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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Selected FCC Regulatory Policies: Their Purpose And Consequences For Commercial Radio And TV

In this comprehensive report GAO assesses the impact of selected Federal Communications Commission regulatory policies and rules on commercial radio and television broadcasters and thus the American people. To improve the regulatory framework, GAO makes recommendations to the Congress and the Federal Communications Commission regarding the

--broadcasting licensing process;

--regulation of program services;

--ascertainment of community problems, needs, and interests;

--rules covering ownership of stations;

--equal employment opportunity;

--equal opportunities/fairness doctrine; and

--charges for spectrum use.

UNITED STATES GENERAL ACCOUNTING OFFICE

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To the President of the Senate and the
Speaker of the House of Representatives

This report assesses regulatory policies and rules regarding the licensing, programing, ownership, and employment practices of commercial broadcast stations. The report makes several recommendations to the Congress and the Federal Communications Commission for improving the regulatory framework provided by the Communications Act of 1934.

A number of factors have contributed to the need to assess Federal regulation of commercial broadcasting. Since 1934, the industry has undergone major changes that are not reflected in the Communications Act. Further, the Commission, acting without explicit guidance from the Congress, has implemented specific policies which have caused controversy among broadcasters and the public and have created concern within the Congress over the appropriate Federal role in broadcast regulation.

A copy of this report is being sent to the Director, Office of Management and Budget, and the Chairman, Federal Communications Commission.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

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ABBREVIATIONS

ABC	American Broadcasting Company
AM	amplitude modulation
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FCC	Federal Communications Commission
FM	frequency modulation
GAO	General Accounting Office
NAB	National Association of Broadcasters
NBC	National Broadcasting Company
UHF	ultra high frequency
VHF	very high frequency

CHAPTER 1

INTRODUCTION

Fundamental questions about regulatory policy have created a need to evaluate broadcast regulation and have caused congressional concern over the regulatory framework provided by the Communications Act of 1934 (47 U.S.C. 151 et. seq.). We undertook this review to assess the impact of selected regulatory policies and rules on the commercial broadcast industry and its listening and viewing audiences. Our review resulted in conclusions and recommendations which should be useful to the Federal Communications Commission (FCC) in its regulation of the broadcast industry and to the Congress in its deliberations on revisions to the Communications Act of 1934.

NATURE OF THE BROADCAST INDUSTRY

One of the most dramatic developments of 20th century technology has been the use of the radio spectrum for communication. Radio communication designed for reception by the general public is known as broadcasting. The term radio refers to broadcasting which is transmitted by amplitude-modulated (AM) or frequency-modulated (FM) stations. Television, another form of radio, is the transmission by stations of sounds and images over very high frequencies (VHF) or ultrahigh frequencies (UHF).

The broadcast spectrum in the United States is divided for commercial and noncommercial use. Commercial broadcasting consists of privately owned businesses supported by revenues from those who advertise goods or services over broadcast media. Noncommercial broadcasting, or public broadcasting, is supported by Government appropriations and private donations.

As of February 28, 1979, there were 9,449 commercial and public broadcast stations licensed by the Commission. Within that total, 7,529 were commercial radio stations and 728 were commercial television stations. Most commercial television stations are affiliated with the American Broadcasting Company (ABC); CBS Inc.; or the National Broadcasting Company (NBC); the three major networks which provide about two-thirds of all programing aired by their affiliates. In 1977 the broadcast industry (including the networks) reported total revenues of $8.2 billion, with television accounting for $5.9 billion. Industry pretax profits were in excess of $1.6 billion.

Commercial radio and television play an important role in our daily lives. They not only are sources of entertainment, but provide programs on news, public affairs, and other topics of public interest. There are an estimated 425 million radio sets in the Nation, and 97 percent of American homes have one or more television sets. The average American home has its TV on over 6 hours a day, and, according to a recent study by The Roper Organization, 64 percent of Americans turn to TV as their major source of news.

HISTORY OF GOVERNMENT INVOLVEMENT IN BROADCAST REGULATION

The first law on domestic control of radio was the Radio Act of 1912 (P.L. 62-264, 37 Stat. 302) which made the Secretary of Commerce and Labor responsible for licensing radio stations and operators. Because increased numbers of stations had led to increased amounts of radio wave interference, a 1925 national radio conference requested that the operating time and power of stations be limited. The courts ruled, however, that the act did not authorize the Secretary to impose such limits. As a result, many broadcasters continued to change frequencies and increase their power and operating time, producing bedlam on the airwaves. The Congress responded with new legislation.

The Radio Act of 1927 (P.L. 69-632, 44 Stat. 1162) created the Federal Radio Commission to issue station licenses, allocate frequency bands to various radio services, assign specific frequencies to individual stations, and control station power.

Following a Federal interdepartmental study of electrical communications, the Congress passed the Communications Act of 1934, which broadened the scope of regulation. This act established the Federal Communications Commission to regulate interstate and foreign communication by wire and radio, including telegraph, telephone, and broadcast. Most of the provisions relating to broadcasting were adopted from the 1927 Radio Act.

SCOPE OF FCC REGULATION

Today, FCC's regulatory role goes beyond the physical aspects of broadcast transmission and includes policies and rules intended to assure diversity of ideas and viewpoints. The act directs the Commission to grant licenses to those who would serve the "public interest, convenience, and necessity," a phrase which the act left undefined. As interpreted and applied by the Commission, the public interest standard entails some governmental involvement in station programing, ownership, and employment practices. This involvement has been implemented in the context of two basic principles: the right of the broadcaster to first amendment protection and the concept of the local station licensee as a public trustee with responsibility for and control over broadcast matter.

Broadcasting and the first amendment

The first amendment to the United States Constitution states in part that the "Congress shall make no law * * * abridging the freedom of speech, or of the press * * * ." The Supreme Court has held that radio is included in the press whose freedom is guaranteed by the first amendment 1/ and that the right of free speech is not confined solely to the exposition of ideas since the "line between the informing and the entertaining is too elusive for the protection of that basic right * * *" 2/ Moreover, the subject matter of a communication need not be of value to society to have free speech protection. 3/

The right of free speech does not include, however, the right to use the facilities of radio without a license. 4/ In upholding FCC's authority to regulate network practices, the Supreme Court stated:

> "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." 5/

The Court also has made it clear that the Communications Act does not limit the Commission to the role of a "traffic officer, policing the wave lengths to prevent stations from interfering with each other" 6/ and that the Commission

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1/United States v. Paramount Pictures, Inc. et al., 334 U.S. 131, 166 (1948).

2/Murray Winters v. People of the State of New York, 333 U.S. 507, 510 (1948).

3/Ibid.

4/National Broadcasting Co., Inc. et al. v. United States et al., 319 U.S. 190, 227 (1943).

5/Ibid.

6/Ibid., p. 215.

neither exceeds its powers under the act nor transgresses the first amendment "in interesting itself in general program format and the kinds of programs broadcast by licensees." 1/ In the landmark "Red Lion" decision, the Court stated that the Commission is not powerless to insist that licensees give adequate and fair attention to public issues. 2/ Addressing the first amendment issue in broadcasting, the Court held that:

> "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount * * *. It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC." 3/

The holding of Red Lion was limited to the fairness doctrine, which requires the broadcaster presenting one side of a controversial issue to present conflicting views. In FCC's judgment, however, the language of the Court clearly pointed the way to a wide range of programing responsibilities on the part of the broadcaster.

The authority to prescribe these responsibilities is not unlimited. Section 326 of the Communications Act expressly prohibits "censorship" by the Commission. Moreover, since broadcasting is entitled to first amendment protection, the Commission has acknowledged that any programing regulation must be reconciled with free speech considerations. For these reasons, the Commission walks a tightrope in attempting to assure diversity of ideas and viewpoints while not interfering with the broadcaster's right of free speech.

Localism and public trusteeship

Independent decisionmaking by local station licensees acting as public trustees has been called the constitutional foundation of the American system of broadcasting. 4/ The concept of local responsibility for and control over broadcast

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1/Red Lion Broadcasting Co., Inc. et al. v. Federal Communications Commission et al., 395 U.S. 367,395 (1969).

2/Ibid., p. 393.

3/Ibid., p. 390.

4/Writers Guild of America, West, Inc. v. Federal Communications Commission, 423 F. Supp. 1064 (1976).

matter was set forth in the Radio Act of 1927 and carried forward into the Communications Act of 1934 to assure maximum diversity of ideas, safeguard the right of viewers and listeners to receive those ideas, encourage attention to local interests and needs, and avoid a broadcast system that is exclusively national in scope. Furthermore, the 1927 act stipulated and the 1934 act provides that licensees do not own their assigned broadcast frequencies. In this regard, the Commission has stated that each licensee is a trustee in the sense that its license imposes a nondelegable duty to serve the public interest in the community the licensee has chosen to represent.

ORGANIZATION OF FCC BROADCAST ACTIVITIES

FCC is an independent Federal agency headed by seven commissioners, one of whom serves as chairman. Commissioners are appointed by the President and approved by the Senate for terms not to exceed 7 years. The commissioners supervise all FCC activities, delegating responsibilities to staff units, bureaus, and committees of commissioners.

In fiscal year 1978, broadcast activities in FCC required 399 staff positions and nearly $11.8 million. Most FCC work in this area is carried out by the Broadcast Bureau, whose functions include

--recommending frequency allocations and frequency-assignment plans in the broadcast services;

--evaluating applications for broadcast stations and for renewals and transfers of existing broadcast licenses;

--investigating complaints against broadcast stations;

--advising the Commission on broadcast rules and standards;

--studying radio and television network operations, social and economic factors affecting broadcasting, and the conditions and status of various aspects of the broadcast industry; and

--participating in broadcast hearings.

PURPOSE AND SCOPE OF REVIEW

Major technological advances in broadcasting have occurred since the Communications Act was passed in 1934. As a result, the act does not mention television or such alternatives to conventional over-the-air broadcasting as cable.

Moreover, the Commission, acting without specific legislative guidance, has established several policies to regulate broadcasting that have been controversial and subject to extensive criticism. Our review was undertaken to assess the impact of selected FCC policies and rules on commercial radio and television broadcasters and the American public. These policies and rules pertain to

--the broadcast licensing process;

--regulation of program service;

--ascertainment of community problems, needs, and interests;

--ownership of broadcast stations;

--equal employment opportunity in the broadcast industry;

--fairness in broadcasters' treatment of controversial public issues; and

--broadcast spectrum user charges.

Recently the Chairmen of the House and Senate Subcommittees on Communications introduced legislation (H.R. 3333 and S. 611) revising the Communications Act of 1934. Some of the revisions relate to the policies and rules discussed in this report, therefore our recommendations and suggestions should be useful to the Congress in its deliberation on proposed revisions to this Nation's communications legislation and to the Commission in its regulation of the broadcast industry.

In conducting our review, we

--interviewed officials, managers, and other representatives of broadcasting and public interest organizations (see app. I) and FCC officials;

--reviewed applicable FCC rules and regulations, court decisions, and legislative proposals and recommendations offered by the broadcast industry, public interest groups, and others;

--reviewed written comments on proposed FCC rules submitted by members of the public and representatives of the broadcast industry;

--performed statistical analyses of financial, programing and other broadcast-related data maintained at FCC headquarters (see app. II); and

--conducted a questionnaire survey of commercial radio and television station managers. (See app. III.)

Our review work was performed primarily at FCC headquarters, Washington, D.C., from September 1977 through February 1979. To help us on our review, we hired four consultants knowledgeable in the field of broadcasting. (See app. IV.)

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In a letter dated March 22, 1979, the Commission commented on a draft of this report. It stated that the report (1) represents an accurate study of the history and competing arguments concerning some of the Commission's broadcasting rules, policies and procedures and (2) should be helpful to the Commission, Congress and other interested parties in determining the future role of the Federal Government in regulating broadcasting. The Commission also stated that it would be premature to comment in detail on the recommendations contained in the report, but that the report presents some useful suggestions and alternatives which deserve full consideration and debate. The text of the Commission's letter is shown in Appendix V.

CHAPTER 2

THE BROADCAST LICENSING PROCESS

The Communications Act of 1934 contains certain provisions on the licensing of broadcast stations which are intended to promote the public interest on a continuing basis. Under section 307 of the act, the term of a broadcast license is limited to a maximum of 3 years. This section also authorizes the Commission to grant license renewal provided its review of station performance shows the public interest, convenience, and necessity would be served. Under section 309 of the act, members of the general public are eligible to participate in licensing proceedings by filing petitions to deny the grant of a license application. As interpreted by the courts, section 309 also requires the Commission to conduct a full, comparative evaluation of those applicants competing for a license grant and, based on its evaluation, to select the applicant best qualified to operate a broadcast station. These provisions on the license term, review of station performance, public participation in licensing proceedings, and comparative licensing evaluations are cornerstones of the current broadcast licensing process.

We believe that the broadcast licensing process would be made more effective if

--the Congress authorizes an indefinite broadcast license term,

--the Commission implements a system of review based on random selection and field audit of broadcast stations,

--members of the public have the right to petition at any time for the revocation of a broadcast license,

--the licensee bears the burdens of proof and evidence in a revocation proceeding unless the Commission assigns those burdens to another party in interest, and

--the Congress eliminates comparative licensing evaluations and authorizes a lottery or auction system for granting new or revoked broadcast licenses.

THE FIXED LICENSE TERM AND LICENSE RENEWAL

The appropriate length of the broadcast license term has been an issue since passage of the Radio Act of 1927. Based on the assumption that the radio spectrum belongs to the public and not to broadcasters, the Congress limited the term of the license as one way to assure that the licensee would not acquire a property right or vested interest in a broadcast frequency. 1/ A fixed term also provided an opportunity for periodic review of licensee stewardship. While the House of Representatives had originally favored a 5-year term, it compromised with the Senate in settling on 3 years. This statutory maximum term was carried over into section 307 of the Communications Act of 1934. 2/ Since 1934, several proposals have been made to lengthen the license term, including proposals to make it indefinite. None of them have been adopted.

Currently, the Commission reviews about 3,000 license renewal applications each year for station compliance with the Communications Act and certain regulatory policies and rules. In 1974 the Commission recommended a 5-year term as a means of decreasing its annual licensing workload and improving the quality of its review process. Recently its Broadcast Bureau's Renewal and Transfer Division began to study alternative procedures which could reduce the annual license review workload yet provide assurance of industry-wide compliance with the act and FCC regulations.

Need for a longer license term

Proponents of a longer license term have argued that the rationale of preventing acquisition of a "vested interest" or "property right" in a broadcast frequency is not relevant today. They point out that the typical licensee has obtained in practice (if not in legal theory) a vested interest in its assigned frequency because the risk of license revocation or nonrenewal has been minimal. (See p. 12.) Further, it is argued that (1) the large financial gain which a licensee may realize from station sale is largely attributable to the value of the license and (2) the purchaser of a broadcast

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1/The Radio Act of 1927 also stipulated that a licensee did not own its assigned frequency and that, before a license application could be granted, the applicant had to waive any claim to the use of a frequency because of its prior use of the radio spectrum "by license or otherwise."

2/While the 3-year term is the statutory maximum, the Communications Act authorizes the Commission to grant licenses for a shorter period if the public interest requires. For example, until 1939 licenses were granted for a 1-year term so that unfit licensees could be weeded out. Today the Commission generally grants licenses for the maximum 3-year term.

station is willing to pay a price substantially in excess of asset value because it is confident that the license will be renewed. 1/

Proponents also have argued that a longer license term would improve licensees' opportunities to obtain financing on favorable credit terms and carry out their planning and other management activities. However, based on the responses to our survey of broadcast station managers, the present 3-year term has not had major adverse effects on facilities planning and development, financing, or staffing for the majority of stations. As shown in the chart below, only about 21 percent of the 527 station managers claimed that their facilities planning and development activities have been adversely affected to a very great or substantial extent by the 3-year license term. The comparable figures were about 17 percent and 8 percent for the ability to secure financial resources and the recruitment and retention of staff.

Impact of 3-year License Term on Management Activities

Extent of adverse effect on management activity	Management activity and percent of 527 station managers			
	Facilities planning	Facilities development	Ability to secure financial resources	Recruitment and retention of staff
Very great	9.3	9.9	8.7	3.0
Substantial	10.8	11.2	8.5	5.1
Total	20.1	21.1	17.2	8.1
Moderate	22.0	20.9	17.6	14.2
Some	18.2	18.4	15.0	14.2
Little or none	38.5	38.3	48.4	61.9
Total	78.7	77.6	81.0	90.3
No response	1.1	1.3	1.7	1.5
Total (Note a)	100.0	100.0	100.0	100.0

a/Total may not equal 100 percent due to rounding.

1/In chapter 8, we discuss the value of a broadcast license and point out that stations often are sold at prices well above tangible asset value and that such prices reflect the potential for large earnings which most licenses afford their holders.

Seventy-seven percent of the 527 station managers reported that they are generally or very dissatisfied with the 3-year license term. Nearly 50 percent of the managers reported that they prefer a 4- to 5-year term and nearly 18 percent reported that they favor an indefinite term. Less than 3 percent of the managers endorsed the present 3-year maximum.

<u>Current procedures for processing and reviewing license renewal applications</u>

The main function served by the 3-year license term is to provide for periodic FCC review of licensee performance through the processing of license renewal applications. To facilitate application processing, the Commission has divided the 50 States into 18 geographical groups. The licenses of stations within each group expire at 2-month intervals over the 3-year licensing cycle. For example, the licenses of stations located in New Jersey or New York expire in <u>June</u> of 1978, 1981, etc., followed by those of stations in Delaware or Pennsylvania in <u>August</u> of 1978, 1981, etc. Each licensee submits its renewal application to FCC headquarters, Washington, D.C., 4 months in advance of its license expiration date. The application includes certain legal, engineering, employment, and other information concerning station operations and sets forth in quantitative terms the programing proposed for serving the public interest during the forthcoming 3-year term.

When an application is filed, an initial review for completeness is made by the staff of the Broadcast Bureau. If the application passes this clerical review, it is evaluated for content in the general categories of (1) legal requirements, (2) technical operations, and (3) program service and employment practices. This evaluation is carried out under two sets of standards by engineers, broadcast analysts, equal employment opportunity specialists, and, in troublesome cases, attorneys.

Under one set of standards, the staff checks for compliance with requirements of the Communications Act and certain FCC rules which, if not met, preclude license renewal. For example, section 310 of the act prohibits the licensing of a station to a corporation of which any director is an alien. Similarly, under FCC ownership rules, a single licensee is limited in the number of broadcast stations it can control. 1/ In addition to checking for compliance with these types

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1/FCC ownership limitations rules are discussed in chapter 5.

of requirements, the staff determines whether the applicant is affected by pending FCC hearing proceedings or unresolved petitions to deny license renewal.

Under the other set of standards, the staff checks for compliance with certain processing guidelines. Failure to meet these guidelines does not preclude license renewal, but precipitates further inquiry and evaluation. For example, under current guidelines, the application of an AM radio licensee proposing less than 8 percent of news and other non-entertainment programing for the forthcoming license term cannot be granted unless the licensee provides adequate justification for its proposal. 1/ According to the Commission, questions which arise during application processing are often resolved through follow-up inquiries by telephone or letter. In such cases, the chief of the Broadcast Bureau is authorized to grant license renewal. Major questions which cannot be resolved are referred by the Bureau chief to the FCC commissioners, who may order an evidentiary hearing to determine whether a grant of renewal would serve the public interest.

Administrative sanctions

Under section 312 of the Communications Act, the Commission has the authority to revoke a broadcast license at any time if it determines that the licensee has not operated in the public interest. Revocation could occur, for example, if the licensee is shown to have knowingly provided false information or willfully or repeatedly violated a provision of the act. The act does not authorize members of the public to petition for license revocation and it requires the Commission to bear the burden of introducing evidence and the burden of proof in a revocation proceeding.

The Commission also can sanction a licensee by declining to renew the license, granting renewal for a period of less than the normal 3 years, or levying a fine against the licensee. 2/ A denial of renewal may result from FCC inquiry into issues raised in petitions filed by members of the public under section 309(d) of the act. In a license renewal proceeding, the licensee rather than Commission bears the burdens

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1/FCC minimum percentage programing guidelines are discussed in chapter 3.

2/The Commission also may grant a license conditioned by certain reporting requirements. For example, a licensee may be required to submit annual reports on progress in correcting deficiencies in its equal employment opportunity practices. (See chapter 6.)

of evidence and proof unless the Commission assigns them to another party in interest.

Although the Communications Act provides that a broadcast license carries no rights beyond its 3-year term, the Commission and the courts have long held that the licensee which has operated in good faith can expect to have its license renewed. Under this general tenet, license revocation or denial of renewal has occurred only in cases of egregious misconduct, and the risk of losing a license by either mechanism has been small. Since 1934, the Commission has revoked 31 commercial broadcast licenses and declined to renew 77. In fiscal years 1975-77, approximately 5 percent of all broadcast stations received any type of FCC sanction. In 421 administrative actions, the Commission revoked 2 licenses, declined to renew 23, granted 36 short-term renewals, and fined 360 stations.

Alternative review procedures

As an alternative to the triennial review of each licensee's renewal application, the Commission could select a certain number of stations on a random basis and review their operations in detail for compliance with regulatory policies and rules. This type of approach was supported by some of the industry representatives and public interest group spokesmen we interviewed. For example, two industry representatives suggested that the Commission, perhaps on an unannounced basis, examine stations in the field to determine whether they have lived up to their proposals on programing for serving the public interest. A public interest organization has proposed that the Commission randomly select and examine each year 12.5 percent of all broadcast stations, with the provision that every station be examined at least once every 10 years. Based on the number of commercial stations licensed as of June 1978, this proposal would entail about 1,000 reviews annually, a figure well below the 3,000 the Commission now conducts. 1/

Unless the license term were made indefinite, random selection and field-based review of broadcast stations would be an adjunct to and not a complete replacement of current

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1/The number of annual FCC reviews could be even lower than 1,000 and still provide reasonable assurance of industry-wide compliance. For example, as of June 30, 1978, there were 8,194 commercial broadcast stations licensed by the Commission. Assuming random selection, a sample size of 385 stations would permit the Commission to estimate with at least a 95-percent level of statistical confidence a rate of compliance which varies from the true rate for all commercial stations by no more than 5 percent.

review procedures because the Communications Act requires that licenses be renewed every 3 years based on written application. In this regard, the public interest organization proposing random selection also has proposed that the act be amended to authorize an indefinite license term and to give members of the public the right to petition for license revocation at any time. These provisions reflect the view expressed to us by public interest spokesmen that access to the licensing process, and not the length of the license term *per se*, is the important consideration.

The Broadcast Bureau's Renewal and Transfer Division is conducting an internal study on alternatives for selection and audit of broadcast stations within the context of the 3-year license term. According to a division official, the study in general is seeking to identify alternative procedures which will make FCC review more effective and limit licensee reporting to information genuinely needed for the Commission to fulfill its regulatory mission. FCC reviews based on random selection of stations and use of audit teams in the field are included in the alternatives under consideration. Among the specific questions the study is addressing are:

--Can the various elements of the current review process--program service, employment practices, technical operations, and legal qualifications--be integrated into a single examination or do they require separate treatments?

--How much and what kinds of information would licensees have to maintain or file with the Commission?

--To what extent can computer processing be applied to the data reported by licensees?

--What standards should be applied in examining station performance? For example, should standards be set which limit the amount of station commercial matter?

--What sanctions (e.g., fines) should be applied to what types of station noncompliances?

As of the time of our review, the division had not set a specific date for completing its study.

PUBLIC PARTICIPATION IN LICENSING PROCEEDINGS

Section 309(d) of the Communications Act provides that any party in interest may file with the Commission a petition to deny the grant of a broadcast license. The act does not define "party in interest," but, as discussed below, the phrase has been interpreted by the courts to include members of the listening audience.

The act requires that a petition to deny (1) contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the license application would be on its face inconsistent with the public interest, convenience, and necessity, (2) be supported by affidavit of a person or persons with personal knowledge of the allegation, (3) be served by the petitioner upon the applicant on or before the day the petition is filed with the Commission, and (4) be filed within the time prescribed by FCC rules. FCC treats a complaint which does not meet these formal requirements as an informal objection. In contrast to a formal petition, an informal objection generally does not entitle the complainant to participate in a licensing proceeding. However, the Commission may still decide to investigate one or more of the issues raised. Thus, whether treated as a formal petition or an informal objection, a complaint can lead to an FCC evidentiary hearing.

"Standing" is a legal term that describes whether a party is permitted to participate in a proceeding. Before 1966, standing to participate in license renewal proceedings was granted by the Commission only to those parties who could show transmission interference or economic injury. Since members of the general public had no occasion to complain of interference or economic injury, contested license renewals were confined to competing commercial interests. However, in March 1966 the Court of Appeals for the District of Columbia Circuit ruled that responsible representatives of the listening public also have standing as parties in interest to contest license renewals and participate in renewal proceedings. 1/ In so ruling, the court stated that:

> "* * * we can see no reason to exclude those with such an obvious and acute concern as the listening audience. This much seems essential to insure that the holders of broadcast licenses are responsive to the needs of the audience, without which the broadcaster could not exist." 2/

1/Office of Communication of the United Church of Christ et al. v. Federal Communications Commission, 123 U.S. App. D.C. 328 (1966).

2/Ibid., p. 336.

The court acknowledged that its ruling might encourage "spurious petitions from private interests * * * [who] cloak themselves with the semblance of public interest advocates." 1/ Consequently, while it doubted its ruling would result in hosts of petitions and obstruction of the administrative process, the court suggested that the Commission develop standards (1) limiting public intervention to spokesmen who can be helpful and (2) preventing unrepresentative groups from persuing their personal interests through the petitioning process. The Commission has not adopted this suggestion; rather than setting standards, it has determined standing on a case-by-case basis.

Impact of court ruling

The extension of standing to the public has resulted in a substantial increase in the number of petitions and informal objections to deny broadcast licenses. It also has increased dialogue between broadcasters and their audiences, which in turn has led to negotiated agreements between broadcasters and citizen groups. Under these agreements, the broadcaster promises to change its programing or other station practices in return for the citizen group's promise not to file (or to withdraw the filing of) a petition to deny license renewal.

The bulk of petitions and objections filed with the Commission are handled by its Broadcast Bureau's Renewal and Transfer Division. As shown in the chart below, this division handled 456 petitions and objections involving 945 commercial stations between January 1, 1967, and November 3, 1977.

1/Ibid., p. 340.

Number of Petitions to Deny and Informal Objections Handled by the Renewal and Transfer Division

Year	Number of petitions and objections	Number of commercial stations
1967	1	1
1968	4	4
1969	4	4
1970	30	40
1971	67	99
1972	79	156
1973	43	70
1974	86	126
1975	39	70
1976	35	245
1977 (as of 11/3)	68	130
Total	456	945

The effect of the court ruling on standing became manifest in 1970. In that year, 30 petitions and objections involving 40 broadcast stations were handled by the Renewal and Transfer Division compared with only 4 petitions and objections involving 4 stations in 1969. In 1967-69, the average annual number of petitions and objections was only three. In 1970-77, the average annual number was 56.

A petition or objection typically alleges more than one violation of FCC policies or rules. Licensees' equal employment opportunity practices have been the most frequent target of alleged violations. 1/ Violations also have been alleged in regard to ascertainment of community problems and needs and lack of responsive program service, 2/ ownership and business interests, and engineering and technical requirements. According to an official of the Renewal and Transfer Division, about 90 percent of purported violations are dismissed by the Commission or withdrawn by the complainant without a formal FCC hearing.

In the event of a formal hearing, the broadcaster may incur substantial litigation costs in an effort to retain its license. An FCC hearing is much like a trial in a civil

1/FCC policies and rules on equal employment opportunity are the subject of chapter 6.

2/FCC requires licensees to ascertain community problems and needs and provide programing responsive to them. The ascertainment process is discussed in chapter 4.

court case. Witnesses under oath are examined and cross-examined, exhibits are offered in evidence, the rules of evidence are applied, and various motions are made, argued, and acted on. Moreover, FCC's final decision can be appealed to the courts. The Commission is not certain of the costs a broadcaster incurs as a result of hearing procedures, but has stated it could amount to tens or hundreds of thousands of dollars. According to estimates cited in 1975 press reports, broadcasters defending their licenses before the Commission or the courts incurred litigation costs ranging from $100,000 to $1.5 million.

FCC policy on citizen-broadcaster agreements

In 1975 the Commission reported that, as a result of extending standing to the public and increased dialogue between broadcasters and their audiences, some agreements had been negotiated which attempted to yield broadcast control and responsibility to essentially private interests. For example, in 1973 a broadcaster and citizen group entered into an agreement which called for the station to hire a minority person whenever a full-time position became available, provide a fixed percentage of locally produced programing dealing with problems of concern to a particular racial minority, and broadcast a certain amount of State and local news. In return, the citizen group agreed to withdraw its petition to deny license renewal. The Commission declined to act on the motion to withdraw because it believed the provisions of the agreement represented potential abdication of licensee responsibility. In an effort to preserve both the principle of licensee control and the value of community dialogue, the Commission in 1975 adopted a policy on citizen-broadcaster agreements.

The FCC policy acknowledges the value of community dialogue, but does not oblige a broadcaster to undertake negotiations or agreements with citizen groups. It emphasizes that, under the localism concept, each station licensee is responsible for its broadcast matter and has a non-delegable duty to serve the public interest. Accordingly, the policy warns that serious abdications of responsibility will raise questions about a broadcaster's basic fitness. The policy does not require that an agreement be submitted to the Commission. Instead, to minimize governmental interference, the Commission reviews a written agreement only upon request or when it is included in a license renewal application. While the policy does not prohibit oral agreements, the Commission does not attempt to determine their existence or review their provisions.

If submitted for FCC review, a written agreement is examined for improper delegation of licensee responsibility, overly restrictive bounds on licensee discretion, and compliance with applicable statutes, rules, and policies. In particular, the Commission seeks assurance that the terms of the agreement do not unduly infringe upon the broadcaster's responsibility for programing. This assurance usually is provided by a clause in the agreement reserving to the broadcaster the right to determine what programing is in the public interest.

Use and frequency of citizen-broadcaster agreements

According to an official of the Broadcast Bureau's Hearing Division, it is not unusual for a citizen group to use the petition to deny predicated on one issue (e.g., failure to ascertain community needs) to achieve another objective (e.g., specific types of programing) by negotiating an agreement with the broadcaster. Some broadcast critics assert that this agreement process is a legitimate extension of the right to petition, and public interest spokesmen told us that the process can be effective in assuring broadcaster responsiveness to local needs and interests. Moreover, a citizen-broadcaster agreement may resolve issues which otherwise would require lengthy and expensive hearings proceedings. For example, as part of an agreement reviewed by the Commission in 1977, one broadcaster promised to eliminate within 4 years its crossownership of a local television station and newspaper. In return, the citizen group which had filed a petition to deny urged the Commission to grant license renewal. The Commission subsequently rescinded its order for an evidentiary hearing and granted renewal. Thus, the agreement served FCC's goal of ownership diversity without requiring an evidentiary hearing on the crossownership issue. 1/

On the other hand, a citizen-broadcaster agreement can be used to serve rather specialized interests. For example, the same agreement which called for the broadcaster to eliminate its television-newspaper crossownership also provided that the broadcaster establish a scholarship fund to train women in broadcasting and provide financial aid for establishing a nonprofit service to disseminate information about women. Such provisions may provide some public benefits, but FCC could not impose or enforce them.

1/FCC rules on broadcast station-newspaper crossownership are discussed in chapter 5.

The total number of citizen-broadcaster agreements is not known because they may be oral or, if written, do not have to be submitted to the Commission. However, based on the responses to our survey of broadcast station managers, the frequency of agreements is relatively low. Only 17 (8.4 percent) of the 202 television station managers and 7 (2.2 percent) of the 325 radio station managers participating in the survey reported that they have entered into agreements with citizen groups. 1/ Of the 24 managers who reported agreements, 14 indicated that an agreement definitely or probably was necessary to avoid or resolve a petition to deny, 6 indicated that a petition definitely or probably was not a motivating factor, and 3 indicated they were uncertain whether an agreement was necessary to forestall or resolve a petition. 2/

In February 1977, the National Association of Broadcasters (NAB) formally requested the Commission to establish by public rule standards under which specific factual information must accompany a petition to deny. NAB proposes that petitioners who claim to represent community interests be required to (1) substantiate by affidavit their relationship with each group they purport to represent and (2) provide information concerning each group's membership, officers, purpose, funding, size, location, and consent authorizing the filing of a petition. According to NAB, the lack of such requirements has encouraged frivolous petitions, permitted possibly unrepresentative groups to participate in licensing proceedings, and provided the leverage for forcing broadcasters to consent to private demands through negotiated citizen agreements. At the time of our review, the Commission had not taken final action on NAB's request.

THE COMPARATIVE LICENSING PROCESS

In certain cases, the Commission is faced with license applications which are mutually exclusive or competing (i.e., the grant of one application precludes the grant of any other). Competing applications occur in conjunction with the grant of a new license or license renewal when

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1/Based on the responses to our survey, we estimate for all commercial stations that between 37 and 82 television and between 44 and 268 radio stations have entered into at least one agreement with citizen groups. The probability is no greater than 5 percent that the actual number of stations which have entered into agreements is smaller or larger than these estimates.

2/One of the 24 station managers did not respond to our question on why an agreement was negotiated.

two or more applications are submitted for (1) the same local television or FM radio channel or (2) for electronically interfering AM radio facilities. The Commission consolidates competing applications for simultaneous consideration in a single hearing proceeding. It then selects the best qualified applicant by comparing the applicants' character and other qualifications to operate a broadcast station. This comparative process is intended as a competitive spur to promote the best broadcast service for the public.

In 1976 the Commission recommended that the Congress abolish the comparative process for license renewals. In FCC's view, the process has not operated as a competitive spur to broadcasters and has been arbitrary, time consuming, and expensive to administer. As an alternative to the comparative renewal process, the Commission proposed to determine whether the renewal application of an incumbent licensee should be granted before it would consider other applications for the license. In addition to this proposal, FCC commissioners and others have suggested a lottery or auction system as an alternative to the comparative process for granting new licenses and licenses which are made available as a result of revocation or denial of renewal.

