picture went out over the air, and anyone who tried to "sneak in" for the showing got only a confusing blur. Telephone wires brought in the rest of the picture, and this part of the reception cost \$1. Though Zenith lost money on the test, the company did not lose hope. In time Zenith abandoned its reliance on the telephone company and worked out methods for scrambling (encoding) and unscrambling (decoding) the sound and picture by using only the airwaves.

Palm Springs, California, a movie-colony playground separated by mountains from Los Angeles, was the location used by Telemeter for expensive tests of pay TV during three winters, 1953, 1954 and 1955. A minimum assessment is that the Palm Springs test taught Telemeter that the engineering of its system would have to be improved. There were a few sports events and a lot of motion pictures, with first-run films priced at \$1.35. Telemeter claimed that 40 per cent of its Palm Springs subscribers watched every current movie, but this response did not bring enough revenue to offset the technical costs.

By February, 1960, Telemeter executives felt they knew enough to try again, this time in Canada. Etobicoke is the name of a suburb of Toronto, and the test began here with something less than 1000 homes hooked



together by telephone-company cables. Three program signals entered a subscriber's home, and he took his pick at a coin box. Several Broadway productions, big-league hockey games, championship fights and competition in the Canadian Football League were exclusive Telemeter offerings to subscribers. By 1963, Gelman reported in *Television* magazine, Telemeter was offering about forty hours each week—"about half unduplicated—of three-channel service to its 5,000 subscribers."

Agreement is general that Telemeter lost money on this experiment and learned much. The experiment has led to great visions of a national system that might bring a bonanza.

Then there is the sad story of a pay-TV enthusiast named Henry Scherer Griffing and his loss of about \$300,000 in Bartlesville, Oklahoma. In a community of 28,000, Griffing wired his subscription television system into an all-time high of 800 homes, still a long way from his goal of 2000 homes. Losses ran as high as \$10,000 a month, and the experiment was ended after eight months. The mistakes, it has been concluded, were that Griffing offered only one program service and charged a flat fee. In the future, pay-TV promoters will offer a variety of shows, scaling prices for each to meet the expected demand.

Finally there is Hartford, Connecticut, the scene of the first try with a completely over-the-air subscription TV test. It is backed with the resources of Zenith (through Teco, Inc.) and RKO General; this business combination announced a willingness to toss \$10 million into the test. RKO General has the station (WHCT, Channel 18) and provides the programming; Zenith makes the encoding and decoding equipment.

The Hartford test is authorized to last for three years (into 1965), and at the end of this period some of the

answers may be available. The tests have already proved that hard-headed businessmen are willing to risk millions of dollars for a head start in an industry that could attach a cash box to nearly every one of the nation's fifty million television receivers. And this tomorrow can be expanded to take in most of the world.

It is therefore not surprising that pay-television promoters proliferated. Teleglobe in Denver, Home Entertainment Company in Los Angeles and the nationally established TelePrompTer Corporation all have a variety of plans. Payvision, developed by the Marconi Wireless Telegraph Company Ltd., in England, is one of the four pay-TV groups in the United Kingdom. Blonder-Tongue Laboratories in Newark, New Jersey, has made known its interest. A company in Sacramento has tried to get FCC permission for a test. One also finds Entron, Inc., in Silver Spring, Maryland, and Angel TollVision in Mill Valley, California. In Beverly Hills one can find three groups: American Pay TV Company, Gene Autry's Golden West organization; and the National General Corporation.

There is the golden lure of a nationwide box office and the incredible wealth that could be accumulated from the telecasting of one splendid attraction.

The favorite example cited by pay-TV promoters during the 1950's was the long-running Broadway musical, *My Fair Lady*. It was claimed that a box office of \$100 million would have resulted if it could have been put on a national pay system. The figure is undoubtedly an exaggerated one, but it does demonstrate the kind of money that is mentioned in any conversation with a promoter. (The claim also overlooked a major obstacle: *My Fair Lady* had been produced with the Columbia Broadcasting System as the sole financial backer, and CBS-TV owns the television rights.)

Faith in the ability of electronics engineers will tell one that the technical problems of pay television will be overcome. Certainly Zenith and RKO-General are wise in sending their programs over the air, for the costs of wiring thousands of homes to a central transmission point are high. The cheapest estimate for a wire system is put at \$30 per home; if a system needed 25,000 subscribers, the capital investment would be \$750,000 just for hardware. A wired system avoids the need for FCC permission, but it requires permits from a city council and probably falls under the regulation of a public utilities commission. New York City may be the richest potential market, but Manhattan is an island, already filled with needed cable systems, and a promoter would need the national budget to squeeze another set of wires into this system.

(In the late 1950's a West Coast pay-TV promoter announced grandly that he would not need coaxial cables or telephone lines. He claimed to have developed a cheap wire substitute that could carry both video and audio portions of television. A reporter checked this story with one of the most respected electronics engineers and was told, "If he's developed a wire that will do all that, he ought to forget about pay television. He can make millions, just by selling patent rights to the wire.")

Whether by wire or by air, the hopes of pay television are welded completely to the kind of programs that are offered. Sports, of course, helped immensely in the original sale of television sets, and sports promoters—whether in wrestling, boxing or baseball—have rarely been known to flee from greater profits. But here there is a catch: major-league baseball teams are currently receiving about \$13 million a year from commercial TV, and the networks are already paying about \$40 million for the television rights to professional and college football. The pay-TV promoter is going to need a large bankroll

to get into this kind of game.

Baseball executive Bill Veeck has remarked in his autobiography (*Veeck As in Wreck*) that baseball owners like to wrap third base in the American flag, blueberry pie and Mom, but none is likely to turn down a chance to make a buck. Veeck's words took on more meaning when a company called Subscription Television, Inc. (STV) filed its registration statement with the Securities and Exchange Commission in August, 1963. The company, which was jointly owned by Lear-Siegler, Inc., and the Reuben H. Donnelley Corporation, a subsidiary of Dun & Bradstreet, offered about \$30 million in stock to the public. The Associated Press report about the transaction included this paragraph: "The company reportedly plans to begin operations on the West Coast in mid-1964. There also have been published reports that the company has reached agreement with the Los Angeles Dodgers and San Francisco Giants for telecasting the teams' home games." The baseball connection became clearer later in the report:

Six parties including the sponsors of the company have committed themselves to purchasing 300,000 shares at the public offering price. The parties are Lear-Siegler, Inc., Reuben H. Donnelley Corporation . . . , the Los Angeles Dodgers, Inc., the National Exhibition Company, owner of the San Francisco Giants baseball team, N. B. Hunt, a director of Subscription Television and the Caroline Hunt Trust Estate.

The Dodgers and Giants companies have subscribed for an additional 55,000 shares at the offering price (\$12 per share). These are paid for out of proceeds received by them from subscription television under contract arrangements.

Some of pay television's promises are pure pie in the sky—that offer about opening night at a Broadway drama for one. Each season about sixty dramatic productions open, not more than a dozen of which succeed in attracting enough customers to survive. A producer will have raised at least \$60,000 for the cheapest of these productions, and no one has to tell him how much the critical notices of opening night have to do with success. It would seem highly unlikely that the chances would be narrowed further by the presence of cameras and technical crews in the theater.

There is an artistic lesson here from motion-picture history, and pay-TV advocates would do well to heed it. In the early days of motion pictures plays were frequently staged before film cameras. Later on, the motion picture developed its own grammar and techniques, including the close-up, the long fadeout and film's special quality of outdoor action. Television, in similar fashion, developed its own techniques for the small screen and for interruption by commercial messages. Instead of going to opening nights, pay TV would do better to mount plays intended not for a collection of patrons in a theater but for the home viewer. (Many of the biggest dramatic successes of recent years have dealt with such topics as homosexuality, incest and rape, strung together with some vivid profanity. One may not be offended by the stories or the dialogue when seated in a theater; the reaction of a pay-TV at-home family is something else.)

Ballet and opera attract small audiences, too small usually to interest an advertiser who measures success by a cost per thousand homes of less than \$4. In the beginning at least, pay television might be willing to settle for the \$6 million or \$10 million box office available from those willing to pay for opera and ballet.

Too little has been written about the possibility of sell-

ing adult education courses to subscription TV viewers. With a need for programs, this would seem a natural development, and the collection system would be simple. Still to be considered is the natural alliance of educational television with subscription TV. Such a union has wondrous possibilities.

Those who beam most warmly at the mention of pay television, however, are the motion-picture producers. Television, along with the changing leisure habits of the nation, cut heavily into movie attendance. Where Hollywood once turned out 1100 feature films each year, production has dropped to fewer than 100. With the new delivery system of pay TV, producers look fondly toward a return to the old factory concept of movies. Hollywood may have taken over television and is the source of at least 80 per cent of all commercial TV fare; but the film industry has never really become accustomed to a business without a box office and has never been happy about producing for the intermediaries of advertising agencies and television networks.

In pay television the ratings services would play a minor, rather than a dominant, role. There is no need to poll 1200 viewers to determine the size of a pay-television audience. This problem is solved by counting the receipts, and the sum at the bottom of a sales sheet is not open to interpretation by several statistical wizards.

No pay-TV promoter to date has been willing to guarantee that he will by-pass commercials. The movie theaters learned long ago that ticket buyers were willing to sit through commercial messages, sandwiched between the main attraction and short subjects. Obviously few paying customers are going to enjoy commercials that interrupt purchased entertainment.

Pay-TV advocates have pointed out that television, like newspapers and magazines, should be entitled to

revenue from both circulation and advertising. Circulation income for pay TV is the amount collected from the home viewer. One plan for the future would be to limit programs for cash to the most desirable viewing hours, from 7:30 to 11:30 P.M., with the station in advertiser-supported operation at other hours of the day.

But, complain the television networks, the prime-time evening hours are the ones in which commercial TV makes its profit. Loss of the audience during these hours would reduce revenues from advertisers and, as a consequence, commercial TV would be forced to shift to pay TV. The argument has a certain merit, but events are not that certain. Presumably the commercial operators would react to the new competition, and some of the patterns would be broken and some of the objectionable practices of commercial television would be changed.

Early pay-TV promoters have not found the commercial stations willing to go out of business because of fear. In Hartford the pay-TV station has had trouble finding attractive movies; they have been going to the movie theater or to network television instead. During the 1962-1963 season, relatively new motion pictures were telecast by NBC-TV on Monday and Saturday nights and by ABC-TV on Sunday night. This meant, using the normal count of thirty-six weeks of new programs and sixteen weeks of repeats, that two networks were using 108 feature films a season.

The possibility of a shortage in the supply was undoubtedly one of the reasons NBC contracted with MCA Ltd. for the production of feature films to be made for first showing on television and for subsequent distribution to theaters outside the continental limits of the United States.

As for the networks' cries that they might have to change their rules or "wither away," the only possible

answer in an economy that approaches free enterprise is, "So what?" Radio broadcasting changed almost completely as a result of television, as did the movie business. If pay television can win acceptance in the market place, the older institutions must be prepared to compete and survive. If the older media cannot adapt, they will have to perish. No dynamic society can guarantee the *status quo* forever.

Probably the biggest boost for pay television in a decade came with the passage of the law that requires television sets to be equipped to receive all eighty-two channels. Significantly, the Hartford experiment is being conducted on Channel 18, and if pay-TV advocates intend to use the cheaper, nonwire, method, they will have to depend on the ultra-high-frequency channels. We have already seen two of the effects of this 1962 legislation: increased competition in commercial television and the opening up of vast new audiences for educational television. The third result is that pay television can be given a chance to take the risks that its advocates have demanded.

A form of pay television (although the practitioners hate the description) has existed in the United States since the earliest days of commercial television. Community Antenna television (CATV) is a thriving business in forty-four states. (CATV has no systems in Alaska, Delaware, Hawaii, North Dakota, Rhode Island, South Carolina and the District of Columbia.) Community Antenna operates in areas where the ordinary rooftop antenna is unable to pick up a satisfactory signal. CATV is quite similar to the master antenna of a hotel or apartment house, except that the programs are piped over cable to individual homes and the user is charged a fee. This business is bigger than one might expect, as is demonstrated in an article by Albert R. Kroeger in the June, 1962, issue of



*Television* magazine. Kroeger wrote: "By rough estimate, CATV today is a \$51.3 million industry—the gross on 1,069,500 homes served, with each home paying the arithmetic average of \$4 a month, \$48 a year. The yearly gross revenues on the average system run between \$100,000 and \$200,000." Kroeger estimated the total CATV investment at "perhaps better than \$450 million."

Some nagging legal questions still persist. CATV operators insist they are not selling television programs but are merely charging for their delivery. The American Society of Composers, Authors and Publishers (ASCAP) does not agree and has insisted that CATV systems should pay music-licensing fees. But there has been no clear-cut adjudication of the property rights to a television program. Both CBS and NBC have at various times claimed property rights in their own programs, but neither has taken legal steps to prevent these programs from being piped through a Community Antenna system.

Where CATV systems become more important, however, is in the future of pay television. The CATV owners contend that they are not involved in pay television at the moment. This distinction was made in *Television* magazine by a CATV spokesman: "CATV is not pay TV. In pay TV, you are expected to purchase programs individually on a pay-as-you-see basis. In CATV, you pay for the convenience of being connected to a fully equipped master antenna. CATV is not involved in the programs put on by the TV stations or networks. It is a receiving service, not a program service, as is pay TV." This distinction is surely meaningless to the man who is paying each month for looking at television. Two heavyweight championship boxing matches have been put on the CATV systems, and the TelePrompTer

organization did collect from the individuals who saw the bouts.

The point lies not in the argument over terms but rather in the existence of what could easily be converted into a pay-television nucleus for the entire nation. The 44 states now offering some form of CATV might furnish a place to begin, or at least a bargaining point for the man who is trying to raise money to launch pay television.

A study of entertainment history is not too comforting in looking at the possible future domination of television by the cash box. The dominant entertainment medium—whether the theater, the motion picture or television—becomes dominant by appealing to the greatest number of persons. Such appeal means that the content of the dominant medium will consist of fare that is of transitory value and that requires no particular training to enjoy. These are the popular arts, handed down from producer to audience and becoming successful through winning acceptance or approval from millions of persons. Such a situation is what H. L. Mencken had in mind when he coined his cruel epigram that "Nobody ever went broke by underestimating the taste of the American people."

True, there is a certain amount of profit in opera and ballet; but the profits are far greater from baseball. The ethics of our business society virtually demand an increasing profit as evidence of competence; and while one may speak in praise of the high arts, the big money has been in the lower ones. If pay television is successful, therefore, it will undoubtedly follow the patterns set by its predecessors.

One new factor, however, does get in the way of such a forecast. First, television offers the most economical, the cheapest, delivery cost in the history of entertain-

ment. The customer (the viewer) pays part of the cost and supplies part of the equipment, much as if moviegoers paid for the installation of seats at a theater and furnished some of the electrical equipment. With the cheap delivery cost, and with thousands of stations now possible, there are many reasons to expect more diversity than the world has ever known. We can accommodate commercial television in some form. There is room for educational television, although it must master the new skills with greater artistry than it has shown thus far. And there is room for pay television if it can command the attractions that will satisfy a box office.

Specialized television stations, deliberately designed for minority-viewer interests, can get into business; and the day is not too far off when someone will adapt to television the radio practice of asking the viewers to support the station's superior offerings by contributions.

One piece of legislation, the all-channel television receiver bill, removed a mass medium from the tight, possessive grip of the few and made it available to the many. This should insure a future in which any man and every man can receive the kind of television fare he needs, wants and enjoys.

## XIV

### “Mind-Forged Manacles”

**THE TIME:** Newton N. Minow went to Chicago in April, 1963, to make one of his last speeches as Chairman of the Federal Communications Commission. The 3000 delegates to the annual convention of the National Association of Broadcasters had already heard and read that Mr. Minow had offered his resignation to President Kennedy. If some of them expected a speech filled with apologies for some of the strong remarks Mr. Minow had made to them in previous years, they were disappointed; in some ways this speech is much stronger than the “vast wasteland” speech that had touched off a great public debate in 1961. It contains a tribute to the broadcasting industry for its role during the October, 1962, Cuban crisis, but it also contains the indictment that broadcasters have failed to keep a bargain—the promised strengthening of the Codes of Good Practices of the National Association of Broadcasters.

Those persons not familiar with broadcasting history will need some background on the Radio Code and the Television Code. The first came into existence in 1937, after President Franklin D. Roosevelt had indicated that he would accept a Code in preference to increased federal regulation. For the twenty-six years that followed, the Radio Code existed as a noble document that lacked any possibility of enforcement. A subscriber was allowed to display a lovely plaque, attesting to his good intentions to embody the society’s highest ideals in the operation of his station. No one would check his performance, and no one would even accuse

him of failing to live up to the standards that broadcasters had written and had publicly proclaimed he would follow. When a check of performance against proclamation was made by a monitoring unit of the National Association of Broadcasters, about 30 per cent of Code subscribers in radio were violating the time limitations in at least one hour.

The Television Code was written in 1952, after Congressman Oren Harris had held a series of public hearings and threatened federal legislation to raise the tops of women's dresses on TV and held out the possibility that his rules might cover other subjects as well. The Television Code is not purely voluntary. Subscribers pay fees (based on the station's highest hourly rate) and there are Code offices in Hollywood, New York and Washington. The most severe penalty for noncompliance is the denial by the Code Authority to the station of the right to display the Code Seal of Good Practices.

Yet at times the Code can demonstrate a remarkable strength. This was seen in the middle 1950's, when broadcasters felt that protests against beer drinking on television might lead to legislation that would cut off a large portion of advertising revenue. Groups had come to congressional hearings to protest that youngsters were learning to drink beer by watching television commercials. The complaint was well publicized, and broadcasters were frightened.

Orders were given that no one was supposed to so much as sip a beer in a commercial. Scenes were snipped from existing commercial advertisements, and no drinking has been permitted in new ones. "Thou Shalt Not Sip" said the Code Authority and put an end to a practice that had been going on for about seven years. Beer advertising continued.

Some stations openly defied a ruling of the Code Authority in order to telecast commercials for a hemorrhoid cure called Preparation H. The Code Authority ruled the advertising violated "good taste" and should not be televised. Fourteen stations were found in violation of the ruling, and their permission to display the Television Seal was revoked. Some stations resigned from Code membership and contin-

ued to televise “Preparation H” pitches. Later most of the offenders were permitted to rejoin the Code.

What Mr. Minow proposed to the NAB in his final talk was the creation of effective self-regulation of the amount of time given over to commercials, along the principles set down by the National Association of Securities Dealers in dealing with brokers who abuse the stock-buying public’s trust. He added that the FCC, like the Securities and Exchange Commission, could then make Code observance a condition for license renewal.

No broadcaster has ever publicly or privately endorsed this proposal. As I have written several times in the *Washington Post*: “The wonderful thing about self-regulation in broadcasting is that no one ever gets punished.”



ADDRESS TO  
THE NATIONAL ASSOCIATION OF  
BROADCASTERS  
CHICAGO, ILLINOIS  
*April 2, 1963*

During the past few months you may have seen some speculation in the press about my leaving the Commission. I’ve received some mail as a result of these rumors. One Hollywood television producer wrote me a kind letter, and said, “Mr. Minow, you’ve been Chairman of the FCC since 1961. Anyone in the business can tell you that two years in television is a long run.”

Apparently these rumors have also stimulated some conversation in the industry. One network vice president said to his boss, “If Minow leaves, I only hope he leaves *permanently*, and that they’re not just going to get a summer replacement for him.” His boss replied, “And we don’t want any reruns either!”

To turn to business. I begin today with a public service announcement for another regular customer of the FCC. Many people erroneously think that the FCC is concerned only with broadcasting. Among our other modest assignments is the regulation of communication companies in the telephone and telegraph industries, including the American Telephone and Telegraph Company.

Through recent FCC action, a reduction in telephone rates goes into effect this week. For \$1 or less, you will be able after 9 P.M. to make a three-minute station-to-station call to any place in the continental United States. I hope that you will all call your mothers, wives, sweethearts, sons and daughters at college or your station managers at this reduced rate.

Unofficially I've suggested that the telephone company might try commercial spot announcements—not loud ones—on radio and TV at 9 P.M. every night to promote use of this new rate. When I mentioned this to several broadcasters to show them how we were promoting *their* business, they were not too enthusiastic. They feared that when people heard the announcements, they would turn off their sets to rush to the phone. Perhaps the FCC can't win!

As you know, this is my third annual talk with you as FCC Chairman. Let us review together some of the more important developments of the past several years.

First, in 1961, it was predicted that international television "will be with us soon." Soon came much sooner than expected, on July 10, 1962. Less than one week after the celebration of our national Independence Day came the beginning of what promises to be the most vital instrument for international interdependence. An active communications satellite was launched through the joint efforts of government and private initiative, with a license from the FCC.

Already we have seen, live, the Ecumenical Council, the midnight sun in Sweden, fishermen in Sicily, night life in Paris. Europeans have glimpsed the Statue of Liberty, the United Nations, the Rio Grande, and a big-league baseball game. The day was brought closer when billions of people on this planet will be linked through instantaneous sight and sound. And on July 10, because of this magic, the powers of darkness retreated while light advanced across oceans and over mountains.

Second, educational television. You were promised that "if there is not a nationwide educational television system in this country, it will not be the fault of the FCC." A strong national educational television system is steadily developing because ETV now is receiving more of the necessary support from leaders in education, in government, in business and in the general community, and I'm proud to say from many of you.

Since January, 1961, we have reserved fifty-six additional channels for educational use, and laid the basis for a number of statewide systems. Twenty-three more ETV stations are on the air now than two years ago, bringing the total of today's stations on the air to seventy-seven. This is only the beginning.

Third, as you were promised, renewals of broadcast licenses have not been automatic. In the last two years, fourteen licenses were revoked or denied a renewal. Fifteen more are now in the hearing process on the question of revocation or renewal. Twenty-six licenses were granted on a short-term basis. Notices of Apparent Liability for fines have been issued in twenty-one cases. In fourteen hearings involving license renewal or revocation, the hearing was ordered held in the station's own community.

Some hearings have also been held in the field to give the public a chance to express views on local service. These hearings have been conducted without regard



to renewals of licenses. The public, your real ownership, has had an opportunity to give its views—some good, some bad—and to participate to a fuller extent in your decisions on broadcast service. I believe that with broadcasting stations, as with income tax returns, the practice of making an occasional audit in depth is an effective though sometimes painful way of finding out whether the public interest is being served. I cannot understand how local expression about broadcasting service can be interpreted as governmental interference with freedom. The public's right to insist on having a voice in your decisions will be honored and maintained.

Some people in this industry have been finding out that when they promise public service to obtain a valuable license, they will be held to their promise. And the large majority of you, who do regard the public interest as a way of long broadcasting life instead of a quick commercial break, silently—I repeat, silently—endorse our efforts.

Fourth, we have encouraged you to take positions on issues, to be unafraid of controversy, to editorialize, to help mold and lead public opinion. More and more of you are beginning to use your voices and to take a stand on such adult themes as foreign aid, Cuba, civil rights, narcotics addiction and the tax program.

Where there have been complaints, the Commission has backed you up provided that you afforded a reasonable opportunity for the presentation of opposing views. We have repeatedly protected you against those who would water down your convictions through pressure-group intimidation or suppress your freedom through commercial reprisals. And I might add that when the going gets rough on true issues of freedom of expression, many of you otherwise staunch defenders of free speech are conspicuously silent and absent from the fray.

Fifth, you were promised that we would press the FCC Network Study to a conclusion with useful results. This study, which was begun in 1955 and reached a half-way point in 1958, has now been completed. Our staff has made a report on network policies and practices, which the Congress is printing and distributing. We now have a clearer picture of the function, the power and the problems of television network operations.

The basic issue before us can be stated quickly. The networks are an indispensable part of television. Our three networks have furnished to the people of this nation informational and entertainment programming which could not otherwise have been achieved. Strong networks—and I hope one day there will be more than only three—are essential to successful television broadcasting. But when does strength become all-embracing dominance? Not long ago an executive of one of the country's largest television advertisers, David J. Mahoney of Colgate-Palmolive, said: "While the number of men who comprise the television industry may be relatively small, there is nothing small nor unimportant about the power this body wields. The networks today not only determine what gets on the air, but they own practically all of the shows. I believe there are about a dozen exceptions, but even in some of these, the networks have partial or controlling interests."