Development of comparative licensing policies

A comparative proceeding can occur when (1) a new broadcast license is sought by two or more applicants or (2) an incumbent licensee's renewal application is challenged by one or more applicants. The Commission has implemented a policy on comparative proceedings involving new licenses. However, it has not articulated a clear policy on comparative proceedings involving license renewals.

New licenses

Based on a series of case decisions, the Commission in 1965 adopted a policy for resolving competing applications for the grant of a new broadcast license. This policy sets forth two goals: (1) maximum diffusion of control of the mass communications media and (2) best practicable service to the public. To achieve these goals, the policy specifies six factors for the Commission to consider in comparing competing applicants:

--Diversification of ownership of mass media.

--Participation of owners in station management (i.e., integration of ownership and management).

--Proposed program service (including efforts to ascertain community needs and program proposals for meeting those needs, staffing and equipment plans, other planning elements, and the likelihood of effectuating proposed plans).

--Past broadcast record (including past ownership interest and significant participation in a broadcast station).

--Efficient use of the spectrum (i.e., technical qualifications).

--Character qualifications.

The 1965 policy provides that diversification of mass media ownership is the comparative factor of primary importance and that an applicant's past broadcast record receives consideration only if that record shows unusually good or bad service to public needs and interests. The policy also provides that the Commission will consider any other issues which are substantial and relevant to a particular case.

In addition to the factors identified in the 1965 policy, participation in station ownership and operations by racial minorities has been added as a comparative consideration as a result of a 1973 court ruling. 1/ Since that ruling, the Commission has held that minority ownership and participation is an issue under the comparative factor of ownership and management integration.

License renewals

FCC's efforts to implement a policy on comparative license renewals have been complicated by the appropriate treatment to accord an incumbent licensee's record of service. On one hand, the Communications Act (1) provides that a broadcast license carries no rights beyond its 3-year term and (2) expresses no preference for the incumbent's record of service during that term. Thus, the act appears to place the incumbent seeking license renewal on the same footing as the challenger seeking the license for itself. On the other hand, for reasons of predictability and stability of broadcast operations, the Commission has consistently held that the licensee whose record demonstrates service in the public interest is entitled to renewal.

1/TV 9, Inc. v. Federal Communications Commission, 495 F.2nd 929 (D.C. Cir., 1973).

In line with its position, the Commission in 1970 announced it would determine whether an incumbent's record of service warranted license renewal before it would consider any other applicants for the license. This policy provided that renewal would be granted and competing applications would be dismissed if the incumbent's program service during the past license term were found to have been "substantially attuned" to local interests and needs. If the incumbent met this test (and had no other deficiencies), no comparative hearing would occur. Shortly after announcing its policy, the Commission initiated a public proceeding to determine whether it should adopt quantitative standards on news, public affairs, and locally produced programing which would define "substantial" service. 1/

In 1971, the appeals court invalidated FCC's 1970 policy on the grounds that it abridged section 309(e) of the Communications Act. 2/ The court ruled that this section entitled each competing applicant to a full comparative hearing on its license proposal. While the court recognized that licensees should be judged primarily on the basis of their past service and that the public interest will suffer unless incumbent licensees can reasonably expect renewal, it held that only a record of "superior" performance should be given "a plus of major significance" in a comparative evaluation. So that licensees providing superior service would have a reasonable expectation of renewal, the court urged the Commission to clarify in both quantitative and qualitative terms what constitutes superior performance.

As a result of the appeals court ruling, the Commission has applied to license renewal challenges its 1965 policy on comparative proceedings for new broadcast licenses. However, it rejected the court's notion of superior performance because superior implied some kind of comparative standard which would be self-defeating if broadcasters upgraded their program service. While such upgrading might benefit the public, it would not help the Commission resolve the question

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1/The events of this proceeding are recounted in detail in chapter 3 in conjunction with our discussion of quantitative programing standards.

2/Citizens Communications Center et al. v. Federal Communications Commission, 447 F.2nd 1201 (D.C. Cir., 1971). In its decision, the court cited Ashbacker Radio Corporation v. Federal Communications Commission, 326 U.S. 327 (1945), in which the Supreme Court ruled that the Commission, when faced with two or more competing license applications, must conduct one full comparative hearing on those applications.

of which competing applicant would provide better service. Further, based on its public proceeding, the Commission in 1977 concluded that quantitative programing standards of "substantial" service would not improve the comparative hearing process or provide licensees with any real assurance of renewal because competing applicants would still argue over whether a particular programing quantity is sufficient.

In applying its 1965 policy to license renewal challenges, the Commission has emphasized past broadcast service on the grounds that the incumbent must "run on its record" and is entitled to license renewal if that record shows substantial, meritorious, or superior service to the public. For example, in a 1976 comparative case, license renewal was granted on the basis of a "significant plus" for the incumbent's program service, which the Commission had found to be "sound, favorable and substantially above the level of mediocre service which might just minimally warrant renewal." In September 1978, this decision was overturned by the appeals court and sent back to the Commission for re-evaluation on the grounds that the Commission had given undue preference to the incumbent's past service and insufficient consideration to other comparative issues, particularly the challenger's favorable standing on the issue of diversification of media control. 1/ The court held that an incumbent's expectation of license renewal is confined to a record of superior performance and that all other comparative factors must be considered even when such a record is present.

The Commission believed that the 1978 appeals court ruling would create a great deal of uncertainty for incumbent licensees because their records of service would have to meet the test of superior performance and because licensees with extensive media holdings would be placed at a severe disadvantage under the diversification of control factor. Consequently, the Commission petitioned the court for a rehearing. In January 1979, the appeals court denied FCC's petition but amended its 1978 ruling. 2/ While holding that the Commission must still re-evaluate its decision granting license renewal, the court appears to have backed away from insisting that superior performance is needed to warrant renewal. The court also appears to have reduced the emphasis which its original ruling had placed on diversification of media control and to have provided the Commission with

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1/Central Florida Enterprises, Inc. v. Federal Communications Commission, No. 76-1742 (D.C. Cir., Sept. 25, 1978).

2/Ibid. (Jan. 12, 1979).

flexibility to develop a separate comparative policy for dealing with license renewal challenges.

In November 1976, the Commission recommended to the Congress that the comparative process be eliminated for license renewals because the process has not operated as a competitive spur and application of the comparative factors has been inefficient, time consuming, expensive, arbitrary, subjective, and counterproductive to the development of sound regulatory policy. The Congress has not adopted this recommendation.

Comparative process as a competitive spur

The comparative licensing process is intended as a competitive spur to broadcasters. By providing a mechanism for applicants to compete for new broadcast licenses and challengers to contest license renewals, the Communications Act seeks to motivate broadcasters to furnish the public with the best broadcast service possible.

The process does not appear to have fulfilled its intended function, however. Since 1934 only one incumbent licensee has surrendered its license to a challenger as a result of a comparative renewal proceeding. Moreover, less than 1 percent of the 527 broadcast station managers participating in our questionnaire survey reported that they have ever been faced with a competing license application. Furthermore, most of these station managers apparently do not perceive the comparative process as a competitive spur to their broadcast operations. Between 60 and 66 percent reported that the possibility of a license challenge has little or no influence on either their ascertainment of community problems and needs, program service, or equal employment opportunity practices. Less than 15 percent reported that the possibility of a challenge has a substantial or very large influence on their activities in any of those areas.

Time and expense of comparative hearing proceedings

FCC hearing proceedings involving competing license applicants typically require a substantial amount of time to resolve. During the year ending December 1978, the Broadcast Bureau's Hearing Division handled 72 cases involving new commercial license grants or major changes to station facilities. Thirty-six of those cases were noncomparative and 36 were comparative, i.e., the license applicant was challenged by one or more additional applicants. In 1978 the division spent an average of 37 staff days on each of the noncomparative cases. In contrast, an average of 169 staff days were spent on each of the comparative cases.

In June 1976, the Commission rendered a decision on a comparative case involving license renewal which had been outstanding since 1971. In June 1978, it rendered a decision on another comparative renewal case which had been outstanding for more than 9 years. In an extraordinary comparative case dating back to 1953 and still pending resolution, the Commission granted the license to the same party four times and had each of its decisions sent back by the court of appeals for further proceedings.

Comparative hearing proceedings are expensive as well as time consuming. For example, in one proceeding which lasted 5 years, the incumbent licensee and challenger reportedly spent a total of $3.5 million.

Application of comparative factors to license renewal challenges

Because its 1965 policy was originally intended for resolving competing applications for new broadcast licenses, the Commission has had problems applying the comparative factors to license renewal challenges. For example, because a challenger does not have a broadcast record comparable to the incumbent's, the Commission has found that programing comparisons are not meaningful. Competing applicants have ended up arguing over who would provide the greater amount of future public service programing, a circumstance which has encouraged inflated programing proposals.

The Commission also has found that there generally are no substantial differences between applicants' character and technical qualifications and that the comparative factor of station ownership and management integration is not necessarily complementary with the factor of diversification of media control. The integration factor assumes that the local owner-manager will be more responsive to his community than the absentee owner. However, the Commission has observed that, while a station manager could be pressured by an absentee owner to maximize profits by offering programs unresponsive to community problems, the local owner-manager whose investment is substantial also might be motivated to ignore locally oriented programing for the sake of greater profits. Furthermore, an absentee owner with extensive media holdings has financial resources which could allow its station managers greater room to experiment with innovative local programing.

It also has been noted that the challenger in a renewal proceeding typically has little or no media holdings while the incumbent, as an established operator, may have accumulated extensive media properties. Consequently, the challenger gains an immediate advantage under the ownership diversification factor even though the incumbent has fully complied with FCC ownership limitation rules.

Because of these problems, the Commission has modified its 1965 comparative policy in deciding individual comparative renewal cases. For example, in a 1976 case it discounted the importance of the diversification factor by stating that comprehensive ownership policies, rather than individual comparative renewal decisions, are a more appropriate means for promoting diversification of media control. In addition, the Commission has emphasized past broadcast record, although this factor is assigned secondary consideration by its 1965 policy. Since there are no fixed standards defining substantial service, this action provided considerable leeway for justifying license renewal. Thus, for example, in the 1976 case renewal was granted on the basis of a record "substantially above the level of mediocre," even though the incumbent was outmatched by its challenger on diversification of media control and other comparative issues. By these actions, the Commission in effect has provided incumbent licensees with the expectancy of renewal that it could not provide with its invalidated 1970 policy.

While the emphasis placed on past broadcast service appears to have saved the day for incumbent licensees that otherwise were outmatched by their challengers, FCC commissioners have differed substantially in their interpretations of this and other individual comparative factors. In appendix VI, we summarize a June 1978 comparative decision in which the Commission, by a 4-to-3 vote, granted the incumbent's renewal application and denied the challenger's competing application. As that case illustrates, different commissioners giving different interpretations to the same factors have reached disparate conclusions in their comparative evaluations. For example, while the majority of the commissioners found the incumbent's record of program service to be substantial and deserving of a plus of major significance, the minority found that record to be only on the borderline of mediocre to average and deserving of a substantial demerit.

Alternatives to the comparative licensing process

Some critics of broadcast regulation contend that the comparative licensing process would be more effective if the Commission set specific standards by which to evaluate competing applicants. For example, one critic has proposed an evaluation system based on fixed points awarded to each applicant under each comparative factor ranked according to its importance. The National Telecommunications and Information Administration, Department of Commerce, has proposed that the Commission develop a comparative renewal policy based clearly on the incumbent licensee's record of service. This proposal provides that the Commission should establish quantitative standards for informational and local programing which define "meritorious" service and that a comparative hearing should occur only in the event that the incumbent has not met those standards.

Other critics, including some FCC commissioners, doubt that the comparative process is workable. For example, a former commissioner stated in 1976 that:

> "In the final analysis, I must conclude that there really is no sensible basis by which applicants who are similarly qualified can be compared--and this is particularly true where the comparison called for is between a renewal applicant and a challenger with no past record of broadcast service. The process inevitably leads to complex hearings which drag on for years at great expense to all concerned. And, ultimately, we are left with a decision which, at its best, can only rest on administrative hunch or intuition. In my opinion, this process simply does not serve the public interest."

In its 1976 recommendation that the Congress eliminate comparative renewal hearings, the Commission proposed to rely on its regular license renewal process and petitions from the public to identify and remove broadcasters which do not operate in the public interest. Under this proposal, competing applications would be considered only if the Commission has denied the incumbent licensee's renewal application. In the event renewal is denied (and assuming the comparative process is retained for new license grants), the Commission would select the new licensee from competing applicants according to the criteria set forth in its 1965 policy. As an alternative to the 1965 policy, the Commission could implement a lottery or auction system of licensee selection.

A lottery or auction system could be used to grant (1) new broadcast licenses and (2) licenses which broadcasters surrender as a result of an FCC decision to revoke their licenses or deny their renewal applications. Under a lottery, the license would be granted to the applicant selected by random procedure from a pool of qualified applicants. Under an auction, the license would be granted to the qualified applicant offering the highest bid price. 1/ Under either system, applicants would have to meet basic qualifications for operating a broadcast station.

Some broadcasters have opposed a lottery or auction system as a replacement for the comparative process because it would not assure selection of the "best" qualified applicant. On the other hand, a lottery or auction was cited as early as 1962 in a study of FCC's licensing process as an alternative means of resolving competing applications 2/ and has been endorsed by at least two former FCC commissioners as less time consuming and arbitrary. Speaking in support of a lottery, one commissioner stated:

> "* * * if a government agency is required to make an essentially arbitrary choice, it is important that the arbitrariness equates to randomness rather than personal whim. The wheel of fortune--a lottery--is much to be preferred to that different class of arbitrary criteria, the capricious preferences of bureaucrats * * *"

How much time and expense a lottery or auction system would save is uncertain. Under section 308(b) of the Communications Act, the Commission must consider an applicant's citizenship, character, and financial and technical qualifications to operate a broadcast station. In addition, the Commission has set certain requirements (e.g., compliance with ownership limitation rules) which applicants must meet. Thus, some screening process would be needed to assure that applicants seeking to participate in a lottery or auction meet basic

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1/In our discussion of the value of a broadcast license (see chp. 8), we point out that an auction (unlike a lottery) would provide a measure of spectrum value. We also point out that an auction system has been criticized on several grounds. For example, it is contended that only wealthy persons could afford to participate. Apart from these criticisms, an auction like a lottery represents a means for granting licenses which is divorced of comparative evaluations by the Commission. For this reason, we have included auction with lottery as an alternative to the comparative licensing process without introducing each of the criticisms discussed in chapter 8.

2/Jones, William D., "Licensing of Major Broadcast Facilities by the Federal Communications Commission," "Administrative Conference of the United States Committee on Licenses and Authorizations," September 1962, pp. 205, and 205a.

qualifications of license stewardship. According to an official of the Broadcast Bureau's Hearing Division, processing time may not be reduced if applicants were permitted to establish their qualifications in a hearing proceeding. On the other hand, the official stated that processing time could be reduced substantially if FCC staff simply screened the applicants for their qualifications. In either event, the official believes that a lottery or auction system would be less costly than comparative licensing proceedings and could result in an increased number of competing applicants.

CONCLUSIONS

Based on the provisions of the Communications Act of 1934 and judicial interpretations of that statute, there are three basic requirements which the broadcast licensing process should meet to be effective in serving the public interest. Those requirements are:

(1) Systematic evaluation of licensee performance. This requirement is necessary to assure compliance with the Communications Act and FCC regulations on a continuing basis.

(2) Opportunity for participation in licensing proceedings by members of the public who represent the interests and concerns of station audiences. This requirement is necessary to assure that broadcasters perform in the public interest and provide service responsive to the needs and interests of their audiences.

(3) Reasonable expectation of license retention for broadcasters which comply with regulatory policies and rules. This requirement is necessary to assure that the public interest does not suffer from broadcast services lacking operational stability and predictability.

We believe that the broadcast licensing process could be made more effective in meeting the basic requirements of systematic evaluation, public participation in licensing proceedings, and broadcaster expectation of license retention if

--the broadcast license term were made indefinite,

--the Commission implemented a review system based on random selection and field audit of broadcast stations,

--members of the public were authorized to petition at any time for license revocation,

--the burdens of evidence and proof were placed on the licensee in a revocation proceeding unless the Commission assigns the burdens to another party in the proceeding, and

--the comparative licensing process were eliminated and a lottery or auction system for granting new or revoked broadcast licenses was authorized.

The indefinite license term

We see no reason to limit the term of a broadcast license to 3 years or any other term of fixed duration. The principal rationale for the fixed term is to prevent licensees from obtaining a vested interest or property right in their assigned frequencies. However, this rationale does not square with reality because the risk of license revocation or nonrenewal has been small and a licensee can realize a large financial gain by selling its station and transferring its license to a party it chooses. Thus, as a practical matter, the typical licensee has been able to maintain a vested interest in its assigned frequency for an extended period of time by complying with the Communications Act and FCC regulations, or has been able to realize the benefits of a property right by selling its station at a price which includes substantial compensation for license value. Furthermore, FCC review of each licensee's renewal application in the context of a fixed license term is not necessary to ensure continuing compliance with the act and FCC regulations.

Under an indefinite license term, the Commission could ensure licensee compliance with regulatory policies and rules by selecting on a random basis and examining each year a certain number of stations. This approach offers several advantages over current review procedures. First, stations would be motivated to comply with the act and FCC regulations on a continuing basis because they would not know when they would be selected for examination. Second, random selection could reduce the number of annual FCC reviews yet provide assurance that the findings are statistically representative of all commercial broadcast stations. These findings could then be used to focus FCC resources on particular problem areas or, for those areas with high rates of compliance, to reduce the scope of the review effort. Third, by using audit teams to conduct examinations in the field, the Commission would not be limited to headquarters review of license renewal applications. Finally, because the audit findings would be developed in the field and could result in narrowing the scope of the audit effort, the Commission might be able to reduce the amount of information licensees now are required to submit to FCC headquarters.

An indefinite license term would eliminate the administrative sanctions of license renewal denial, short-term renewal, and conditional renewal. However, the Commission need not be limited to fines and license revocations to enforce its policies and rules. The Communications Act authorizes the grant of a license for less than 3 years if the public interest requires. A similar provision included in the authority to grant licenses for an indefinite period would enable the Commission to place on probation stations which have not complied with regulatory policies and rules. This probationary license period would be analogous to the use of short-term or conditional license renewals.

Public participation in licensing proceedings

The 1966 appeals court ruling extending standing to responsible representatives of station audiences made it clear that public participation in licensing proceedings is important for ensuring responsive program service. There are two basic issues regarding this participation. First, how can it be maintained in the context of an indefinite license term? Second, is there a need to place additional restrictions on the use of citizen-broadcaster agreements?

As a result of the appeals court ruling, public participation has been facilitated by the petition to deny license grants, including grants of license renewal. An indefinite license term would eliminate petitions to deny and FCC renewal proceedings. The important point, however, is not that the right to petition has been linked to license renewal, but that it gives members of the public a tool for assuring responsive service by their local stations. This tool would be made available under an indefinite license term if the public were authorized to petition at any time for license revocation. The Communications Act now provides that the licensee in a renewal proceeding must bear the burdens of evidence and proof unless the Commission assigns the burdens to another party in interest. To assure continued public participation in the context of an indefinite license term, we believe that this provision should be applied to license revocation proceedings, regardless of whether a proceeding results from a petition for revocation or an FCC field audit.

Citizen-broadcaster agreements are likely to continue to occur under an indefinite license term because licensees will seek to avoid the time and expense of a petition and possible revocation proceeding. We recognize that agreements carry the potential for abuse since their provisions can have a direct influence on the broadcaster's programing decisions and other operations. We do not believe, however, that restrictions beyond those imposed by FCC's 1975 agreements policy are warranted. The frequency of citizen-broadcaster agreements has been relatively low. Moreover, the potential for abuse could be eliminated only if the public were denied the right to petition.

The comparative licensing process

An indefinite license term would eliminate comparative proceedings for license renewal challenges. The broadcaster which has its license revoked would be finished and, unless the Communications Act were further amended, the new licensee would be selected under the factors set forth in FCC's 1965 comparative policy. We believe that comparative renewal proceedings should be eliminated and that a lottery or auction system should be used for granting new (and revoked) licenses.

The comparative renewal process has not worked as a competitive spur. Only one incumbent licensee has ever been replaced by a challenger, very few commercial stations have ever been faced with a competing license application, and the majority of station managers do not view the possibility of a license renewal challenge as a spur to their broadcast operations. Furthermore, the comparative renewal process has been time consuming and expensive to administer and arbitrary and subjective in its results. In our view, the process can be truly competitive only if one assumes that (1) the licensee which has complied with regulatory policies and rules is not entitled to license renewal and (2) the Commission can weigh a certainty--the incumbent's actual record of service--against a promise--the challenger's proposed service--and conclude that the challenger would better serve the public. Neither of these assumptions is realistic. The first one is contrary to the longstanding position of the Commission and the courts that the licensee which has operated in good faith is entitled to license renewal. Even the appeals court, in overturning FCC comparative renewal actions, has recognized that the public interest will suffer unless incumbent licensees can reasonably expect renewal. The second assumption is not tenable because only the incumbent has a record of service regarding the audience to which the license gives access. Consequently, the factor of past broadcast record has lacked true comparability and the Commission has not found it realistic to favor the challenger's promises over the incumbent's record.

We believe that a lottery or auction system of licensee selection would offer greater speed and economy and less subjectivity than the current comparative process for granting new broadcast licenses. It is arguable that the major shortcomings of comparative renewal proceedings are not present in comparative proceedings for new licenses. Because no incumbent licensee is involved, there is no uncertainty regarding license retention. Because past broadcast record is a factor only if it shows unusual program service, there is less of a problem with lack of comparability. Nevertheless, comparative evaluations of new license applicants still entail subjective and arbitrary decisions arrived at in the context of prolonged and expensive hearing proceedings.

We have no particular preference for the lottery or auction as a replacement for the comparative process. Because a lottery does not involve bid prices, it may result in a greater number of competing applicants. On the other hand, as discussed in chapter 8, auctioning is one way for measuring license value and charging for use of the broadcast spectrum.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress amend the Communications Act of 1934 to

--authorize the Commission to grant broadcast licenses for an indefinite period providing that, if the public interest requires, a licensee can, at any time, be placed on probation for a fixed period as determined by the Commission.

--direct the Commission to implement a system of random selection and field-based review of broadcast stations to ensure compliance with the act and Commission rules and regulations on a continuing basis;

--authorize any party in interest to file with the Commission at any time a petition for revocation of a broadcast license;

--place the burdens of evidence and proof on the licensee in a revocation proceeding unless the Commission assigns those burdens to another party in interest;

--eliminate the requirement for the Commission to provide competing license applicants with an opportunity for a full comparative hearing; and

--authorize the implementation of a lottery or auction system for granting new broadcast licenses and licenses which have been revoked.

CHAPTER 3

REGULATION OF PROGRAM SERVICE

The Commission has implemented certain policies and rules which are intended to assure that the public receives balanced and responsive program service. These policies and rules have been controversial. On one hand, public interest advocates claim that programing regulation would be more effective if the Commission

--established quantitative standards for station programing,

--used station expenditures on programing as a basis for a standard of program service, and

--authorized routine public disclosure of broadcaster financial reports.

On the other hand, broadcasters claim that quantitative programing standards would interfere with their programing discretion and that routine financial disclosure would harm their competitive position. Furthermore, some broadcast critics believe that market competition can assume balanced and responsive service to the public without FCC programing regulation.

We believe that quantitative programing standards would provide public benefits and the Commission should adopt them. We also believe that the Commission should evaluate by public proceeding the arguments for and against routine financial disclosure. In addition, we support FCC's recent initiative on experimental deregulation of radio programing and believe that the Congress should provide legislative authorization as needed for the Commission to carry out an experiment.

PRINCIPLES OF PROGRAMING REGULATION

Because the first amendment and the censorship provision of the Communications Act of 1934 limit interference with the broadcaster's journalistic judgment, the Commission traditionally has avoided narrow interpretations of what is good or bad programing. Rather than prescribing program content, it (and its predecessor, the Federal Radio Commission) has set forth certain broad principles of programing regulation. These principles include a balanced program schedule and presentation of material in general categories, such as news and public affairs, which the Commission believes are important to service in the public interest. Each broadcast station is expected to respond to local problems, needs, and interests by providing some programing within these general categories, but is accorded wide discretion in its program selection and presentation.

In 1929 the Federal Radio Commission held that broadcasters were expected to provide a balanced program schedule and identified a number of general program categories which it believed should be included in the broadcast service of each station:

> "The tastes, needs, and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program schedule, in which entertainment, * * * religion, education and instruction, important public events, discussions of public questions, weather, market reports, and news, and matters of interest to all members of the family find a place."

In listing these categories, the Radio Commission did not "propose to erect a rigid schedule specifying the hours or minutes that may be devoted to one kind of program or another." Its purpose was only to emphasize the general character of programing to which licensees must conform to fulfill their public service responsibility.

Since succeeding the Radio Commission in 1934, the Federal Communications Commission has held that programing is the essence of service in the public interest and has reemphasized the importance of a "well-balanced program schedule." In its 1960 Programming Policy Statement, the Commission listed 14 major elements which it believes usually are necessary for the broadcaster to meet the public interest, needs, and desires of its community. These 14 elements are (1) opportunity for local self-expression, (2) development and use of local talent, (3) programs for children, (4) religious programs, (5) educational programs, (6) public affairs programs, (7) editorializing, (8) political broadcasts, (9) agricultural programs, (10) news programs, (11) weather and market reports, (12) sports programs, (13) service to minority groups, and (14) entertainment.

The Commission stated that its list is "neither all embracing nor constant" and is not "intended as a rigid mold or fixed formula for station operation." Furthermore, while it held that each broadcaster is expected to provide programing that serves the varied needs and interests of its community, the Commission stated that the ultimate decision on program presentation is left to the broadcaster's judgment.

MINIMUM PERCENTAGE PROGRAMING GUIDELINES

Although the Commission does not require the broadcaster to devote a certain amount of time to a specific type of program, it has adopted minimum percentage guidelines for screening nonentertainment and local programing proposals included in commercial broadcast license applications. These guidelines are not hard and fast programing standards which each station must meet to keep its license. Rather they are procedural guidelines for identifying and focusing FCC attention on stations which do not appear to be providing program service responsive to community needs.

The minimum percentage guidelines were first adopted in 1973 and subsequently revised in 1976. For television, the current guidelines are 5 percent of informational, 10 percent of total nonentertainment, and 5 percent of local programing between the hours 6 a.m. to midnight. The programing proposals of UHF-independent stations are exempt from these guidelines. For AM radio, the guideline is 8 percent of total nonentertainment programing and for FM radio, 6 percent of total nonentertainment programing. Table 1 gives the FCC definitions which broadcasters use to classify their program matter and shows the program categories to which the Commission applies its guidelines.

According to a Broadcast Bureau official, virtually all license applicants propose programing percentages above the guideline levels or provide the Commission with adequate reasons for not doing so. Applicants have been excused, for example, because of weak financial condition. If an applicant has not met the guidelines and does not provide adequate reasons, the chief of the Broadcast Bureau refers the application to the FCC commissioners for evaluation and disposition. Based on their evaluation, the commissioners may grant the license application, seek additional information from the applicant, or, if important questions remain unresolved, order an evidentiary hearing to determine whether a grant of the application would serve the public interest. At the time of our review, there was only one instance in which an FCC hearing order had been triggered by a licensee's failure to propose a programing percentage above the applicable guideline.

Our analysis of programing proposals filed by 843 license renewal applicants showed that the great majority of television and radio stations have exceeded the FCC guidelines. We also found, however, that the current exemption granted to UHF-independent television stations no longer appears warranted. In addition, as a result of the single

Table 1
Current FCC Program Definitions and Minimum Percentage Guidelines

Program category and definition	Type of commercial broadcast station and minimum percentage guideline		
	Television (Note a)	AM radio	FM radio
"News programs" includes reports dealing with the current local, national and international events, including weather and stock market reports; and commentary, analysis, or sports news when it is an integral part of a news program.	--	--	--
"Public affairs programs" are programs dealing with local, state, regional, national, or international issues or problems, including but not limited to talks, commentaries, discussions, editorials, speeches, political programs, documentaries, mini-documentaries, panels, roundtables and vignettes, and extended news coverage (whether live or recorded) of public events or proceedings, such as local council meetings, congressional hearings, etc.	--	--	--
"Informational" programing is comprised of news and public affairs programs, as defined above.	5% of oper. time, 6 a.m. to midnight	--	--
"Other nonentertainment programs" includes all other programs which are not intended primarily as entertainment (e.g., music, drama, variety, comedy, quiz, etc.) and do not include play-by-play and pre- or post-game related activities of sports events and separate programs of sports instruction, news, or information (e.g., fishing opportunities, golfing instructions, etc.). This category gives recognition to program types which FCC historically has cited as important to service in the public interest (e.g., agricultural, religious, educational).			
"Total nonentertainment" programing is comprised of news, public affairs, and other nonentertainment programs, as defined above.	10% of oper. time, 6 a.m. to midnight	8% of total oper. time	6% of total oper. time
A "local program" is any nonentertainment, entertainment, sports, or other program originated or produced by the station, or for the production of which the station is substantially responsible. Such a program, taped, recorded, or filmed for later broadcast, is classified by the originating station as local. Programs primarily featuring syndicated or feature films, or other non-locally recorded programs, are not classified as local.	5% of oper. time, 6 a.m. to midnight	--	--

a/Guidelines do not apply to UHF-independent stations.

case in which the Commission ordered an evidentiary hearing, the broadcast industry has questioned the purpose and application of the minimum guidelines. Because the guidelines are intended only for screening purposes, the Commission had adopted them by administrative rule and not by public rulemaking. In the industry's view, FCC's order of a hearing for failure to meet the guidelines constitutes implementation of a regulatory policy that has not been clearly defined.

Television and radio programing proposals

Table 2 summarizes the percentages of operating time which a sample of 226 commercial television stations proposed to devote to informational (news plus public affairs), other nonentertainment, total nonentertainment, and total local (i.e., locally produced) programing during the 6 a.m.-to-midnight broadcast period. 1/ For each program category, the table shows the percentage of stations with proposed programing within a certain percentage interval. For example, 70.4 percent of the stations proposed informational programs representing between 10.0 and 19.9 percent of their operating time. The table also gives the mean and median programing percentages. The mean is the arithmetic average of the individual station percentages. The median is the value above which half of the stations proposed a greater percentage of programing and the other half proposed a lesser percentage.

1/Table 2 is based on programing data included in license renewal applications filed for the period December 1974-October 1977 by a randomly selected sample of 226 commercial television stations.

Table 2
Percentages of Informational, Other Nonentertainment,
Total Nonentertainment and Local Programing Proposed by
Commercial Television License Renewal Applicants
December 1974 - October 1977

The percent of operating time from 6 a.m. to midnight	Percent of 226 sample stations: Nonentertainment programs: Informational (news plus public affairs)	Other	Total	Local only	Total local programs (Note a)
4.9 or less	3.1	24.3	-	20.4	18.1
5.0 - 9.9	23.5	52.2	3.1	54.9	47.8
10.0 - 19.9	70.4	20.4	50.4	21.2	28.3
20.0 - 29.9	0.4	0.9	41.6	0.9	2.2
30.0 or more	1.3	0.9	3.5	1.3	2.2
Data not available	1.3	1.3	1.3	1.3	1.3
Total (note b)	100.0	100.0	100.0	100.0	100.0
Mean (% oper. time)	12.4	7.7	19.6	8.3	9.4
Median (% oper. time)	12.4	6.9	19.6	7.6	8.1

a/Includes nonentertainment, entertainment, and sports programs.

b/Percentages may not total 100 due to rounding.

Only 3.1 percent of the television stations proposed informational programing below the 5-percent guideline and only 3.1 percent proposed total nonentertainment programing below the 10-percent guideline. If UHF-independent stations (which are exempt from the guidelines) are excluded from the data in table 2, the percentage of stations which proposed less than 5-percent informational programing is reduced to 1.4 percent and the percentage which proposed less than 10-percent total nonentertainment programing is reduced to 1.9 percent.

A comparatively large 18.1 percent of the television stations proposed total local programing which was below the minimum of 5 percent. However, the majority of the proposals included in our sample were filed before the local programing guideline became effective in October 1976, and it is likely that a greater proportion of stations will exceed the 5-percent figure in the future. At one time, the Commission had an informal rule under which the application of a licensee proposing less than 5-percent total nonentertainment programing was referred to the FCC commissioners. According to a former commissioner, broadcasters gradually increased their programing percentages in response to this rule. 1/

Programing percentages for samples of 300 AM and 317 FM commercial radio stations are shown in table 3. 2/ None of the AM stations proposed nonentertainment programing below the minimum guideline of 8 percent and only 6 percent of the FM stations proposed nonentertainment programing below the guideline of 6 percent.

Exemption of UHF-independent stations

UHF-independent television stations are exempt from the minimum percentage guidelines because they generally were not profitable. Based on its analysis of 1974 financial data, the Commission found that only 29 percent of UHF-independent stations were profitable compared with 55 to 87 percent of VHF-independent, UHF-affiliated, and VHF-affiliated stations.

Our analysis of 1976 financial data found that nearly 64 percent of UHF-independent stations were profitable in 1976. This percentage exceeds the low of 55 percent for non-exempt stations in 1974 and is well above the 29 percent of profitable UHF independents in 1974. Furthermore, the 64-percent figure is almost as large as the 68 percent of UHF-affiliated stations that were profitible in 1976.

Industry reaction to FCC use of minimum guidelines

In its renewal application for the 1976-79 license term, the licensee of an FM radio station with a "Beautiful Music" format proposed a total of 2.9 percent nonentertainment programing, a figure well below the 6-percent minimum guideline for FM stations. Before it referred the license renewal application to the FCC commissioners for disposition, the Broadcast Bureau requested the licensee to explain fully why it believed that its proposed programing would effectively serve community needs. The Bureau did not say that the commissioners might order a hearing on the renewal application, but did state that the licensee could amend its application if it so desired.