Power inevitably carries with it grave responsibility. We presently look to the stations, not the networks, while we know that it is generally the networks and not the stations which make the crucial decisions about what the public sees and hears. The responsibility for what goes out *over* the air cannot be left up *in* the air. And those who are making a buck from television must stop passing the buck.

Our problem is to maintain a free market for ideas in television while preserving and encouraging essential serv-

ices which only the networks currently provide. The ultimate solutions may rest with the Congress.

Next radio. Let me once again express publicly the appreciation of your government for the extraordinary cooperation and dedicated public service provided by you radio broadcasters at the time of the Cuban crisis last fall. Because of necessary security measures, there could be little advance notice given of President Kennedy's intention to speak to the nation on October 22, 1962, or of the nature of his address. It was imperative that the President's message be heard by the people of Cuba.

In the hours prior to 7:00 P.M. on October 22, a study was made by the Voice of America and the Commission of the American stations which provided a strong signal to Cuba. Each was then asked to stand by for an important request from the White House. Between 6 and 7 o'clock our Defense Commissioner, Robert Taylor Bartley, and I were with Pierre Salinger to help him reach seven broadcast stations and two shortwave stations. In each case they immediately agreed to make their facilities available to carry the President's message. These stations, together with two more which volunteered their services, carried programs fed directly via land line from Voice of America studios for several weeks thereafter. As the President has said, this unprecedented use of American private broadcast facilities effectively aided an important national defense effort. It is a remarkable demonstration of the cooperation our broadcast industry stands ready to give in times of emergency, and your Commission is proud of you and grateful to you.

Last year we concluded that the time had come to give radio a long hard look—to find out whether we were helping radio to make its own unique contribution to the public or whether we were stifling and warp-

ing the efforts of this oldest of our broadcast services to meet the newest of challenges. You responded promptly and constructively. In a friendly spirit the Commission and all parts of the radio industry held a major conference.

My own conclusion is that the Commission should adopt fundamentally different approaches to radio and television. In radio we have abundant facilities. In a community with numerous stations on the air, I believe we should encourage more flexibility and specialization. I also believe that FM and AM should be considered together as one aural service. FM is coming into its own, and we are delighted with the splendid growth of FM stereo service and the advances of FM generally. The time to preserve FM's ability to make its own unique contribution is now. There are glimmerings of a return to drama on the radio, and there are healthy increases in news coverage. Last year more radios were purchased in the United States than ever before, and we will do what we can to help, and not obstruct, radio's continuing growth and service to the public.

We have also put UHF television in a position to compete with the older VHF system. We can put to use eighty-two channels instead of only twelve. Some people sincerely believe that over-all TV quality may suffer by added channels. But our free competitive system is an act of faith, and in the long run we have faith that new dimensions of television service will broaden the range of choice, will upgrade instead of degrade, will inspire instead of stultify, will liberate instead of suffocate.

As we move in this decade into the second round of UHF's television's growth, we should ask ourselves some basic questions. Where do we go from here? Where do *you* go from here?

Not long ago I read an extraordinary article entitled

"Renewal in Societies and Men," by Dr. John W. Gardner, president of the Carnegie Corporation. Poking beneath the surface, Dr. Gardner ponders the ingredients needed to keep a society alive and "relatively immune to decay." He wrote: "When we talk about revitalizing a society, we tend to put exclusive emphasis on finding new ideas. But there is usually no shortage of new ideas; the problem is to get a hearing for them. And that means breaking through the crusty rigidity and stubborn complacency of the status quo. The aging society develops elaborate defenses against new ideas—'mind-forged manacles,' " in William Blake's vivid phrase."

Dr. Gardner observes that as an organization becomes older, there comes to be a rule or precedent for everything. Men become prisoners of their procedures. And he reminds us that "the last act of a dying organization is to get out a new and enlarged edition of the rule book."

It is time to review the ever-enlarging rule books to see whether, even in this exceptionally young medium and industry, we are already in danger of becoming prisoners of our own procedures. By we, I mean not only you broadcasters, but also those of us on the regulatory side.

I would like today to make several suggestions for all of us concerned with television.

We can all agree that one of TV's basic problems is the insatiable appetite of the medium for programing material. Given the best talent, the best intent and the best financing, it is difficult for TV to create quality programing at the fantastic rate programs are consumed. One of the tragedies of television today is that most of our great programs, just like our not so great, disappear after one fleeting hour or half-hour, never to be seen again. The rule, with some exception, appears to be: "See It Now . . . or Never." Unlike other media of in-

formation and entertainment, television says flatly to the viewers, "Turn the dial to our station, now, at our convenience, or miss it ever afterwards." One thoughtful observer, Father John M. Culkin, notes that arranging your schedule to see a "must" program is like arranging for a plane flight, except there is no second time around if you miss it.

This becomes even more a matter of regret when we examine what the television critics had to say and when we hear word-of-mouth reaction which advises us on Tuesday what we missed Monday night. As Goodman Ace once observed, the job of a TV critic is to write, "Don't watch that lousy program that was on last night." To be serious, our critics often tell us of the fine program we missed. Our friends and neighbors tell us of the special program we could not see. And our children often miss some of your better efforts which are scheduled after their bedtime.

This is a situation which is easily rectified through new technology. Few programs are live today. Although I am among those who mourn the dearth of live TV, there is comfort in the fact that programs on film or tape are easy to repeat at other times convenient for those who missed the first telecast.

A great deal of superlative TV fare, though it cannot be matched every hour, can certainly be repeated on the new UHF channels for the public. With some imagination and enterprise, UHF in the future can, among its other useful potentials, provide the ideal second and third opportunities for the great hours and half-hours of TV.

This possibility, I believe, makes good sense and good economics. Even the special programs which reach the largest TV audiences still leave a residue of nonviewers in every community which is at least equally large; and this audience, kept from the first viewing by other plans

or by competing TV or by lack of foreknowledge, could tune in the next night or week or month, or even several hours later, if given the opportunity. The heavy cost of producing much of our top TV demands residual uses to amortize production expenses, uses over and above the sometime syndication or sale of foreign rights. The present system often produces a colossal waste—of money, of talent and of dedicated work. It results in a shameful deprivation, a needless withholding of information and entertainment from what is probably the majority audience who missed the first showing.

What can UHF do to help?

Quite a bit. UHF could make it possible for the networks to have two affiliates in some communities, a first-run and a second-run affiliate. The second affiliate would be a UHF station which would have access to the network's programs on a delay or repeat basis. The public would then have a second chance to see the best the networks have to offer within a week or so for timeless drama, music, and entertainment programs, and perhaps a shorter time in case of news or informational programs.

Consider the benefits. New, less affluent advertisers could enter television; program costs could be better amortized; participants could receive some additional income.

Even as I point out these pleasant economic consequences, I am aware that there are a lot of cloudy problems. You will wonder about competing with yourselves. What about sponsors? What about ratings? About unions? As cloudy as the problems are, equally clear is one overriding consideration: your responsibility to the public.

That responsibility, I say with John Gardner, can be met by shaking those mind-forged manacles and by

breaking through the crusty rigidity and stubborn complacency of the *status quo*. Perhaps you have some better ideas on how to accomplish the same purposes. How about some experiments? UHF in the future offers a rare second chance, an end to the scarcity of air time that has plagued television in the past. Let us use this exceptional opportunity to try out some new ideas. You are too young, too vigorous, too creative to be bound by this year's rule book or last year's balance sheet. The enemies of progress, the twin ghosts of fear and habit, must not imprison you in your own procedures.

The new channels also provide fresh opportunities to see programs from other lands. Fine television fare is being produced all over the world, and their producers are eager to make these programs available to the American audience. Variety shows, serious drama, documentaries of high quality are created in England, France, Italy, Canada, Japan, to name only a few countries. With UHF channels, program exchanges can be vastly increased. As *TV Guide* said recently:

We might see a British play one week, vaudeville turns from half a dozen countries the next week, bits of political debates, quiz shows, mysteries, science programs—the whole world of television could be our oyster.

Foreign viewers see many American shows. Isn't it time that we had an opportunity to see some of theirs?"

That's a fair question, and I refer it to you ladies and gentlemen for a fair answer.

Another subject we should discuss is commercials, a matter of debate in broadcasting since 1922. It was in 1922 that Herbert Hoover, then responsible as Secretary



of Commerce for the regulation of broadcasting, said, "It is inconceivable that we should allow so great a possibility for service, for news, for entertainment, for education, and for vital commercial purposes to be drowned in advertising chatter."

Forty-one years later the American public is drowning, and calling for help. A television commercial is broadcast somewhere in the United States every 1.7 seconds. To figure out how often a radio commercial occurs would give a computer a nervous breakdown.

At the FCC we have a policy against "overcommercialization." If you ask us what that means, we would have to confess that in all its years the FCC has never established ground rules defining it.

However, at the NAB you have a Code of Broadcasting Practices. In the Code is a specific and detailed provision for time to be devoted to commercials. The Code was written by this industry and represents the thinking of responsible broadcasters about advertising practices. In your view it establishes a fair standard under which "revenues from advertising" can support "the free, competitive American system of broadcasting" and at the same time "make available to the eyes and ears of the American people the finest programs of information, education, culture, and entertainment." Those quotations are from the preamble to the Code itself.

The trouble with that Code provision is that it is not complied with and is not adequately enforced. According to your own Robert Swezey, the head of your Code Authority, "It is virtually impossible for us to maintain industry standards in any practical sense. The public is still being victimized by the poor programing and shoddy practices of a large element of the industry which has no interest in standards and no compulsion to observe them."

The NAB itself says that only 1750 radio stations subscribe to the Code, approximately 38 per cent of the radio stations on the air. In television, the figures are 405 subscribers, approximately 70 per cent of the television stations.

And even those who subscribe to the Code do not always adhere to its provisions. One trade magazine summed up the situation recently by saying, "As things stand now, a broadcaster can keep the Code barefoot and knock it around the house as long as nobody from the NAB's Code Authority is looking. Even if he gets caught, the neighbors aren't apt to hear of it."

Last year I quoted the head of your own Code Authority, Mr. Swezey, who said to you that the time had come "to put up or shut up about self-regulation."

*I submit you have succeeded in doing neither.*

In another field, *The Wall Street Journal* recently urged greater self-regulation by the stock exchange and observed that "the way to keep any neighborhood from crawling with policemen is for the community to insist upon good behavior all along the street." That is sound advice. Yet, as Mr. Swezey remarked only two weeks ago, the interest broadcasters have "in self-regulation is . . . in direct proportion to the threat of government regulation." Self-regulation is clearly the best regulation, just as self-discipline is the best discipline. Yet, though you have established reasonable standards for yourselves, you have demonstrated neither the capacity nor the will to enforce them. You can no longer have it both ways. Self-regulation cannot become self-deception.

That is why a majority of the Commission is inviting public comment on how best to solve this problem. One proposal we will consider is whether your own standards on commercials should be adopted as Commission standards.

I wish I could persuade you and my colleagues to go to the Congress together to urge that broadcasting legislation follow the principles of the Securities Exchange Act. I would urge that the law require that every broadcaster belong to the National Association of Broadcasters, just as most brokers belong to the National Association of Securities Dealers. You should be professionals, a status which many in your ranks already deserve. But this demands that you maintain high standards and that you discipline those among you who repeatedly cut corners.

My friend and teacher, William L. Cary, Chairman of the Securities and Exchange Commission, recently said about the SEC: "This Commission is in no mood to expand, to seek growth for growth's sake. Government steps in to fill an evident public need; we urge, indeed, entreat, the industry to acknowledge this need and fulfill it." I say to you today the same things about the FCC.

I urge that you have the lawful authority to enforce your own commercial standards, with an appeal to the FCC, just as is done in the securities field with the SEC. I cannot understand why you do not see the wisdom of taking such a course instead of requiring further action from the government. Those of you who live honorably by fair rules should insist now that your competitors adhere to them too.

Again, with Dr. Gardner, this requires shaking up the crusty rigidity and stubborn complacency of the *status quo*. But I believe that the long-suffering patience of the viewing and listening public has worn thin and that in the long run you had best shake up your own *status quo* before you are shook up by a fed-up public.

Finally, as we re-examine the *status quo*, I must confess that I have found the FCC, too, a prisoner of its own procedures. The Commission is a vast and sometimes dark forest, where FCC hunters are often required

to spend weeks of our time shooting down mosquitoes with elephant guns. In the interest of our governmental processes, and of American communications, that forest must be thinned out and wider, better marked roads have to be cut through the jungles of red tape. Though we have made many substantial improvements in recent years, the administrative process is still a never-never land.

I am probably alone at the Commission in this view, but I believe deeply that the judicial and the other so-called administrative functions of the FCC should be split. I do not think it wise, or even possible, that we can be simultaneously regulator and judge.

I have studied the Report of the Hoover Commission of 1949 and the 1959 Report to President Eisenhower by Mr. Louis Hector, who served as a member of the Civil Aeronautics Board from 1957 to 1959. I agree basically with the views of the Hoover Commission and Mr. Hector. On this principle of separation of regulatory and judicial functions, I recognize that most of my colleagues disagree with me. I respect this majority view and recognize, of course, that I could be wrong. However, I sincerely believe that this basic reform could materially improve the effectiveness and value of the FCC to the public and to the industries under FCC regulation.

Your annual meeting is a fitting occasion to pay tribute to many of you active in the day-to-day work of the National Association of Broadcasters, above all to Governor Collins, a leader you too have grown to recognize as a man of principle, of conscience and of wisdom. If you've seen the Broadway play, you will know what I mean when I say he is your "Man of All Seasons." He commands the respect and confidence of the public and your government. He is a man to heed, to follow and to treasure.

There have been improvements in broadcasting. Many of you are doing a better job of serving the public than was the case several years ago. I hope the congressional examination of the ratings systems has encouraged you to put more trust in the people, and more faith in your own judgments of the public's capacity to respond to the best that is in you.

In the area of informational programing, there are many reasons to be proud. A comparison of today's television schedules with those of three years ago will indicate there is now slightly more than three times as much informational programing in evening hours. And much of it is done with skill and courage.

You are helping the nation to know more about the Supreme Court, about juvenile delinquency, about mental illness, about Communism, about education and about ourselves. You are effectively carrying on the good fight to win access for broadcasting to more public proceedings so that it can enlarge its informational service to the public. I salute your efforts and I will continue to help to the best of my ability.

I have been urging you to see if there was not more room on television "to teach, to inform, to stretch, to enlarge the capacities of our children." You have found a bit more room for some exceptional programs. Some of you may ask now in the words of the familiar political slogan, "Had enough?" The Answer is "Positively No!" Nothing is enough, nothing is too good for the children who spend seventy million hours a day with you. You're beginning to demonstrate what television can do. But it is only a beginning. In the last year a first-rate study of television for children was completed by the Foundation for Character Education in Boston. To quote from it: "Knowing . . . about children, a writer who can resolve a plot only by killing the villain is incompetent; a producer who employs violence and brutality to attract

an audience is unscrupulous; a network which encourages such material, even by default, is irresponsible; and a sponsor which accepts such sadism if it produces sales is unethical."

Every American parent trusts you to continue your improvement. You are not merely babysitting electronically. You are molding, by the hand and the heart and the mind, America's future.

Finally, ladies and gentlemen, you chose a hard life when you chose broadcasting. You volunteered for public regulation and public pressure. In return, the people have placed in your hands and hearts the greatest gift possible in a free country, the extraordinary privilege of using the public airwaves to the exclusion of others who would welcome, and indeed have fought for, that privilege. Under our broadcasting system, as I have repeated so often, your government does not decide what goes on the air. Acting as trustees for all of us, you private citizens make the decisions. We will continue to prod your consciences, to goad your ideals, to disturb your sleep.

As you meet your responsibility, you will remember to provide more news and public affairs programs where ideas are rubbed against other ideas into the friction of controversy. On such informational programs may rest the strengthening of an enlightened electorate, critical to the survival of freedom. But you will also remember that you need to do more than feed our minds. Broadcasting must also nourish our spirit. We need entertainment which helps us to grow in compassion and understanding.

Certainly, make us laugh; but also help us comprehend. Of course, sing us to sleep; but also awaken us to the awesome dangers of our time. Surely, divert us with mysteries; but also help us unlock the mysteries of our universe.

Above all, heed the wisdom of Judge Learned Hand,

who once penetrated the heart of the meaning of liberty when he wrote: "By enlightenment men gain insight into their own being, and that is what frees them."

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**AFTERMATH:** At least partly as a result of the challenge issued by Mr. Minow, the Television Code of the National Association of Broadcasters has been strengthened. Howard Bell has replaced Robert Swezey as Director of the Code Authority, and in January, 1964, the NAB Board of Directors voted to give Bell a large budget for advertising the Code.

Bell's plans, in the spring of 1964, include large-scale advertising plans that would tell the public just what it means to be a subscriber to the Television Code. This, in theory, would make Code membership a valuable asset to a station; would give the public greater confidence in a station that is a member; and ultimately would be a factor in the choice of a station by an advertising agency for placing of commercial business.

Bell has attacked the so-called piggyback commercials—a practice of advertising two unrelated products within one thirty-second or sixty-second commercial. Bell argues that to the public this appears as two commercial messages and gives the impression of overcommercialization.

Bell was also able to report on April 28, 1964, that observance of the Radio Code (purely voluntary) is greatly improved. A total of 85 per cent of radio subscribers were monitored for a full year (April 1, 1963, to March 31, 1964), using a review of station logs and by tape recording stations on the air. Bell reported: "During the year, 67,091 hours were monitored, with 98 per cent of these hours in compliance with the Radio Code's time standards. The hours that were not in compliance (two per cent) were spread over 22 per cent of subscribing stations.

"Significantly, 91 per cent of the stations with time standard violations adjusted their schedules to comply. A total of only 19 stations were required to resign.

“An additional 23 stations were required to resign for reasons other than failure to abide by time standards. These reasons include accepting commercial copy that violated the code and programming practices.”

This was a great improvement over the 1961 survey when over 30 per cent of the stations were violating time standards during one or more hours.

Remaining, in the view of any regulatory agency, is the relatively low radio membership in the Radio Code. Less than 50 per cent of the stations subscribe to the Code.



## XV

### Free Enterprise in Space

**THE TIME:** In ancient English common law, the owner of a piece of land was held to have title to a kind of triangle. The point was at the center of the earth, and its base widened infinitely as it headed toward outer space. This concept had to be modified when airplanes began to fly through this private property and when the property was used as the highway for radio signals. It must be modified, again, to accommodate the new space technology of satellites that will perform tasks as infinite as the cosmos.

Just who are the owners of outer space? There is no sure answer for this question, and there is not likely to be one for many years.

To use the new highways that skip across continents and hurdle oceans, the United States has made enormous investments. The estimates go as high as \$50 billion for the machinery that vaults the communications satellites into orbit. For this reason in the early 1960's a small band of United States Senators held a filibuster against passage of the Communications Satellite Act. The argument ran that public investment had already been too great to allow a communications satellite system to be turned over to private industry.

The filibuster was led by Senator Russell B. Long of Louisiana, and he was helped by such Senators as the late Estes Kefauver, Maureen Neuberger, Albert Gore, Ralph W. Yarborough and Wayne Morse. Senator Long would not use the phrase, but it was plain to the floor leader of the bill (Senator John O. Pastore of Rhode Island) that the alternative pro-

posed was a giant government corporation modeled after the Tennessee Valley Authority (TVA).

The filibuster was brief, and the Communications Satellite Act of 1962 was passed by the Congress and signed into law by President Kennedy. The law authorizes something new: a corporation half-owned by the general investing public and half-owned by communication companies; regulated by the Federal Communications Commission; and having three directors (out of a total of fifteen) appointed by the President of the United States.

Such an amalgamation was inevitable. The government lacks the technicians and the experience to run such a corporation. And since the privately owned common carriers already own and operate the land lines that would carry messages to and from a satellite's ground station, a government-owned satellite system would be at the mercy of the owners of the land lines.

How well the Communications Satellite Corporation serves the American public and the world, the fairness of its rates and the reasonableness of the profits it returns to investors will depend, of course, on the skill and the zeal with which the Federal Communications Commission performs its regulatory function. If one objects to this, he will have to remember that the same argument would apply to a wholly owned government system.

Newton Minow had championed the Communications Satellite Act in appearances before many committees of the House of Representatives and the Senate. His best explanation of the Act and the purposes it must serve came in a speech before the Third National Conference on the Peaceful Uses of Space. He also delivered the best available simple explanation of this nation's early efforts to create a satellite system.

There remain many unanswered questions, but these may not be answered in this century. The point, it would seem, is that we have prepared for a new age; the tools of a new technocracy have been forged and made ready for use. There is the expectation that they will serve us well.

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ADDRESS BEFORE  
THE THIRD NATIONAL CONFERENCE ON  
THE PEACEFUL USES OF SPACE  
CHICAGO, ILLINOIS  
May 8, 1963

I've been invited to discuss our new venture into space communications, a venture which requires that all of us see a long way in all directions, with no shackles on the mind or the spirit.

Where do we stand in the technology required for a global commercial communications system using space satellites?

The first active communications satellite, Telstar I, which was launched last July, operates under an FCC experimental license and points the way of the future. Those of us who were present at the Andover, Maine, ground station last July 10th witnessed a modern-day miracle: the first international communication through outer space. As dramatic and awe-inspiring as this achievement was, it is but a crude beginning of an ultimate, working system.

In considering a working system, there are alternative possibilities. One possibility is a high-altitude system—meaning we would send a satellite into orbit at approximately 22,300 miles. (Project Syncom is an example.) At that height and with the right speed and an equatorial orbit, the satellite travels at the same speed as the earth, so that related to points on earth, it appears to be stationary. The first Syncom shot was not entirely successful. During the five hours required to reach apogee, the Navy ship *Kingsport* made repeated contact with the

satellite, sending up and back tone, teletype, music and voice communications. However, the communications system failed when the final-stage on-board rocket was fired to put it in its proper orbit.

The synchronous system has obvious advantages. Because of its great height, only three satellites in use, spaced at 120-degree angles, could provide communications service to 90 per cent of the earth's surface, reaching to all but the extreme and unpopulated polar regions. Because it is stationary with respect to points on the earth, there is less need for expensive tracking equipment. This would be of great importance in the development of a global system, especially to provide service to many underdeveloped nations which can ill afford to construct and maintain elaborate ground stations.

However, we are anxious to move ahead, and today the launching of a high-altitude satellite of sufficient size and weight to do the whole job (approximately 500 pounds) is still in the planning stage. Syncom I, for example, had only a single two-way telephone circuit, compared to the 600 in Telstar required for television. Moreover, a high-altitude system introduces certain problems, such as a noticeable lag in voice communications as a result of the tremendous distances involved.

Low- or medium-altitude systems such as Telstar and Project Relay have proven capabilities. Telstar follows a random inclined orbit and is tracked by elaborate ground equipment at Andover, in England and France and by the new facility in Italy. Relay is in a slightly higher orbit and has been tracked by the big ground stations and also by much smaller ones, such as the thirty-foot antennas in Fucino, Italy, and at Rio de Janeiro, Brazil. But as you know, depending upon the earth's rotation and the satellite's orbit, Telstar and Relay are in sight of the ground station for only a few

passes a day. Some of these passes last much less than an hour. For round-the-clock global transmission, about forty such satellites will have to be in orbit at all times to give continuous, reliable service, so that as some dip below the horizon, others will be in sight to take their place.

Thus, a low-altitude system requires more satellites and more elaborate ground stations, while a high-altitude system offers advantages but poses a number of yet unresolved technical problems.

During the first four months of continuously successful operation. Telstar I circled the earth 1242 times and traveled a distance almost half that to the sun. Telstar I became silent due to radiation effects on the command transistors caused by its passing back and forth through the Van Allen belt. Relay must be turned off occasionally so that its batteries have a chance to recharge. One of Relay's first feats was to transmit medical data for diagnosis across the Atlantic Ocean. The brain waves of an English patient at Bristol, England, were sent via Relay into a computer at the National Academy of Neurology at Minneapolis, Minnesota. A diagnosis was made and sent back to England, all in a few minutes.