1/Although it was generally known by broadcasters, the 5-percent rule of thumb was not included in FCC regulations.

2/Table 3 is based on programing data included in license renewal applications filed for the period August 1974-June 1977 by randomly selected samples of 300 commercial AM and 317 commercial FM radio stations.

Table 3

Total Nonentertainment Programing Proposed By Commercial Radio Stations

August 1974 - June 1977

Percent of total operating time	Percent of 300 sample AM radio stations (Note a)	Percent of 317 sample FM radio stations (Note a)
5.9 or less	-	6.0
6.0 - 7.9	-	6.6
8.0 - 9.9	2.3	9.1
10.0 - 14.9	11.3	17.0
15.0 - 19.9	23.7	12.9
20.0 - 24.9	21.7	11.0
25.0 - 49.9	33.3	9.8
50.0 - more	3.0	2.2
Data not available	4.7	25.2
Total (see note b)	100.0	100.0
Mean (% oper. time)	24.3	16.8
Median (% oper. time)	22.4	13.4

a/Includes news, public affairs, and other nonentertainment programs.

b/Percentages may not total 100 due to rounding.

In response to the Broadcast Bureau letter, the licensee asserted that it served the public interest through locally produced "meaningful and quality" public affairs programing and that its station has received widespread acclaim and praise from community leaders and the general public. Furthermore, because numerous other stations were serving the same market, the licensee considered it "highly unlikely" that changing its program schedule would better contribute to the community needs or the diversity of available broadcast matter. For these reasons, the licensee held that the Commission should be more concerned with the quality than the quantity of the station's nonentertainment programing and that the "magic" 6-percent figure should not be imposed arbitrarily on a station which has satisfied the community at large. The licensee did not elect to amend its renewal application to increase its programing proposal.

The Broadcast Bureau referred the renewal application and licensee comments to the FCC commissioners. The commissioners found the comments on program service to be unpersuasive and directed the Bureau to seek further explanation. In its second letter of inquiry to the licensee, the Bureau stated:

> "The Commission does not feel that an adequate justification has been made to support the contention that an increased percentage of non-entertainment programming would so substantially change your format that it would no longer be specialized or effective. Nor does the Commission feel that the diversity of the service area would be altered so much as to be detrimental to the licensee or to the public * * * In addition, the Commission recognizes the favorable public acceptance of your programming format, but high audience ratings do not indicate whether your ascertained needs and problems are being met with your current non-entertainment programming proposal. In addition, each station has an independent obligation to serve the problems and needs of its service area. Therefore, your public interest requirements cannot be met through non-entertainment programming offered by another station, even if your station is one of many stations in the service area."

The Bureau again requested the licensee to review its nonentertainment programing proposal and explain how the station will meet community needs. The Bureau did not state that an inadequate explanation might result in an evidentiary hearing.

In response to the Broadcast Bureau's second inquiry, the licensee asserted that "there is absolutely no basis for [the station] to be forced into altering its present programming schedule to meet an arbitrary 'minimum' percentage figure imposed by the Commission" and that such action "is contrary to the Communications Act of 1934 * * * and sound regulatory practices."

The FCC commissioners found the licensee's second response no more illuminating than its first one regarding how community needs would be served. Consequently, they proceeded to evaluate the programing information available from the station's renewal application. This evaluation showed that the station had provided nonentertainment programing totaling 4.1 percent of its broadcast time during the 1973-76 license term and that a public affairs program which the station had proposed in 1973 for broadcast on Saturdays and Sundays from 7:30 a.m. to 8:30 a.m. had actually been aired between 4:30 a.m. and 6:00 a.m. The station also reported as public affairs two 5-minute programs aired weekdays at 8:25 a.m. and 6:25 p.m., but the commissioners could not determine whether the content of those programs could reasonably be classified as public affairs material. Because of the hour at which the station had broadcast its weekend public affairs program, the uncertain content of the material it reported as public affairs, the very limited amount of past and proposed nonentertainment programing, and the licensee's reluctance to provide further explanation, the commissioners were unable to determine whether the station had been responsive to community needs in the past license term or would be responsive in the forthcoming term. As a result, in March 1978 an evidentiary hearing was ordered to determine whether

--the station's nonentertainment programing during the 1973-76 license term was reasonably responsive to ascertained problems, needs, and interests;

--its proposed programing for the 1976-79 license term is adequate to meet ascertained problems, needs, and interests; and,

--a grant of the license renewal application would serve the public interest, convenience, and necessity in light of the evidence adduced under the preceding issues.

One week after the Commission ordered a hearing, the licensee amended its renewal application to increase its proposed nonentertainment programing from 2.9 to 6.2 percent. In addition, it petitioned the Commission to reconsider the hearing order. The licensee did not challenge FCC's authority to designate programing issues for a hearing, but claimed that the Commission had acted arbitrarily and failed to clearly state its renewal standards. The licensee contended that:

> "Without sufficient predictability of agency standards, the uncertain state of the law and Commission policy would be tantamount to placing unseen 'land mines' in the paths of licensees to be triggered selectively or by mere whim instead of recognized administrative standards applied on an even-handed basis * * * The fact is, however, that the Commission's action had deprived all licensees * * * of the clear predictability of reasonably fixed and certain standards which is the key foundation of the administrative process."

The licensee noted that neither the Broadcast Bureau letters of inquiry nor the FCC rule on referral of renewal applications to the commissioners expressly state that a programing proposal below the percentage guidelines might result in an evidentiary hearing. It asserted that it should have received some specific notice that its proposed percentage was inadequate and that, had it been so notified, it almost certainly would have amended its application to avoid the "dire prospect" of an FCC hearing. In the licensee's view, FCC's action means that the minimum percentage guidelines are not merely part of a procedural rule, but in effect are substantive programing standards.

In written comments supporting the licensee's petition for reconsideration, the National Association of Broadcasters claimed that FCC's action raises the basic policy question of whether all broadcasters must now follow the practice of meeting FCC-prescribed programing percentages or run the risk of an evidentiary hearing. In NAB's view, the hearing order can be construed to betoken a new era of programing control and raises the distinct prospect of the Commission applying substantive programing standards to future license renewal applicants. For these reasons, NAB urged the Commission to reconsider its hearing order and to initiate a public inquiry to evaluate its use of percentage programing guidelines.

In comments opposing the licensee's petition for reconsideration, the Broadcast Bureau asserted that the guidelines had not been transformed from a procedural rule into a substantive standard. The Bureau pointed out that other stations with below-minimum programing percentages had been granted license renewals after they had provided adequate explanation for their proposals. Furthermore, the Bureau noted that the licensee had ample opportunity to amend its renewal application and that the hearing order resulted from reasons other than only the low percentage of proposed nonentertainment programing. In addition, the Bureau asserted that the licensee should have concluded from the FCC letters of inquiry that an inadequate explanation of its programing proposal might lead to a hearing. According to the Bureau, any other conclusion would have to be based on the assumption that FCC correspondence involves an "exaltation of form over substance." 1/

BENEFITS AND LIMITATIONS OF QUANTITATIVE PROGRAMING STANDARDS

The minimum percentage guidelines the Commission uses in screening programing proposals are not standards of service to which members of the public can hold their local stations. According to public interest groups, the Commission should establish quantitative programing standards so that (1) the public is furnished criteria by which to evaluate station program service and (2) broadcasters as well as the public are provided greater certainty in licensing proceedings.

Based on the responses to our questionnaire survey, the large majority of broadcast station managers do not believe that the Commission should establish quantitative programing standards. In FCC rulemaking proceedings, broadcasters have claimed that such standards would constitute unwarranted interference with their programing discretion and could not be applied on an equitable basis.

The Commission has held that it has the authority to set quantitative standards for general program categories and has stated that standards could provide broadcasters and the public with guidance on what constitutes responsive program service. However, it has declined to adopt quantitative standards on the grounds that they (1) would not facilitate selection of the best qualified applicant among those competing for a license grant, (2) could not account for program quality, and (3) might result in some stations reducing the quality and value of their programing.

The need for quantitative standards

Among the 527 television and radio station managers participating in our questionnaire survey, 72 percent

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1/In a summary decision released in October 1978, the presiding FCC administrative law judge granted the licensee a short-term, 1-year renewal.

reported that they do not favor quantitative standards for news, public affairs, or other nonentertainment and locally produced programing. Furthermore, 67 percent do not believe that their stations' service in the public interest should be evaluated only on the basis of program quantities.

On the other hand, public interest group spokesmen told us that quantitative standards are needed to reduce ambiguity in evaluating broadcaster service. One spokesman asserted that, in the absence of standards, broadcasters can rationalize to the Commission almost any programing effort as serving the public interest. According to another spokesman, the Commission frequently has not articulated the criteria it has applied or will apply in evaluating programing performance. As a result, this spokesman believes that the public is left uncertain about what it can rightfully expect from broadcasters and broadcasters are left uncertain about what standards the Commission will apply in assessing their service.

To reduce this uncertainty, a public interest organization has proposed that the Commission set standards for determining whether a broadcaster has rendered substantial informational program service to its area of license and acted in a meaningful way as a local outlet for expression of diverse views on issues of public importance. As part of the standards, the Commission would establish by rule the amounts of time to be devoted to news, public affairs, other nonentertainment, and locally originated programing. According to the organization, this proposal is intended to protect those broadcasters which are doing a good job in serving the public and expose those broadcasters which are not. Therefore, the proposal provides that the Commission would assume that the station meeting the standards has fulfilled its informational and local programing obligation unless that assumption is overcome by a complainant who raises a substantial and material question of fact regarding the station's programing effort.

It can be difficult in the absence of fixed evaluation criteria to discern the basis for an FCC conclusion that a particular station has provided responsive program service. In chapter 2, in conjunction with our discussion of the comparative licensing process, 1/ we reported on a 1978 decision

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1/The comparative licensing process occurs when the Commission is faced with competing license applications and must select the best qualified applicant by comparing the applicants' character qualifications, broadcast records, and other factors. (See ch. 2.)

in which four FCC commissioners concluded that the incumbent licensee's record of program service was substantial and worthy of a plus of major significance in a comparative evaluation. In contrast, the other three commissioners, based on the same information, concluded that the incumbent's record was only on the borderline of mediocre to average and deserved a substantial demerit. We also reported on a 1976 comparative decision in which the Commission granted the incumbent licensee's renewal application on the grounds that its program service was "substantially above the level of mediocre." In our view this sort of justification simply begs the question of what constitutes substantial or mediocre service.

In 1971 the Commission initiated two separate public proceedings which included proposals on the use of quantitative programing data to evaluate program service. One proceeding was undertaken to improve the comparative hearing process and the other was undertaken to simplify the license renewal process. As discussed below, neither proceeding resulted in adoption of quantitative programing standards. However, both provided insight into potential applications of such standards.

<u>Quantitative standards of substantial program service</u>

As part of its proceeding on the comparative hearing process, the Commission proposed quantitative standards of substantial service by which the past performance of a license renewal applicant could be evaluated. The Commission did not attempt to establish standards for every program category cited in its 1960 Programming Policy Statement (i.e., agricultural, religious, etc.), but focused on (1) news and public affairs because of the contribution broadcasting could make to an informed electorate and (2) local (i.e., locally originated) programs because the congressional design of television allocations is based on local outlets.

Based on an analysis of television programing data, the Commission proposed the following figures as standards of "substantial" service by a network-affiliated or VHF-independent television station. 1/

1/The Commission did not include radio in its proceeding because it elected to focus initially on television. In addition, the Commission believed that unprofitable stations should be exempt from quantitative standards. For this reason, it excluded UHF-independent stations from its proposal and stated that, if the proposal were adopted, other stations could be excused because of weak financial condition.

(1) For news programing, a range of 8 to 10 percent of the broadcast effort for a network affiliate and 5 percent of the broadcast effort for an independent VHF station (with the same figures, respectively, for the prime-time period, 6 p.m. to 11 p.m., when the largest potential audience is available).

(2) For public affairs programing, a range of 3 to 5 percent, with a 3 percent figure for the prime-time period.

(3) For local programing, a range of 10 to 15 percent, with the same range for the prime-time period.

The Commission stated that its proposed standards would not be a requirement automatically determining license renewal or denial. The incumbent licensee which had not met the standards could still argue that its service was substantial by pointing out, for example, an exceptional qualitative effort. On the other hand, full compliance with the standards would not preclude an evidentiary showing by a party challenging license renewal that the incumbent's past performance had failed to include, for example, efforts to deal with issues of truly great public concern. In short, the standards were intended to serve only as general guidelines and *prima facie* indicators of substantial service.

The Commission believed that its proposed standards could benefit both broadcasters and the public because they would give a general indication of what is called for, at least quantitatively, to meet public interest requirements in the critically important areas of news, public affairs, and local programing. In addition, at least three commissioners saw advantages in establishing standards through formal policymaking rather than through case-by-case decisions. One commissioner, for instance, cited administrative ease and greater certainty in the licensing process:

> "As I see it, we have two basic alternatives: (1) a 'common law' case-by-case evolution of 'substantial performance,' or (2) an effort at general definition and promulgation as a general policy or rule. The latter approach clearly has the advantages of (1) administrative ease, reducing our hearings and processing load substantially, and (2) reducing the sense of insecurity and instability in the industry when standards are vague, unarticulated or unknown."

In response to FCC's proposal, several broadcasters questioned the authority of the Commission to establish quantitative standards. For example, one broadcaster contended that standards would constitute regulatory activity not countenanced by either the Communications Act or judicial interpretation of that statute. The Commission replied by disclaiming any intention to dictate the content or format of particular programs. It stressed that program selection is a matter for each licensee's judgment and that the proposed standards were intended simply to provide greater certainty for license renewal applicants.

In March 1977, the Commission decided not to adopt its proposed standards because they would be "a simplistic, superficial approach" to the problem of evaluating program service. While it held that it had the authority to establish quantitative standards, the Commission believed that the standards would not improve the comparative hearing process or provide any real assurance of license renewal because competing applicants would end up fighting over where in the percentage range any particular station would meet the prima facie standard and whether other factors should or could overcome a prima facie showing. 1/ In addition, the Commission had found that many stations were providing news, public affairs, and local programing below the proposed percentage ranges. While it believed that some stations might upgrade their service if the ranges were adopted, the Commission also felt that other stations might only spread their resources thinner and reduce the quality and value of their programing. Furthermore, the

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1/More generally, the Commission earlier had concluded that the process of comparing competing license applicants is inherently defective. In November 1976 it recommended to the Congress that comparative renewal hearings be eliminated. (See ch. 2.)

Commission concluded that quantitative standards are inherently deficient because they cannot account for program quality. 1/

Quantitative programing data for evaluating license renewal applicants

In February 1971, the same time it began its proceeding to improve the comparative hearing process, the Commission launched a public inquiry to simplify the license renewal process. While it did not propose specific quantitative standards, the Commission did propose that percentage programing data be used to rank the performances of individual stations and that the station rankings be used to select license renewal applicants for detailed review and evaluation.

In response to FCC's proposal, several broadcasters as well as public interest groups cited limitations in using quantitative data and station groupings to evaluate programing performance. An industry spokesman, for example, contended that the proposal ignored the qualitative aspects of programing and would inject the Commission into areas of programing control precluded by the censorship provision of the Communications Act. Broadcasters also (1) cited precedent in which the Commission had stated that it has never made a public interest determination on the basis of comparative rankings and (2) asserted that there is no way of intelligently and equitably grouping stations for evaluation purposes. Public interest groups supported the idea of scrutinizing stations ranked below an appropriate level, but cautioned that a purely quantitative approach may not present a complete picture of a broadcaster's program service.

The Commission closed its inquiry in October 1973 without adopting a procedure for ranking station programing

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1/FCC's decision not to adopt quantitative programing standards was appealed by a citizen group coalition on the grounds that adoption of such standards is compelled by first amendment principles and the Communications Act. The coalition argued that standards are needed to provide objectivity in comparative licensing proceedings and that FCC, in declining to adopt standards, had abused its authority. The appeals court upheld FCC's decision. It ruled that neither the first amendment nor the Communications Act requires the Commission to adopt quantitative standards and that the Commission had acted within its authority. National Black Media Coalition et al. v. Federal Communications Commission, No. 77-1500 (D.C. Cir., Oct. 13, 1978), pp. 7-9.

performances. However, it did establish a requirement for commercial television licensees to report annually the amounts of time their stations devote to news, public affairs, local, and other types of programs. The Commission uses this data to determine whether a station actually provides the amounts of programing it has proposed in its license application. In addition, the Commission summarizes and publishes the data in an annual television programing report. 1/

BASES FOR QUANTITATIVE PROGRAMING STANDARDS

There are two basic approaches to setting quantitative programing standards. The Commission could adopt a single minimum-level standard for all stations. Alternatively, the Commission could adopt a multiple-level standard based on factors which account for programing variation among individual stations. The first approach is simpler, but the second is more equitable because a single-level standard could be so high that it is burdensome for many stations or so low that it is meaningless for many others. If stations located in small markets, for example, generally provide lesser amounts of news programing than do stations in large markets, the news standard for small market stations could be set at a level below the standard for large market stations.

In addition to market size, factors such as network affiliation or frequency type have been put forth as bases for quantitative standards. We examined a set of 6 station factors in relation to nonentertainment and local programing percentages of a sample of 250 commercial television

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1/Under current regulations, television license applications are required to show programing percentages proposed for the forthcoming 3-year license term in the program categories of news, public affairs, other nonentertainment, and total. For each category, the application also must show the amount of programing which is local and nonlocal in origin. In addition, each television licensee annually reports its actual percentages for the calendar year, based on programing data for 7 days randomly selected by the Commission. Radio licensees are not required to report annual programing percentages. Instead, their license renewal applications show (1) actual programing percentages for the past license term (also based on 7 days randomly selected by the Commission), (2) percentages originally proposed for that term, and (3) percentages proposed for the forthcoming term. Radio licensees use the same program categories as television licensees, but do not distinguish between local and nonlocal program sources.

stations. The sample stations were selected at random from FCC's Television Broadcast Programing Data Report for 1976. The selection and treatment of specific factors is discussed below.

Several public interest advocates have urged that station expenditures on nonentertainment and local programing be used as a basis for a service standard. Program expenditures as a percentage of station revenues, profits, or investment in tangible assets has been proposed, based on the assumption that a higher percentage signifies better service. Because stations do not report their expenses by types of programs, 1/ we could not determine whether the level of program expenditures is related to the quantity of nonentertainment or local programing. However, the Commission is reviewing certain revisions to its financial reporting form which, if adopted, would require stations to disclose their expenditures on nonentertainment and local programing. This data would permit detailed analysis of relationships between station programing and expenditures.

Variations in station programing

Table 4 summarizes the percentages of operating time which our sample of 250 television stations actually spent on news, public affairs, other nonentertainment, and locally produced programing in 1976 during two broadcast periods--station sign-on to sign off and prime time. 2/ For each program category and broadcast period, the table shows the percentage of stations with programing within a certain interval and the mean and median programing percentages. In addition, the table gives the lowest and highest programing percentages in each category and period. For example, at least one station in our sample provided no news programs during sign-on to sign off and at least one provided news representing 13.8 percent of its operating time.

1/Under current FCC regulations, stations report the following program expenses: (1) employee payroll, (2) rental and amoritization of film and tape, (3) records and transcripts, (4) cost of outside news services, (5) payment to talent other than employees, (6) music license fees, (7) other performance and program rights, and (8) all other program expenses.

2/Stations vary in their sign-on to sign off operating periods. In contrast, virtually all stations operate throughout the fixed prime-time period (defined here as 6 p.m. to 11 p.m., Eastern and Pacific time, and 5 p.m. to 10 p.m., Central and Mountain time).

Table 4 shows that some stations had percentages of nonentertainment or local programing which were well below or above the mean and median values. For example, the mean of total nonentertainment programing during prime time was 20.3 percent and the median was 18.8 percent. However, 6.8 percent of the stations had total nonentertainment programing representing less than 10 percent of their prime time (including at least one station which had only 0.5 percent) and 12.4 percent of the stations had total nonentertainment programing representing 25 percent or more of their prime time (including at least one station which had an extraordinary 98.5 percent).

Selection and treatment of factors 1/

We examined a set of six station factors in relation to programing percentages in each of the nonentertainment and local program categories shown in table 4. The six factors, all of which pertain to calendar year 1976, included:

(1) Frequency type--whether the sample station was UHF or VHF.

(2) Affiliation status--whether the station was a network affiliate or an independent.

(3) Market competition--number of additional television stations (commercial and noncommercial) in the same market as the sample station.

(4) Station size--number of total station employees.

(5) Profitability--the ratio of station profits before Federal income tax to broadcast revenues.

(6) Group ownership--whether the station was nongroup-owned or group-owned (where group-owned was defined to include (a) ownership of at least two TV stations or one TV station and at least three radio stations or (b) crossownership of at least one TV station and one newspaper).

1/The procedures used in this section are described in greater detail in appendix II.

Table 4

Percentages of Nonentertainment and Local Programing Broadcast by Commercial Television Stations - 1976

Broadcast period and percent of operating time	Percent of 250 sample stations					
	Nonentertainment programs					Total local programs (note a)
	News	Public affairs	Other	Total	Local only	
Sign-on to sign off:						
2.4 or less	5.2	15.6	0.8	-	(b)	5.6
2.5 - 4.9	2.0	53.6	3.2	-	(b)	8.4
5.0 - 9.9	48.8	30.0	56.8	0.4	(b)	50.0
10.0 - 14.9	44.0	0.4	27.2	2.8	(b)	26.0
15.0 - 19.9	-	0.4	6.8	17.6	(b)	6.8
20.0 - 24.9	-	-	1.2	44.0	(b)	1.2
25.0 - 29.9	-	-	1.2	26.0	(b)	0.4
30.0 or more	-	-	2.8	9.2	(b)	1.6
Total	100.0	100.0	100.0	100.0		100.0
Mean (% oper. time)	9.0	4.3	11.3	24.6	-	9.2
Median (% oper. time)	9.6	4.3	9.4	23.7	-	8.3
Lowest % value	0.0	0.0	1.3	9.7	-	0.0
Highest % value	13.8	16.1	98.5	98.5	-	69.9
Prime time (note c):						
2.4 or less	7.2	37.6	33.6	0.8	10.8	9.6
2.5 - 4.9	-	49.6	41.2	0.4	6.8	4.0
5.0 - 9.9	9.6	11.6	19.6	5.6	56.0	56.0
10.0 - 14.9	65.6	0.4	2.0	14.8	19.2	20.4
15.0 - 19.9	14.8	0.4	-	36.0	5.2	7.2
20.0 - 24.9	2.4	0.4	-	30.0	0.8	0.4
25.0 - 29.9	0.4	-	0.4	8.0	-	0.8
30.0 or more	-	-	3.2	4.4	1.2	1.6
Total	100.0	100.0	100.0	100.0	100.0	100.0
Mean (% oper. time)	12.0	3.0	5.3	20.3	8.2	9.0
Median (% oper. time)	12.3	2.8	2.9	18.8	7.0	7.2
Lowest % value	0.0	0.0	0.0	0.5	0.0	0.0
Highest % value	25.8	24.0	98.5	98.5	74.7	97.2

a/Includes nonentertainment, entertainment, and sports programs.

b/Data not available.

c/Includes the hours 6 p.m. to 11 p.m., Eastern and Pacific time, and 5 p.m. to 10 p.m., Central and Mountain time.

The station factors were selected based on (1) factors cited by public interest advocates or previously considered by the Commission, (2) results of preliminary analyses of more than 50 variables, and (3) reasonableness and practicality. 1/ Station profitability, for instance, was cited by a public interest group during FCC's proceeding on the license renewal process as a basis for ranking programing performances. Similarly, the Commission used frequency type and affiliation status in proposing quantitative standards of substantial program service in conjunction with its proceeding on the comparative renewal process.

The six factors were examined in relation to the sample station percentages of nonentertainment and local programing during the sign-on to sign off and prime-time broadcast periods to determine

--the extent to which the set of factors accounted for variations in programing percentages,

--the amount of variation accounted for by each factor when the effects of the other factors were held constant,

--the direction (positive or negative) of the relationships between the factors and programing percentages, and

--whether those relationships were statistically significant at a 95-percent level of confidence (i.e., whether the risk is no greater than 5 percent that a particular relationship observed for the sample data occurred merely by chance and did not hold for the population of commercial television stations from which the sample was selected).

The particular program categories and broadcast periods for which quantitative standards should be adopted, and the specific levels at which such standards should be set, are matters the Commission must decide based on its regulatory

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1/For example, the fact that certain stations are affiliated specifically with the ABC television network rather than the CBS or NBC network could account for more of the variation in a particular program category than the fact that the stations are network affilates rather than independents. While different programing standards for affiliated and independent stations would be reasonable and practical, different standards for specific network affiliations would not.

objectives. Our purpose here is simply to illustrate how certain factors might be used to provide equity in developing quantitative standards. If the factors examined account for appreciable amounts of programing variation and are statistically significant, they could be considered as bases for setting standards at multiple levels. Conversely, if the factors do not account for appreciable amounts of variation and are not statistically significant, they need not be considered and each standard could be set at a single minimum level for all stations.

Examination results

Table 5 summarizes the results of our examination. For each nonentertainment and local program category, the table shows the percentage of total variation in programing accounted for by (1) the set of station factors and (2) each factor that was statistically significant when the effects of all the other factors were controlled for. For example, the set of factors accounted for about 59 percent of the total variation in news programing during sign-on to sign off. Within this 59 percent, about 9 percent was accounted for by frequency type, 47 percent by affiliation status, and 3 percent by station size. Market competition, profitability, and group ownership accounted for very small portions of variation, but their relationships with news programing were not statistically significant when the effects of all six factors were considered.

Table 5 also shows the direction of the relationship between each statistically significant factor and each program category. For example, the relationship between frequency type (represented by UHF) and news programing during sign-on to sign off was negative. This indicates that UHF stations tended to be associated with lower percentages of news programing during sign-on to sign off, and VHF stations tended to be associated with higher percentages, when the effects of the other station factors on news programing were held constant. 1/

The data in table 5 suggests the following strategy as one way to set quantitative standards for nonentertainment programing:

1/The average UHF station had about 14 percent less news programing during sign-on to sign off than stations overall when affiliation status, market competition, station size, profitability, and group ownership were held constant.

Table 5
Percentages of Variation in Programing
Accounted for by Station Factors

Program category	Variation accounted for by set of station factors (Note a)	Variation accounted for by individual station factors (Note b): Frequency type (UHF)	Affiliation status (independent)	Market competition	Station size	Profitability	Group ownership
		Percent of total variation					
Nonentertainment programs:							
News:							
Sign-on to sign off	59.1	(-) 8.8	(-) 46.7		(+) 3.5		
Prime time	41.6		(-) 32.5		(+) 10.5		
Public affairs:							
Sign-on to sign off	15.1		(-) 2.7	(+) 8.3		(-) 4.1	
Prime time	9.6					(-) 9.4	
Other:							
Sign-on to sign off	28.2		(+) 7.7			(-) 21.2	
Prime time	32.7		(+) 9.9			(-) 23.9	
Total:							
Sign-on to sign off	19.8					(-) 17.4	
Prime time	20.6					(-) 19.7	
Local only, prime time	15.9				(+) 9.2	(-) 6.8	
Total local programs (nonentertainment, entertainment and sports):							
Sign-on to sign off	25.3		(+) 3.2		(+) 6.9	(-) 2.4	
Prime time	17.6		(+) 10.4		(+) 3.8	(-) 5.3	

a/For all program categories, the relationship between the percentage of programing and the set of station factors was statistically significant at a 95-percent confidence level.

b/Percentage of variation is shown only if the relationship between the programing percentage and station factor was statistically significant at a 95-percent confidence level when all other station factors were held constant. Positive or negative sign indicates the direction of the relationship.

--Combine news and public affairs into a single category separate from the category of other nonentertainment.

--For the news/public affairs category, set the standard for smaller, independent, and UHF stations at a level below the standard for larger, network-affiliated, and VHF stations.

--For the other nonentertainment category, set the standard for network-affiliated and more profitable stations at a level below the standard for independent and less profitable stations.

This strategy recognizes that, while a separate standard for public affairs could be adopted, it probably would have to be set at a single minimum level because our set of station factors did not account for much of the variation in public affairs programing. 1/ In addition, when we examined news and public affairs together, we found essentially the same relationships that existed for news alone. 2/ The strategy also recognizes a basic difference between the nonentertainment programing of network-affiliated and independent stations. While affiliated stations generally provided higher percentages of news and public affairs, independent stations generally provided higher percentages of religious, educational, and other nonentertainment programing. This difference tended to be offsetting, however, since affiliation status was not a statistically significant factor in accounting for variations in total nonentertainment programing.

For the categories of local nonentertainment and total local programing (including nonentertainment, entertainment, and sports) certain station factors were statistically significant, but the amounts of variations they accounted for were not particularly impressive. This suggests that the most practical strategy is to set a standard for each of those categories at a single minimum level for all stations.

1/It is possible that factors other than those we examined can account for substantially more of the variation in public affairs programing, and the Commission may want to pursue them. As discussed in appendix II, however, our preliminary analyses included more than 50 variables and, while certain of those variables accounted for additional variation in public affairs programing, they do not appear practical as bases for quantitative standards.

2/Affiliation status was by far the most significant factor. Frequency type, station size, and profitability also were significant. (See app. II.)

Proposals for standards based on program expenditures

In a 1971 ruling, the appeals court urged the Commission to clarify its standards of program service and suggested that one criterion "should certainly be whether and to what extent the incumbent [licensee] has reinvested the profit on his license to the service of the viewing and listening public." 1/ In that same year, a public interest law firm argued in a petition to the Commission that the public must know the extent to which a station invests its profits in locally originated, community-oriented programing to assess the station's service. Similarly, a citizen group seeking FCC release of three stations' financial reports argued that a station's service must be judged in substantial part by the extent to which it invests an adequate percentage of profits in local programing.

Furthermore, in a 1973 study of television, a former FCC commissioner contended that the amount of money spent on programing, particularly local programing, compared with the station's revenues or profits can be a valid indicator of its commitment to public service. In 1977, a public interest organization proposed that the Commission be required to set standards governing the reinvestment of profits in programing and that, as further inducement, a licensee be prohibited from retaining as profit before taxes an amount exceeding 25 percent of its investment in tangible station assets.

On the other hand, it can be argued that a standard of service based on program expenditures might lead to inefficiency and greater FCC involvement with programing judgment. For example, the relatively inexpensive nonentertainment programing of one station could be as effective (or even more effective) in dealing with important community issues as the more expensive nonentertainment programing of a competitor with similar revenues or profits. Nevertheless, under such a standard, comparison of the stations' program expenditures in relation to their revenues or profits would indicate that the lower-cost station has a lesser commitment to public service. Such a station would thus have an incentive to increase its program expenditures even though tne public would not necessarily be better served. To preclude this circumstance, the Commission might have to look beyond program expenditures into program content and quality, a situation which it and the Communications Act seek to avoid.

1/Citizens Communications Center et al. v. Federal Comunications Commission, 447 F.2nd 1201, 1213, n. 35 (D.C. Cir., 1971).

In 1971, as part of its inquiry to improve the comparative licensing process, the Commission invited public comments on whether the relationship between station revenues and program expenditures could serve as a guideline for evaluating station service. At that time, the Commission said it believed program expenditures should be left to exploration as appropriate on a case-by-case basis in licensing proceedings. Subsequently, when it closed its inquiry in March 1977, the Commission simply reiterated its position without further elaboration. 1/ However, as a result of a contractor study completed in October 1977, the Broadcast Bureau reviewed several potential revisions to FCC's financial reporting form (form 324), including disclosure of station expenditures on news, public affairs, and local programs.

The contractor study concluded that program expenditures data could help the Commission in setting policies which affect public service and local programing. In addition, this data, together with information stations now report, would permit detailed analysis for evaluating a standard of program service. For example, the Commission could determine whether station expenditures on local programs (or those expenditures as a proportion of station revenues or profits) are closely related to the percentage of local programing.

Based on the contractor study, the Broadcast Bureau is preparing a proposal to initiate a public inquiry on revisions to the form 324. At the time of our review, this proposal had not been presented to the commissioners.

ROUTINE DISCLOSURE OF BROADCASTER FINANCIAL REPORTS

If quantitative standards based on program expenditures or other financial factors were adopted, some broadcaster financial data would have to be disclosed publicly so that the public could apply the standards to their local stations. Currently, a station's financial report is treated as confidential and is released to the public only when the Commission determines that disclosure is necessary to resolve a specific public interest issue. However, the Commission has discretionary authority under the Freedom of Information

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1/A citizen group coalition petitioned the appeals court to order the Commission to reopen its inquiry on the grounds that the issue of program expenditures as a standard of station service had not been fully considered. The court held that the Commission had acted properly and ruled that the coalition's appeal lacked legal basis. National Black Media Coalition, Ibid., pp. 9, 10.

Act (5 U.S.C. 552) to release financial reports on a routine basis, and it has been petitioned for a rule authorizing such disclosure. Public interest advocates claim that routine disclosure would facilitate station evaluation. Broadcasters, on the other hand, claim that it would result in competitive harm. Because the Commission has not evaluated these claims, it is not clear what consequences routine disclosure would bring.

Financial disclosure under the Freedom of Information Act

Under the authority of section 308(b) of the Communications Act, the Commission requires each radio and television station licensee to file an annual financial form 324 showing broadcast revenues, expenditures, profits, and related financial data. In 1945, the Commission invited public comments on whether any or all of this data should be open to public inspection. Later that year, it decided that it would not disclose financial information on a routine basis, but would permit disclosure when a substantial showing of relevance and need was presented. 1/ This policy is still in effect. Under provisions of the Freedom of Information Act, the Commission treats station financial reports as confidential and generally exempts them from mandatory disclosure.

The Freedom of Information Act establishes the policy that any person can have access to identifiable agency records without giving a reason for wanting the information. There are nine categories of records which the act exempts from disclosure, but these exemptions are permissive rather than mandatory. Federal agencies are not required to withhold a record because it is exempt and must be able to show that substantial demonstrable harm will result if the record were disclosed.

Confidential financial information obtained from an individual, partnership, or corporation is included in one of

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1/Such a showing has been made, for example, when a station proposes for financial reasons to change its programing format. The Commission has released the station's financial reports so that members of the station audience can evaluate the argument that financial circumstances justify a format change. In general, the Commission authorizes disclosure when a station places its financial condition in issue in an FCC proceeding.

the nine exempt categories. 1/ Under recent court rulings, financial information is confidential if disclosure is either likely to (1) impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the provider of the information. The first test of confidentiality has been relatively unimportant because it only applies to information voluntarily submitted to the Government. This test is not relevant when information is submitted pursuant to a statute or regulation, or to obtain a contract, license, or other valuable benefit from the Government. The second test of confidentiality--known as the competitive harm test--has been more important and the subject of most recent court cases.

The boundaries of competitive harm are still not clear. In 1976 the Court of Appeals for the District of Columbia Circuit ruled that proof of actual adverse affect on competition is not necessary for an agency to withhold commercial or financial information. 2/ All that appears to be required is a showing based on relevant and credible opinion testimony that the information could be useful to competitors. This new standard makes the competitive harm test somewhat easier to apply, but it can still be difficult to determine the competitive consequences of disclosure. For this reason, the balancing of the public's right to know against the interest of a business to protect its information is one of the most difficult judgments the Freedom of Information Act requires an agency to make.

Petitions for routine financial disclosure

The Commission has stated that if routine disclosure of financial information were to be authorized, it should be done as a result of public rulemaking. In 1971 and 1976, the Commission was petitioned for a rule authorizing routine disclosure of station financial reports. In the 1971 petition, a public interest law firm requested a rule (1) permitting public inspection of all financial reports and (2) amending FCC's financial form 324 to require reporting of station expenditures on nonentertainment and local programing. In the 1976 petition, another law firm sought release of station financial reports principally for the benefit of the cable

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1/ 5 U.S.C. 552(b)(4) exempts from mandatory disclosure trade secrets and commercial or financial information which are privileged or confidential.

2/ National Parks and Conservation Association v. Kleppe, 547 F.2d 673 (D.C. Cir., 1976).

television industry. The Commission restricted cable television on the grounds that it is detrimental to the economic standing of conventional broadcast stations. The petitioner claims that cable operators have a right to broadcaster financial reports to rebut FCC's argument of economic harm. The Commission has not taken final action on either the 1971 or 1976 petition.

Arguments for and against
routine financial disclosure

As we stated earlier, public interest advocates have argued that the public must know the extent to which a station invests its resources in nonentertainment and local programing to evaluate the station's service. For this reason, they believe the Commission should make station financial reports available for public inspection on a routine basis. Another argument for routine disclosure focuses on the public's right to know. The law firm which filed the 1976 petition for rulemaking contends that the public, as collective owners of the broadcast spectrum, have an inherent right to observe and monitor the financial benefits accruing to broadcasters from their use of the spectrum. Similarly, in 1971 a citizen group sought public disclosure of certain financial reports on the grounds that the broadcaster is a public trustee deriving its profits from a public resource.

On the other hand, broadcasters argue that routine financial disclosure would result in serious harm. For example, in comments opposing the 1976 petition for rulemaking, it is argued that disclosure might affect a station's ability to obtain financing. Broadcasters also claim that:

--Financial data could be used by competitors to influence advertisers unfairly by claiming, for instance, that an unprofitable station is on the verge of collapse.

--A financially sound broadcaster, sensing a chance to drive a competitor out of business, could severely reduce advertising rates, eliminate a competing broadcast voice, and establish a monopoly in which rates could be set at artificially high levels.

--The goodwill of a station stigmatized as a "loser" would be damaged.

Broadcasters also have argued that, because they have relied on FCC's expression of confidentiality, the Commission has an obligation not to authorize routine disclosure.

The argument that disclosure might jeopardize a station's ability to obtain financing seems somewhat specious. It is hard to imagine a financial source which would render assistance without insisting upon disclosure. Broadcasters' other claims may have greater merit, but neither those claims nor the arguments in support of routine disclosure have been evaluated by the Commission in a public inquiry under the competitive harm test of the Freedom of Information Act.

Future FCC action on routine financial disclosure

During House appropriations hearings held in February 1978, the FCC Chairman stated that station financial information should be open to public inspection unless a clear case of competitive harm can be made. The Chairman also noted that the Commission had undertaken a review of revisions to its form 324 financial report to improve the value of the financial information reported by stations. 1/ According to a Broadcast Bureau official, the Commission may formally evaluate routine financial disclosure of station financial reports after it completes action on revisions to the form 324.

CRITICISMS OF PROGRAMING REGULATION

Some critics of broadcast regulation argue that FCC programing policies and rules are not needed to assure that the public receives balanced and responsive program service. In their view, the large number of competing media voices available to the public can provide adequate diversity, balance, and responsiveness in the treatment of public issues.

The Commission recently began to formulate options for deregulating on an experimental basis the programing of radio stations in selected markets. While the scope of this experiment was not fully defined as of the time of our review, the general purpose would be to test the argument that the marketplace provides the public with the program service it wants and needs.

Programing regulation and competition

In addition to its minimum percentage guidelines on nonentertainment and local programing, the Commission has other

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1/FY 79 Appropriations hearings before Subcommittee on Departments of State, Justice, and Commerce, the Judiciary and related agencies, House Committee on Appropriations, 95th Cong., 2nd Sess. 287 (1978).

policies and rules intended to assure balanced and responsive program service. Under the fairness doctrine, each broadcast licensee has the obligation to deal with controversial issues of public importance and provide opportunity for the expression of conflicting viewpoints on those issues. Furthermore, under FCC's ascertainment policy, each licensee has the obligation to identify and serve the problems, needs, and interests of its community. To assure that this obligation is fulfilled, the Commission has prescribed specific ascertainment procedures which licensees must follow. 1/

These programing policies and rules have been applied without regard to the number or diversity of broadcast stations and other mass communications media (e.g., newspapers, magazines) serving a particular community or market. For example, the Commission requires each licensee which has presented one side of a controversial issue to provide opportunity for the expression of conflicting views, even if those views are treated by other stations, newspapers, or other media in the same market. Similarly, each licensee has the obligation to provide program service responsive to ascertained community problems and needs regardless of the service provided by competing stations. As previously discussed, the Commission ordered an evidentiary hearing on the renewal application of an FM radio licensee because it was uncertain whether the station's nonentertainment programing adequately served ascertained problems and needs. The Commission did not accept the licensee's argument that the large number of additional stations serving its market precluded the need for a change in its program schedule to assure responsive service.

As we report in our examination of the fairness doctrine (see ch. 7), some representatives of the broadcast industry have argued that the multiplicity and diversity of communications media available to the public afford adequate opportunity for the expression of diverse views on public issues. Consequently, they have contended that there is no need to regulate fairness and balance in programing and that the fairness doctrine should be abolished. A similar argument has been made regarding FCC's ascertainment policy (see ch. 4.) A spokesman for the radio industry told us that the competitive market in radio effectively identifies community problems and needs. Consequently, in his opinion there is no need for the specific ascertainment procedures prescribed by the Commission.

1/FCC's ascertainment policies and procedures are examined in detail in chapter 4. The fairness doctrine is examined in chapter 7.

Individual FCC commissioners have expressed doubts about the need for programing regulation, particularly in the case of radio stations located in large markets. In 1975, for example, a former FCC Chairman suggested that market forces may be sufficient in major radio markets to eliminate the fairness doctrine. Moreover, FCC's current Chairman has supported the view that a diverse and competitive marketplace of ideas and voices can substitute for FCC regulation, provided that the number of radio outlets is sufficient to provide opportunity for expression of diverse viewpoints.

Because all commercial stations are subject to FCC programing regulation, it is not possible to conclude whether the marketplace alone would assure opportunity for expressing diverse views or provide balanced and responsive program service. For example, in examining 1976 nonentertainment and local television programing, we found a very weak linear relationship between station percentages of prime-time public affairs programing and the number of additional television stations in the market. 1/ This relationship was even weaker when we examined only those stations in markets with five or more additional stations. 2/ In addition, the number of additional stations had no statistically discernable effect when frequency type, affiliation status, station size, profitability, and group ownership also were considered. 3/ These results imply that market competition (when measured by the number of additional stations) has no material effect on the relative amounts of prime-time public affairs programing provided by television stations. For radio, competition may have a more pronounced effect on programing since there are more than 8,000 radio stations (commercial and noncommercial) compared with less than 1,000 television stations. In any event, the fact that the programing of all stations is influenced by FCC regulations confounds the effects of competition. Those effects cannot be isolated unless some stations are exempted from programing regulation and compared with stations which are not.

FCC experiment on deregulation of radio programing

In October 1978, FCC's Chairman directed the FCC staff to formulate options for exempting from programing regulation on an experimental basis radio stations located in selected

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1/The coefficient of correlation was 0.11.

2/The coefficient of correlation was 0.07.

3/See appendix II.

markets. In general, the purpose of the experiment would be to test the argument that the marketplace provides the public with the service it needs and wants without FCC programing regulation. According to the Chairman, the public will have an opportunity to comment on specific options developed by the Commission before an experiment is implemented.

At the time of our review, the Commission had not determined the markets in which radio stations will be exempted, the particular rules and regulations that will be suspended, the time period of the experiment, or the means by which the experiment will be evaluated. However, in discussions with us, a Broadcast Bureau official outlined certain issues in these areas which the FCC staff faces in formulating specific options.

One issue is the number and size of the markets to exempt for experimental purposes. Because the argument to be evaluated is that competitive forces alone assure responsive program service, an experiment limited to a few markets of similar size will not provide meaningful results. For example, large markets presumably are more competitive because they have a greater number of media voices. It is possible, however, that the number of media voices has no substantive effect on the responsiveness of radio programing and does not assure that the listening public receives the service it wants. This outcome cannot be observed and evaluated unless stations in markets of small and/or medium as well as large size are included in the experimental exemptions.

Another issue is FCC's authority to suspend its programing rules and regulations. The Commission could lift its minimum percentage guidelines on AM and FM nonentertainment programing because they were established by administrative rule and not mandated by the Congress or the courts. For the same reason, the Commission could exempt stations from its formal ascertainment procedures. On the other hand, the extent to which stations could be relieved of their obligations under the fairness doctrine is not clear because the doctrine's basic principle is included in section 315 of the Communications Act and has been upheld by the courts. Consequently, depending on the precise scope of its experiment, the Commission may require authorization from the Congress to suspend some programing rules and regulations.

A third and quite difficult issue is how the Commission can measure and evaluate the effects of deregulation on program service. The Broadcast Bureau official did not know what particular effects would be measured or specifc evaluation criteria would be used. One possible approach is to analyze programing quantities to determine changes that occur (1) among stations in exempt markets and (2) between those stations and stations in nonexempt markets. Another approach is to solicit opinions of audience members in exempt markets to identify their perceptions of changes in program service.

A fourth issue is concerned with protecting exempt stations from public challenges to their program service. The Broadcast Bureau official stated that a deregulation experiment should be conducted for at least one complete licensing cycle (i.e., 3 years) and that he personally favors a 5-year period. In his view, an experiment will not provide meaningful results unless exempt stations are insulated during the experimental period from challenges under section 309 of the Communications Act. This section authorizes members of the public to petition to deny license grants and to file competing license applications. If an exempt station could still be challenged, for example, on the grounds that it had not adequately ascertained community needs, the station for its own protection may continue to follow FCC's formal ascertainment procedures. In that event, the experiment would serve no purpose. Consequently, the Commission may decide to obtain authorization from the Congress insulating exempt stations during the experimental period from license renewal challenges predicated on programing issues.

CONCLUSIONS

In regulating broadcast programing, the Commission has sought to strike a balance between the broadcaster's responsibility to serve the public interest and the broadcaster's right to control program content. This balance is reflected in FCC programing policies and rules that are intended to assure balanced and responsive service for the public, but not to interfere unduly with the broadcaster's free speech and journalistic judgment. Those policies and rules in turn reflect the belief implicit in the Communications Act that station licensees have an obligation to provide programing attentive to the varied needs and interests of their communities and that the public has a role in ensuring this obligation is met.

Public interest spokesmen claim that programing regulation would be more effective if the Commission established quantitative programing standards and authorized routine public disclosure of broadcaster financial reports. Broadcasters, on the other hand, claim that quantitative standards would interfere with their programing discretion and that routine financial disclosure would result in competitive harm. More fundamentally, some critics contend that market competition can assure that broadcasters are responsive to the needs of their audiences without FCC regulation of program ascertainment, fairness, and balance.

We believe that the Commission should by public rule establish quantitative programing standards. We also believe that the Commission should initiate a public inquiry to evaluate the arguments for and against routine financial disclosure. In addition, we support FCC's initiative on experimental deregulation of radio programing and believe that the Congress should provide legislative authorization as needed for the Commission to carry out an experiment.

Need to establish quantitative programing standards

A primary reason why we believe the Commission should establish quantitative programing standards is that they would provide members of the public with more definitive criteria for evaluating the service of their local stations. In the absence of standards, different commissioners reviewing the same programing information have reached disparate conclusions as to what constitutes responsive service, and they have characterized program service in vague and uncertain terms like substantial or mediocre. We recognize that quantitative standards will not resolve all differences of opinion concerning a station's program service, but we do believe they represent a reasonable compromise between the need for more definitive evaluation criteria and the need for avoiding FCC judgments on program content and quality.

Quantitative standards also would provide greater certainty in licensing proceedings to broadcasters as well as the public. As the Commission has noted, program quantity is not synonymous with quality and quantitative standards in themselves would not be appropriate for automatically determining whether a license application should or should not be granted or whether a broadcaster has or has not provided responsive service. Standards would be appropriate, however, for defining the circumstances under which the quantity of proposed or actual programing on its face raises a substantive question warranting FCC inquiry into the broadcaster's programing effort. Under this approach, the broadcaster meeting the standards would carry the presumption of having fulfilled its public interest programing obligation, unless that presumption is overcome by compelling evidence of unresponsive service. Applied in this manner, standards would provide broadcasters with a greater degree of certainty as to whether their program service might be challenged and subjected to FCC inquiry.

We recognize that decisions on program content and presentation should and must be made by station licensees and not the Commission. However, program categories like news, public affairs, other nonentertainment or local are broad and leave ample room for exercising programing discretion and journalistic judgment. Furthermore, the Commission could limit its standards to the categories of total nonentertainment and local programs. This would give the broadcaster wide latitude to emphasize news rather than public affairs, for example, in responding to audience needs.

We believe that quantitative standards can be equitable. Because broadcasters would seek to avoid public challenges and the prospect of an FCC inquiry, they would tend to view programing standards as quantitative minimums. 1/ Consequently, some stations probably would increase their percentages of nonentertainment or local programing. Whether those stations also would reduce the quality or value of their programing is conjectural. In any event, quantitative standards set at a single minimum level for all stations or, where feasible, at multiple levels based on factors that account for programing variations among individual stations would help assure that no stations are burdened unfairly.

Our examination of 1976 television programing data found that frequency type, affiliation status, station size, and profitability could be used in setting multiple-level standards for categories of nonentertainment programing. Because the factors we examined did not account for all of the variations in nonentertainment and local programing, the Commission should seek public comments on additional factors that could be useful. Similarly, comments should be sought on factors that might be appropriate as bases for standards on radio programing. One additional factor that might be useful is station expenditures on nonentertainment or local programing. We could not evaluate this factor because data is not available on expenditures by program categories. In reviewing proposed revisions to its financial reporting form, the Commission should recognize that expenditures data by program categories would be useful for evaluating the utility of a

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1/This is why the Commission declined to adopt quantitative standards in conjunction with the comparative renewal process. Competing applicants would simply set their programing above whatever level called for by the standards and argue over whether a particular quantity was sufficient. In chapter 2, we recommend that the comparative licensing process be eliminated because it has been inefficient and ineffective.

standard based on the relationship between station program expenditures and revenues, profits, or investment.

In considering standards for television, the Commission should not exempt UHF-independent stations as it has in the case of its minimum percentage programing guidelines. That exemption is based on 1974 financial data which showed that UHF independents generally were not profitable. Our analysis of 1976 financial data found that the majority of UHF independents are profitable today.

It is important that the Commission establish quantitative programing standards by public rulemaking. The concerns expressed by the broadcast industry over FCC's current minimum percentage guidelines may be somewhat exaggerated since those guidelines are intended only for license processing purposes. Nevertheless, industry confusion and uncertainty over the purpose and application of the guidelines might have been avoided if the Commission had implemented them by public rulemaking rather than administrative rule.

Need to evaluate routine financial disclosure

Under current policy, the Commission treats as confidential the annual financial reports filed by broadcasters and releases them to the public only to resolve specific public interest issues. Critics of this policy argue that these reports should be released on a routine basis because they would be helpful in evaluating program service and because members of the public, as collective owners of the broadcast spectrum, have an inherent right to observe and monitor the financial benefits accruing to spectrum users. Broadcasters, in contrast, argue that routine disclosure would result in competitive harm.

The Commission has not taken final action on petitions requesting routine disclosure of broadcaster financial reports. As a result, it is not clear what consequences routine disclosure would bring. Because the Freedom of Information Act is intended to encourage public access to agency records, we believe that the Commission should initiate a public inquiry to evaluate the arguments for and against routine disclosure under the competitive harm test of that act.

Need to evaluate market competition

We support FCC's initiative on experimental deregulation of radio programing because it addresses the criticism that market competition and not Government regulation is the more effective method of assuring responsive program service for the public. By exempting some stations from programing regulation, the Commission could observe the effects of competition and evaluate how effectively the public is served.

In defining the scope of its experiment, the Commission should assure that a representative number of markets of various sizes are included in any experimental programing exemptions. Otherwise, the effects of market size (i.e., competition) cannot be isolated and observed. We also believe that the Commission should assure that exempt stations are insulated from public challenges regarding their program service during the experimental period. If exempt stations for their own protection feel compelled to follow FCC programing rules and regulations, the experiment would serve no purpose. We are mindful that the Commission is limited in its authority to suspend programing regulations and to insulate exempt stations from public challenges. Accordingly, to ensure a meaningful experiment, we believe that the Congress should provide legislative authorization in these areas if the Commission determines that special authorization is needed.

Our call for quantitative programing standards is not inconsistent with programing deregulation. Market competition may indeed prove more effective than ascertainment, the fairness doctrine, and other FCC rules that seek to promote programing balance and responsiveness. However, the public will continue to have a role in licensing proceedings and in ensuring that broadcasters are responsive to the varied needs and interests of their audiences. Quantitative standards would assist the public in fulfilling its role.

RECOMMENDATIONS TO THE CHAIRMAN, FCC

We recommend that the Commission establish by public rule quantitative programing standards for commercial television and radio stations. In establishing standards, the Commission should determine

--the general program categories (i.e., news, public affairs, local, etc.) and broadcast periods for which standards should be adopted,

--the levels at which such standards should be set, and

--whether each standard should be set at a single level for all stations or at multiple levels based on factors such as (for television) frequency type, affiliation status, station size, and profitability.

In reviewing proposed revisions to its form 324 financial report, the Commission should consider that expenditures data by program categories would be useful for evaluating the utility of a standard of service based on the relationship between station program expenditures and revenues, profits, or investment in tangible property. In addition, because the Freedom of Information Act is intended to encourage public access to agency records, the Commission should initiate a public inquiry to evaluate the arguments for and against routine financial disclosure of broadcaster financial reports and determine whether routine disclosure would cause competitive harm.

In defining the scope of its experiment on deregulation of radio programing, the Commission should assure that stations in a representative number of markets of various sizes are exempted from programing regulation so that the effects of market competition can be isolated and observed. In addition, to ensure that exempt stations participate in the experiment, the Commission should assure that those stations are insulated during the experimental period from public challenges to their program service.

RECOMMENDATION TO THE CONGRESS

To ensure that an FCC experiment on programing deregulation will be meaningful, we recommend that the Congress provide the Commission with legislative authorization if the Commission determines that special authorization is needed to suspend its programing rules and regulations and to insulate exempt stations from public challenges to their program service during the period of the experiment.

CHAPTER 4

ASCERTAINMENT OF COMMUNITY PROBLEMS, NEEDS, AND INTERESTS

Ascertainment is the process by which the broadcaster seeks to identify the problems, needs, and interests of the community it serves. Based on its findings, the broadcaster selects significant community problems for treatment on the air. Thus, ascertainment is not intended as an end in itself, but as a means of assuring program service that is responsive to the community.

The Commission has established formal procedures for conducting ascertainment. The primary procedure is consultation with leaders who represent the significant elements of the community and members of the public who receive the station's signal. These procedures are not intended to determine the public's programing preferences, but to determine important community problems and dig beneath the surfaces of majority opinion and conventional wisdom to deal with local issues that otherwise might not be exposed.

Although ascertainment is generally accepted as a useful practice by both broadcasters and public interest groups, there is wide disagreement over the need for and effectiveness of FCC's formal ascertainment procedures. The small market exemption, adopted in 1976 to relieve smaller stations from certain ascertainment formalities on a test basis, gives the Commission an opportunity to evaluate the effectiveness of its formal procedures, and it intends to conduct an evaluation once the exemption expires in October 1979.

To provide for a meaningful assessment of its formal ascertainment requirements, we believe the Commission in its evaluation of the small market exemption should examine the problem-identification and program-selection processes used by exempt and nonexempt stations. The Commission should then exempt stations in large markets and evaluate the effects of formal ascertainment on their program service.

DEVELOPMENT OF ASCERTAINMENT POLICIES AND PROCEDURES

Ascertainment was not established by statute, but was an outgrowth of regulatory policy based on the public interest standard. The first explicit statement about ascertainment was contained in the FCC Programming Policy Statement of 1960. After reiterating the statutory obligation of licensees to operate their stations in the public interest, convenience, or necessity, the Commission stated:

"The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility * * *."

To permit a determination of whether a broadcaster fulfills its public responsibility, the Commission required future license application forms to state (1) the efforts made to determine the tastes, needs, and desires of the community or service area and (2) the manner in which the applicant proposes to meet those needs and desires.

Broadcasters interpreted FCC's mandate as applying to programing preferences rather than local problems. Thus, the Commission was shown communities with needs for more country and western music, or more sports programs, but did not have, for example, such needs as improved schools, better roads, or more effective welfare programs. In addition, broadcasters submitted only cursory descriptions of their consultations with community members and the responses obtained during the consultations were either so ambiguous or general that they were of little value to station program planners. As a result of these problems, the Commission gradually increased the formality of the ascertainment process.

In August 1968, the Commission issued a public notice, "Ascertainment of Community Needs by Broadcast Applicants," which provided specific guidelines for completing the ascertainment sections of license application forms and clarified the distinction between the identification of community problems and the identification of programing preferences. Despite this public notice, the case-by-case handling of broadcast applications gave rise within the legal community to conflicting interpretations of ascertainment requirements. Consequently, at the request of the Federal Communications Bar Association, the Commission, in December 1969, began a public inquiry to clarify its ascertainment policy. This inquiry resulted in a revised and expanded Primer on Ascertainment of Community Problems by Broadcast Applicants, which the Commission adopted in February 1971.

The 1971 primer initially applied to commercial broadcast applications for renewal of licenses as well as for authorizations to construct a new station or modify existing facilities, to change station location, and to assign or transfer control of an existing license. Effective February 6, 1976, those broadcasters seeking renewal of their licenses became subject to the requirements set forth in the new and revised

Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants.

Requirements of the 1971 primer

The 1971 primer reemphasizes the distinction between community problems and programing preferences and requires a broadcast applicant to determine the demographics and composition of its city of license, indicating the economic, social, racial, ethnic, and other significant characteristics. After completing its compositional study, the applicant must conduct within the 6-month period prior to filing a broadcast application two surveys--one of community leaders and one of the public--to ascertain community problems, needs, and interests. The applicant's management-level employees must interview community leaders representing a cross section of the community as revealed in the compositional study. While an applicant is expected to make reasonable and good faith efforts to interview leaders in each significant community element (e.g., labor, religious), interviews with leaders of all groups within each significant element are not required. The applicant has broad discretion in selecting leaders from each significant element--discretion the Commission will not disturb without a showing, supported by appropriate data, that a significant element of the community has been omitted. The applicant also must identify each leader interviewed by name, position, and organization represented.

In surveying the public, the applicant must make efforts to consult with a random sample of community members. The random sample need not be a statistically reliable sampling, but may be taken from a city directory or may be done on a geographical basis. Also, the applicant has a wider choice as to who can conduct the public survey--namely, management-level or other employees and professional research organizations. The applicant need not identify members of the public interviewed but must identify the number of consultations and the methods used.

Having completed its community leader and general public surveys, the applicant is required to list all nonfrivolous problems ascertained. Based on its evaluation of these problems, the applicant must determine which problems merit treatment. The applicant is not expected to treat all ascertained problems; however, for those problems selected, the applicant must propose what programs will be broadcast and give a description of the program or program series, its anticipated time segment, duration, and frequency of broadcast.

Requirements of the 1976 primer

The 1976 primer contains separate ascertainment standards for commercial broadcasters applying for renewal of their licenses. Commercial broadcast applications other than those for license renewal remain subject to the 1971 primer.

The 1976 primer for renewal applicants differs from the 1971 primer requirements regarding the (1) periodicity of ascertainment, (2) listing of community problems and program responses, (3) compositional survey and community leader consultations, and (4) recordkeeping by stations located in certain small communities.

One major change of the 1976 primer is that a broadcaster is expected to record its ascertainment efforts on a continuous basis throughout the license term rather than during the 6-month period prior to submission of a renewal application. In making this change, the Commission cited the call by the 1960 Programming Policy Statement for a "diligent, positive and <u>continuing</u> effort" to ascertain local problems, needs, and interests. (Underscoring supplied.)

In concert with continuous ascertainment, the broadcaster is required to place in the public inspection file each year a listing of no more than 10 significant problems and needs of its service area, together with a description of typical and illustrative programs or program series broadcast during the preceding 12 months in response to those problems and needs. Thus, in contrast to the 1971 primer requirement that an applicant list the programs it proposes for meeting local problems, the 1976 primer provides for a retrospective look at the broadcaster's actual programing responses to ascertained problems. In setting the requirement to list problems and programs, 1/ the Commission hoped to encourage continuous dialogue between broadcasters and the public which would result in local resolution of differences over community problems and program responses. The Commission asserted that the annual list would promote timely responses to current community problems and enhance the public's ability to evaluate a broadcaster's service.

In place of the compositional survey required by the 1971 primer, the 1976 primer requires a broadcaster to maintain and make available for public inspection a list of

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1/The annual problems-programs list has been required of commercial television licensees since January 1974. The effect of the 1976 primer is to extend the requirement to radio licensees.

certain demographic aspects of its city of license, including total population figures and numbers and proportions of males, females, minorities, youth, and the elderly. To lend greater certainty to a licensee's survey coverage, the Commission devised a checklist of 20 institutional elements, such as agriculture, business, labor, and environment, which it believes are common to most communities. A broadcaster is required to interview leaders in each of the elements, although it is permitted to show that one or more of the elements is not present in its community. The Commission did not establish a minimuim number of leader consultations, but did establish numerical guidelines based on city-of-license population. The broadcaster which meets the appropriate guideline cannot be challenged for consulting with an insufficient number of community leaders. In contrast to the 1971 primer, which requires that community leaders be interviewed by an applicant's management level employees, up to 50 percent of leader consultations may be conducted by nonmanagement-level employees under proper supervision. Face-to-face interviewing is retained as the staple of leader consultations, but the 1976 primer permits greater informality in consultation formats. The requirement of the 1971 primer to conduct a survey of the general public remains substantially unchanged.

As part of its inquiry into ascertainment by license renewal applicants, the Commission requested comments on differences between television and radio and on factors, such as market size and number of station employees, which may be bases for developing ascertainment procedures. Based on the comments received, the Commission concluded that, while television and radio perform somewhat different roles in serving the public, all broadcasters have the same basic obligation to discover and fulfill local problems, needs, and interests. Accordingly, the 1976 primer treats television and radio in the same manner in their ascertainment requirements. However, the primer does exempt from most ascertainment documentation those stations which are (1) licensed to cities having a population of 10,000 persons or less and (2) located outside all standard metropolitan statistical areas. The purpose of the exemption is to test the argument that the broadcaster in the smaller community is thoroughly aware of the community's minority as well as majority elements.

APPLICATIONS OF ASCERTAINMENT REQUIREMENTS

In July 1977, the Commission declined to renew the licenses of two radio stations in part because the stations had failed to (1) provide nonentertainment programing as promised and (2) establish that their proposed nonentertainment programing would meet ascertained problems and needs. These are the only instances in which the Commission has denied renewal of a commercial broadcast license specifically on the basis of ascertainment/programing issues. However, next to FCC's rules on equal employment opportunity (see ch. 6), ascertainment/programing issues are the ones most frequently cited in objections and petitions to deny license renewal. 1/ From January 1, 1967, to November 3, 1977, the Renewal and Transfer Division of the Broadcast Bureau handled 456 objections and petitions. Based on a randomly selected sample of 88 cases, we estimate that at least 152 of the 456 objections and petitions included allegations of ascertainment/ programing violations.

In general, the complainant raising an ascertainment/ programing issue alleges that the broadcaster failed to (1) consult with a sufficient number of minority group leaders or otherwise ascertain local problems adequately, (2) relate proposed programing to ascertained needs, (3) provide programing which lives up to representations, or (4) offer programs which are in the interest of the community element represented by the complainant. 2/ In some cases, the complainant alleges abuses of a particular ascertainment technique, such as an excessive reliance on telephone interviewing in surveying the general public.

The Commission looks for a certain sequence of procedural steps in evaluating broadcaster compliance with formal ascertainment. First, the broadcaster must demonstrate a close familiarity with the demographic composition of its service area. Second, in identifying local problems, the broadcaster must show that it has consulted with a representative number of leaders of significant elements within its community. Third, based on the results of its leader consultations and public survey, the broadcaster must select problems for treatment on the air. The Commission does not, however, require treatment of a specific number of problems or explanation of how specific problems are selected. Finally, the broadcaster must correlate typical and illustrative programs with each problem selected for treatment. The Commission affords the broadcaster broad discretion in program selection.

1/A petition to deny license renewal is a formal request in writing usually signed by a number of persons, asking the Commission not to renew a broadcaster's license. An objection is a less formal request to the Commission. (See chapter 2.)

2/Complainants also have alleged that the broadcaster has misrepresented its ascertainment findings. In such cases, FCC may then order further inquiry on the issue of misrepresentation rather than ascertainment/programing.

A breakdown at any step in this sequence can lead the Commission to question whether the broadcaster's programing is responsive to community problems and needs. If the broadcaster has not demonstrated familiarity with the demographic composition of its service area, the Commission has found it is unable to evaluate the representativeness of the broadcaster's leader consultations or the responsiveness of its program service. Thus, in one case involving a complaint against a broadcaster's compositional showing, the Commission concluded that it could not determine the adequacy of the broadcaster's ascertainment even though the complainant had conceded that the list of ascertained problems was "probably fairly accurate." Similarly, if the broadcaster simply lists local problems and program responses without correlating one with the other, the Commission has found it is unable to judge the broadcaster's program service. Conversely, if the broadcaster has reasonably accomplished the procedural steps, the Commission has stated it will not second-guess the broadcaster's judgment and question the responsiveness of the programs selected to meet ascertained problems.

CRITICISMS OF FORMAL ASCERTAINMENT

The Commission expected the ascertainment procedures set forth in the 1971 primer to benefit broadcasters and the public, as well as the Commission itself. It stated:

> " * * * in our view, [the primer] will aid broadcasters in being more responsive to the problems of their communities, add more certainty to their efforts in meeting Commission standards, make available to other interested parties standards by which they can judge applications for stations licensed to their community, and aid our staff in applying our standards uniformly."

Subsequently, in developing the 1976 primer, the Commission sought to advance the public interest by providing more flexible procedures geared to ascertainment's substance and results rather than its form and method. Nevertheless, despite FCC's expectations and efforts, ascertainment has been a controversial subject. The controversy reflects differing views of (1) the need for formal ascertainment and (2) its effectiveness in identifying community problems and ensuring responsive program service.

Reasons for formal ascertainment

In setting ascertainment documentation and reporting requirements for license renewal applicants, the Commission sought to strike a balance between the burdens alleged by broadcasters and the benefits claimed by public interest groups regarding the amount and type of documentation to be maintained. Insight into the balancing of competing interests and the reasons for setting formal procedures is provided by the comments of one former commissioner. After acknowledging that FCC's procedures may have become unduly mechanistic and observing that the 1971 primer represented "a crafted endeavor to ensure a periodic exchange which is important to our scheme of locally responsive broadcast outlets," the commissioner responded in metaphor to criticism that formal ascertainment is unnecessary:

> "I have found that fidelity to a formally arranged plan, accompanied by moderately disciplined regimentation, is essential to ward off vices of negligence, complacency, and presumptiousness. The mere setting aside of an enforced exercise period goes a long way toward a healthy and functioning system. Our ascertainment exercise serves the same fundamental purpose and I favor retention of the skeleton and musculature even though the carcass may have become needless[ly] corpulent in some respects."

<u>Broadcasters' views of formal ascertainment</u>

Based on the comments offered during development of the 1976 primer, the opinions of industry spokesmen we interviewed and the responses to our survey of television and radio station managers, broadcasters generally recognize ascertainment of community problems and needs as a useful business practice, but do not believe that the formal procedures prescribed by the Commission are necessary or that ascertainment should be regulated.

The public inquiry which resulted in adoption of the 1976 primer generated comments describing FCC's ascertainment requirements as "hogwash" and "a complete waste of time." More temperate were the comments of Westinghouse Broadcasting and the National Association of Broadcasters which characterized ascertainment as simply a natural and necessary process. Other industry representatives recognized ascertainment as a useful practice but questioned the need for formal procedures. For example, one industry group commented that consultations with the community are invaluable but each station must devise its own methods for maintaining continuing and meaningful contact at all community levels. Broadcasters also advanced the argument that they are in a position such that they hear about or are aware of all community problems and needs.