These experiments were far more successful than even the most optimistic hopes of our scientists. All experiments originally planned were carried out. Over 300 technical tests and some 400 demonstrations were conducted through Telstar I, and over 500 communications tests and demonstrations (more than 50 operating hours) were made on Relay.

A tremendous amount of invaluable information has been obtained. We know, for example, that the delicate instruments, containing some 15,000 components, can withstand the initial shock of blast-off and the later beatings of particles in space.

We know that satellites *can* relay all sorts of communications—two-way telephone conversations, telegraphy data, telephoto, facsimile and television, both color and black and white. Telstar I sent data across the Atlantic at the rate of 1,460,000 words per minute, fast enough to send the entire King James version of the Bible in just forty-five seconds. All of Shakespeare's works could have been transmitted in twenty-five seconds. The master clocks in England and the United States were synchronized to within better than ten millionths of a second via Telstar I. And millions of people here and abroad saw live and simultaneously the Ecumenical Council and the flight of Astronaut Schirra. They also saw a big-league baseball game, the United Nations, and night life in Paris.

The performance of Relay has been equally impressive. The television picture of the unveiling of the Mona Lisa in Washington by President Kennedy, carried live via Relay from Washington to France, was reported by foreign officials to be the best video picture yet sent by satellite. Quality of the voice, facsimile and teletype transmissions were equally excellent. (I was at the National Gallery of Art when the President welcomed the Mona Lisa, and I know whereof I speak when I tell you that those who witnessed the event through television saw more than we did in the National Gallery!) And when President Kennedy awarded honorary American citizenship to Sir Winston Churchill, the 3-o'clock ceremony was specially timed so that this distinguished world leader and millions of his countrymen in Great Britain could watch, via Relay, this impressive ceremony live as it happened. (I was present at the White House for the Churchill ceremony and assure you that Sir Winston saw the event more clearly than those of us on the scene!)

It is this thrill of hundreds of millions of people here

and abroad simultaneously sharing the unfolding of history that makes your task and mine—that of using this science for peaceful purposes—so rewarding. It has captured the imagination of the world. In addition to the ground stations already operational in England, France, Italy and Brazil, stations are being constructed in Munich, Germany, the Scandinavian countries, Canada, India, and Japan. The German station is nearing completion, and the Japanese facility should be ready in time to bring us parts of the 1964 Olympics live.

In many ways our European colleagues are better prepared for international television than we in the Western Hemisphere. In Eurovision, free men in eighteen West European nations have joined forces to erase communication barriers to reach thirty million television homes in Eurovision countries. These broadcasters have conquered language barriers, standards conversion, political differences and all the myriad characteristics of outworn European nationalism. News inserts, major events and sports are carried live throughout Europe, in a market of service for and between nations. At the end of 1961, 2275 Eurovision programs for a total of 2366 hours had already given rise to 12,733 relays through the Eurovision circuits. There are lessons for us to learn from the European Broadcasting Union. And as we learn, we can start to build worldwide univision.

Several years ago the Federal Communications Commission gave the challenge of space communications its top priority. We worked closely with the White House, the Space Council, the Departments of State, Defense and Justice, NASA and the USIA. We sought the advice and views of the communications industry and the general public. We testified frequently on progress and problems before congressional committees. We attended international conferences with representatives of other countries

and consulted frequently with the communications authorities in all parts of the world.

Of primary interest were preparations for the Extraordinary Administrative Radio Conference to be held in Geneva next October. At this Conference the vitally important question of frequencies to be allocated to this service will be considered. Without international agreement to set aside frequencies for this service, we could have found ourselves in the situation of the man on skis without snow.\*

The Telecommunication Committee of the Conference of European Postal and Telecommunications Administrations, on behalf of the nineteen countries composing that Conference, have already expressed support for the concept advanced by the United States for a single global satellite system. We have developed a realistic set of frequency proposals.

Now what is the significance of all this in terms of the role of free enterprise in the space age?

In 1927, when we first put in radiotelephone service to Europe, there were 11,000 calls. In 1962 there were about five million overseas calls. By 1980 it is estimated that the traffic will reach 100 million. Today there are about 700 overseas circuits. By 1980 it is estimated that at least 10,000 will be needed. Present-day cable and radio facilities will be used to full capacity by 1965. So, unless we are to commit ourselves to an emergency program of providing greatly increased cable facilities with much greater capacity, the answer to our problem lies in putting microwaves to work via satellites.

New facilities will not replace or threaten to replace existing facilities. The satellite facilities will be needed in addition to the existing facilities in order to satisfy the

\* The conference was held and resulted in an international agreement largely consisting of the United States proposals.



rapidly increasing demand for communications service.

This kind of situation has occurred before. Prior to 1956 practically all plant for overseas telephone service was radio plant. Yet, beginning in 1956, hundreds of millions of dollars have been spent for undersea cables. Existing investment in radio facilities did not hamper adoption of more efficient facilities.

To meet this ever-growing demand, President Kennedy established the principle that the United States would favor development by private enterprise of the American part of a global, commercial space communications system if the public interest could be fully protected. The President and all of us in the government concerned with communications know that our American system of private operations of communications under government regulation has served the nation well. We set out to extend those same time-tested principles into the space age, and they are reflected in the Communications Satellite Act of 1962. This is an imaginative, responsible and timely law.

The law authorized the creation of a unique form of American corporation. It is a private corporation for profit, subject to substantial governmental regulation. The corporation will build and operate a commercial communications satellite system. It will do this in partnership with foreign governments and businesses. Half the stock of the new corporation can be owned by communications companies; the other half by investors from the general public. There will be fifteen directors: six elected by the communications carriers, six by public stockholders and three appointed by the President of the United States.

To organize the corporation, the President appointed fourteen prominent Americans, whose appointments were recently confirmed by the Senate. There were clear

indications that the general public is eager, almost too eager, to participate in the development of the corporation.

The government's role is carefully spelled out in the new law. The President, of course, will coordinate the activities of the federal agencies. He will supervise the relationship between the corporation and foreign governments and stimulate foreign participation in the system.

The National Aeronautics and Space Administration (NASA), working with the corporation, will continue to explore and clarify the technical characteristics of the satellite system. The FCC has a number of important new responsibilities. With the advice of NASA, we must decide the characteristics of the system—whether it will be high-, middle- or low-altitude, or some combination of the three.

We must approve the rates. Here we will anticipate some excruciating problems. Comsat will be a common carrier's common carrier; that is, it will provide service to and interconnect with existing carrier facilities. The rates must be fair to all users. The rate-making proceedings will have to be novel. We must insure effective competition for both large and small businesses in the purchase of equipment for the satellite system and ground stations.

Where the Secretary of State advises that communications to a foreign nation by means of the satellite system should be established in the national interest, we must immediately institute proceedings to establish such service. This, of course, is a basic policy, because what we seek is a truly global service, reaching both large and small nations. The FCC was given the assignment of approving stock issues and borrowing by the corporation. We must also insure that no substantial additions are made to the corporation or to a ground station unless re-

quired by the public interest. *The New York Times* was most perceptive when it called our assignment "the most exacting regulatory task in the Commission's history."

As citizens, each of us has a staggering stake in the issues. A basic question of our time is whether a free society or a totalitarian dictatorship can make the best use of the technological revolution. The future of each one of us and of our children is woven into our answer to that question. Yet this technological race is so explosive that it leaves little time to grasp its deeper meaning. Albert Schweitzer has written of the inability of science to give us guidance in the use of its marvels. As Dr. Schweitzer has observed, "Today thought gets no help from science. . . ."

In the new area of space communication, every effort has been made to keep thoughtful public policy abreast of science and to advance the philosophy of peaceful uses of space. Congress has provided the framework within which government and private enterprise in cooperation can meet the technical, economic and operational challenges involved in the establishment of a global communications system. Senator Humphrey articulated our national purpose eloquently when he said during the Senate debates last year:

I believe that we ought to demonstrate to the world that a free people, through their free institutions of Government and through their free economic institutions, can pool their resources without the loss of identity of either Government or private enterprise in the fulfillment of a common objective.

I wish to afford the world an example of what can happen in this country when the Government works with the private sector of our economy and when Government and industry walk arm in arm toward a common purpose and with a common goal.

Within the next few years this example of a joint venture of government and private enterprise will bear fruit through improved international communications. We dimly see a future in which the ancient walls separating people will be surmounted by our new soaring peaceful satellites in the sky. I would leave with you this vision of the future by one of the world's great historians, Arnold Toynbee, who has the perspective of centuries; he sees the communications satellite as "a great asset to mankind in its present struggle for survival . . . A world-wide network of television broadcasting is going to expand the circle of everyone's personal acquaintances to a world-wide range; and this is the very thing that we most need in the dangerous chapter of history through which we are now passing."



**AFTERMATH:** On December 20, 1961, the United Nations General Assembly unanimously adopted Resolution 1921. It calls for communication by satellite to be made "available to the nations of the world as soon as practicable on a global and nondiscriminatory basis."

In 1963 seventy nations of the world met at Geneva, under the aegis of the International Telecommunications Union, and reached agreement providing frequency allocations for space communication.

Both events probably led to the public's great enthusiasm for stock ownership in the communications satellite. When the issue went on the market on June 2, 1964, the stock had already been oversubscribed at \$20 per share.

Members of the fifteen-man Board of Directors had already met with postal, telephone and telegraph officials of European, Asian, African and Latin American nations to discuss the techniques for inaugurating a worldwide system. There have been few disagreements.

What the future holds might be understood from the words of Washington attorney Leonard H. Marks, a direc-

tor of the Communications Satellite Corporation and Chairman of the American Bar Association's International Communications Committee. In an article published by the *European Broadcasting Union Review* in March, 1964, Marks wrote: "If I may venture a prediction, it also appears likely that someday it will be possible to equip a satellite with transmitting facilities so that direct radio and television broadcasts may be beamed into the viewers' homes, instead of to ground relay stations. Satellites hovering around the earth at distances ranging from 6,000 to 22,000 miles in outer space can reach vast segments of the world's population simultaneously. Here indeed will be the ultimate challenge."

Later, Marks added, "In the predictable future, the scientists will solve the technical problems of direct broadcasting and unveil this window on the world."

In five brief years man has sent nearly 300 man-made objects whirling through the earth's outer space. If man continues at this rate (and the expectation is for a greater rate), broadcasters of the world will have unimagined opportunities. There is even the possibility that barriers of language, custom and national borders may be removed.

Is it, then, too much to hope that the divided and competitive members of the earth's population might move closer to that ideal held out for centuries by every major religious faith? A world community, perhaps, in which there are no real strangers?

## XVI

### A Letter to President Kennedy

**THE TIME:** The last document written by Newton N. Minow as Chairman of the Federal Communications Commission was a letter to President Kennedy. It came after a term that lasted two years and four months and suggested the need for a reorganization of the agency.

It is hardly an accident that any agency that needs agreement from four of seven members has trouble taking decisive action. Congress specified the number as a safeguard against hasty, incautious action. The caution remains, but piled on it in no discernible pattern is legislation that is confusing, contradictory and bound in procedural detail that makes the simplest decisions complex beyond reason.

For the Communications Commission is an agency that is hurt by quick, sharp changes in congressional attitudes. It is condemned and bullied in times of trouble for its failure to be alert to any possible abuses of public confidence. Such was Congress's attitude after the public came to know about rigged quiz shows.

Charges of irresponsibility shook congressional committee rooms after congressmen made public the existence of payola in broadcasting. And, since Congress controls the purse strings and public policy, an FCC Commissioner rarely wins an argument with a committee chairman. The best he can get is a draw, with an apologetic promise to do better in the future.

An FCC member may be admonished one day by the Chairman of the Senate Commerce Committee for being too

aloof from members of the broadcasting industry. He will be told that he cannot regulate effectively unless he understands the problems faced by radio and television station operators. I have heard him told that his duties include the fostering of broader service to the public through encouragement of the licensees. But an FCC member must not take this free advice too literally. The makers of public policy have remarkable agility and can shift their views more swiftly than the wayward wind. In the very next session the same FCC member may be advised by the very same congressman that he has gotten too close to the broadcasting industry.