Many broadcasters from relatively small communities spoke out in particular against the redundancy of community contacts. For example, one licensee maintained that, of necessity, broadcasters are already familiar, often on a first-name basis, with local government, business, charity, and minority group leaders. Thus, there is no need to visit countless officials under formalized procedures. Another licensee noted that it continually works with people in schools, service clubs, youth groups, and other local organizations, not just as a broadcaster but as a coworker in many projects that keep a small community alive. Thus, to schedule and document formal consultations is wasteful and expensive.

The comments of the industry spokesmen we interviewed reflected the views expressed during the FCC ascertainment inquiry. In general, the spokesmen indicated that broadcasters would continue to ascertain if the FCC requirements were abolished. However, several of the spokesmen characterized formal ascertainment as burdensome and excessive or indicated that it should not be required of all broadcasters.

The broadcast spokesman supporting formal ascertainment stated that it (1) provides an effective means of identifying local needs, (2) forces broadcasters to consult with minority elements in their communities which they otherwise may overlook, or (3) is probably needed as long as localism is an objective of regulatory policy. Other spokesmen indicated that formal ascertainment is (1) preferable to more direct FCC involvement in programing or (2) helpful to new licensees but costly and redundant for established stations.

The manager of a station which serves a large metropolitan area told us that his station performs some 200 formal ascertainments yearly and has yet to identify any problems which the station was not made aware of through its everyday activities. The station manager has found that community groups are highly effective in initiating contact and pointing out their problems. He believes that most stations share this experience, but that FCC's requirements are predicated on the mistaken assumption that the typical broadcaster would not ascertain unless required to. Other industry representatives agreed that formal ascertainment does not provide information beyond that provided through normal station operations and that the conscientious broadcaster would ascertain whether required to or not.

One broadcast spokesman suggested that the Commission, instead of having formal ascertainment for all broadcasters, should develop policing techniques to isolate those broadcasters which fail to make sincere efforts to identify local problems and needs. This spokesman also suggested that radio licensees should be permitted to limit their ascertainments to members of their listening audiences rather than required to ascertain members of their entire service areas. 1/ Another spokesman contended that radio stations should be absolved from formal ascertainment entirely because the competitive market in radio effectively identifies local needs.

Our questionnaire survey found substantial differences between the opinions of television and radio station managers regarding current ascertainment procedures. Nearly 56 percent of the 202 television station managers participating in the survey responded that FCC should regulate ascertainment of community problems and needs. For 325 radio station managers, the figure was only 38 percent. As shown in the following charts, many of the television and radio station managers believe the current ascertainment procedures are (1) helpful to at least a moderate extent in identifying community problems and (2) effective to at least a moderate extent in contributing to problem resolution through programing. However, substantially smaller percentages of radio respondents than television respondents perceive the current procedures as at least moderately helpful and effective.

1/A similar argument was made during the inquiry concerning the 1976 primer. A licensee requested that the small market exemption be extended to include stations serving minority audiences, arguing that such stations should be allowed to ascertain and serve only that audience and be exempted from making an ascertainment survey of the entire community. In rejecting the request, FCC reiterated its position that all broadcast licensees have the basic obligation to discover and fulfill the problems, needs, and interests of the public within their service areas.

Helpfulness of Current Ascertainment Procedures in Identifying Community Problems and Needs

Extent to which procedures help identify community problems and needs	Percent of responses 202 television	Percent of responses 325 radio
Very large	8.4	1.5
Substantial	18.3	9.2
Moderate	33.7	26.8
Total	60.4	37.5
Small	21.8	23.7
Little or no	17.8	28.9
Not applicable (exempted station)	-	7.4
No response	-	2.5
Total	100.0	100.0

Effect of Current Ascertainment Procedures in Contributing to Resolution of Community Problems and Needs

Extent to which procedures result in programs that contribute to resolution of community problems and needs	Percent of responses 202 television	Percent of responses 325 radio
Very large	5.4	1.8
Substantial	14.4	10.2
Moderate	41.1	23.1
Total	60.9	35.1
Some	21.3	25.2
Little or no	16.3	37.2
No response	1.5	2.5
Total	100.0	100.0

When asked which ascertainment procedures they would employ if formal ascertainment were abolished, 93 percent of the television and radio station managers responded that they would use informal contacts with community members. Most of the managers claimed that they also would use formal interviews with leaders of majority and minority groups (68 percent), document unsolicited telephone contacts (61 percent), and prepare annual statements on how community problems were identified (51 percent). Half of the television managers and 45 percent of the radio managers indicated they would survey members of the general public. Similarly, 53 percent of the television managers and 45 percent of the radio managers claimed that they would prepare annual lists of ascertained problems and program responses.

Public interest groups' views of formal ascertainment

Public interest groups have maintained that formal ascertainment is needed to enable the public, as well as the Commission, to evaluate a broadcaster's efforts to discover and fulfill community problems, needs, and interests. In addition, they have urged the Commission to require broadcasters to explain how they evaluate ascertained problems and determine which ones warrant treatment on the air and have opposed the exemption of small market stations from the formal ascertainment requirements.

During the inquiry concerning the 1971 primer, public interest groups contended that essential to an accurate evaluation of a license application is information on how the broadcaster decides which ascertained problems to treat. A public interest group made a similar appeal during the inquiry concerning the 1976 primer, stating that "more basic ascertainment data should be made available to the public," particularly with regard to "lists of problems and needs the broadcaster claims to have formulated" from its community leader and public surveys. FCC's position on evaluation of ascertained problems has been that it does not desire to intrude upon a broadcaster's thought process. Instead, it relies on the broadcaster's good faith judgment of those problems which are significant and worthy of treatment.

During development of the 1976 primer, several interest groups opposed exempting small market stations from the requirement to document ascertainment surveys. Those groups asserted that

--all stations have the same obligation to serve the public interest, regardless of their size or location;

--an ascertainment exemption would prevent public interest groups from performing their function of monitoring and analyzing station performance;

--small market stations have at least as much need as large market stations to be fully aware of the problems of their communities and are not inherently more knowledgeable of local problems simply because they serve small communities;

--small communities are particularly dependent upon their broadcast stations and interchange between stations and minority groups in small communities is often particularly acute; and

- --formal ascertainment by all stations is needed to guard against a broadcaster's failure to educate itself voluntarily.

In adopting the 1976 primer, the Commission responded to criticism of the small market exemption by asserting that the annual list of ascertained problems and program responses, which is required of all broadcasters, provides an effective means for citizens to evaluate station performance.

Public interest group spokesmen whom we interviewed maintained that formal ascertainment should be required of all broadcasters. The spokesmen gave several reasons for their position:

- --The localism concept is predicated on the broadcaster having intimate knowledge of local problems. Formal ascertainment provides a spur to broadcasters to maintain their awareness of local problems, particularly those of minority groups, at a time when public issues are becoming increasingly complex.

- --Without formal ascertainment, many broadcasters would not seek out and meet with minority groups in their communities. Further, most stations are group-owned and their managers are transferred frequently. Formal ascertainment provides some assurance that these managers will be made aware of local problems and needs.

- --Ascertainment leads to more responsive programs and provides a means for community members to vent their frustrations and concerns. Moreover, by requiring formal ascertainment, the Commission provides broadcasters with a rationale (i.e., excuse) for communicating with groups whose views and concerns may be unpopular with the general community or with advertisers.

Several of the spokesmen stated that the current ascertainment requirements have certain shortcomings. The community leader checklist was criticized for failing to provide adequate information on how and with whom ascertainment consultations were conducted, a shortcoming which is critical if the broadcaster neglects to maintain complete supporting records. The annual list of ascertained problems and programs was criticized for being too broadly worded to permit an assessment of a broadcaster's responsiveness. A spokesman provided the following illustration. A broadcaster identifies a local problem as "auto exhaust pollution," but lists it simply as "pollution." The broadcaster may then list a program dealing with pollution as responsive, even though the program was not about auto pollution specifically. Thus, a program which is general in subject is represented as responsive to a problem which is specific in local character.

There is some sympathy for reducing the formality of ascertainment, although one spokesman contended that several of the procedural formalities are the result of broadcasters' desires for greater certainty. The idea of permitting radio stations to ascertain only members of their listening audiences was supported by two spokesmen. However, another spokesman suggested that limiting formal ascertainment by radio stations would leave unserved the problems and needs of certain local minorities. Several spokesmen were critical of the small market exemption, contending that (1) a broadcaster is not more attuned to local needs simply because it operates in a small community or (2) the exemption, rather than serving as a basis for a test of the small market hypothesis, is actually the first step toward eventual elimination of formal ascertainment.

Effectiveness of formal ascertainment

The effectiveness of formal ascertainment in identifying community problems and ensuring responsive program service has not been demonstrated conclusively. Although programing attentive to local needs is the ultimate objective of the ascertainment process, ascertainment research has been concerned with the methodology of problem identification rather than the responsiveness of program service. And even this limited research has been inconclusive, providing results which can be used to support opposing points of view.

A 1977 review of ascertainment issues reports that academic research has been of little help in resolving questions about the effectiveness of formal ascertainment. 1/ The review notes that this research has focused on ascertainment methodology, namely, the (1) adequacy of methods employed by broadcasters, (2) use of ascertainment data in renewal applications, and (3) implications of the procedural requirements that broadcasters survey the general public as well as community leaders. In each of these areas, the review points out that selected findings from different studies could be used to support opposite viewpoints. A primary example, as discussed below, has been the requirement for a broadcaster to survey the general public in addition to community leaders.

1/Avery, Robert K., "Access and Ascertainment in Broadcasting: An Overview, "Western Journal of Speech Communication," vol. 41, No. 3, Summer, 1977, p. 132.

Broadcasters have been skeptical of the need for conducting formal public surveys in addition to consulting with community leaders. During the inquiry concerning the 1976 primer a broadcaster contended that the public survey tends to elicit problems which are already known and well publicized. The broadcaster added that survey costs far outweigh benefits and that professional survey organizations are a chief beneficiary of the FCC requirement. Similarly, the Federal Communications Bar Association suggested that the public survey does not often identify problems not mentioned by community leaders and serves no useful purpose in small markets.

On the other hand, the Commission originally established the public survey requirement because it believed that members of the public may perceive local problems differently than community leaders. Subsequently, in defending continuation of the requirement in the 1976 primer, the Commission cited two academic studies which concluded that (1) important information might be lost unless the broadcaster surveys the public as well as community leaders and (2) perceptions differ markedly between community leaders and members of the public. The Commission did not consider the results of these studies to be final, but held that:

> "On the record before us, we cannot conclude that public surveys add nothing or little value to the licensee's ascertainment * * *. Rather, in the absence of a clear demonstration that public surveying is unwarranted, we prefer to stick fairly closely to the status quo of the [1971] Primer."

The assumptions and methodology of public surveying remain unproven. The 1977 review of ascertainment cites findings of one study which can be used to argue that there is a significant discrepancy between information elicited from community leaders and that provided by the general public. Similar findings were reported during 1975 Senate hearings on broadcast regulation. 1/ The local problems identified by the owner, manager, and news director of a station in a community of 23,000 were found to agree with the problems subsequently elicited from community leaders but to differ markedly from the problems identified by the general public. On the other hand, the 1977 review cites findings of another study which can be used to demonstrate a high correlation between the problem rankings of community leaders and the public.

1/Hearings before Subcommittee on Communications, Senate Committee on Commerce, Science and Transportation, Sept. 17, Nov. 5, 6, 11, 1975.

A recent study of ascertainment in the black community in Columbus, Ohio, supports the idea that community leaders and the general public may differ in their perceptions. 1/ However, the authors raise new doubts about FCC's ascertainment methodology. The study determined that identification of community group leaders is dependent upon the technique employed and that group leaders identified by different techniques tend to cite different problems. The particular technique upon which FCC's community leader checklist relies was found to be potentially misleading. The study concluded that the broadcaster must not rely on prominent community leaders or on organized groups if its ascertainment is to be representative of the entire community.

The lack of evidence demonstrating the effectiveness of formal ascertainment has raised doubts within the Commission about the value of the process it has prescribed. One former commissioner, in commenting on an FCC proposal to extend ascertainment to noncommercial educational broadcasters, voiced uncertainty over the effects of the ascertainment process and lamented the absence of conclusive evidence:

> "* * * like my colleagues, I have been concerned that existing requirements * * * impose burdens and costs out of proportion to any compensating benefits * * * I have been nagged by doubts that the process we have required since 1971 has had any demonstrable effect on licensee performance. The evidence * * * has contributed little to the resolution of such doubts inasmuch as it is composed essentially of unsubstantiated claims from either side of the ascertainment issue * * *."

EVALUATION OF THE SMALL MARKET EXEMPTION

The small market exemption was adopted to test the hypothesis that the "broadcaster in the smaller community knows his town thoroughly, not only its majorities but also its minorities." The exemption includes about 1,900 radio and 14 television stations, representing about 25 percent of all commercial stations. Exempt stations are expected to maintain their awareness of local problems and needs, but are relieved of the requirement to document consultations with community leaders and the general public. The stations are still required, however, to prepare annual lists of

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1/McCain, Thomas A. and Hofstetter, C. Richard, "Different Strokes for Different Folks: Ascertainment in the Black Community," submitted to the Mass Communication Division of the International Communication Association, Chicago, Illinois, 1978.

ascertained problems and program responses. The requirement for television stations to prepare annual problems/programs lists became operational in October 1974 and the requirement for radio stations became operational in August 1976.

When it authorized the small market exemption in 1976, the Commission stated that it intended to reexamine the exemption after approximately 3 years and that it would conduct studies to analyze and evaluate whether the exemption in fact has served the public interest. In 1975, shortly after the exemption had been formally proposed, FCC's Chairman stated that the Commission was contemplating internal and external studies to analyze and evaluate the exemption. As of December 1978, it had performed some preliminary analyses but had not passed judgment on the overall validity of the exemption. However, the Commission intends to conduct an evaluation once the exemption expires in October 1979 and determine whether it should be discontinued, extended, or expanded to include additional stations.

What will serve as the basis for an FCC evaluation is not clear. The annual list of ascertained problems and program responses is the only documentation required of both exempt and nonexempt stations. In adopting the requirement for all licensees to prepare problems/programs lists, the Commission asserted that the lists would provide an effective means for evaluating station performance. However, according to the Broadcast Bureau official responsible for monitoring the exemption, preliminary analyses found that the lists are not useful for evaluation purposes. Our review of selected problems/programs lists confirmed that finding.

FCC rules stipulate that, to be complete, a station's list of ascertained problems and program responses must give the title of the program, its source (e.g., network, local), type (e.g., religious, educational), brief description, broadcast time, and duration for each community problem or need cited. We reviewed the problems/programs lists included in 197 randomly selected television license renewal applications for the period December 1974 through October 1977.

Our review found that about one-third of the applications did not provide complete problems/programs lists. In several cases, we could not determine which program was addressing which problem. The quality of the lists generally improved over the 3-year period, but wide fluctuations occurred among individual renewal months. For example, 80 percent of the applications filed for April 1976 had incomplete lists while 27 percent of those filed for June 1976 had incomplete lists.

Stations with relatively few employees and located in relatively small markets (characteristics exemplary of the stations included in the small market exemption) appear to have had a particularly difficult time providing complete information. Seven of the eight stations (or 88 percent) which had fewer than 25 employees and which were located in markets of less than 100,000 TV households did not provide complete problems/programs lists. In contrast, two of the eight stations (or 25 percent) which had 50 or more employees and were located in markets of 2.5 million or more TV households did not provide complete lists. These findings for television stations, coupled with the fact that radio stations have had nearly 2 years less experience in preparing problems/programs lists, strongly indicate that the lists do not provide complete data for evaluating program service.

Even if problems/programs lists were complete, they do not account for significant community problems which an exempt station may have overlooked. A station cannot treat problems which it has not identified and need list only those problems it has chosen to address. If the hypothesis that the broadcaster in the smaller community knows its town thoroughly is to be supported, it is important to identify all significant community problems, including those which may not have been selected for treatment. Otherwise, the proposition being evaluated is not whether the small market station is thoroughly knowledgeable, but whether it is capable of preparing a problems/programs list and is as adept as non-exempt stations in doing so.

CONCLUSIONS

After reviewing ascertainment policy, its development, and application; reading countless comments on both sides of the issue; and talking with broadcasters and public interest groups, it is easy to overlook the fact that ascertainment is intended as a means of achieving better program service and not as an end in itself. For example, a broadcaster was challenged for not following a prescribed procedure, even though the local problems it had identified were recognized by the challenger as accurate. Clearly, this marks a triumph of form over purpose, a circumstance which the Commission sought to avoid in developing its 1976 primer. Close familiarity with community demographics, consultations with community leaders as well as the general public, selection of particular problems for treatment on the air, preparation of lists of ascertained problems and program responses--each has been formalized as a procedural step which presumably contributes to responsive program service. This presumption has not been proved and doubts have been raised in research studies and within the Commission about whether the formal ascertainment process really works.

The fundamental issues are twofold: if absolved from formal ascertainment, (1) would broadcasters make sincere efforts to identify significant community problems, needs, and interests, and (2) what assures that those efforts, if made, will lead to responsive program service? If formal ascertainment in fact assures that broadcasters contact community elements and identify local problems which otherwise might be overlooked, then the process arguably is providing some benefits. Those benefits are marginal, however, unless the process also has a substantial influence on the broadcaster's programing decisions.

The Commission intends to evaluate its small market exemption once the exemption expires in October 1979 to determine whether the broadcaster in the small community is in fact thoroughly knowledgeable of its local majority and minority elements. We view this as a useful beginning, but believe that the exemption also provides the Commission with an opportunity to examine the basic questions stated above. By comparing the ascertainment practices of exempt stations with those of nonexempt stations, the Commission could determine whether its formal ascertainment procedures are needed to assure that broadcasters make efforts to identify community problems and whether the use of those procedures has any effect on the broadcasters' program selections. In this regard, the Commission must go beyond the annual problems/programs lists and examine station problem-identification and program-selection processes. Problems/programs lists cannot, in themselves, establish that the broadcaster has identified the truly significant problems of its community or that the broadcaster has not ignored such problems in its program selections. Furthermore, an evaluation which is not comprehensive will only lend credence to contentions that the small market exemption is simply a step toward elimination of formal ascertainment requirements rather than the basis for a meaningful assessment of those requirements.

An evaluation of the small market exemption also provides the Commission with an opportunity to (1) eliminate needless procedural requirements and (2) lay the groundwork for exempting stations in large markets and assessing the effects of formal ascertainment on their program service. The Commission could permanently relieve small market stations from ascertainment documentation if its evaluation finds that small market stations are in fact thoroughly knowledgeable of their communities. This finding would not establish that formal ascertainment is ineffective for stations located in large markets since none of those stations are included in the current exemption. However, the results of an evaluation of the small market exemption should provide a base of knowledge for designing, implementing, and evaluating an exemption for large market stations.

RECOMMENDATION TO THE CHAIRMAN, FCC

To provide for a meaningful assessment of the Commission's formal ascertainment requirements, we recommend that the Chairman assure that the evaluation to be conducted once the small market exemption expires in October 1979 goes beyond analysis of annual lists of ascertained problems and program responses and includes examination of the problem-identification and program-selection processes used by exempt and nonexempt stations. The Commission should then exempt stations in large markets and evaluate the effects of the exemption on the ascertainment practices and program service of those stations.

CHAPTER 5

RULES COVERING OWNERSHIP OF BROADCAST STATIONS

The belief that the public should get the greatest number of viewpoints from diverse, competing sources is the basis for FCC rules limiting the number of broadcast stations which a licensee may own. These multiple ownership rules are intended to foster maximum competition in broadcasting and promote diversity of programing sources and viewpoints. Since optimum levels of competition and diversity cannot be measured, the Commission assumes that the greater the number of owners, the greater the diversity.

The direct effect of the multiple ownership rules on diversity is unknown. However, it is known that as a result of FCC's reluctance to force divestiture and its desire to limit industry disruption, ownership concentration has not dissipated materially. We believe that the Congress as a matter of policy should decide the relative importance to be placed on ownership diversity and industry stability in formulating ownership rules, and the circumstances under which divestiture would be appropriate for fostering competition in broadcasting and promoting diversity of programing sources and viewpoints.

Although the Commission cannot determine the effect on diversity of its multiple ownership rules, it can measure the impact on ownership concentration by analyzing available ownership data. However, it doesn't. Except in the course of formulating ownership rules, the Commission performs no overall ownership analyses. Nor does it maintain aggregate ownership statistics. We believe that an information system would reduce research time and provide ownership statistics on a timely basis for evaluating the impact of ownership rules. We also believe that a statistical report published periodically showing changes in ownership concentration at the local, regional, and national levels would be useful to the Congress and the public for monitoring ownership trends.

In 1978 the Commission adopted a policy to promote ownership of broadcast stations by racial minorities. This policy is intended to ensure adequate representation of minority viewpoints and, like the multiple ownership rules, to promote diversity of programing sources. The Commission does not, however, collect minority ownership data. We believe that this data should be collected and would be helpful in examining efforts to increase minority ownership and evaluating the effectiveness of those efforts. We also believe that minority ownership statistics should be included in periodic FCC reports on ownership concentration.

PRINCIPLES OF STATION OWNERSHIP RULES

The Communications Act authorizes the Commission to grant broadcast licenses only after it determines that the public interest, convenience, and necessity will be served. As interpreted by the Supreme Court 1/ and the Commission, the public interest includes the belief that "the widest possible dissemination of information from diverse and antagonistic sources" is essential.

The Commission has stated that there is no optimum degree of diversification and that it is not competent to determine what number of broadcast outlets is sufficient. In the words of one commissioner, diversity and its effects are elusive concepts, not easily defined, let alone measured, without making qualitative judgments objectionable on both policy and first amendment grounds. Nevertheless, the Commission believes that, the greater the number of station owners, the healthier the competition and the greater the diversity of viewpoints. In this regard, the Commission has stated that ownership limitation rules, in contrast to ascertainment of community needs and the fairness doctrine, 2/ constitute a means of fostering diversity without regulating program content, and thus are more compatible with first amendment values.

The courts have noted that the Commission has established ownership rules without demonstrating a substantive amount of harm. Similarly, according to an FCC official, the Commission has not routinely evaluated the effects of the ownership rules on competition. Instead, it has adopted policies based on the proposition that, while the effects of competition cannot be measured, competition is strengthened just by removing the potential advantage of multiple-station ownership over single-station ownership. Thus, for example, FCC's first consideration in granting new licenses is diversification of ownership control.

The following sections discuss FCC's efforts to foster diversification through rules which limit local, regional, and national control of station ownership. Several of the rules were adopted to contain an existing situation and limit the potential for industry disruption.

1/Associated Press v. United States, 326 U.S. 1,20 (1945).

2/FCC's ascertainment policy is the subject of chapter 4 and the fairness doctrine is the subject of chapter 7.

disrupt the industry, cause individual hardship, and harm the public interest. The Court noted that the Commission, in addition to promoting ownership diversity, is concerned with ensuring the best practicable service to the public. The Court then stated that the weighing of these competing goals under the public interest standard is a task which the Congress has delegated to the Commission and that nothing in the Communications Act, the first amendment, or FCC's past and present practices requires that ownership diversity be given primary weight in all circumstances. Responding to other points raised by the appeals court, the Supreme Court stated that:

--Since local ownership in and of itself has been recognized to be a factor of some (albeit slight) signficance in granting new broadcast licenses, it was not unreasonable for the Commission to consider local ownership as one of several factors militating against divestiture by established licensees of cross-owned broadcast stations.

--FCC's past concern with avoiding industry disruption is evident in its practice of regularly renewing the licenses of broadcast stations (including newspaper-owned stations) that have operated in the public interest, and in its tailoring of other ownership limitation rules so that they operate wholly or primarily without forcing divestiture.

--The fact that the Commission has routinely approved voluntary station sales and license transfers is not pertinent to the question of whether it should compel established licensees to divest their stations.

--The Commission did not need complete factual support for its decision to limit divestiture because predictions of future public interest benefits necessarily entail judgment by the expert agency.

Extent of crossownership

FCC's crossownership rules provide that newspaper and broadcast properties must be sold to different parties. One FCC commissioner contended that, given the stability of crossownerships, the Commission cannot realistically rely on future transfers to dissipate concentration of control and that the public should not have to wait 25 to 30 years to realize the benefits of increased competition. To reduce ownership concentration and ensure local competition, the commissioner suggested that FCC adopt a standard under which divestiture would be required if the co-owned, colocated newspaper and

Because the Commission does not maintain aggregate ownership statistics, we used the latest aggregate statistics available at the time of our field work, those published in the 1977 "Broadcasting Yearbook," to analyze changes in ownership patterns. The yearbook data was current as of late 1976.

To determine how the pattern of local co-ownership has changed since adoption of the 1970 one-to-a-market rules, we compared yearbook statistics with 1966-67 statistics which the Department of Justice had compiled to urge the Commission to adopt the rules. Justice analyzed the extent of radio-TV co-ownership in 50 major markets. We analyzed yearbook data on co-ownerships in the same 50 markets 9 years after Justice's study and more than 6 years after the 1970 one-to-a-market rules went into effect.

Our analysis showed that only 29 percent of the radio-TV combinations cited by Justice had been dissolved by 1976. At this rate, co-ownerships in the 50 markets will be around until 1998. In the country's three largest TV markets--New York, Los Angeles, and Chicago--the same 15 co-ownerships still existed. When all U.S. markets are considered, there were 142 instances at 113 locations of AM-FM-TV co-ownership in 1976.

AM-FM co-ownership

The 1970 one-to-a-market rules included restrictions on acquiring AM and FM stations in the same location. However, the Commission believed that, in most cases, existing AM-FM combinations in the same market might be economically and/or technically interdependent and that independent FM stations generally were losing money. Consequently, in 1970, the Commission permitted AM-FM combinations under certain conditions to be sold to a single buyer, something it did not permit for AM-TV and FM-TV co-ownerships. The Commission observed that while this provision was not fostering the objective of increased diversity, it was preventing many stations from closing down thereby discouraging decreased diversity.

The Commission rescinded the AM-FM co-ownership rules 1 year after adopting them, partly because it intended to study the issue further. In 1975 the Commission concluded that FM stations could not be expected yet to stand on their own and that a rule barring AM-FM combinations might stunt FM's growth and be unnecessary in light of other FCC policies. In 1970, 1,300 FM stations were licensed to owners of AM stations. By late 1976, after the Commission had decided to permit AM-FM co-ownership, over 2,000 FM stations were co-owned and colocated with AM stations. Thus, of the Nation's more than 7,000 commercial radio stations, over half were included in AM-FM co-ownerships having both outlets in the same communities.

AM-FM programing duplication

Rather than requiring separate AM and FM ownership, the Commission chose to increase diversity by requiring separate AM and FM programing. In this regard, the Commission had begun to require some nonduplication of AM and FM programing in the 1960s. Those requirements were intended to limit the waste of spectrum space, improve the opportunity for development and competitiveness of independent FM stations, and stimulate the sales of FM receivers. By the mid-1970s, the Commission believed that increases in the number of FM stations and in FM profitability indicated that the nonduplication requirements had achieved the desired effect. It noted that FM's standing, while not yet equal with AM's, had improved materially. Consequently, in 1976 the Commission decided to reduce the amount of duplication but not to abolish it completely. Beginning May 1, 1979, an FM station cannot devote more than 25 percent of its average program week to duplicating the programing of an AM station owned by the same licensee in the same area if either of the stations is licensed to a community of over 25,000 population. One FCC commissioner dissented from the rules, arguing that the Commission had not proved the economic necessity of retaining any duplication.

Extent of AM-FM duplication

Radio licensees report information on programing duplication in their license renewal applications, but the Commission does not compile aggregate statistics on the amount of programing duplication by co-owned stations. However, based on a randomly selected sample of 340 FM license renewal applications, we estimate that at least 30 percent of all FM stations duplicated AM programing to some extent during the period August 1974 to June 1977. In addition, among the FM stations which had some programing duplication, we estimate that at least 31 percent duplicated AM during more than 25 percent of their total operating time and at least 24 percent duplicated AM during more than 50 percent of their total operating time. 1/

1/Our estimates of the percentages of FM stations which duplicated AM programing were made at the 95-percent level of statistical confidence. The probability is no greater than 2.5 out of 100 that the actual percentages for the population of FM stations are less than our estimates.

In developing its 1976 programing duplication rules, the Commission researched the extent of AM-FM duplication in selected markets. That data, however, is no longer available. Thus, should it decide to re-address programing duplication, the Commission will have to reconstruct its information base. The Commission is on record as not precluding the need for separate AM and FM ownership in the future.

LOCAL OWNERSHIP RULES: NEWSPAPER-BROADCAST CROSSOWNERSHIP

In 1970, when the Commission issued its one-to-a-market rules, it also proposed to limit common ownership in any given market to one or more daily newspapers or one TV station or one AM-FM combination. To comply with FCC's proposed rule, owners whose holdings exceeded the limits would have to divest themselves of either the newspaper or broadcast station within 5 years. The intent of the proposal was to promote competition among newspapers and broadcast stations and to encourage greater diversification of information sources and viewpoints. There was general agreement that the most significant aspect of newspaper-broadcast joint control, or crossownership, was the common control of television and general circulation newspapers.

The Commission adopted crossownership rules in 1975. Future formation of TV-newspaper or radio-newspaper combinations in the same market would be barred. However, with regard to existing crossownerships, the Commission departed from its proposal of across-the-board divestiture. After reviewing public comments, it decided that divestiture would be required only in the most egregious cases--those true monopoly situations in communities in which one owner controlled the only daily newspaper and either the only TV station or the only broadcast station of any kind providing the entire community with a clear signal. Sixteen such cases were identified: seven TV-newspaper monopolies and nine radio-newspaper monopolies. The TV-newspaper monopolies served markets ranging from 34,600 to 365,400 TV households. Each market represented less than 1 percent of the Nation's total TV households in 1976.

In limiting the scope of divestiture, the Commission concluded that a mere hoped-for gain in diversity was not enough to offset the possibilities of industry disruption, owner hardship, and reduction of service to the public. In March 1977, the Court of Appeals, acting on a challenge to the crossownership rules, disagreed with the Commission and ordered it to adopt a rule generally requiring divestiture of existing newspaper-broadcast combinations in the same city. 1/ In June 1978, the Supreme Court reversed the appeals court and upheld FCC's crossownership rules in their entirety. 2/ Throughout the FCC and court proceedings, the fundamental question regarding divestiture was whether ownership diversity or industry stability better serves the public interest.

Pros and cons of divestiture

During FCC's crossownership proceeding, proponents of divestiture contended that increased diversity of ownership would result in increased diversity of programing and viewpoints. 3/ While the Commission remained convinced of the importance of diversity, it declined to order broad-scale divestiture because it believed that:

--Divestiture might reduce local ownership and the involvement of owners in management since many station sales would be to outside parties.

--The continuity of local operations would be disrupted since the new owner would lack knowledge of the community.

--Forcing divestiture might engender local economic dislocations in the form of vast demand for equity capital, increased interest rates, and changing selling prices.

--Stability and continuity of ownership serve important public purposes and divestiture might result in loss or diminution of service to the public.

1/National Citizens Committee For Broadcasting v. Federal Communications Commission, 555 F.2d 938 (D.C. Cir., 1977). Although it ordered a new rule regarding divestiture, the appeals court upheld FCC's rule prohibiting future formation of newspaper-broadcast combinations.

2/Federal Communications Commission v. National Citizens Committee For Broadcasting, No. 76-1471 (June 12, 1978), 46 LW 4609.

3/Proponents also offered arguments based on anti-trust grounds and the economic power of local crossownerships. The Commission held that these arguments were relevant, but that they were of secondary concern under its regulatory responsibilities.

The Commission held that divestiture is a harsh remedy appropriate only when the need is overwhelming and the evidence unambiguous. In this regard, it stated that many newspaper-broadcast combinations began operations long before there was hope of profit and, were it not for those efforts, service would have been much delayed in many areas. The Commission also stated that a number of crossownerships have a long record of service to the public, and it found an undramatic but statistically significant superiority in the amount of local news and other local programing broadcast by cross-owned TV stations. 1/

The appeals court, in ordering a new divestiture rule, noted that the Commission had to rely mainly on judgment rather than facts in determining divestiture policy since the voluminous record of its proceeding contained little reliable "hard" information. The record had not proved whether crossownership served or hindered the public interest, or whether divestiture would or would not cause public harm. The court held that the Commission, in dealing with ambiguous evidence, had erred in concluding that evidence of harm from divestiture had to be found before divestiture could be ordered. In the court's view, not ordering broad-scale divestiture was inconsistent with FCC's long-standing position that "nothing can be more important than insuring that there is a free flow of information from as many divergent sources as possible." 2/ Unlike the Commission, the court did not consider divestiture to be a harsh remedy.

1/FCC's analysis found that in 1973 newspaper-owned TV stations on the average provided 6 percent more local news, 9 percent more local nonentertainment, and 12 percent more total local programing than other TV stations during the hours 6 a.m. to midnight, after controlling for frequency type, network affiliation, group ownership, station revenue, the number of minutes broadcast per week, and the number of commercial TV stations in the market. During prime time (6 p.m. to 11 p.m.), however, newspaper-owned stations did not provide significantly greater amounts of such programing. An analysis submitted by an outside researcher during FCC's proceeding had concluded that ownership by a newspaper did not affect the amounts of TV news or local programing. Our own analysis (see app. IV) found no statistically significant differences in the average percentages of total nonentertainment and total local programing provided in 1976 by TV stations with different ownership patterns, including newspaper crossownership.

2/National Citizens Committee For Broadcasting, Ibid., p. 966.

It reasoned that station owners would not be deprived of any vested rights since the Communications Act specifically provides that a broadcast license carries no rights beyond its 3-year term. 1/ Addressing FCC's arguments for limiting divestiture, the appeals court stated that:

--Local ownership by itself does not insure that a station will be attuned to local needs. Most parties had stated during FCC's proceeding that their broadcast stations and newspapers have separate management, facilities, and staff. About one-quarter of the 79 newspaper-TV crossownerships in question were not locally owned, and there was no evidence that the local owners of the other stations actively participated in daily management. Furthermore, there was no reason to suppose that crossowned stations would not be sold to local entrepreneurs and, in any event, licensees have long been permitted by the Commission to sell their stations and transfer their licenses

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1/However, FCC's practice of routinely granting license renewal except in cases of serious misconduct has led broadcasters to assume a vested right in their licenses. (See ch. 2.) Although FCC's regulatory mission is not to ensure the financial wellbeing of broadcasters, it was argued that forcing divestiture might create financial hardship and be unfair to owners who have operated their stations in good faith. In response, proponents of divestiture argued that (1) the large majority of station owners have recouped their initial investment several times and thus would not be harmed materially by divestiture and (2) the Commission could waive the divestiture rule for those owners who clearly show that they would suffer financial hardship and that their hardship would result in diminished service to the public, or could grant the owners an extended period of time (e.g., 10 years) to comply with a divestiture order. Critics also pointed out that (1) owners of stations located in two separate cities could comply with a divestiture order by swapping stations, thereby increasing onwership diversity in both cities and permitting both owners to maintain an equity interest in broadcast properties, and (2) as an inducement to divestiture, the Commission could authorize deferral of taxation on the capital gains realized from station sale. Under 26 U.S.C. §1071, the Commission can permit sellers of broadcast properties to defer capital gains taxation whenever it certifies that the sale is "necessary or appropriate to effectuate a change in policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcast stations * * *."

without regard to whether the new owners intended to participate actively in management. 1/

--Divestiture would entail an alteration in the ownership patterns of the broadcast industry, but there was no evidence that this one-time alteration would so seriously disrupt continuity of operations that the public's interest in quality programing would be substantially harmed. Furthermore, there was no reason to believe that divestiture would disrupt local economic conditions or future program service to any greater extent than the voluntary station sales which the Commission routinely approves. 2/

The Supreme Court, in upholding FCC's crossownership rules, did not decide whether divestiture was good or bad, but limited its ruling to whether FCC's method of determining divestiture policy had been arbitrary and capricious. In this regard, the Court found that the Commission had weighed competing policies and had rationally concluded that although broad-scale divestiture would foster diversity, it also might

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1/Our analysis of questionnaire survey responses by 457 radio and television station managers found that (1) in the large majority of cases (85.6 percent), the station manager usually made programing decisions, (2) in about half the cases (50.5 percent), the station manager had an ownership interest in the station, and (3) whether or not the station manager usually made programing decisions was not related to a statistically significant degree to whether or not he had an ownership interest. These findings suggest that the broadcast station manager is the focal point of local decision making and that a station owner, unless he is also the station manager, is not greatly involved in daily management.

2/One argument made by opponents of divestiture was that the profits generated by a broadcast station enable an owner to subsidize a local newspaper which otherwise would fail. However, no reliable evidence was presented during FCC's proceeding to show the degree to which stations subsidize newspapers. The appeals court pointed out that the Commission could waive divestiture on a case-by-case basis if it were persuaded that continuation of a local crossownership would serve the public interest. Other critics argued that the licensee divesting its broadcast station could invest the proceeds in other profitable enterprises to subsidize newspaper operations and that, in any event, ensuring continued operation of local newspapers is not FCC's primary responsibility.

disrupt the industry, cause individual hardship, and harm the public interest. The Court noted that the Commission, in addition to promoting ownership diversity, is concerned with ensuring the best practicable service to the public. The Court then stated that the weighing of these competing goals under the public interest standard is a task which the Congress has delegated to the Commission and that nothing in the Communications Act, the first amendment, or FCC's past and present practices requires that ownership diversity be given primary weight in all circumstances. Responding to other points raised by the appeals court, the Supreme Court stated that:

--Since local ownership in and of itself has been recognized to be a factor of some (albeit slight) signficance in granting new broadcast licenses, it was not unreasonable for the Commission to consider local ownership as one of several factors militating against divestiture by established licensees of cross-owned broadcast stations.

--FCC's past concern with avoiding industry disruption is evident in its practice of regularly renewing the licenses of broadcast stations (including newspaper-owned stations) that have operated in the public interest, and in its tailoring of other ownership limitation rules so that they operate wholly or primarily without forcing divestiture.

--The fact that the Commission has routinely approved voluntary station sales and license transfers is not pertinent to the question of whether it should compel established licensees to divest their stations.

--The Commission did not need complete factual support for its decision to limit divestiture because predictions of future public interest benefits necessarily entail judgment by the expert agency.

Extent of crossownership

FCC's crossownership rules provide that newspaper and broadcast properties must be sold to different parties. One FCC commissioner contended that, given the stability of cross-ownerships, the Commission cannot realistically rely on future transfers to dissipate concentration of control and that the public should not have to wait 25 to 30 years to realize the benefits of increased competition. To reduce ownership concentration and ensure local competition, the commissioner suggested that FCC adopt a standard under which divestiture would be required if the co-owned, colocated newspaper and broadcast station together controlled a certain percentage (e.g., 30 percent or greater) of their respective markets, as measured by circulation figures for the newspaper and audience share for the broadcast station.

The Commission pointed out, however, that the number of colocated crossownerships was dropping. The number of newspaper-TV combinations was 96 in 1970, 94 in 1971, 83 in April 1974, and 79 in July 1974. According to statistics published in "Broadcasting Yearbook," the number had dropped to 60 by late 1976. However, of the 50 major markets studied by the Department of Justice in the late 1960s, 31 had TV-newspaper crossownerships in 1966-67. Twenty-four of the 50 markets still had crossownerships in 1976 and 15 of the 25 largest markets had TV-newspaper combinations.

Other statistics emerge when radio and magazine ownerships are considered. Based on yearbook data, 29 colocated AM-FM-TV-newspaper combinations existed throughout the United States as of late 1976. Two of these are in the same communities where the Commission is requiring divestiture. Although only 60 TV stations were co-owned and colocated with newspapers, 208 or 29 percent of all commercial TV stations had some form of interlocking ownership with newspapers or magazines. The percentage for radio was much lower.

The Commission does not normally maintain aggregate statistics on crossownership. As a result, it had to generate data to formulate the crossownership rules and was uncertain about the number of co-owned and colocated newspaper-broadcast properties. In its brief filed with the Supreme Court for its recent crossownership case, the Commission noted that the number of newspaper-radio combinations is not readily available.

REGIONAL OWNERSHIP RULES

In 1977 the Commission adopted rules restricting ownership of broadcast stations located in a given region. To promote FCC's goal of diversity, the rules prohibit the acquisition of three stations if any two are within 100 miles of the third and any of the stations have overlapping primary areas of service. In FCC's view, the limited number of frequencies allocated to a region should be distributed to prevent domination by a single owner.

NATIONAL OWNERSHIP RULES

To foster competition and promote diversity at the national level, the Commission has established numerical limits which prohibit ownership of more than seven AM stations, seven FM stations, and seven TV stations. No more than five of the TV stations can be VHF. The Commission also adopted a policy which requires a compelling public interest showing whenever any owner proposes to acquire its fourth TV station or third VHF station in the largest 50 television markets. No acquisition has ever been denied under this policy, however, and the Commission is formally reviewing the policy.

Development of the 7-7-7 rules

In the early 1940s, owners were limited to three TV and six FM stations. According to FCC officials, these numerical limits were selected arbitrarily. In 1944, the limit on TV stations was raised to five in light of "changed conditions." The National Broadcasting Company, then a holder of three television licenses, had petitioned the Commission and successfully argued that ownership of more than three stations was necessary for television networks and national programs to develop.

In 1946 the Columbia Broadcasting System sought but was prohibited from acquiring a full interest in an eighth AM station. Subsequently, in 1953 the Commission formally adopted the present limit of seven AM stations. The Commission pointed out that it might have been thought that the AM limit should have been set as low as the limit of six FM stations given the lesser potential for AM expansion. However, seven was selected to avoid undue disruption of existing holdings, discourage absentee ownership, and prevent increased ownership concentration.

As an alternative to a strict numerical limit, the Commission considered taking into account station class and market size. However, it concluded that no realistic formula based on those factors could be developed unless it was willing either to require large-scale divestiture or to permit a substantial increase in multiple ownership holdings.

The 1953 order adopting the AM limit also addressed FM and TV station ownership. The FM limit was raised from six to seven to conform with the AM limit due to the interrelationship between the two services and the status of FM growth. The existing limit of five TV stations was continued because the Commission believed, based on its experience, that the limit had proved "practicable and desirable."

In late 1953, the Commission proposed to raise the limit to seven stations, only five of which could be VHF. Adopted in 1954, the revised limit was intended to encourage rapid and effective development of the UHF spectrum. Rapid development did not follow, however. In 1954, 121 commercial UHF stations were on the air. This total was not exceeded until 1968, or 14 years later. One commissioner, while concurring with the rule, had expressed misgivings that the numerical ceilings were not based on more than intuition.

Even though the reasons for adopting the 7-7-7 rules may have been rather arbitrary, many of the broadcasters and public interest groups we interviewed saw no reason to change the rules. Several multiple-station owners contended that autonomous decisionmaking by local station managers is more important than the number of commonly owned stations in assuring diversity of programing and opinions. In addition, one broadcast spokesman stated that multiple owners can assume greater programing risks and provide better service because they can spread the risks over a broader financial base and more easily tap sources of capital. It also has been argued that multiple ownership serves to offset the power and influence of the three national television networks.

Development of TV station ownership rules in the 50 largest markets

In 1964 the Commission noted a marked increase in multiple ownership, especially of VHF stations located in larger markets. Because it believed this trend in ownership concentration was undesirable, it adopted an interim policy which required a hearing when an owner applied to acquire its second VHF station in the top 50 television markets, unless the applicant presented a "compelling affirmative showing" that the public interest would be served.

In 1965 the Commission considered adopting a rule to deny outright any acquisition of a fourth TV station or a third VHF station in the top 50 markets. The proposal noted that the limit of seven TV stations (5 VHF) was not appropriate for all licensees. Ownership of five big stations was treated the same as ownership of five small stations even though the top 50 markets included nearly 75 percent of all television households. In addition, according to the Commission, no one could validly argue that multiple ownership was needed to provide capital to establish and continue television service in the top 50 markets. The Commission contended that, were it not for the scarcity of frequencies, the number of VHF stations in large markets would be substantially greater due to the profitability of existing stations, increases in their capital value, and opportunity for growth.

In 1968 the Commission decided not to adopt the proposed rule, 1/ but did adopt a policy which requires a "compelling public interest showing" when an owner proposes to acquire its fourth TV station or third VHF station in the top 50 markets. No hearing has ever been held and no acquisition has ever been denied under this policy, however. FCC reviews of the applications have been on a case-by-case basis and in every case the Commission has been persuaded by the applicant's compelling showing.

In March 1978, the Commission initiated a rulemaking proceeding to review the top 50 policy. The Commission is seeking comments on whether the policy should be retained, terminated, or modified. It also hopes to determine whether ownership concentration in the top 50 markets has increased, something it does not know due to the lack of current data on ownership concentration. At the time of our review, the Commission was reviewing comments received.

Changes in multiple ownership

In 1958, more than 4 years after the 7-7-7 limits were established, a committee of FCC commissioners issued a report on network broadcasting known as the Barrow Report. The report noted that multiple ownership of TV stations had grown substantially despite numerical limits and concluded that in the long run the Commission should strive for the goal of one station for each owner.

1/Between 1965 and 1968, the number of commercial UHF stations in the top 50 markets had increased from 20 to 39. As a result, ownership concentration in those markets was reduced and as many separate owners and viewpoints were provided as the proposed rule would have required. In addition, the Commission concluded that not adopting the rule might encourage rapid development of UHF stations and improve chances for a fourth network. This conclusion was based on FCC's experience with multiple ownership and public comments on the proposal, all of which had been filed by broadcasters. One commissioner who dissented from the decision asserted that the question which should have been addressed was:

> "How is the public's interest served by having a non-resident, corporate, multiple owner control one of the major sources of news, opinion, and entertainment for a city of millions?"

As of late 1976, ownership of commercial television stations was in some respects more concentrated than in the late 1950s. According to the Barrow Report, 43 percent of all commercial TV stations were held by 81 multiple, or group, owners--those owning more than one TV station. We found that in 1976, 61 percent of all commercial TV stations were held by 128 group owners. The Barrow Report stated that the image of an individual station owner devoted to serving a single community was a myth for most large cities. The report noted that, among the top 25 markets, 8 had no single-station proprietor and 11 included only one such owner. By 1976, however, the figures had declined to four and eight.

Another indication of increased ownership concentration is given by changes in the number of TV stations held by group owners In 1956, according to the Barrow Report, 90 percent of all group owners held two to four stations while 10 percent held five to seven. In 1976, 77 percent held two to four stations while 23 percent held five to seven.

The Barrow Report expressed concern over the concentration of ownership in the top 25 markets, which served more than half of the U.S. population. It noted that in these markets group owners held 72 percent of the commercial TV stations. In 1976, the figure was 70 percent. In 1956, group owners held 58 percent of the VHF stations in the top 50 markets and seven group owners controlled the maximum of five VHF stations. In 1976, group owners held 81 percent of the VHF stations in the top 50 markets and 16 owners controlled the maximum of five VHF stations. Depending on the location of their stations, these 16 owners reached between 0.5 percent and 22 percent of the Nation's television households. Thus, while the multiple ownership rules restrict control of the number of stations, they permit some owners to reach more than a fifth of the U.S. television audience.

NEED TO COLLECT MINORITY OWNERSHIP STATISTICS

In May 1978 the Commission issued a policy statement setting forth specific FCC actions and inviting proposals on additional ways to promote increased broadcast station ownership by racial minorities. In announcing its policy, the Commission stated that increased minority ownership would promote its regulatory objectives of programing and ownership diversity and complement its policies on equal employment opportunity and ascertainment of community needs. 1/ The Commission held that:

"Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audiences. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.

"* * * ownership of broadcast facilities by minorities is another significant way of fostering the inclusion of minority views in the area of programming * * *. In addition, an increase in ownership by minorities will inevitably enhance the diversity of control of a limited resource, the spectrum * * *. What is more, affecting programming by means of increased minority ownership * * * avoids direct government intrusion into programming decisions."

The policy statement specifies two actions which the Commission will take to promote increased minority ownership. First, persons selling their stations to parties with a significant minority interest may qualify for deferred taxation on the capital gains they realize from selling their broadcast facilities. Second, broadcasters in jeopardy of having their licenses revoked or renewal applications denied may be permitted to assign or transfer their licenses at a distress sale price to applicants with a significant minority interest. 2/

1/FCC's ascertainment policy and procedures are discussed in chapter 4 and its equal employment opportunity rules are discussed in chapter 6.

2/Under the distress sale provision, the Commission intends to permit broadcasters which have been scheduled for a license revocation hearing or a renewal hearing on basic qualification issues to assign or transfer their licenses before a hearing is initiated. The assignment or transfer would have to be to applicants with a significant minority interest that meet FCC's character and other qualifications to hold a license. To encourage broadcasters to opt for the distress sale provision, the Commission expects the sale price would be somewhat above the value a broadcaster could realize in selling its equipment in the event of a license revocation.

In addition to the provisions on tax deferral and distress sale, the FCC policy statement invites proposals on other ways to increase minority ownership and states that the Commission intends to examine the recommendations of its minority ownership task force. The task force was convened under FCC sponsorship in April 1977 to address problems which minorities face in increasing their ownership interests and to recommend actions for overcoming those problems. In its report released in May 1978, the task force makes several recommendations which call for the Commission to review its ownership, licensing, and related rules and policies to determine how they affect minority access to ownership of broadcast properties. On the basis of available data, the task force estimated that fewer than one percent of all radio and television properties are controlled by minority persons. By contrast, the task force noted that minorities consititute about 20 percent of the Nation's population and over 20 percent of the population in eight of the 20 largest television markets. 1/

The Commission does not collect data on minority interests in broadcast properties. The ownership report which licensees submit with their license renewal applications 2/ does not request information on minority group membership. As a result, FCC officials told us that the Commission has no systematic way of identifying minority owners or collecting minority ownership statistics. These statistics would provide baseline data for developing ownership rules and could be updated systematically to provide the Commission with a means of evaluating whether its regulatory policies are promoting minority ownership.

The Commission could collect minority ownership statistics by requiring a licensee to identify in its ownership report the race/ethnic origin of each individual who has a proprietary interest in the station. FCC's ownership report requires the licensee which is a partnership to show the extent of each partner's proprietary interest. If the licensee is a corporation, the number of equity shares legally or beneficially held by each officer, director, and stockholder

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1/As used by the task force, the term minorities includes persons who are of American Indian, Black, American Eskimo, Hispanic, Aleut, or Asiatic American extraction.

2/Licensees also are required to submit an ownership report (form 323) within 30 days after (1) consummation of an FCC-approved transfer of control or assignment of license, (2) FCC grant of an original construction permit, or (3) any changes in the information called for by form 323.

must be reported. For corporations with more than 50 stockholders, ownership interests is reported for those stockholders who are officers and directors or who hold one percent or more of the corporation's stock.

Another approach is to incorporate an ownership section into the statistical employment report (form 395) which station licensees file each year with the Commission. Under this approach, the form 395 would include a breakdown of ownership interest by percentage intervals (e.g., 1 to 10 percent, 11 to 20 percent, etc.) and licensees would report in the applicable interval the number of station owners by their race/ethnic origin.

CONCLUSIONS

The Commission and the courts have stated that the widest possible dissemination of information to the public from diverse and antagonistic sources is basic to our form of government. FCC's multiple ownership rules are intended to implement this concept by fostering maximum competition in broadcasting and promoting diversity of programing sources and viewpoints. However, as a result of FCC's reluctance to force divestiture and its desire to limit industry disruption, ownership concentration has not dissipated materially.

At their present rate of divestiture, local TV-radio co-ownerships will continue to exist until 1998. Also, given the relative stability of newspaper-broadcast cross-ownerships, many of them probably will continue indefinitely. Moreover, proportionately more television stations were group-owned in 1976 than in the 1950s, and concentration of VHF television ownership in the top 50 markets was greater. In addition, if the Commission decided today to require separate ownership of AM and FM radio stations (a possibility it has not precluded for the future), over half of the Nation's commercial radio stations either would have to be divested or grandfathered.

Whether one agrees with FCC's reluctance to employ divestiture as a regulatory tool depends on whether higher priority should be given to ownership diversity, as a means of fostering industry competition and diversity of programing sources, or industry stability, as a means of ensuring the best practicable service to the public. The weighing of these competing goals is a matter of judgment, since there is no conclusive evidence that newspaper-broadcast, TV-radio, and AM-FM co-ownerships provide better service, or that their divestiture would cause public harm. In light of these conditions, we believe that the Congress should decide as a matter of policy (1) the relative importance to be placed on ownership diversity and industry stability in formulating broadcast station ownership rules and (2) the circumstances under which divestiture by established broadcast licensees would be appropriate for fostering competition and diversity. In doing so, we believe the following factors are important:

--Diversity and competition have long been principal objectives of broadcast regulation, and increasing ownership diversity is one way of promoting those objectives without Government intrusion into broadcaster programing decisions. Since regulation of ownership per se does not entail judgments about program content, it is wholly compatible with first amendment values.

--Local ownership and management and stability and continuity of broadcast operations also are regulatory objectives, but they need not be the primary considerations in formulating ownership rules. FCC's concern for preserving local ownership and management would be more persuasive if the Commission required new and established station owners to be involved in daily management. Its concern for industry stability and continuity is evident in the practice of regularly renewing the licenses of stations which have demonstrated service in the public interest. While we agree that a station's record of service is the most important consideration in evaluating the performances of individual stations, the public benefits of increased diversity and competition can be more important than the public service records of particular stations. The Commission adopted this view when it ordered divestiture of 16 local newspaper-broadcast monopolies. Its decision was based on the expected benefits of increased diversity and competition and not the stations' records of service.

--Divestiture might be carried out without causing undue industry disruption, owner hardship, and reduction in service to the public. The Commission could, for example, exempt from divestitute on a case-by-case basis those station owners who clearly show that divestiture would cause individual hardship or local economic disruption and that these conditions would result in reduced service to the public. Alternatively, the Commission could grant such owners an extended period of time (e.g., 5 or even 10 years) to comply with a divestiture order. In addition, to alleviate individual inequities and encourage timely divestiture, the Commission could authorize deferral of taxation on the capital gains realized by owners who divest their broadcast stations.

--Ownership diversity and competition appears to be most relevant at the local level since the Commission historically has been concerned with the local news, public affairs, and other local components of broadcast programing. The fact that certain group owners reach more than a fifth of the Nation's TV households may not be important, provided that those households also have access to diverse sources of local information.

--Since the direct effects of ownership diversity on diversity of programing sources and viewpoints cannot be measured, divestiture policy could be based on the level of co-ownership concentration in a local market, as measured by station audience shares and newspaper circulation figures. A threshhold percentage of ownership concentration could be established, and divestiture could be required if the threshhold were exceeded regardless of whether or not specific anti-competitive behavior were evident.

Although the Commission cannot determine the effect of its multiple ownership rules on the diversity of programing sources and viewpoints, it can measure their impact on ownership concentration. However, while it requires licensees to report data on their ownership of broadcast stations and related media, the Commission does not aggregate the data or perform overall analyses of ownership patterns other than during the course of formulating its ownership rules. Similarly, aggregate data on the extent of AM-FM programing duplication is not readily available, even though the Commission receives this information from individual licensees. Moreover, while the Commission had adopted a policy to promote increased ownership of broadcast stations by racial minorities, it has no systematic way of collecting minority ownership data.

We believe that statistics on broadcast station ownership would be useful in assessing ownership trends, reducing research time, and evaluating the impact of ownership policies. We also believe that minority ownership statistics would help in evaluating alternative ways for increasing minority participation and in evaluating the effectiveness of the actions taken. Minority statistics could be collected by requiring licensees to identify in their ownership reports the race/ethnic origin of those individuals having proprietary interests in broadcast stations. Alternatively, an ownership section could be incorporated into stations' annual statistical employment reports to show ownership interests by percentage intervals and categories of race/ethnic origin. Finally, we believe that periodic reports showing changes in ownership of broadcast stations and related media, and the extent of minority participation in station ownership, would be useful to the Congress and the public for monitoring ownership trends.

RECOMMENDATIONS TO THE CHAIRMAN, FCC

To permit monitoring of ownership trends, improved evaluation of multiple ownership policies and rules, and timely assessment of efforts to promote increased minority ownership of broadcast stations, we recommend that the Commission

--establish an information system which provides current aggregate statistics on ownership of broadcast stations and related media;

--implement procedures for collecting minority ownership statistics; and

--publish periodically a statistical report showing changes in ownership concentration at the local, regional, and national levels, and the extent of broadcast station ownership by racial minorities.

RECOMMENDATION TO THE CONGRESS

As a matter of public policy, we recommend that the Congress decide

--the relative importance which the Commission should place on ownership diversity and industry stability in formulating broadcast ownership rules, and

--the circumstances under which divestiture by established broadcast licensees would be appropriate for fostering competition in broadcasting and promoting diversity of programing sources and viewpoints.

CHAPTER 6

EQUAL EMPLOYMENT OPPORTUNITY

The Commission has defined the equal employment opportunity (EEO) responsibilities of broadcasters to include nondiscrimination and affirmative action. Under its nondiscrimination policy, the Commission is concerned with employment practices to the extent that they reflect the broadcaster's qualifications to hold a license. Under its affirmative action policy, the Commission is concerned with broadcaster efforts to provide employment opportunities for women and minorities.

FCC's role in regulating employment practices, particularly its efforts to ensure broadcaster affirmative action, has caused controversy. Rather than allow this controversy to continue through frequent rulemaking proceedings, we believe that the Congress should clearly set forth FCC's responsibilities to regulate EEO in broadcasting.

Given its current role, we believe that the Commission should take certain steps to improve the effectiveness of its EEO policies. These steps include (1) obtaining more specific data on programing decisionmaking roles and responsibilities, (2) conducting field audits to verify women and minority employment status at broadcast stations and determine station compliance with EEO rules, (3) establishing criteria for applying EEO sanctions, (4) focusing its staff resources on reviewing all broadcaster EEO programs and (5) expanding computer applications in processing EEO information.

CONTROVERSY OVER FCC'S ROLE IN EEO

The Commission is the only independent Federal regulatory agency which has established for an industry it regulates rules prohibiting discrimination in employment and requiring affirmative action to ensure equal employment opportunity for women and minorities. FCC's nondiscrimination rule provides that all broadcast licensees must afford equal opportunity in employment to all qualified persons, and that no licensee may deny employment or related benefits to any person because of race, color, religion, sex, or national origin. FCC's affirmative action rule requires that each broadcast station establish, maintain, and carry out a positive, continuing program of specific practices to assure equal opportunity in recruiting, hiring, training, and related employment actions. To help enforce its rules, the Commission requires broadcast stations with five or more full-time employees to submit (1) a written 10-point EEO program (summarized in app. VIII) describing station recruiting, hiring, and other practices to assure equal employment opportunity for women and minorities and (2) an annual statistical employment report (form 395) giving the number of station employees by sex, race/ethnic origin, and job category.

These rules and requirements have caused controversy. Broadcasters and other critics have claimed that FCC's role in EEO unnecessarily overlaps the role of the Equal Employment Opportunity Commission, the agency primarily responsible for enforcing title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), and that special EEO rules for broadcasters result in reporting and enforcement duplication. On the other hand, critics such as the U.S. Commission on Civil Rights have claimed that FCC should be more aggressive in EEO, and that further actions are needed to ensure that broadcasters employ a fully integrated workforce and that women and minorities hold decisionmaking positions in broadcasting.

<u>Rationale and development of FCC's EEO policies and rules</u>

FCC regulation of broadcaster employment practices is not explicitly authorized by statute, but is based on the mandate of the Communications Act of 1934 to regulate broadcasting in the public interest. As interpreted by the Supreme Court, the authority delegated by the public interest standard takes meaning only within the context of the underlying regulatory statute. 1/ Accordingly, the Commission considers employment practices only to the extent that they (1) raise questions about the broadcaster's character qualifications to hold a license and (2) affect the public interest obligation of the broadcaster to provide programing that fairly reflects the tastes and viewpoints of minority groups. In considering these two factors, the Commission is concerned with the separate EEO policies of nondiscrimination and affirmative action. These policies are not intended to provide a remedy for an individual aggrieved by discrimination, but to assure that broadcasters engage in employment practices compatible with their public interest programing obligation.

The Commission adopted a nondiscrimination policy as a result of a petition filed by a public interest group in 1967. At that time, it was unlawful under title VII of the Civil Rights Act of 1964 for certain employers of 25 or more persons 2/ to discriminate because of race, color, religion,

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1/<u>National Association for the Advancement of Colored People et al</u>. v. <u>Federal Power Commission</u>, 425 U.S. 662, 669 (1976).

2/The figure was lowered from 25 to 15 or more persons by the Equal Employment Opportunity Act of 1972 (42 U.S.C. 2000e(b)).

sex, or national origin. After consulting with the Equal Employment Opportunity Commission and the Department of Justice, the agencies responsible for administering title VII, FCC declared in 1968 that it would act on EEO complaints against stations not under the jurisdiction of a Federal or State EEO agency. The Commission stated that a petition or complaint raising substantial issues of fact about employment discrimination would be fully explored before a license would be granted. In 1969 the Commission adopted a specific rule prohibiting discrimination based on race, color, religion, or national origin, and in 1970 amended this rule to prohibit discrimination based on sex. 1/

The main justification offered by the Commission for its nondiscrimination policy is not that broadcasters are inadequately covered by existing regulations, but that questionable employment practices cast doubt on the broadcaster's ability to serve the public interest. 2/ In FCC's view, it would be incongruous to permit the broadcaster violating the Nation's policy against discrimination to use the public airwaves. Thus, intentional discrimination almost invariably disqualifies a broadcaster from retaining its license, and the Commission, when presented with responsible and well-supported claims of discrimination, has held hearings to resolve the charges before granting license renewal.

FCC's affirmative action policy began in 1969 when the Commission decided that relying on complaints was an inadequate procedure and that further action was needed to cope with general patterns of employment discrimination. Consequently, to assure equal employment opportunity, a rule was adopted requiring each broadcast station to establish, carry out, and maintain a continuing affirmative action program in areas such as recruitment and training.

Since taking this initial step, the Commission has substantially increased its regulation of broadcaster affirmative

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1/The Commission noted that it could enforce its nondiscrimination policy on the basis of licensee character qualifications without adopting a specific nondiscrimination rule. However, it wanted to emphasize the importance of broadcaster compliance with the Nation's policy against discrimination.

2/The Commission also believed that, because television and radio have an enormous impact on American life, the broadcast industry's employment practices bear significance beyond the number of its employees and that exemplary practices by broadcasters would contribute toward reducing and ending discrimination in other industries.

action. In 1970 the requirement was adopted for stations with five or more full-time employees to prepare and submit written EEO programs to assure that licensees focus on the best methods for recruiting and employing racial minorities. In 1971 the affirmative action rule was amended to include women in station EEO programs, and those stations required to prepare written programs also were required to begin filing annual form 395 employment reports so that the Commission could monitor industry employment patterns and identify questions concerning the causes of such patterns. In 1975 the Commission developed guidelines to help stations prepare their EEO programs, and in 1976 established the current 10-point program under which stations describe their hiring, promotion, training, and related practices to assure equal employment opportunity for women and minorities.

The Commission also began requiring stations with 50 or more full-time employees to submit with their EEO programs a survey of the local workforce to help assess minority and female occupational levels and decisionmaking responsibilities. While the Commission does not require a station to employ women and minorities in full proportion to their representation in the local labor force, it does expect a station's workforce percentages to bear a reasonable relationship to the percentages of women and minorities in the available labor force.

The rationale for FCC's affirmative action policy is not just to assure equal employment opportunity for women and minorities, but to assure that their views are adequately represented in broadcast programing. 1/ In contrast to ascertainment of community needs, which also is intended to assure that broadcasters are responsive to minority views, affirmative action does not involve regulation of program content. 2/ The Commission believes that affirmative action will in turn lead to more representative and responsive broadcast service, and considers its role to be a prospective

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1/The Supreme Court stated in 1976 that FCC regulation of broadcaster employment practices "can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934 * * * to ensure that its licensees' programing fairly reflects the tastes and viewpoints of minority groups." National Association for the Advancement of Colored People, Ibid., n. 7, p. 670.

2/Under FCC's ascertainment policy, broadcasters are required to provide programing responsive to community problems and needs based on their consultations with the local public and leaders of significant community elements. (See ch. 4.)

one in which it leads the broadcaster to adopt policies ensuring an active recruitment program and genuine equal opportunity. Because this role is prospective, FCC's primary means of enforcing its policy has not been to take away the broadcaster's license, but to renew the license with the condition that the broadcaster improve its efforts to recruit and employ women and/or minorities.

<u>Criticism that FCC's role duplicates the role of the Equal Employment Opportunity Commission</u>

A major criticism of FCC's role in EEO has been that special rules for broadcasters are not needed since the Congress has charged the Equal Employment Opportunity Commission (EEOC) with the responsibility for enforcing nondiscrimination in employment by private industry, and that the regulations implemented by FCC unnecessarily overlap those of EEOC. In this regard, only 26 percent of the 527 television and radio managers participating in our questionnaire survey believe that FCC should regulate their stations' employment practices, and broadcasters have claimed during rulemaking proceedings that FCC's regulations would result in reporting and enforcement duplication. Other critics, noting that the administration is consolidating under EEOC the EEO authority of certain executive departments and agencies, 1/ claim it would be more efficient to leave broadcast EEO enforcement entirely with EEOC.

Based on employment statistics reported to FCC by broadcast licensees, we estimate that in 1977 roughly 90 percent of commercial television stations, and 39 percent of commercial radio stations, fell within the regulatory authority of both EEOC and FCC, and that those stations included nearly 104,000 employees or about 81 percent of the workforce employed by all commercial stations. Thus, in the absence of special EEO rules for the broadcast industry, the large majority of television stations (and industry employees), but a minority of radio stations, would still be subject to regulation by EEOC. As discussed below, however, the regulatory

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1/As part of the Administration's Reorganization Plan No. 1 (43 Fed. Reg. 19807, Feb. 23, 1978), EEOC in July 1978 replaced the Equal Employment Opportunity Coordinating Council as the agency responsible for coordinating all Federal EEO programs. In addition, in January 1979 EEOC assumed the authority held by the Civil Service Commission to ensure equal employment opportunity for Federal employees, and in July 1979 EEOC will assume the authority held by the Department of Labor to enforce the Equal Pay Act and the Age Discrimination in Employment Act.

mission and enforcement mechanisms of EEOC differ substantially from those of FCC, and the two agencies have endeavored to coordinate their procedures for processing discrimination complaints involving broadcast stations.

In contrast to FCC, EEOC was established expressly to enforce the prohibition contained in title VII of the Civil Rights Act of 1964 against discrimination based on race, color, religion, sex, or national origin. Thus, EEOC acts primarily to remedy the effects of past discrimination and, unlike FCC, it can provide a remedy for an individual aggrieved by employment discrimination. In this regard, EEOC may through conciliation or suit filed in a U.S. district court obtain an array of retrospective remedies, including reinstatement, promotion, and restoration of seniority or back pay.

EEOC has the authority to take action against employers (including broadcast stations) of 15 or more persons. FCC, in contrast, is not limited in its authority by the size of a station's workforce. In this regard, FCC has held that all stations must comply with its EEO rules because all stations must follow employment practices compatible with their public interest programing obligation.