When Chairman John C. Doerfer defended his attendance at broadcasting conventions as part of his duty to know the problems of broadcasters, a congressman asked coldly, "Where do you go to learn the problems of the public?"

In the home of the FCC, tucked in behind the Post Office Department as an afterthought, a Commissioner becomes even more aware of the limitations on his authority. Men of good will must pursue the general welfare by initiating investigations into broadcasting. In effect, this is an act of prosecution. Having begun an investigation, with the concurrent investment in manpower and its expense, the same prosecutors must judge the effectiveness of this investigation. Later they will hear counterarguments, and these must be weighed against the conclusions of the investigators.

This procedure could lead to abominable abuses.

The men who must investigate and take judicial steps are also legislators. They write the detailed laws of broadcasting. Having written these rules, they must also interpret them.

These contradictory duties do violence to the theory about separation of power, but we continue with the cumbersome machinery and the nearly impossible demands on the individual Commissioners.

"Justice delayed," wrote Chief Justice Earl Warren, "is justice denied." Few will argue with this, yet we continue with procedures at the FCC that have built-in delays (or, if you accept the Chief Justice's view, built-in injustice).

It was to these delays, contradictions in duties and unnecessary complexities that Mr. Minow addressed himself in the letter to the President. Simplicity in procedures, a definable set of policies and an enormous benefit to broadcasters and to the public would result, he argued, if the functions of Commissioners were separated.

Mr. Minow, following suggestions that had been made in part before he came to the FCC, suggested a splitting of the functions of the agency. A single administrator, not a Chairman and six additional Commissioners, would be responsible for the smooth functioning of the agency. He would take care of planning and policy. With the single administrator would go on an independent administrative court, removed from the strong personal ties to broadcasters—the same ties that have caused grief and tragedy in the past. Judicial decisions would belong to jurists.

There is a ringing simplicity about these proposals, and their merit is self-evident. The saddest comment one could make is that little has been done about the plan. With what Mr. Minow called “our exploding technology,” there are signs that we will reach a state when we have no choice but to adopt these proposals.

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON 24, D.C.  
*May 31, 1963*

The President  
The White House  
Washington 25, D. C.

My dear Mr. President:

As I leave the Federal Communications Commission, I thank you again for the opportunity to be of service in your administration. On the basis of my experience here,



I want to submit some suggestions to you for improvement of the administrative process, in the hope that these ideas may be considered in possible future studies or revisions.

I have found my experience with the FCC most rewarding. The defects inherent in the present administrative process do not prevent the agencies from accomplishing much to advance the public interest and should not deter qualified men from accepting positions on them.

I do not presume to make suggestions for *all* the agencies, upon the basis of my experience with a single agency. Differences between the agencies require different administrative processes. I am competent to discuss only the Federal Communications Commission.

I recently spoke to the nation's broadcasting industry and said:

. . . The Commission is a vast and sometimes dark forest, where FCC hunters are often required to spend weeks of our time shooting down mosquitoes with elephant guns. In the interest of our governmental processes, and of American communications, that forest must be thinned out and wider, better marked roads have to be cut through the jungles of red tape. Though we have made many substantial improvements in recent years, the administrative process is still a never-never land.

The FCC could accomplish much more with one basic change by splitting the administrative and judicial functions. The judicial functions should be vested in an administrative court; the other responsibilities should be borne by a single administrator appointed by the President (with the advice and consent of the Senate) and serving at his pleasure.

My view closely parallels the proposals made by Mr. Louis Hector to President Eisenhower in 1959, the 1949

Report of the Hoover Commission and the 1963 Report of the Federal Communications Bar Association Committee. In certain respects I differ from these proposals; not, however, on fundamentals.

Splitting the agency's functions along the above lines has marked advantages. I'll try here to briefly summarize those advantages from each aspect of the matter, the single administrator and the administrative court.

#### THE SINGLE ADMINISTRATOR

First, a single administrator will facilitate the formulation of policy by the agency. Policy making is *the* critical responsibility of the agency; yet, as Judge Friendly and others have stressed, it is precisely in this area that the agencies have been markedly deficient.

I think the single administrator would do an effective policy-making job. The multimember agency has great difficulty resolving differences among the members, each with his own approach to basic policies. The result is to not formulate the policy and to postpone the policy decision to resolution on a case-by-case basis, which all too often means inconsistent decisions, with the public and the regulated industry not knowing the ground rules. More important, its consequence is that vital planning and policy measures are not undertaken.

The single administrator would not be hamstrung by such wide splits among agency members. His basic job would be policy formulation, and he would have no excuse for not doing so.

Indeed, he would be compelled to do so, because of the division of the agency's functions between himself and the administrative court. The court would be called to decide cases by an accumulation of established policies and rules. This demands that precise and meaningful standards be established for the administrative court to interpret and

apply to specific controversies.

Let me give one example of how the division might foster effective policy making in the communications field: the comparative hearing.

From its earliest years, the Commission has been called upon to choose between two or more competing applicants that wish to operate the same broadcasting channel. It has evolved an elaborate set of comparative criteria as guideposts in selecting the one applicant that would best serve the public interest. But despite these criteria, I think it is largely true that the Commission has failed to develop any coherent policy for comparative cases. Almost every student of the Commission has reached this conclusion, the most recent being Judge Henry Friendly in his 1962 Harvard Law School paper. I will not now discuss the merits of any particular policy on comparative hearings. Rather, my point is that coherent policies should be developed and that those policies form a pattern. Because of the failure, some broadcasters have come to regard the Commission as arbitrary, a kind of administrative "Caliban Upon Setebos" (" 'Let twenty pass, and stone the twenty-first . . . just choosing so' ").

Studies are underway that might correct this situation. But I believe that the policy-making function would not have been adrift for so long, if there had been a division of responsibility between an administrator and an administrative court. The administrator would have had to articulate effective, logical policies or the administrative court would be at a loss in deciding the comparative case. And the court would have long ago established a coherent line of comparative decisions, rather than an unpredictable, crazy-quilt pattern.

Another advantage of the single administrator would be better coordination of policy making, since the administrator, as a part of the executive department, would be in

closer touch with other parts of the executive dealing with related or interconnected matters. One example is in the vital field of space satellite communications. The Commission shares responsibility for policy planning with a host of executive agencies such as State, Justice, National Aeronautics and Space Administration and the Bureau of the Budget. I believe that the formulation and coordination of policy would be improved by having all policy making directly under one man, the President. I shall touch on this matter again at the conclusion of my letter.

#### THE ADMINISTRATIVE COURT

There are several advantages to assigning the hearing functions now exercised by the Commission to a new administrative court patterned, for example, after the Tax Court.

First, it is clearly desirable to separate the prosecutory function from the function of judging. An agency should not be called upon to investigate fully to determine whether a violation has occurred; to become steeped in all kinds of investigative reports upon which it determines that a hearing is necessary; and then to judge the merits of the case. Indeed, an agency may quite properly embark upon a vigorous enforcement program—say, promise against performance before renewing a license. For fair play, an agency with such a mission must not be charged also with the responsibility of judging the results of its own mission.

Second, the establishment of the administrative court would greatly improve the decisional process itself. As Dean James Landis pointed out in his 1960 report to you, "the members of administrative commissions, unlike the judges of the federal judiciary, do not do their own work." They simply cannot do so in view of their work-

load. FCC Commissioners cannot spend several weeks analyzing the record of a case and drafting their own opinions. The work of the Commission would grind to a stop if they did so. As a result, the Commissioners determine the case mainly from staff analysis and oral argument and finally adopt an institutional decision prepared by the staff.

This may be a customary established process, but it is clearly not an optimum one. No one would seriously argue that the present institutional procedure is preferable to an administrative court process where the decision maker is wholly familiar with the record and pleadings and actually drafts his own opinion.

Finally, the administrative court will lead to better formulation of standards. Not only will the administrator be required to lay down definitive and clear policies, if the administrative court is to follow them, but the court could be expected to apply these policies in a meaningful manner that would build up a body of meaningful precedents.

As a result of these drastic revisions in the decision-making process, the problem of the improper *ex parte* attempts to influence the outcome of hearing cases should disappear, as it has in the case of the federal courts. Those who make policy and who regulate must necessarily have frequent contact with the industry if they are to be well informed. Under the present system the possibility of improper influence or at the least of charges of such influence is always present. The administrative court, made up of jurists having only judicial functions, could not be a similar breeding ground for the *ex parte* contact.

I recognize that many arguments are made against the single-administrator approach.

One argument is that it would put too much power in one person. I find this hard to reconcile with the fact that

we entrust to single administrators in the Executive far more vital responsibilities for policy development than are involved in the communications field.

Those who fear a so-called czar may mean that a single administrator will be effective, that he will make policy. All I can say is that I hope so.

There is no possibility whatever of the administrator assuming control of the industry being regulated. His authority is prescribed by law: he cannot go beyond that authority. If he attempted to do so, Congress and the courts would quickly check the transgression. Since judicial review is a bulwark against any usurpation of authority or unlawful action by the administrator, it seems to me that the charge of "czar" is really directed against the fact that the administrator can be an effective policy maker.

Nor do I believe that the change will result in any loss of administrative expertise. Indeed, the statistics on relative length of term of agency members and members of bodies such as the Tax Court would indicate that there will be a gain. Both the administrator (because of the greatly strengthened potential for effective policy action) and the administrative court judges could be expected to serve for longer terms than the average term has been for FCC Chairmen and members.

There is, however, one argument that does have some validity. It may be difficult, in practice, to confine the policy-making function to the administrator.

The administrative court, in deciding particular cases, may find itself called upon to make policy or may take action which, in the administrator's view, is inconsistent with the policies he has established. In a division of responsibility such as this, there is always the possibility of some degree of friction between the administrator and the court.

Taking this argument at face value, I would, on balance, still prefer establishment of a single administrator-administrative court for the advantages I have previously discussed. But there are countering considerations to the argument. There is no reason why the administrative court should not make policy if the administrator has failed to do so or, indeed, if the administrator decides that the formulation of policy on some particular matter might better await ascertainment of all the facts in the hearing. Further, if the court does not follow the administrator's policies, it is because the administrator has not set out his policies explicitly and clearly. The administrator thus has a ready remedy and one which greatly serves the public interest. He can set clear policy. In other words, the relationship of the administrator and court, while admittedly a source of potential friction, has also the immediate prospect of promoting definitive policy making. The court could point up fuzzy areas or policy lacunae or, indeed, could call to the administrator's attention countering factors that stem from its considerations which might indicate a need for reevaluation of the policy by the administrator.

Since I do recognize the force of the above argument, I do not favor the "troika" proposals made by Mr. Hector or the Federal Communications Bar Association Committee, wherein the agency's functions would be split three ways: (1) policy making (to an administrator or five-member commission); (2) investigation and enforcement—nonhearing actions (to the Department of Justice or an administrator); and (3) hearing actions (to an administrative court). I do not believe the functions of the agency can be so neatly compartmentalized. Friction and possible stalemate would be almost inevitable, sooner or later, in such a tripartite arrangement. Even assuming its advantages, as a practical matter, I believe the line should

be drawn with the dual, but not the tripartite, arrangement.

On this whole principle of separation of regulatory and hearing functions, I know that many of my colleagues disagree with me. I respect this majority view, but I sincerely believe that this basic reform could materially improve the effectiveness and value of the FCC to the public and to the industries under FCC regulation.

I do not attempt here to spell out all details of suggested reform. The details are necessarily complex, and require certain exceptional rules. To give but one example, issues concerning political broadcasts or "fairness" under Section 315 of the Communications Act should be assigned to the administrative court rather than to a single administrator within the Executive. My purpose here has not been to present a detailed blueprint, but rather to advance the principle of separation of regulatory and hearing functions, in the hope that as more voices declare for the principle, a serious study of it will be undertaken. I do not believe it is possible to be a good judge on Monday and Tuesday, a good legislator on Wednesday and Thursday, and a good administrator on Friday.