EEOC encourages employers to take voluntary steps to overcome barriers to equal employment opportunity, but it cannot compel affirmative action efforts without litigation or formal Government action. In contrast, FCC requires each broadcast station to establish, maintain, and carry out an affirmative action program to ensure equal employment opportunity, regardless of whether discriminatory practices are evident. FCC also collects detailed employment statistics from stations employing five or more persons. EEOC, in contrast, collects similar statistics from employers of 100 or more persons. In 1974, the most recent year for which figures were available, less than 8 percent of the broadcast stations that reported employment statistics to FCC also reported to EEOC.

As an independent regulatory agency, FCC is not directly involved in the executive branch's consolidation of EEO authority under EEOC. However, FCC and EEOC have negotiated a memorandum of understanding that became effective in September 1978 and is intended to eliminate conflict and duplication of effort by the two agencies in processing discrimination complaints. The memorandum provides that:

--EEOC will forward to FCC complaints involving broadcast stations which do not fall within EEOC's statutory authority or the authority of a State EEO agency, and FCC will process those complaints in accordance with its own rules, regulations, policies, and procedures.

--FCC will refer to EEOC or a State EEO agency complaints which fall within its jurisdiction and the jurisdiction of EEOC or State agency. FCC also may undertake its own investigation within its statutory responsibility to determine whether the grant of a broadcast license would serve the public interest.

--EEOC will notify FCC about discrimination complaints involving broadcast stations which EEOC determines are well-founded but cannot resolve through conciliation. FCC will then request the station to make an affirmative showing that a grant of license renewal will serve the public interest. Based on the station's response and other information relating to its employment policies and practices, FCC under its statutory authority will determine whether to grant license renewal or sanction the station, and will notify EEOC of its determination.

Criticism that FCC should be more aggresive in EEO

In a 1977 report on women and minorities in television, the U.S. Commission on Civil Rights maintained that broadcasters must employ a fully integrated workforce to be responsive to the diverse needs of their communities, and that women and minorities must hold decisionmaking positions in broadcasting to enrich and diversify program service. 1/ In the view of the Civil Rights Commission and public interest spokesmen we interviewed, these objectives have not been met because FCC has displayed a great deal of reluctance to fully implement EEO rules and has appeared to take action only in response to pressure from citizen groups.

To improve the effectiveness of EEO implementation and enforcement, these critics believe that FCC should require all broadcast stations (including those with less than five full-time employees) to prepare written EEO programs and detailed form 395 employment reports, and to report employee salary data and the numbers of job hires and terminations by sex, race/ethnic origin, and job category. These critics also believe that all stations should be required to examine the composition of their workforce and the extent to which women and minorities are represented at the various levels

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1/"Window Dressing on the Set: Women and Minorities in Television," August 1977.

of responsibility in all areas of station programing, and that FCC should

- --conduct on-site investigations to determine station compliance with EEO rules, and
- --adopt job categories which are specifically related to the broadcast industry.

In 1977 roughly 5 percent of commercial television and 18 percent of commercial radio stations had less than five full-time employees. These small stations are not required to submit written EEO programs and detailed form 395 employment reports because the Commission believes that such a requirement would be unduly burdensome for licensees and that the information provided would not be meaningful for statistical evaluation. The Commission rarely conducts on-site investigations to determine station compliance with EEO rules, but relies on periodic headquarters review of station EEO programs and form 395 reports and on petitions from the public. As discussed in the following sections, the Commission has declined to require reporting of employee salary data and job terminations, or to adopt more specific job categories, but it has in certain cases required stations to report detailed information concerning recruitment methods and sources and new hires.

PROBLEMS WITH JOB CATEGORY EMPLOYMENT DATA COLLECTED BY FCC

The Commission has justified its regulation of broadcaster employment practices with the argument that improving the employment status of women and minorities is one way to assure that broadcasters meet their obligation to provide responsive program service. The Court of Appeals for the District of Columbia Circuit has observed that women and minority representation in upper level jobs is particularly relevant to FCC's argument because these are the positions where important policy and editorial decisions about programing are made. 1/

Based on form 395 employment statistics reported to the Commission, from 1972 through 1977 women and minorities have substantially increased their number and pay status in broadcasting. However, critics claim that these gains misrepresent the true status of women and minority employees because the

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1/National Organization for Women, New York City Chapter et al. v. Federal Communications Commission, 181 U.S. App. D.C. 65, 82 (1977).

job categories FCC uses are not descriptive of broadcast jobs.

In December 1978, the Commission responded to these criticisms by providing more specific examples of the types of broadcast jobs which should be included in form 395 job categories. The Commission also stated it would initiate a public inquiry to develop ways for verifying whether stations have reported their employment figures accurately.

Changes in women and minority employment pay status

The Commission uses nine job categories in collecting employment figures from broadcasters. These categories, which EEOC also uses to collect employment data from private industry, include (1) officials and managers, (2) professionals, (3) technicians, (4) sales workers, (5) office and clerical workers, (6) skilled craftsmen, (7) semiskilled operatives, (8) unskilled laborers, and (9) service workers. The following charts show the number of women and minorities employed by broadcast stations in 1972 compared with 1977 and the pay status of women and minorities in 1974 compared with 1977. The charts are based on form 395 employment statistics reported by stations with five or more full-time employees. The Commission designates as "higher pay" the first four job categories and as "lower pay" the remaining five categories.

Changes in Total Women and Minority Employment by Broadcast Stations, 1972-77

Sex and minority status	1972 Number of employees	1972 Percent of total employees	1977 Number of employees	1977 Percent of total employees	Percent increase 1972-77
Total employees	130,656	100.0	157,951	100.0	20.9
Women	30,064	23.0	45,300	28.6	50.7
Minorities (note a)	13,973	10.6	21,934	13.9	57.0

Changes in Pay Status of Full-time Broadcast Station Employees, 1974-77

Full-time employees and pay category	Number of employees 1974	Number of employees 1977	Number of employees 1974-77 change	Percent change 1974-77
Total employees				
Higher pay	92,369	104,634	+12,265	+13.3
Lower pay	27,217	26,214	- 1,003	- 3.7
Women employees				
Higher pay	10,713	17,911	+ 7,198	+67.2
Lower pay	19,531	19,677	+ 146	+ 0.7
Minority employees (note a)				
Higher pay	8,339	11,106	+ 2,767	+33.2
Lower pay	5,552	6,256	+ 704	+12.7

a/Minority employees include male and female Blacks, American Indians, Orientals, and Spanish surnamed Americans.

The first chart shows that (1) women as a percentage of total employees increased from 23 percent in 1972 to about 29 percent in 1977, (2) minorities as a percentage of total employees increased from 11 percent to about 14 percent over the same period, and (3) the percentage increases in the number of women (51 percent) and minorities (57 percent) exceeded the percentage increase in total employees (21 percent). The second chart shows that between 1974 and 1977 (1) in the higher pay categories, women increased by 67 percent and minorities increased by 33 percent compared with a 13 percent increase for total full-time employees and (2) total full-time employees in the lower pay categories decreased by about 1,000 and those in the higher pay categories increased by over 12,000. Within the 12,000 increase, minority women accounted for over 1,000, nonminority women for over 6,000, and minority men for over 1,500. 1/

We also compared the percentages of males, females, and minority full-time employees in each of the four higher pay job categories in 1973 with percentages in 1977. Table 6, below, shows that the percentage of white males has decreased and the percentages of females and minorities have increased in each of the four job categories. For example, between 1973 and 1977 the percentage of full-time employees in the top job category--officials and managers--who were white males decreased from 85 percent to 75 percent. Over the same period, male minorities increased from 4.5 to 5.1 percent, female minorities increased from 1.2 to 2.5 percent, total minorities (male and female) increased from 5.7 to 7.6 percent, and total females (white and minority) increased from 12.5 to 19.7 percent.

On the basis of the data in the charts on page 127 and in table 6, women and minorities have substantially increased their number and pay status in broadcasting in the 1970s, both in absolute terms and as a percentage of total employees, and have increased their representation in the upper level job categories. Whether these increases are comparable with increases that have occurred in other industries cannot be determined because the employment statistics collected by EEOC are limited to employers of 100 or more persons and exclude the majority of broadcast stations. In addition, as discussed below, critics have claimed that the job categories used by FCC present a misleading picture of women and minority employment in broadcasting.

1/These increases for women and minorities total less than the 7,198 increase for women and the 2,767 increase for minorities shown in the second chart because the chart includes double counting of minority women.

Table 6
Changes in Full-time Employment by Broadcast Stations in
Higher Pay Job Categories by Sex and Race
1973 Compared with 1977

Higher pay job category (note b) and year	Total full-time employees	Percent of full-time employees (note a): Male White	Male Minorities	Male Total	Females White	Females Minorities	Females Total	Total White	Total Minorities
Officials and managers									
1973	100.0	83.0	4.5	87.5	11.3	1.2	12.5	94.3	5.7
1977	100.0	75.2	5.1	80.3	17.2	2.5	19.7	92.4	7.6
Change in percentage	-	- 7.8	+0.6	- 7.2	+ 5.9	+1.3	+ 7.2	- 1.9	+ 1.9
Professionals									
1973	100.0	79.0	8.1	87.1	11.0	1.9	12.9	90.0	10.0
1977	100.0	71.1	8.8	79.9	16.7	3.4	20.1	87.8	12.2
Change in percentage	-	- 7.9	+0.7	- 7.2	+ 5.7	+1.5	+ 7.2	- 2.2	+ 2.2
Technicians									
1973	100.0	88.2	9.7	97.9	1.8	0.3	2.1	90.0	10.0
1977	100.0	81.5	12.4	93.9	5.0	1.1	6.1	86.5	13.5
Change in percentage	-	- 6.7	+2.7	- 4.0	+ 3.2	+0.8	+ 4.0	- 3.5	+ 3.5
Sales workers									
1973	100.0	83.5	5.2	88.7	10.5	0.8	11.3	94.0	6.0
1977	100.0	71.6	5.3	76.9	21.1	2.0	23.1	92.7	7.3
Change in percentage	-	-11.9	+0.1	-11.8	+10.6	+1.2	+11.8	- 1.3	+ 1.3

a/Includes stations with five or more full-time employees; minorities include Blacks, American Indians, Orientals, and Spanish surnamed Americans.

b/Officials and managers include officers of the station licensee; station manager and assistant manager; program, sales and news directors and assistant directors; office managers; budget officers; promotion managers; public affairs directors; chief engineers; and those holding equivalent positions. Professionals are persons engaged in the writing, preparing and producing programing, including continuity and news writers, editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions. Technicians include audio and video engineers, cameramen (live or film), film processors, light men, and stage hands. Sales workers are persons engaging wholly or primarily in direct selling.

Criticisms of job categories

The job categories used by FCC to collect employment data from broadcasters were developed by EEOC for application in industry in general. In 1970, when it solicited public comments on its form 395 employment report, FCC was told that the job categories were largely irrelevant to broadcasting. FCC conceded that more specific categories, such as on-the-air talent and operating engineer, would provide more useful statistics, but it felt that recordkeeping would be less burdensome for those broadcasters already maintaining similar data for EEOC.

After 1970, the Commission received many requests from academia, public interest groups, and Government agencies to revise the job categories used in its form 395 employment report. The most frequent criticism has been that using form 395 results in an inaccurate and misleading picture of women and minority employment because the job categories are not function oriented and specific to broadcasting. For example, studies by the U.S. Commission on Civil Rights, the Office of Communication of the United Church of Christ, and John Abel and Judith Saxon of Michigan State University 1/ asserted that:

--Job categories on form 395 have been interpreted so that nearly 75 percent of all employees at selected television stations were classified in the higher pay categories of officials and managers, professionals, technicians, and sales workers. In practice, however, many of the so-called higher pay positions were little more than clerical in nature, particularly those occupied by women and minorities. These misclassifications and the resultant misrepresentation of women and minority employment are due to FCC's failure to define its job categories in terms which apply specifically to the broadcast industry.

--FCC's job categories are subject to widespread misinterpretation because the kind of work and responsibility each job category entails is not clearly defined. The lack of specific job categories makes it difficult for the Commission and impossible for the public to separate those broadcasters which may have manipulated job classifications to create a false image of their employment practices from those which have made a

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1/Abel, John D. and Saxton, Judith E., "Women in Television Station Management: the Top 50 Markets in 1974 and 1975."

serious attempt to improve the employment status of women and minorities.

--The possibility of misrepresentation in reporting position descriptions exists because FCC's job categories are not representative of the broadcast industry. Furthermore, it cannot be determined whether women and minorities are advancing to positions with authority and influence over station programing, or to positions such as chief accountant or general counsel that are not directly involved with programing decisions. This circumstance cannot be changed until the Commission revises its job categories to approximate those used by broadcasters.

FCC action to revise job categories and the form 395

In November 1977 the Commission decided to reevaluate its form 395. It consolidated all the requests it had received to revise the employment report and solicited comments from interested parties. In addition to specific proposals to change its job categories, the Commission requested comments on proposals to require additional information on station hires, reasons for employment terminations, employee salaries, and station organization charts. In seeking specific proposals, the Commission wanted to develop ways to prevent unwarranted upgrading of job titles of minorities and women so that it would have accurate employment data in dealing with individual stations and in publishing statistics for the industry. In response to its requests for proposals, the Commission received about 260 formal and informal comments from broadcasters and the public.

Proposals included in these comments generally either retained the same number (nine) of job categories the Commission now uses or combined certain categories into a fewer number. The proposals also generally agreed on the appropriate job descriptions and titles to include in the positions covered by the FCC categories of technicians, sales workers, office and clerical workers, craftsmen, operatives, laborers, and service workers. However, disagreement existed over the appropriate job descriptions and titles to include in the positions covered by the FCC categories of officials and managers and professionals. While some proposals would have retained the current categories, others would have divided the categories into more specific titles (e.g., top management, department heads, on-the-air personnel, and program production professionals) to provide clearer distinction among job responsibilities and involvement with programing.

In December 1978 the Commission decided to keep its current job categories but change form 395 instructions to provide clearer, more understandable examples of jobs in broadcasting. 1/ On the basis of the comments received, the Commission concluded that defining each job category so precisely or furnishing so many examples of job titles and functions as to assure that each employee is placed in the ideal category is virtually impossible. By changing form 395 instructions, but retaining the current categories, the Commission asserted that unwarranted upgrading of job titles would be prevented without destroying the employment data base it had built up in the past several years or imposing an additional reporting burden on the relatively few stations which also must file employment reports with EEOC.

The Commission recognized that more specific examples of job titles is not necessarily the most direct way of arriving at the status of a station employee. For this reason, it initially adopted a proposal for stations to place in their public files and include with their annual form 395 reports a listing of each full-time employee, ranked by salary (without revealing dollar amounts or the employee's name) and showing the employee's race, sex, job title, and job category classification. Because station licensees and employees raised several objections to public disclosure of salary data, however, the Commission dropped the salary-reporting proposal and stated it would initiate a further public inquiry on possible ways of verifying employee status.

As one way to provide for verification, some of the comments submitted to the Commission had suggested that each station be required to place in its public file each year and submit with its license renewal application a list of employees by sex, race, job title, and form 395 job category. Currently, such a list must be included in the EEO program filed by stations with 50 or more full-time employees. In 1977 these stations represented only about 8 percent of all commercial stations and included less than 36 percent of all station employees.

1/For instance, the form 395 instructions cite the following examples under the sales job category: advertising agents and salesmen, insurance agents and brokers, real estate agents and brokers, stock and bond salesmen, demonstrators, salesmen and sales clerks, grocery clerks and cashier-checkers, and kindred workers. Under the revised form 395 instructions (effective April 1, 1979), the sales category includes all sales account executives, sales analysts, account representatives, and sales trainees.

To provide for more complete verification, the Commission could conduct onsite reviews of station employment records. In our discussion of the licensing process, we recommended that the Congress direct the Commission to implement a system of random selection and field-based audits of broadcast stations to ensure compliance with the Communications Act and FCC rules and regulations. (See ch. 2.) Verification of women and minority employment status could be included in such a system.

APPLICATIONS OF EEO SANCTIONS

In a January 1978 report, the Inter-Agency Task Force on Non-Discrimination in Public Broadcasting concluded that regulatory sanctions should be clearly stated for broadcast licensees. 1/ The Commission, however, has not established criteria for applying sanctions against broadcasters found to have deficient EEO practices. As a result, broadcasters with similar practices have received different treatment.

Types of EEO sanctions

The Commission applies three types of EEO sanctions against broadcasters. The first two--both of which require broadcasters to report additional employment information--are used to enforce FCC's affirmative action policy. The third sanction--denial of license renewal--is used to enforce FCC's nondiscrimination policy.

FCC's most frequently used sanction is the grant of license renewal with the condition that the licensee periodically report on progress in improving its EEO program. For example, licensees have been directed to report the race, sex, and job category of individual employees and the steps they are taking to recruit new employees. In some cases, these special reporting conditions also have included a requirement for the station to establish women and/or minority hiring goals and timetables for achieving them. The Commission has used the conditional license renewal to express its "concern" over deficiencies in a broadcaster's EEO program and to assure that efforts to improve employment practices are continuous and systematic. As of February 1979, 191 conditional license renewals were outstanding, including 11 with a requirement for hiring goals and timetables.

1/The task force was established in 1977 in response to a report by the House Subcommittee on Communications. Its mission was to study Federal statutes and their enforcement to develop a program to assure EEO in public broadcasting.

In "more serious" cases of EEO deficiencies, the Commission has imposed reporting requirements in conjuction with license renewal for a period of less than the normal 3 years. This short-term license renewal has been used to express FCC's "deep concern" over the broadcaster's stewardship of its license. As of February 1979, eight short-term renewals were outstanding.

In "egregious" cases of EEO deficiencies, the Commission has designated broadcasters for evidentiary hearings to determine whether the severity of the deficiencies warrant denial of license renewal. As of February 1979, five hearing cases involving EEO issues were outstanding. In July 1977 the Commission declined to renew the licenses of two commercial radio stations partly because the stations' summary discharge of three minority employees had violated FCC's nondiscrimination rule.

Inconsistent processing criteria

EEO deficiencies may be brought to FCC's attention as a result of staff reviews of broadcaster EEO programs and form 395 employment statistics submitted with license renewal applications or as a result of petitions to deny license renewal filed by individuals. Similar deficiencies identified by these two methods have received different treatment. For example, we were told by Broadcast Bureau officials that license renewal applicants frequently increase their hiring of women or minorities in response to questions raised during staff review of their renewal applications. The officials also said that FCC's practice has been to forego sanctions against these applicants because the Commission is more concerned with future EEO compliance than with past EEO deficiencies. In one case we reviewed, however, the Commission sanctioned by conditional license renewal a station which had increased its minority hiring in response to a petition to deny. The Commission applied the sanction even though it found the station's EEO program to be "satisfactory."

In another case, the Commission granted a conditional license renewal because the station's minority employment was unreasonably low in comparision with the local minority population and its plan for recruiting minority employees was not sufficiently active. FCC's action resulted from a petition to deny filed by a coalition of local citizens. In its request for the Commission to reconsider the conditional renewal, the licensee cited statistics showing that its station's employment record was as good as or better than other stations in the same market whose license renewal applications the Commission had processed and granted without conditions. The licensee demanded that the Commission either explain the reasons for the unequal treatment or withdraw the conditions from the license renewal. In response, the Commission affirmed the conditional renewal and stated that it considers each station individually and does not make public interest determinations by comparing stations within markets. Thus, the Commission did not give specific reasons why it had granted renewal without conditions to other stations in the same market or attempt to show that those stations' recruitment plans were more active.

According to a Broadcast Bureau official, inconsistencies in treatment between EEO deficiencies identified by staff reviews and similar deficiencies identified by petitions from the public occur because the issues cited in petitions are more thoroughly examined than the employment data submitted with license renewal applications. The official stated that inconsistencies could continue to occur unless the Commission uses uniform criteria in determining EEO sanctions.

Reasons given for sanctioning broadcasters

The Commission has stated that hard and fast criteria for applying EEO sanctions are not possible because it has to deal with various employment practices and affirmative action plans. Broadcast Bureau officials acknowledge that inconsistencies occur in applying sanctions, but they do not know what criteria would be appropriate. Even if criteria were established, they believe that an exception would immediately occur.

During our review, we noted that one recurring reason the commission cited for granting conditional license renewals has been station reliance on traditional recruitment techniques without affirmative efforts to expand the pool of women and minority job applicants. We also noted that unsatisfactory hiring performances, ineffective EEO programs, and low female participation in higher pay job categories have been cited as reasons for conditional renewals. It is not clear, however, how the Commission applies these factors in deciding which EEO sanction it will use.

In November 1976, the chief of the Broadcast Bureau recommended that seven stations be granted conditional license renewals because they were relying on traditional recruitment methods (e.g., word of mouth) without affirmatively expanding the pool of women and minority applicants. Final action was deferred on one station. Among the remaining six stations, two were co-owned and had no minorities among the total full-time workforce of 75 employees. The other four stations were smaller, but also had no minority employees. The six stations were given the same conditional requirement to report employee race, sex, job titles, and action taken to recruit new hires. However, while the FCC commissioners followed the Broadcast Bureau's recommendation in granting conditional renewals to four of the stations, they granted short-term renewals to the two co-owned stations.

In a letter informing the licensee that its two stations had received short-term renewals, the Commission identified no EEO deficiencies other than the licensee's lack of minority employees and the passive nature of its recruitment efforts. These conditions also were true for the four stations granted conditional license renewals. FCC's letter also noted a continuing trend of employing few or no minorities. At least two of the four stations granted conditional renewals, however, had similar trends.

Broadcast Bureau officials and staff members responsible for reviewing broadcaster EEO programs and employment statistics told us that they do not know why the two co-owned stations were granted short-term rather than conditional license renewals. While the co-owned stations were larger than the other four stations, a Broadcast Bureau EEO staff member doubted that size was the determinative factor since the Commission previously had granted short-term renewal to a station with only five employees.

PROCESSING OF EEO INFORMATION

On the basis of FCC workload estimates, the Broadcast Bureau's EEO staff could readily identify stations' EEO deficiencies if it spent its time reviewing broadcaster EEO programs rather than manually screening at license renewal time the data provided on form 395. The screening and other processing functions could be performed more efficiently if the Commission expanded its use of the computer in processing form 395 data. By using the computer, the staff could focus its time on reviewing all stations' hiring, promotion, training, and related employment policies and practices contained in their EEO programs.

EEO program reviews

The EEO unit of FCC's Broadcast Bureau is responsible for processing employment data submitted with license renewal applications, including EEO programs and updated employment statistics reported on form 395. The unit is comprised of three persons who screen about 3,000 form 395s each year. On the basis of this screening process, the EEO unit staff reviews in detail selected EEO programs of stations with more than 10 full-time employees, prepares recommendations for correcting broadcaster EEO deficiencies, and administers EEO sanctions.

Under screening guidelines which FCC adopted in March 1977, the EEO unit staff reviews in detail the EEO program of a station with more than 10 full-time employees if (1) the station's overall female or minority employment percentages are less than 50 percent of the female or minority percentages in the labor force of the station's recruitment area 1/ or (2) the female or minority employment percentages in the station's higher pay categories (officials and managers, professionals, technicians, and sales workers) are less than 25 percent of the area labor force percentages. For example, assuming that the area labor force includes 40 percent women and 20 percent minority group members, the staff would scrutinize the station's EEO program if the station has (1) less than 20 percent women employees overall, (2) less than 10 percent minority employees overall, (3) less than 10 percent women employees in the top four job categories, or (4) less than 5 percent minority employees in the top four job categories. The staff does not examine the EEO program of a station with 5 to 10 full-time employees unless a pattern of excluding women or minorities is evident from the station's form 395 employment reports.

FCC's EEO program review is intended to determine whether a station is making a good faith effort to provide equal employment opportunities. No established criteria exist for evaluating a station's program but, according to the EEO unit staff, primary attention is given to hiring, recruitment, and effectiveness analysis (see app. VIII) to determine why a station has fallen below the screening guidelines. The Commission has stressed that its percentage guidelines for screening employment statistics are not intended as employment quotas. Instead, they are intended to save staff time by isolating those stations having the worst female or minority employment statistics.

The EEO unit staff estimates that it spends 25 minutes screening form 395 employment statistices for each of the 2,000 stations which also must submit EEO programs. Thus, on a yearly basis, the screening process requires about 833 staff hours. For those stations (estimated at up to 60 percent, or 1,200) that fall below the screening guidelines, an additional 20 minutes, or 400 hours each year, is estimated as spent

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1/The labor recruitment area is defined as the standard metropolitan statistical area in which the station is located. For a station located outside any standard area, the recruitment area is considered to be the station's city-of-license or county.

examining EEO programs. 1/ In total, this screening and evaluation process requires 1,233 staff hours per year. In contrast, if the staff simply evaluated each station's EEO program without screening renewal applications, only 667 staff hours, (20 minutes for each of the 2,000 EEO programs), or about 70 fewer staff days, would be required.

Computer use during the screening and evaluation process

Each year the Commission publishes a consolidated, computerized station-by-station employment profile of the broadcast industry which is based on stations' annual form 395 employment reports. This comprehensive document, however, has not been available on a timely basis. For example, although form 395 for 1977 was due at the Commission by May 31, 1977, consolidation was not completed by FCC until 9 months later. According to the Civil Rights Commission, the consolidated documents for 1972 and 1973 were issued 12 months and 9 months, respectively, after stations filed their form 395s.

Because of such delays, the consolidated employment document usually is not available to the EEO unit staff during the screening process. As a result, the EEO unit staff spends about 250 hours each year manually retrieving the most recent employment figures from individual station reports. In an effort to secure this data on a more timely basis, the Commission informally encourages a station to file an updated form 395 with its renewal application or a duplicate form if its employment figures have not changed since the time the station filed its annual form 395. According to a Broadcast Bureau official, computerized employment data would be more timely if it were provided to the EEO unit for groups of license renewal applicants rather than for all licensees annually.

Although the form 395 is submitted annually, the Commission examines a station's employment statistics only at the time of license renewal. By using the computer, the Commission could compare station employment data to area labor statistics on an annual basis, thereby identifying those stations with deficient employment profiles on a more timely basis. In this regard, in April 1977 a public interest law

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1/The staff estimates are included in a study unrelated to the efficiency of the EEO process. According to the staff, the figures may not be wholly accurate because of the limited amount of time spent compiling them. In particular, the 60-percent figure may be distorted since it is based on only one renewal period. Later periods may have lower percentages.

firm requested an FCC inquiry into the employment practices of 907 radio and television stations which had no women in the higher pay job categories and/or no full-time minority employees. Each of the stations had at least 11 full-time employees and was in an area with at least a 5-percent minority population. The Commission dismissed the request on the grounds that the EEO practices of the designated stations would be reviewed in conjunction with their license renewals. As a result of this action, about two-thirds of the 907 stations will not be reviewed until 2 or 3 years after their questionable employment statistics were first brought to FCC's attention.

CONCLUSIONS

FCC's role in assuring equal employment opportunity in broadcasting has been controversial. Broadcasters and other critics claim that FCC should not regulate station employment practices and that EEO enforcement should lie entirely with EEOC. In contrast, the U.S. Commission on Civil Rights and other critics claim that FCC should enforce its EEO policies and rules more aggressively. Rather than allow this controversy to continue through frequent FCC rulemaking proceedings, the Congress should clearly define FCC's responsibilities to regulate EEO. Until such action is taken, however, the Commission should improve its EEO reporting, enforcement, and information processing to be more effective in its current role.

Factors to address in defining FCC's EEO responsibilities

The controversy surrounding FCC regulation of broadcaster employment practices has centered on affirmative action, and the central issue for the Congress to consider is whether the Commission, in addition to enforcing its nondiscrimination rule, should continue enforcing its affirmative action rule. In addressing this issue, we believe the following factors are important:

--FCC is the only independent Federal regulatory agency which has established an affirmative action rule and related requirements for an industry it regulates. Without this special rule, most television but not most radio stations would still be subject to regulation by EEOC. These stations would still be required to abide by the Nation's policy against discrimination, but would not be obliged to establish, maintain, and carry out an affirmative action program for women and minorities unless required by court order or formal Government action.

--FCC has argued that affirmative action is necessary to ensure that broadcasters provide programing responsive to the needs and views of women and minorities, and the courts have recognized this argument as a valid interpretation of the public interest standard. Furthermore, in contrast to other FCC policies, such as ascertainment of community needs, affirmative action represents one way to promote responsive broadcast service without Government involvement in programing decisions.

--While some misclassifying of employee status appears to have occurred in station reporting of employment statistics, these statistics show that women and minorities have substantially increased their number and pay status in broadcasting during the 1970s. It is not known, however, how those increases compare with changes that occurred in other industries, or whether similar increases would have occurred without FCC regulation of affirmative action.

--Increasing women and minority employment *per se* is not the purpose of FCC's affirmative action policy. Unless increases in employment levels also entail greater involvement with station programing for women and minorities, FCC regulation of affirmative action is undermined. In this regard, the extent to which changes have occurred in decisionmaking roles and responsibilities cannot be determined because FCC's job categories are not specifically related to jobs in the broadcast industry.

Need to improve EEO reporting, enforcement, and information processing

Since the rationale for broadcaster affirmative action is that it helps ensure program service responsive to the needs and views of women and minorities, the Commission must be concerned with whether women and minorities hold positions with authority and influence over station programing. The FCC higher pay job categories do not, however, differentiate degrees of programing authority and responsibility among officials and managers and do not distinguish between professionals who are directly involved with programing and those who are not. We recognize that the variety of job titles and descriptions in broadcasting are not readily accommodated by a limited number of job categories. In reviewing courses of action for verifying employee status, however, we believe that the Commission also should be concerned with focusing more on programing decisionmaking roles and responsibilities. In this regard, the idea of requiring each station to list individual employees by sex, race, and job title might be helpful since it could provide more specific information on employee roles and responsibilities than the present job categories provide. We believe that this information, if evaluated during annual field audits conducted at a selected number of broadcast stations, would enable the Commission to validate the reported status of women and minority employees, determine whether women and minorities are advancing to higher pay positions with programing authority and responsibility, and ensure overall station compliance with EEO rules.

The Commission has neither specified nor consistently applied criteria for determining sanctions for enforcing its affirmative action policy. We believe that, by analyzing the various reasons it has cited in the past, the Commission can develop criteria for applying specific sanctions. For example, reliance on traditional recruitment techniques has been one recurring reason given for granting conditional renewals under the current licensing process. FCC's criteria need not be hard and fast, and exceptional cases will continue to occur. Consistent enforcement of its affirmative action policy, with established sanction criteria, could reduce the uncertainty broadcasters now face in implementing affirmative action and provide the Commission with a framework for assessing its enforcement program and identifying the need for changes in its EEO policies and rules.

About 40 percent of those stations which file EEO programs are not reviewed because their women and minority employment percentages exceed FCC's current screening guidelines. Based on FCC workload estimates, the Broadcast Bureau EEO staff would be more effective if it spent its time reviewing all stations' EEO programs rather than manually screening form 395 employment statistics included with license renewal applications. This screening function could be performed by the computer which the Commission uses to prepare annual documents summarizing employment statistics of the broadcast industry. In addition, the computer could be used to identify and analyze trends in a station's employment statistics, and to select specific stations for onsite review. For these reasons, we believe the Commission should focus its staff resources on reviewing all broadcaster EEO programs and expand its computer applications in processing EEO information.

RECOMMENDATION TO THE CONGRESS

Because of the controversy over FCC's role in assuring equal employment opportunity in broadcasting, we recommend that the Congress define FCC's EEO responsibilities. If it decides that a special affirmative action rule for the broadcast industry should continue, we recommend that the Congress define the scope of FCC's authority to implement and enforce an affirmative action policy. If it decides that a special rule should not continue, we recommend that the Congress expressly prohibit FCC from implementing and enforcing an affirmative action policy and limit its EEO responsibility to ensuring that station licensees found to have violated laws prohibiting discrimination are evaluated for their character qualifications to hold a broadcast license.

Until this action is taken, however, the Commission should strengthen its current EEO efforts.

RECOMMENDATIONS TO THE CHAIRMAN, FCC

To strengthen current EEO reporting, enforcement, and information processing, we recommend that the Commission

--examine ways to obtain more specific data on programing decisionmaking roles and responsibilities, including a requirement for each station to list its employees by race, sex, and job title for each form 395 job category,

--conduct each year onsite audits of a selected number of broadcast stations to verify the reported employment status of women and minorities, determine whether women and minorities are advancing to positions with programing authority and responsibility, and ensure overall station compliance with EEO rules,

--establish criteria specifying the EEO deficiencies which will result in specific sanctions,

--focus staff resources on reviewing all broadcaster EEO programs, and

--expand current computer applications to include screening and analysis of station employment statistics.

CHAPTER 7

EQUAL OPPORTUNITIES/FAIRNESS DOCTRINE

Controversy exists as to whether the equal opportunities requirements contained in section 315 of the Communications Act of 1934 and FCC's fairness doctrine, as currently enacted and administered, are achieving their basic goals. Both have been criticized as unnecessary, counterproductive, and representing undue Government intrusion into broadcasting.

The equal opportunities provisions require a broadcaster to afford legally qualified candidates for public office equal opportunities to use its station. Uncertainty exists, however, as to the balance intended by the Congress between promoting greater coverage of political events and providing equal opportunities.

The fairness doctrine attempts to ensure first amendment goals in broadcasting by requiring broadcast licensees to afford reasonable opportunity for the discussion of controversial issues of public importance and to allow reasonable opportunity for the presentation of opposing viewpoints on such issues. Arguments have been made both for and against a Government-mandated and Government-regulated fairness doctrine. These arguments have focused on the question of whether market forces are sufficient to ensure full and fair coverage of controversial issues without the need for Government regulation.

To resolve the controversies surrounding the equal opportunities provisions and the fairness doctrine, the Congress should

--clarify the desired balance between promoting political coverage and providing equal opportunities to candidates and determine the proper mode for achieving this balance and

--provide the legislative framework from which FCC can consider and test alternative methods to determine whether market forces are adequate to ensure full and fair broadcast coverage of controversial issues.