Nor do I think we can remain complacent about our present administrative process. Exploding technology demands prompt and wise decisions by the regulatory agencies. In the field of international communications, vast changes are under way. Communication via satellite on a regular basis is almost here. A new, revolutionary transistorized telephone cable having a capacity six or seven times that of current cables will be available in the last half of this decade. The distinction between voice and record communications is being blurred, and there is a growing need for the broadband channel; this pattern is certain to continue as computers become increasingly important.



These drastic changes in turn call for basic decisions as to the future of the industry in the national interest. The industry must be encouraged to invest and grow to provide better service to the public. We must face promptly hard issues such as whether the international telegraph carriers should be permitted to merge. That question should be reevaluated in the light of these profound changes. Indeed, because of the changes, the more basic question now is whether consideration should be given to fostering, through compulsory merger legislation, a single or unified U.S. international common carrier.

I do not raise these issues to discuss their merits. Rather, I seek here to reexamine the process—the procedure—for the formulation of basic policy as to such vital issues.

The past certainly does not provide a happy precedent. In 1945 Secretary Forrestal submitted to the Congress a proposal to effect compulsory merger of all international carriers. Because the several interested agencies were divided upon the “basic principle of unification,” Congress, in effect, directed the agencies to get together on a plan. The result of agency meetings was the same split and no action. As to permissive merger of the international telegraph carriers, no policy has evolved because of the differences between the agencies (chiefly the Commission and the Department of Justice). Indeed, there is not even agreement today among the agencies as to whether Western Union should be required to divest itself of its international telegraph operations—a matter that has been with us since 1943.

I do not suggest which side is right or wrong. But I do urge most emphatically that we can no longer afford the luxury of such leisurely policy making. Perhaps the short-term answer to such matters as a unified U.S. international communications carrier is the immediate employment of a

special committee to study our policy needs in this field. But over the long run, I believe the establishment of the single administrator within the executive is a necessary step to markedly improve policy making in this important area.

Dr. John W. Gardner, president of the Carnegie Corporation, observed not long ago that as an organization becomes older, there comes to be a rule or precedent for everything and that men become prisoners of their procedures. We are in danger of becoming prisoners of our own procedures in the administrative process. That is why I recommend to you that serious study be given to the proposal for an administrator-administrative court to separate the regulatory functions from the judicial functions of the Federal Communications Commission.

I'll be pleased to be of any help I can in furthering this study.

Respectfully yours,  
Newton N. Minow  
Chairman

## XVII

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### Problem: The Bureaucracy

POSTLUDE: After Newton N. Minow resigned as Chairman of the Federal Communications Commission, many tributes were paid to him. These came in newspaper and broadcast editorials, in speeches on the floor of the House of Representatives and in the Senate and in messages from national leaders.

But the most restrained and perceptive quick review of Mr. Minow's effect on the broadcasting industry came in the Summer, 1963, issue of *Television Quarterly*, the Journal of the National Academy of Television Arts and Sciences. The tribute was signed by Dr. A. William Bluem of Syracuse University, editor of the *Quarterly*. Of Mr. Minow, Bluem wrote:

His strength lay in that devotion to those basic principles of life which are so pure that they defy argument. Newton Minow said, and believed, that man is neither a dot nor a number, but a human being with a commitment to the future. In saying this, he chose to ignore those essentially amoral, often statistic-ridden confirmations of what we *really* are—those deadly analyses which give us only that small, cold comfort of knowing we are as bad as everyone else. What he was arguing about concerned the moral imperatives of human behavior.

But if he ignored the "facts of life" in one respect, he also never fawned upon those drafty theoreticians who,

since the days of the "Blue Book," have sought in Governmental authority the forceful methods by which to impose upon a whole society. The stench of antifreedom hovered over their willingness to dismiss altogether too casually the honest wants and desires of a majority of the people. If politics creates strange bedfellows, the regulation of broadcasting requires dormitory arrangements, and no one was probably more aware of the amazing number of people with pet cures for broadcasting's ills than the Chairman himself.

The possibilities of error arising from zealous dedication to principles are ever present. There are, and always have been, a goodly number of broadcasters to whom the Chairman's every suggestion must have been infuriatingly gratuitous. For every rare case when a rapacious operator was caught with soiled hands, there have been hundreds of others who have managed to execute a responsible role in their communities, and still dozens more who inspired and led their communities with a creative force and vigor that deserved a better fate than Minow wielded.

Even his most unforgiving detractors cannot deny that Newton Minow inspired a positive change, if not in the quality of broadcasting, at least in the way we look at the establishment. He borrowed a line from the great Human Drama—"Man does not live by bread alone"—and he repeated it publicly. In an age when such verities are going out of style, this was an achievement in itself, and merits for him a respectful farewell from all of us.

This final speech is actually a reiteration of the points made by Mr. Minow in his letter to the President. The letter, of necessity, was written in the language of the legal brief. The speech that follows is in the vernacular of the public forum and contains much more passion than the letter to the President.

The points made, the needs underscored, are self-evident

and should be appreciated and applauded by every person who is not trying to protect a very real claim in extension of the *status quo*.

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ADDRESS\* TO  
THE CENTER FOR STUDY  
OF DEMOCRATIC INSTITUTIONS  
LOS ANGELES, CALIFORNIA  
*December 7, 1963*

A legend is making the rounds in Washington about a minor official in one of the large federal agencies. One morning a document routinely passed across his desk. Automatically, he placed his initials on it. Mechanically he transferred it from the "In" box on his desk to the "Out" box. As it happened, this particular document had been missent to him by the mail room. It really belonged in another department, and should never have come to his agency at all.

After leaving his "Out" box, bearing his initials, the document moved up through several more layers in the hierarchy of the agency, accumulating more initials. Finally it reached the desk of the agency's director. The director noticed the minor official's initials at the bottom of what was now a long list of initials. Indignant at the error, the director stormed into the office of the man who had first initialed the document and pointed out his transgression. The minor official conceded his mistake and in a trembling voice asked what he could do to correct it. His superior officer directed him to erase his initials—and then to place his initials on the erasure! Sat-

\* Stanley A. Frankel of New York contributed indispensably to the work on this paper. The paper—and I—are the beneficiaries of his creative suggestions, counsel and insight.

ified, they both returned to work.

While this story may be apocryphal, similar incidents, typical of bureaucracy at its worst, do take place in government. Nowhere is Parkinson's law of paperwork rising to meet jobs more operative, whether the party in power is Republican or Democratic. Nearly 15 per cent of our national work force is now employed by the local, state or federal government, and this represents almost a third of the gross national product. As our society becomes more complex, we decry the inefficiency and red tape of the government agencies set up to meet the complications. We complain about big government growing ever bigger—overlooking the fact that our big country is growing bigger at the rate of three million new people every year. And even while criticizing the bureaucracy, we assign to already loaded bureaucratic desks more tasks, more responsibilities, more assignments. We confuse the solution of a problem with the creation of still another agency. Then we engage in the national pastime of blaming the bureaucracy for our own failures as citizens—our own failure to study, to analyze, to understand the real nature of the problem before turning it over to an agency, perhaps the wrong agency in the first place.

In our fantasy world existing side by side with a real world of incredibly fast-moving technological revolutions, we dream about muddling through the tangled maze, somehow, some way. We wishfully think our way to achieving ultimate victory against these enormous obstacles.

Never was the capacity of man for self-delusion and self-deception so clearly drawn. We are *not* winning ultimate victories over bureaucratic adversaries. We are *not* lighting up seas of darkness with our hopes and efforts and dreams. Instead, we are losing: we are losing money; we are losing materials; we are, in a real as well as sym-

bolic sense, losing men. That the losses have not yet destroyed our political system is a testimonial not to man's wisdom but to his brutelike ability to withstand punishment and defeat and still survive. Perhaps our major consolation is that weary travelers who come home to America after a trip to Russia almost uniformly report that the Russian bureaucracy is even more bureaucratic than our own.

Here, today, we are challenged to examine the structure and function of democratic government. My particular assignment is to take a hard if not long look at the confrontation between our government and the frustrating and frustrated bureaucracy which administers it. While I can claim exposure to this bureaucracy, I do not claim expertise. Any knowledge I might have is concentrated heavily in the Federal Communications Commission. But my belief is that many of the bureaucratic problems in the FCC are similar to those in the other agencies. Therefore I will focus on this Commission, assuming that it provides a good and a clear example of current problems of bureaucracy in our nation and even our world.

In a nation dependent upon communications, the FCC has many important tasks. We do not have the time to discuss all its tasks, which involve the processing of some 840,000 filings of applications a year. I can barely touch one of its heaviest assignments: the awesome responsibility of selecting which private citizens are to be granted broadcast licenses. I would concentrate on this particular assignment because I believe it goes to the heart of the problems of bureaucracy.

The laws of physics and the limitations of the electromagnetic spectrum demanded that public regulation replace the natural forces of unlimited competition in broadcasting.

Congress responded with a law providing that broadcast stations be licensed to use the airwaves, explicitly providing that these were exclusive licenses *to use* assigned channels of communication, but not *to own* them.

The FCC has the responsibility to award television channels, to decide who shall possess this unobstructed, no-speed-limit, multilane superhighway to men's minds. The FCC must determine who speaks to America; this means denial of the claims of all others scrambling fiercely for this same priceless privilege.

How does the FCC exercise this fearsome responsibility? How is it organized to protect the public interest in regulating the conduct of this powerful, pervasive but oft-times not omniscient giant? Let us examine the process.

When an applicant seeks a television license, he fills out the prescribed application forms, and the regulatory processing begins. If it is a desirable channel, the license is also worth millions of dollars. Willing contenders compete vigorously for the prize. The contest will cost the applicant many hundreds of thousands of dollars, and the government invests a staggering number of man hours and dollars to determine the winners.

To make the choice, the FCC follows a course prescribed by law. There will be a hearing on a public record before a trained examiner, followed by appeals and arguments to the Commission, followed by appeals and arguments to the courts. The transcript will run into thousands of pages, with hundreds of charts and exhibits. While I served at the Commission, we sometimes heard cases that had begun as long as five, ten, and even fifteen years ago. Once while testifying in Congress I was asked about the status of a specific case, and upon checking I discovered that it had begun when I was a soldier in the U.S. Army in India during World War II.



It is still pending.

Judge Henry J. Friendly perceptively explained FCC problems in this manner:

The job that Congress gave the Commission was somewhat comparable to asking the board of the Metropolitan Opera Association to decide, after public hearing and with a reasoned opinion, whether the public convenience, interest, or necessity would be better served by having the prima donna role on the opening night sung by Tebaldi or by an up-and-coming American soprano who might prove herself the Tebaldi of tomorrow, or, more accurately, whether the optimum would be achieved by having the role sung by Tebaldi, by Sutherland, or by one of several winners of high American awards. Multiply this many hundredfold; add the seemingly capricious element that whoever was selected for the role could assign it to any of the other qualified applicants; prohibit the board from getting the advice of many best able to help; assume further that the decision-makers know their action is likely to please or displease persons responsible for their continuance in office, who occasionally communicate attitudes while the decision is in process—and you will have a more sympathetic understanding of the Commission's problem. The Commission possessed the Supreme Court's comforting assurance that the statutory standard was "as concrete as the complicated factors for judgment in such a field of delegated authority permit" but it had been clothed in little else. Nor has Congress seen fit to supply any more clothing over the years.\*

\* Henry J. Friendly, *The Federal Administrative Agencies: The Need for Better Definition of Standards*. Cambridge, Mass., Harvard University Press, 1962, pp. 55-57.

And so, for over thirty years, naked and alone, the Commission has tried its best. It has developed some criteria to evaluate the applicants. What types of programs does the applicant propose for his community? Are the applicants local people, involved in civic activities? Will the applicants be involved in management and operation, or are they passive investors who will hire managers to run the station? What about their financial resources? Have they acquired broadcasting experience? If so, what was their record of service to the public? What caliber of staff will the station have? Do the applicants already own other media of communication, such as the local newspaper? What of the physical plant and technical facilities to be built for the station?

The answers to these and other questions will be spread on an exhaustive public record. The other applicants will challenge the answers, and sometimes the record becomes cluttered with irrelevancies and trivia. One applicant in all dignity claimed he would provide better rest-room facilities! Sometimes the record will raise broad questions of social policy (e.g., should newspapers own television stations? If so, there will be a concentration of the media into a few hands. If not, it may mean that less qualified, less reliable, less financially stable owners take over). Sometimes the record will get nasty. What about the moral character of an applicant? And sometimes the record will pit a novice against a seasoned broadcaster with other TV stations who argues that his experience assures sound service to the public. Yet, argues the novice, how is he to acquire experience if he is denied the opportunity to show what he can do? This is his only chance. Is he to be penalized for *not* having been the recipient of the public largesse on other occasions?

Some of these choices are hard to make. Some of them are impossible to make with assurance. And since a

Commissioner is called upon to vote thousands of times during a year, often a hundred times in one week, he cannot keep up with the flood of testimony, papers and briefs clogging the record in each case. He cannot keep up, and the process becomes clogged up. Mere man becomes drowned in this flood, and it is a wonder that the Commission can occasionally come up for air, and for a decision.

While visiting London in 1963, I met the officials of the Independent Television Authority, the body which regulates commercial television in Great Britain. I asked the Director of ITA how commercial television licensees were selected in England. He told me that an announcement was made about the availability of a channel, and applicants were invited to send in letters and proposals. Many of these proposals were rejected on their face, and the applicants who seemed promising were then invited to come in for an informal interview. After the interviews, the Authority immediately awarded the license.

I inquired, "Is that all there is to it?" That was all. I asked, "What happens if a rejected applicant thinks you have made a mistake, or that you've been unfair? Can he appeal to the courts to review your decision?" "No, our decision is final." Incredulous, I asked, "What if you awarded the license to your cousin?" "We would never do anything like that." I then explained our system. The response: "How do you ever get your work done?"

The answer is that the work is not getting done, at least not as well as it should or could be done. This is not because the bureaucrat is lazy or malingering. The common notion that most people in the government do not work hard is a myth. Most people in governmental bureaucracy work, in my opinion, as hard as or harder than the bureaucracy in business, or in education, or in labor unions, or in any other institution, and often with more

unselfish dedication. The problem is that the bureaucrat in government too often works on the wrong things, struggles to solve the wrong questions, spending his energies on diversions from the mainstream of the basic problems of the 1960's. For the government bureaucrat is chained to laws which take an act of Congress to change, while the bureaucrat in business relies on rules which one decisive autocrat can, and does when necessary, countermand.

To return to the FCC as an example, let us assume that, through the described process of selecting a television licensee, the FCC makes a choice, and the winner builds a station. With rare exceptions the licensee will then enter into an affiliation contract with one of the three national networks. The programs his audience will see and hear most of the time will then come from the network. During prime evening time virtually *all* the broadcast schedule on an affiliated station originates from the network—and the licensee who was selected with such care and expense contributes painfully little to the process.

Richard A. R. Pinkham, a talented advertising man who knows broadcasting intimately, has this to say: "The question we must now ask ourselves is do [the local stations] make a creative contribution to television parallel to those profits which nobody begrudges to them? The actors act, the writers write, the producers organize, the agents represent, the networks gamble and sell and what do the stations do? Anything more than provide air time and get paid for doing so?"\*

What Mr. Pinkham asks is easily answered. Travel about the country and tune in television stations in any city in the evening. The country is viewing the same programs: brought to them by local broadcasters who have

\* *Broadcasting Magazine*, August 26, 1963.

plugged their equipment into the network lines. With rare exceptions indeed, this means that the work in deciding which of twelve contenders should win the license has really settled very little. Whichever contender was victorious—Tweedledum or Tweedledee—he will plug in the same equipment to the same network TV program. His personal and professional qualifications for being awarded the channel dwindle down to a few independent decisions in a few open hours, usually hours viewed by the smallest number of people.

My point is a simple one: bureaucracy has failed to keep up with the technological changes in the broadcasting industry. When broadcasting began, the concepts were based on a radio system to be operated by many small local stations.

Networks were nonexistent. When the law governing broadcasting was passed, networks were either just beginning or too weak to matter. Now networking is indispensable to broadcasting and has profoundly changed, and improved, it. But the government grinds on inexorably, doing the same things in the same ways, asking the same tired questions, applying the same passé techniques to different conditions. The rules remain the same, but they are being applied to a dramatically different game.

The problem of this bureaucracy is the same problem confronting our entire society: the failure to adapt our institutions to rapid-fire technological change. Broadcasting is typical of the scientific breakthrough that characterizes our time. But the governmental institutions we created to deal with scientific breakthroughs do not change. Vested interests in doing things in prescribed ways become powerful, comfortable and inflexible. This is true in all aspects of American life and is compounded in government bureaucracy where it's easier to pass a new law than repeal an old one; where it is simpler to

create a new department than abolish an obsolescent one; where it is more comfortable to dwell in the past than face the future. In government, unlike business, there are not those occasional lean economic years which force a business, if it is to survive, to cut fat and waste. Government bureaucracy seldom cuts; it adds and clings and defends the *status quo* long after technological advances demand that the status *go!*

To paraphrase William McNeil: a massive bureaucracy almost inevitably becomes a vested interest dependent upon elaborate rules and precedents and procedures rising toward the semi-sacredness of holy ritual. These rituals rationalize a set pattern or routine and make modern bureaucracy potentially capable of throttling even the explosive pressures of social and technical change nurtured by modern science.

And this means that elected officials and political appointees in high office often find that they are only *nominally* in charge of a bureaucracy so firmly entrenched that it is all but impossible to do more than slightly deflect the previously prescribed line of march. "The way things always have been done" becomes a substitute for a creative recognition of new problems. "Whatever is, is right" bit by bit becomes "an adequate surrogate for social theory." The river is flowing devastatingly downstream, and woe to anyone who attempts to swim upstream. Better, in theory anyway, to build a dam or engineer a shift in the riverbed, but those who would be builders of dams and the changers of the course of the stream often, to preserve their health and sanity, revert to conformity and join all the others in the easy trip with the current.

Yes, how much more rigid is the rule book of governmental bureaucracy which fastens the chilling tentacle of precedent upon the ironclad base of the law. Occa-

sionally, under stress and urgency and lionheartedness, the tentacle may be ripped asunder, in business or education or even in government; but whereas business or education can now proceed without the dead tentacle of the past, government is still held by the ironclad grip of the law which vested interests refuse to disengage.

The rulebooks and the lawbooks of governmental bureaucracy are bulging, and new editions are always on their way to the printer. While this is happening, science is breaking down each day some new barrier to hidden knowledge. Meanwhile our bureaucracy is too often addressing itself to tidying the backlog of cases involving problems no longer of basic importance.

This is the failure of bureaucracy: its inability to respond quickly to a world of change. But this is not a failure peculiar to governmental bureaucracy; it is also the failure of bureaucracy in all settled institutions which become nervous in the presence of a new idea. It is the problem of business, the labor unions, the schools: indeed, it is the problem of each of us alive in 1963.

What should be done to correct these failings? I can offer no instant remedies guaranteeing "fast-fast-fast relief." But I do have several modest suggestions, some procedural and some substantive, about the regulatory agency.

First, I do not believe that judicial and administrative functions can be effectively mingled in one body. I do not think it possible, or fair, for one man to be a judge on Monday and Tuesday, a legislator on Wednesday and Thursday and an administrator on Friday. To be specific about the FCC, I believe the judicial functions should be vested in a court; that the administrative functions should be vested in a single individual appointed by the President and serving at his pleasure. I believe this single basic step would pinpoint basic responsibility for decisions and materially speed up the clogged ad-

ministrative process.

Second, I believe that some concepts of civil service organization are obsolete. Originally designed as sound reforms to protect the civil servant from the spoils system and political intrusion, some practices have now gone too far in the opposite direction. Too often civil service requirements have become rigid, resulting in the chief executive of an agency having responsibility without authority. Some practices are so cemented into the statutes that the government employee is sometimes immune from effective disciplinary action even when incompetent. Simultaneously, it is often impossible under the present system to reward excellence and accomplishment because of inflexible seniority rules, rights and privileges out of step with the public good.

Third, government salaries at the top levels are too low. We would be better off paying talented people more—and having fewer people working for the government.\*

Finally, to substance. We must as a nation articulate clearly the public responsibility of broadcasting. We must establish reasonable standards of public service in broadcasting—standards which are fair to the public as well as the private interest. We must insure that the medium is a place of free expression; yet we must insure also that public resources are not frittered away on emptiness. I believe we are overdue for an appraisal of present industry and regulatory practices by a Citizens' Advisory Board to help bring the Communications Act into the 1960's and to bring public attention and participation to bear upon the future course of broadcasting policy. This substantive change requires the thought and planning of the best brains in America. A contemplative

\* Mr. Minow, upon leaving the FCC, became a director of the National Civil Service League, which successfully aided in the recent passage of legislation to raise federal-government salaries for government employees. [Ed.]



dialogue should go into the framing of these standards, for their wisdom and efficacy could help determine not only the future of television but, more vitally, the very future of our democracy. Most important, we must not blame the bureaucracy for our own failure as citizens to decide what we have a right to expect from television. For as Ed Murrow once said of television: "This instrument can teach, it can illuminate; yes, it can even inspire. But it can do so only to the extent that humans are determined to use it to those ends. Otherwise, it is merely lights and wires in a box."

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**AFTERMATH:** In the months that followed Mr. Minow's departure from the Communications Commission, the needs stressed in the speech have become even more acute. The backlog of cases has not diminished and the complexities of the agency have continued to grow. Even under the excellent leadership of Chairman E. William Henry, the agency is still trapped in the red tape and the quicksand of shifting public policy that have made the FCC a most inefficient body for the past three decades.

For no individual is equipped or trained to be both prosecutor and defender; legislator and jurist; policy maker and policy enforcer. In what has been called a pluralistic society, we cannot expect the most brilliant individual to be a completely pluralistic man. The load is simply too great.

Mr. Minow's proposals have not been adopted. Objections have been raised, both by those elected officials who see in reorganization a diminution of personal power and by those with a stake in the long delays that now hamper the Commission.

There will be more delay, but there is a certain inevitability about the plan. We shall adopt it, eventually, or we shall be forced to overhaul, completely, the regulatory process for broadcasting.

## Coda

One year after Newton Minow's resignation had been accepted by President Kennedy, it was possible to cast a limited perspective on his role in communications history. Not a single one of his policies had been refuted or changed. Indeed, most had been strengthened and implemented.

True, the efforts of the FCC to adopt the National Association of Broadcasters' Radio and Television Code time standards had been voted down overwhelmingly in the House of Representatives. However, the Senate had shown no interest in taking up Representative Walter Rogers' (Democrat of Texas) bill that would prohibit the FCC's ever adopting time standards for commercials. The Senate's lack of interest in passing the bill, as Representative John Moss (Democrat of California) pointed out in opposing Rogers' bill, would in effect affirm the FCC's right to set limitations.

More important, there is a record of accomplishment. The Communications Satellite Corporation had completed its financing and was a strong and viable pioneer in the new venture into space communications.

Federal grants to educational television stations were being given. The number of ETV stations grew steadily—and served more communities with improved programs. The all-channel television receiver legislation had been

put into effect. There were even contests from applicants for UHF channels.

Millions were making regular use of the three-minutes-for-one-dollar telephone call after 9 P.M. to any place in the continental United States.

A record number of stations were broadcasting editorials. News and public affairs programs—categories that are usually classified, *per se*, as public service—had reached an all-time high in television. At most stations there had been a development that would have been unthinkable in 1960: a station's news director enjoying equal status with the entertainment program director; and the news director usually commanded more subordinates and was responsible for a larger budget.

Many broadcasters came to believe that Mr. Minow's influence had contributed to their growing industry. Dr. Frank Stanton, president of CBS, proposed Mr. Minow to direct a searching study of the relationship between the courts and broadcasting and the press. And broadcasting groups across the country continuously invited him to speak to their associations, present awards for best programs and come to their meetings. His fair-mindedness had won respect—if not agreement.

Thus the record of the Minow administration at the FCC still stands. There is good reason to believe that it will stand for many years to come. And there is reason to believe also that the beneficiary of the battles detailed in these pages, the clashing, clanging debates, is ultimately the American public.

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## NEWTON N. MINOW

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