SECTION 315--EQUAL OPPORTUNITIES FOR POLITICAL CANDIDATES

Section 315 of the Communications Act of 1934 is generally referred to as the "equal time" or, more properly, the "equal opportunities" requirement. Basically, the section states that if a licensee permits a person who is a legally qualified candidate for public office to use a broadcasting station, he must afford equal opportunities to all other candidates for the same office to use the station. While such equal opportunities usually include equal time, they also include other factors such as the right to obtain time in a period during which approximately the same size audience will be attracted.

In establishing and implementing the equal opportunities provisions, the Congress and FCC have been confronted with the fundamental problem of ensuring that political candidates receive equal treatment by the broadcast media while preserving the right of the public to be informed by presenting political events. Originally, both the Congress and FCC placed primary emphasis on assuring that candidates received equal opportunities even if this resulted in broadcasters reducing their overall coverage.

Actions taken by the Congress, FCC, and the courts, however, have gradually shifted this emphasis toward promoting greater coverage of political events and affording broadcasters more flexibility in providing such coverage. This shift has brought with it uncertainty as to the (1) balance the Congress intended between promoting coverage and providing equal opportunities and (2) need for legislative change or repeal of section 315 to ensure full coverage of political events by broadcasters. We believe these uncertainties are matters the Congress must address.

Development of the equal opportunities requirements

The equal opportunities requirements set forth in section 315 of the Communications Act were developed directly from section 18 of the Radio Act of 1927 (44 Stat. 1164). In establishing a system of broadcast regulation under the Radio Act, the Congress had considered a provision which treated broadcasters as common carriers when they were dealing with political broadcasts or controversial public issues. However, this provision was ultimately rejected in favor of an amendment proposed by Senator Clarence C. Dill of Washington, a member of the Senate Committee on Interstate Commerce. This amendment stated:

> "* * * If any licensee shall permit a broadcasting station to be used by a candidate or candidates for any public office, he shall afford equal opportunities to all candidates for such office in the use of such broadcasting station. Provided, that such licensee shall have no power to censor the material broadcast under the provisions of this paragraph and shall not be liable to criminal

or civil action by reason of any uncensored utterances thus broadcast." 1/

In explaining how his amendment differed from the common carrier provision, Senator Dill stated that

> "* * * under the common carrier provision a radio station is compelled to take any kind of broadcasting that anybody wants to offer * * * This provision simply says that if a radio station permits one candidate for a public office to address the listener it must allow all candidates for that public office to do so, and to that extent there must be no discrimination * * *" 2/

Senator Dill further noted, in response to concerns that the amendment might result in a situation under which broadcasting would be denied to all political candidates, that he believed "* * * it would be better to deny it altogether than allow the candidate of one party to broadcast and the candidate of the other party not to be able to secure the same right."

During congressional consideration of section 18 of the Radio Act the question was raised as to whether its provisions were intended to apply to appearances by candidates in which politics were not discussed. In response, Senator Dill stated it was better to allow the Federal Radio Commission to make rules and regulations governing such questions rather than addressing them in the bill.

Following certain changes in language, Senator Dill's amendment was incorporated into section 18 of the Radio Act of 1927. Section 18 specifically provided:

> "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, and the licensing authority shall make rules and regulations to carry this provision into effect: Provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this paragraph.

1/67 Cong. Rec. 12501-12502 (1926).

2/Ibid.

No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

This section was subsequently carried forward as section 315 of the Communications Act of 1934.

Early FCC rulings

Before 1959, FCC proceeded on the basis that the Congress had given it freedom to determine what uses of broadcasting stations were covered by section 315. The Commission generally held that section 315 applied to any use by a candidate of a broadcast station, regardless of its political or nonpolitical nature. For example, the following appearances by political candidates were held to be subject to the equal opportunities provisions:

--Appearances of a station owner, advertiser, or announcer after they had qualified as candidates.

--Appearances of candidates in a debate, press conference, or forum-type program.

--Appearances of a congressman to deliver a weekly message to his constituents after he became a candidate for re-election.

In a 1957 case, the Commission held that the brief appearance of a candidate in a news program was not a use of a station's facilities. This decision was taken as being indicative that the appearance of a candidate in a news film which did not result in any advantage or disadvantage to him was not a use of a broadcast facility under section 315. However, this belief was overturned by FCC's 1959 Lar Daly decision. In Lar Daly, the Commission held that section 315 applied even to the appearance of a candidate on a regularly scheduled newscast. Specifically, the Commission held that section 315 applied even to filmclips of a candidate greeting a foreign dignitary at an airport or appealing for funds for the March of Dimes polio drive.

The 1959 amendments

Within 3 days of FCC's Lar Daly decision, congressional hearings were held to consider amendments to section 315. While the hearings were primarily intended to design amendments which would preserve the basic philosophy of the equal opportunities provisions, they also were apparently intended to reconcile this objective with other goals of political broadcasting--wide coverage of political events and broadcaster discretion.

This intention was reflected by Congressman Harris, Chairman of the House Subcommittee on Communications and Power, at the opening of the hearings. He stated:

> "This section (§315) by providing absolute equality among competing political candidates comes into conflict with two other worthy and desirable objectives:
>
> "First, the right of the public to be informed through broadcasts of political events; and
>
> "Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events.
>
> "Thus the principle of absolute equality for competing political candidates requires modification in the light of these two additional considerations and that is the specific problem which the Congress must face--just how far the equality principle should give way to these other two principles. This question is to be developed in the course of these hearings." 1/

Within 6 months, on September 14, 1959, amendments were enacted which provided that a candidate's appearance on any one of the following types of news programs was not to be considered a use of the station by that candidate:

--Bona fide newscasts.

--Bona fide news interviews.

--Bona fide news documentaries (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary).

1/Hearings on H.R.s 5389, 5678, 6325, 7123, 7180, 7026, 7602, and 7985 before the Subcommittee on Communications and Power of House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. at 1-2 (1959).

--On-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto).

Implementation of the 1959 amendments--debates and press conferences

In implementing the 1959 amendments to section 315, the Commission was faced with the question as to whether political debates and press conferences were subject to the equal opportunities exemptions for on-the-spot coverage of bona fide news events.

In a 1962 decision the Commission held that the live coverage of a debate between two major candidates for Governor of Michigan was not a bona fide news event under section 315(a)(4) of the Communications Act, and, thus, it was subject to the equal opportunities provisions. In its ruling FCC determined, on the basis of its interpretation of the legislative history of the 1959 amendments, that the Congress did not intend for debates to be excluded formats under section 315. FCC further stated that if debates were considered exempt, it "would result in the exemption swallowing the rule."

In another 1962 decision the Commission elaborated on its opinion regarding the type of programs which could be exempted as bona fide news events. It stated that in cases where a candidate's appearance was designed by him to serve his political advantage and encompassed an entire program, the program could not be considered to be on-the-spot coverage of a bona fide news event simply because the broadcaster believed it was newsworthy.

Two years later FCC also held that the coverage of press conferences by Presidential candidates, including the incumbent President, did not qualify for exemption as on the spot coverage of bona fide news events. FCC's rationale in this decision was based on that employed in the cases involving candidate debates.

In its 1975 Aspen Institute case, however, the Commission overruled earlier decisions. FCC held that in the future it would interpret section 315(a)(4) of the Communications Act so that debates between political candidates and press conferences of the President and all other candidates for public office could qualify for exemption as on-the-spot coverage of bona fide news events.

The Commission stated in Aspen Institute that its earlier decisions had been based on what now appeared to be an incorrect reading of the legislative history of the 1959 amendments.

Upon reconsideration, FCC determined that the legislative history did not support its earlier conclusion that programs which otherwise might be exempt should lose their exemptions because the appearance of a candidate is the presentation's central aspect. By reversing its earlier decisions on candidate debates, the Commission said that it would be both complying with legislative intent and serving the public interest "* * * by allowing broadcasters to make a fuller and more effective contribution to an informed electorate."

FCC followed a similar line of reasoning regarding candidate press conferences--holding that they should not lose their exemption because the candidates' appearance is the central aspect of the news event. Thus, it stated that candidate's press conferences which are considered newsworthy and subject to on-the-spot coverage may be exempt from section 315.

FCC's decision in Aspen Institute was not unanimous. One commissioner stated that the decision had sidestepped the purpose of section 315--that all qualified candidates for a public office be given equal opportunities to present their positions to the voters via broadcast media. He added that under FCC's interpretation a broadcaster may determine that only major candidates are newsworthy and, while covering their debates and press conferences, may ignore similar appearances of other candidates--thus leading to unbalanced political coverage. Another commissioner stated succinctly, "We have * * * interpreted 315(a) into oblivion."

In 1976 FCC's decision was upheld by the Court of Appeals for the District of Columbia Circuit. 1/ The court stated that, based on its examination of the 1959 amendments' legislative history, it was unclear whether the Congress intended to include or exclude nonstudio debates and candidate press conferences. Likewise, the court noted that the language in the amendments provided "no ready clue" as to what or who determines whether a news event is bona fide.

However, the court determined that the Congress had intended to give FCC some discretion in interpreting the exemptions established by the 1959 amendments. Thus, it deferred to FCC's interpretation, even though it noted that it was not the only possible interpretation. In a dissenting opinion, one member of the court took issue with the majority's deference to FCC's judgment. He concluded that:

1/Chisholm v. Federal Communications Commission, 538 F.2d 349 (D.C. Cir., 1976).

"The Commission's ruling exempting debates and press conferences is contrary to the intent of Congress in passing the 1959 amendment. Most importantly, as the Commission itself held in the cases it is now reversing, affirming the Commission's action in this case effectively repeals Congress' venerable equal time legislation." 1/

Reasonable access for Federal candidates

In 1972 the Congress enacted another provision which, while not a part of the equal opportunities provisions, directly relates to political broadcasts. As part of the Federal Election Campaign Act of 1971, the Congress amended section 312(a) of the Communications Act of 1934 to afford candidates for Federal office reasonable access to or permit them the purchase of reasonable amounts of time for the use of a broadcast station.

Specifically, section 312(a)(7) gave FCC authority to revoke any station license or construction permit:

"* * * for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy."

In administering section 312(a)(7), FCC policy has been to defer to licensee judgment in determining what constitutes reasonable access. In March 1978, however, the Commission issued a Notice Of Inquiry to determine whether this policy had been adequate or whether it needed to promulgate specific rules. In July 1978, the Commission decided that it was undesirable to develop rules for enforcing section 312(a)(7), choosing instead to continue relying on the reasonable, good faith discretion of individual licensees. The Commission did, however, formulate certain guidelines which were designed "* * * to clear up confusion expressed by candidates and licensees and to ensure that the Congressional intent in enacting section 312(a)(7) is fully realized."

Among the guidelines adopted was one which required licensees to provide legally qualified candidates for Federal office reasonable access "through the gift or sale of uses of a station." Thus, compliance with the provisions of section

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1/Ibid., p. 396.

312(a)(7) directly affects licensees' obligations under the equal opportunities provisions of section 315.

The effects of equal opportunities on broadcast coverage

As is evident from the history relating to the development and implementation of the equal opportunities provisions, questions have frequently arisen as to how the provisions can best be designed and administered to promote full and fair political broadcast coverage.

Recently questions have been raised before both the Congress and the Commission as to whether these objectives would better be served if the equal opportunities requirements were eliminated--either partly or entirely. Such questions are based largely on the premise that because of the equal opportunities provisions, broadcasters may seriously reduce their coverage of political events.

FCC debates the merits of section 315

In April 1977 the Commission heard arguments from its General Counsel and Broadcast Bureau on the merits of section 315 and whether its repeal was warranted. The General Counsel called for total repeal of section 315, while the Broadcast Bureau favored its retention.

The General Counsel argued that the Commission should recommend that the Congress totally repeal section 315 on the grounds that it seriously inhibits broadcast coverage of political candidates and thus reduces the calibre and quantity of political coverage. The General Counsel argued that even after the 1959 amendments to section 315 and FCC's Aspen Institute decision, the equal opportunities provisions continued to be inconsistent with the first amendment goal of promoting an informed electorate. In his view, the provisions narrowed and limited broadcast coverage of candidates. He further argued that administering section 315 had involved FCC in decisions which "serve no valid public interest purpose and are absurd," such as preventing coverage of the President throwing out the opening ball of a baseball game. Moreover, the General Counsel found little evidence that repealing section 315 would lead to unfair broadcast coverage.

In contrast, FCC's Broadcast Bureau asserted that repeal of section 315

--would not necessarily increase coverage of political events,

--would greatly increase the number of fairness doctrine complaints, and

--would "* * * once again raise the specter of broadcast favoritism which caused Congress to enact section 315."

While the Commission did not adopt the General Counsel's recommendation that it call for the Congress to repeal section 315, it did recommend that the Congress make certain modifications in the equal opportunities provisions: (1) that Presidential and Vice Presidential candidates be exempted from section 315 and (2) that section 315 be applied only to candidates who had demonstrated substantial support among the electorate. Such changes have not been enacted.

<u>The Congress hears arguments for repeal</u>

Arguments for repealing section 315 were presented to the Congress in June 1978 hearings before the Subcommittee on Communications, Senate Committee on Commerce, Science and Transportation. These hearings were held in connection with the Subcommittee's consideration of a bill introduced in the 95th Congress by Senator Proxmire of Wisconsin, which would repeal both section 315 and the fairness doctrine.

Most of the broadcast industry representatives testifying during the hearings supported repeal of section 315. Among the primary reasons cited was that section 315 limits broadcasters' ability to bring major candidates before the public in various program formats.

One network official also called for repealing section 312(a)(7), which provides for license revocation for failure to grant reasonable access to candidates for Federal elective office, on the grounds that it "unduly intrudes on the ability of broadcasters to make independent programming decisions regarding the allocation of their program schedules."

Only one broadcast representative who testified spoke out against repeal of section 315. He noted that while the burden placed on broadcasters by minor candidates may be excessive and the benefit from granting them equal time minimal,

> "The repeal of section 315 would greatly reduce the public accountability of broadcasters and would render the FCC powerless to do anything about arbitrary and one sided presentations of important issues."

Nevertheless, he did support repeal of the equal time requirement as applied to the offices of President and Vice President.

A spokesman for the National Telecommunications and Information Administration, Department of Commerce, also opposed repeal of section 315 but recommended that other alternatives should be studied, such as limiting the application of the equal opportunities provisions to major party candidates and exempting joint or back-to-back appearances of candidates. FCC's Chairman likewise expressed reservations about repealing section 315. While he noted that section 315 may have an inhibiting effect, resulting in no coverage or restricted formats, he felt its repeal could adversely affect new minority parties and their ability to attract the electorate's attention.

Opinions of broadcasters and public interest groups

Most of the broadcasters we spoke with stated that section 315 requirements should be eliminated. Among the reasons cited for repealing section 315 were that it inhibits coverage of major candidates, creates difficulties in designing program formats to accommodate all candidates, and prohibits meaningful candidate debate.

On the other hand, public interest group spokesmen we interviewed stated that section 315 requirements were necessary. They noted that the requirements may have certain undesirable effects, but that the risk of broadcaster abuse in the coverage of candidates was significant enough to warrant retaining section 315.

CONCLUSIONS

In establishing and implementing provisions to deal with broadcast station coverage of political candidates, the Congress and the Commission have had two objectives: (1) providing wide and meaningful coverage of political events and (2) ensuring equal opportunities for all political candidates. Throughout the history of the equal opportunities requirements, the question has remained of how these two goals can best be balanced.

When section 18 of the Radio Act of 1927 was enacted the Congress appears to have placed prime importance on assuring that all candidates received equal opportunities, even though such a requirement might reduce total broadcast coverage of a particular election. Such a view is clearly reflected in the remarks of the section's sponsor. Early FCC decisions also reflect such an outlook in establishing an absolute principle of equality for competing candidates in using a broadcast station.

In recent years, however, increased emphasis has been placed on providing full coverage of political events. For example, in enacting the 1959 amendments to section 315, the Congress appears to have considered the goal of ensuring that the electorate is informed through political broadcasts, as well as affording the broadcaster increased discretion in covering political events. The emphasis on providing full coverage of political events was also reflected in the enactment of section 312(a)(7) of the Communications Act, which requires broadcast stations to provide Federal candidates reasonable access to and use of their facilities.

FCC has also stressed the right of the public to be informed through political broadcasts in its Aspen Institute decision, which reversed its earlier position and interpreted the 1959 amendments to section 315 to include exemptions for candidate debates and press conferences.

Questions have been raised, however, as to whether these actions have resulted in the optimum balance between promoting the right of the public to be informed through political broadcasts while ensuring that opposing candidates are provided equal opportunities by the broadcast media. On one hand, FCC's Aspen Institute decision has been attacked on the grounds that it misinterprets congressional intent and, in doing so, obliterates the basic purpose of section 315. On the other hand, it has been argued before both the Congress and FCC that section 315 should be either modified or repealed because it unduly restricts broadcast coverage of political events. In this regard, both FCC and the National Telecommunications and Information Administration have suggested that the Congress consider alternatives to the existing equal opportunities requirements.

RECOMMENDATIONS TO THE CONGRESS

The broadcast media play a critical role in our political process by (1) providing candidates an outlet for expressing their views and convictions, (2) disseminating a range of political views and (3) informing the public as to both the national and local political processes. Given these circumstances, we recommend that the Congress

--Clarify the balance to be struck between promoting coverage of political events and providing equal opportunities for political candidates and

--Determine the proper mode for achieving this balance. The Congress could, for example, (1) explicitly mandate implementing provisions, (2) explicitly mandate implementing provisions but allow the Commission to alter these provisions in response to changing market conditions, or (3) allow the Commission to establish provisions in a manner which will best achieve the policy goals the Congress sets, or allow market forces to achieve the policy goals.

THE FAIRNESS DOCTRINE

The purpose of FCC's fairness doctrine is to stimulate open debate of public issues. Specifically, it imposes a twofold obligation on broadcasters. First, it establishes an affirmative obligation on the part of broadcast licensees to provide a reasonable amount of time for presenting programs devoted to the discussion of controversial issues of public importance. Second, it requires licensees which have presented one side of a controversial public issue to allow a reasonable opportunity for the presentation of opposing views.

FCC's efforts to ensure first amendment goals in broadcasting through its fairness doctrine have been controversial. Approximately one-half of the 527 broadcast station managers participating in our questionnaire survey do not believe that their stations should be subject to the fairness doctrine. In this regard, broadcasters, among others, have argued that market forces are sufficient to ensure full and fair broadcast coverage of controversial issues without the need for and dangers of Government regulation. Public interest groups and others, however, have stated that (1) the public is best served by the principles embodied in the fairness doctrine, (2) sufficient market forces do not exist, and (3) FCC should strengthen its enforcement efforts. While we take no position on the controversial existence of sufficient market forces, we believe the need for the fairness doctrine could be more clearly weighed if the Congress provided the legislative framework from which FCC could consider and test alternative methods to determine whether market forces are adequate to ensure full and fair broadcast coverage of controversial issues.

Given the existing fairness doctrine's requirements, however, we believe that current FCC action to establish improved means for ensuring broadcaster coverage of controversial issues is a positive step in identifying alternative enforcement methods.

Development of the fairness doctrine

The fairness doctrine has evolved out of an attempt to integrate the principles of the first amendment with a system for regulating the broadcast media. In this regard, the Congress chose, through the Radio Act of 1927, to leave broad journalistic discretion with the licensee by limiting governmental authority over the regulation of program content. Language in the Radio Act, which was later incorporated intact into section 326 of the Communications Act of 1934, states:

> "Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

Notwithstanding this limitation the Federal Radio Commission recognized broadcasting's potential for expanding public debate on important issues. For example, in 1929 the Radio Commission held that the public interest requires ample play for the free and fair competition of opposing views, and that the principle applies to all discussions of issues of importance to the public.

It was not until 1949, however, that FCC issued the first general statement of fairness doctrine principles. In its report entitled "Editorializing by Broadcast Licensees," FCC stated that

> "* * * one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day."

Thus FCC established a twofold obligation on the part of every licensee seeking to operate in the public interest: (1) that every licensee devote a reasonable portion of broadcast time to the discussion and consideration of controversial issues of public importance; and (2) that in doing so, the licensee be fair--that is, affirmatively endeavor to make the station's facilities available for the expression of contrasting viewpoints held by responsible elements with respect to the controversial issues presented.

In 1959 the Congress amended section 315 of the Communications Act of 1934 to exempt certain news presentations from the equal opportunities provisions. In doing so the Congress incorporated the basic principle of the fairness doctrine into the act by emphasizing that nothing contained in the exemptions should

> "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 Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

The fairness doctrine and the first amendment

In 1968 the Supreme Court, in its Red Lion decision, attempted to reconcile the principles contained in the fairness doctrine with the broadcaster's rights under the first amendment. 1/

The Court noted that only a fraction of those with resources could communicate intelligibly by radio at the same time because of the scarcity of radio frequencies. It recognized that chaos had existed in the use of broadcast frequencies before the Radio Act of 1927 was enacted and that a system of licensing had proven necessary to ensure effective radio communications. The Court went on to reason that where there were substantially more people who wished to broadcast than there were licenses to give out it was "idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."

At the same time the Court noted that:

> "* * * as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which

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1/Red Lion Broadcasting Co., Inc., et al. v. Federal Communications Commission et al., 396 U.S. 367 (1969).

are representative of his community and which would otherwise, by necessity, be barred from the airwaves."

The Court concluded that while the first amendment limits Government interference in broadcast content, the Government may nevertheless place restrictions on licensees in favor of other persons whose views should be expressed. In this fashion, the public would retain its collective right to have the broadcast media function according to the principles of the first amendment.

FCC's fairness doctrine policy

While the Supreme Court's decision seemingly settled the question of the constitutionality of the fairness doctrine's underlying principles, it did not resolve how the doctrine should be administered without undue Government intrusion into broadcasting. In July 1974, following an inquiry which began in 1971 concerning the efficacy of the fairness doctrine, FCC set forth its policy in a report entitled "Fairness Doctrine and Public Interest Standards--Fairness Report Regarding Handling of Public Issues."

In this report, the Commission noted that in administering the fairness doctrine its policy would be to achieve "robust wide open debate" in the broadcast media on one hand while avoiding "the dangers of censorship and pervasive supervision by the Government" on the other. To balance these factors the Commission stated that it believed the public interest could best be served by a system in which individual broadcasters could exercise wide journalistic discretion even though many questionable decisions by broadcast editors might go uncorrected.

The Commission emphasized that while licensees would be allowed discretion in their coverage of controversial issues, the affirmative obligation to cover such issues was "the single most important requirement of operation in the public interest--the 'sine quo non' for grant of a renewal of a license."

In 1976, after receiving petitions urging it to reconsider certain of the report's conclusions, the Commission issued a Memorandum Opinion and Order on Reconsideration of the Fairness Report in which it basically reaffirmed the positions it had taken in 1974. On appeal, however, the Court of Appeals for the District of Columbia Circuit directed FCC to further pursue ways to ensure that licensees are devoting a reasonable amount of time to the presentation of controversial issues. 1/ In this regard, in March 1978 FCC issued a Notice of Inquiry and, at the time of our review, was evaluating the responses to its notice.

Mandating a fairness doctrine--the controversy

Widely differing opinions exist as to the need for a Government-mandated and Government-regulated fairness doctrine to achieve the doctrine's underlying goal. Specifically, various broadcast industry spokesmen and Government officials, among others, have suggested that it may be better to rely on market forces 2/ to ensure first amendment goals in broadcasting than to have Government-mandated fairness doctrine requirements.

In this regard, broadcasters have argued that (1) market forces may now be sufficient, at least in some instances, to ensure fair coverage of controversial issues and (2) FCC enforcement of the fairness doctrine results in undue Government interference in broadcast journalism, which may inhibit rather than promote the doctrine's goals. For example, a network spokesman has stated that while the fairness doctrine is well intended, it has subjected broadcasters to undue governmental interference and has a tendency to inhibit rather than foster the flow of information to the public. In contrast, a public interest group spokesman has stated that without the FCC requirement for each station to deal with public controversy, however weakly that requirement may be enforced, many stations would not contribute to public debate.

In setting forth its fairness requirements, FCC has recognized the potential dangers of unnecessary Government interference in broadcast journalism. Its enforcement procedures afford licensees considerable discretion--both in determining when a controversial issue has been presented and, if so, how to present contrasting views on the issue. In this regard, FCC officials have noted that of the about 5,000 fairness complaints and inquiries they receive each year, only 2 to 3 percent are considered significant and are forwarded to licensees for comment. Of these, only about 15 to 20 result in adverse findings to the licensee, most of which

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1/Committee for Open Media v. Federal Communications Commission, No. 76-1351 (D.C. Cir., Nov. 11, 1977), p. 45.

2/In general, market forces serve as the invisible hand regulating the everyday economic process and business activities.

involved violations of the personal attack or political editorializing rules. 1/

A former FCC Commissioner has stated that even this level of enforcement may be too high, and that increased enforcement would almost certainly "run afoul of the First Amendment." Another former Commissioner noted that while FCC has administered the fairness doctrine in a relatively benign and reasonable manner, that no broadcaster could schedule a minute of programming without being aware that some "bureaucratic opinion" may eventually influence the decision to permit or forbid the station to continue broadcasting.

Broadcasters, congressmen, and academicians have argued that enforcing the requirement that broadcasters cover controversial issues fairly could be self-defeating, since it may discourage (or "chill") broadcasters from covering controversial issues in order to avoid possible second guessing by FCC as to whether they have complied with the fairness doctrine. Such second guessing, it is argued, can result in additional costs to the licensee--in the form of legal costs to defend himself, free broadcast time to present balancing viewpoints, or both.

An illustration of how the fairness doctrine might have a chilling effect on broadcasters has been cited in a 1977 analysis of FCC's treatment of the 1972 NBC program "Pensions: The Broken Promise." 2/ The program, a 1-hour documentary dealing with problems in private pension plans, led to a complaint by a public interest group that NBC had violated the fairness doctrine by presenting "* * * a onesided documentary that created the impression that injustice and inequity were widespread in the administration of private pension plans." NBC, on the other hand, argued that the program was only a

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1/The personal attack rule requires that if an attack is made on the "honesty, character, integrity or like personal qualities" of an identified person or group during the discussion of a controversial issue of public importance, the licensee must advise the person of the attack and offer him a reasonable opportunity to respond. The political editorializing rule requires licensees who endorse or oppose a qualified candidate to notify the candidates for that office who were not endorsed or the candidate who was opposed and to offer them time to respond.

2/Simmons, Steven J., "The Problem of 'Issue' in the Administration of the Fairness Doctrine," "California Law Review," Vol. 65, No. 3, May 1977, pp. 570-576.

broad overview of some problems in some pension plans, and that this was not a controversial issue of public importance.

After considering these arguments, FCC found that NBC had violated the fairness doctrine and ordered the network to present balancing material. NBC, however, appealed FCC's decision to the Court of Appeals for the District of Columbia Circuit, which ultimately ruled in NBC's favor. 1/

The 1977 analysis points out that NBC's presentation of "Pensions: A Broken Promise" resulted in its having to bear the costs of defending itself in a lawsuit. In addition, should its appeal have failed, NBC may have been required to offer free time for opposing views. The analysis concludes that such occurences are bound to create a disincentive for broadcasters to present future public affairs programs.

Both the Commission and the Supreme Court have considered arguments that enforcement of the fairness doctrine has a chilling effect on broadcasters. In its 1969 Red Lion decision, the Supreme Court recognized the seriousness of such allegations, since, if true they would stifle the purposes of the fairness doctrine. However, the Court concurred with FCC that the arguments were at best speculative. FCC also considered such arguments in its 1974 Fairness Report. It again concluded that it had seen no credible evidence that its policies had reduced rather than enhanced coverage of controversial issues.

In conjunction with arguments attacking the merits of FCC's present fairness requirements, broadcasters and FCC have stated that market forces, particularly in large markets, may provide an effective substitute for Government regulation to ensure full and fair broadcast coverage of controversial issues.

In this regard, broadcast spokesmen calling for abolition of the fairness doctrine have argued that the justification for establishing the fairness doctrine--the scarcity of broadcast frequencies--is no longer valid. For example, a network representative argued during June 1978 hearings before the Senate Communications Subcommittee that there are more than 8,000 broadcast stations in the United States, or over four times the number of daily newspapers. He added that such stations may supply a multiplicity of voices which

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1/National Broadcasting Co. v. Federal Communications Commission, 516 F.2d 1101 (D.C. Cir., 1974).

"far exceeds that provided by any other mass medium at any time in our history." He further noted that the public also received information from various other media, such as books, newspapers, magazines, and newsletters, and thus the possibility of any major news organization misusing its function in light of such competing information sources is "virtually non-existent."

While rejecting the view that the scarcity principle is no longer valid, FCC's Chairman has also supported the view that a diverse and competitive marketplace of ideas and voices can substitute for existing FCC content regulations, such as the fairness doctrine. He noted, however, that before "the bonds of public trustee regulation in electronic communication can be loosened," there must be reasonable assurance that market forces alone would bring important issues and a diversity of views on those issues to the public.

In 1975, the previous FCC Chairman also suggested that market forces may be sufficient in major radio markets to eliminate the need for the fairness doctrine. To test this theory, he proposed that FCC conduct an experiment in which enforcement of the fairness doctrine would be eliminated in major radio markets. It is questionable, however, whether such an experiment could be conducted without congressional authorization since the 1959 Communications Act amendments require broadcasters to "afford reasonable opportunity for the discussion of conflicting views of public importance."

Based on responses to our questionnaire survey of broadcast station general managers, we found various opinions on the need for the fairness doctrine. About 47 percent of the 325 radio managers and 51 percent of the 202 television managers felt that the presentation of controversial issues should not be regulated; 42 and 43 percent, respectively, felt that FCC should regulate controversial issues programing.

Interviews with a cross section of broadcast station officials also revealed widely different opinions on the need for and effects of the fairness doctrine. Opinions ranged from affirming the need for the fairness doctrine to maintaining that it constituted censorship. One industry representative also stated that fairness doctrine enforcement should vary according to market size because in multistation markets sufficient diversity of opinion may exist without regulation.

Likewise, little consensus of opinion existed among the broadcast representatives we interviewed on the fairness doctrine's chilling effects. However, several spokesmen told us that they did believe stations may not be presenting controversial issues in order to, as one spokesman put it, "take the easy way out."

All of the public interest group representatives we interviewed supported the fairness doctrine's principles. In addition, several of the groups felt that it would be beneficial to supplement the fairness doctrine with some form of direct public access. 1/ They were, however, generally against replacing the fairness doctrine with a system of public access.

Two representatives of the public interest groups also addressed the chilling effects of the fairness doctrine. One spokesman noted that while the fairness doctrine may have some effects on broadcaster presentation of controversial issues, they were insignificant. The other felt that reluctance to cover controversial issues resulted from broadcaster fear of the personal attack rules.

Presentation of controversial issues

The Commission has stated that the right of the public to be informed is the cornerstone of the American broadcasting system. Thus, as part of the fairness doctrine, FCC requires broadcasters to devote a reasonable amount of time to the presentation of programs dealing with controversial issues of public importance. In its 1974 Fairness Report, FCC stated that:

> "The first, and most basic, requirement of the fairness doctrine is that it establishes an affirmative responsibility on the part of broadcast licensees to provide a reasonable amount of time for the presentation over their facilities of programs devoted to the discussion and consideration of public issues."

To enforce its fairness doctrine requirements the Commission relies on complaints received from the public. Before it will take action on a fairness complaint, however, FCC requires the complainant to establish prima facie 2/ evidence of a violation.

1/ A system under which broadcasters would be required to grant either free or paid access to their stations for persons or groups wishing to express a viewpoint on a controversial public issue.

2/Evidence adequate to establish a fact or raise a presumption of fact unless refuted.

If the Commission determines that the complainant has established prima facie evidence of a violation, it will then request the broadcast licensee against whom the complaint was filed to respond to the allegations contained in the complaint. A Broadcast Bureau official told us that this response is then sent to the complainant and if he is satisfied or fails to respond further, the matter is normally dropped. He added, however, that FCC may pursue the case on its own if it believes the situation so warrants. If FCC determines that a violation has occurred, the licensee is directed to inform FCC of the steps taken to assure compliance with the fairness doctrine.

The basic criterion which the Commission uses in determining whether a violation of the fairness doctrine has occurred is whether or not a licensee has acted reasonably and in good faith. While this criteria applies to both the broadcasters' obligation to cover controversial issues and to present opposing viewpoints, the Commission affords broadcasters particularly wide discretion in complying with the first obligation. Specifically, it has stated that while some issues may be so critical or of such great importance that they cannot be ignored, such instances are rare. FCC added that it had "no intention of becoming involved in the selection of issues to be discussed" nor did it "expect a broadcaster to cover each and every important issue which may arise in his community."

The Commission does not maintain aggregate data on the number of fairness complaints which deal with the licensee's obligation to present controversial issues. However, according to a Broadcast Bureau official, of the approximately 5,000 fairness complaints received each year, only a few dealt with complainants' concerns for the need for presentation of controversial issues, and FCC has directed only one licensee to cover a particular issue.

A possible explanation for the relatively small number of such complaints has been offered by the Court of Appeals for the District of Columbia Circuit. The court stated:

> "* * * there exists very little incentive for members of the public, whom we may conclude are vitally concerned with a limited number of public issues, to initiate complaints relating to the first fairness obligation. A citizen would almost have to consider himself a guardian of the general public interest in being informed in order successfully to initiate such a complaint."

A Broadcast Bureau official told us that, in addition to the complaints procedures, FCC's ascertainment requirements are useful for enforcing the broadcaster's obligation to devote a reasonable amount of time to controversial issues. Licensees are required to survey community leaders and the general public to ascertain problems, needs, and interests of their communities. The licensees are to determine which of these problems merit treatment and to present programs dealing with them, and must place in their public inspection files a list of no more than 10 significant problems and needs along with a description of typical and illustrative programs presented in response to those problems and needs. FCC reviews these lists in connection with station license renewal.

Our review of a randomly selected sample of these lists indicated that they were, in many cases, of limited value in determining whether a broadcaster has complied with his obligation to present controversial issues. For example, the problems cited by stations on the lists are often very general--including categories such as schools, apathy, health, nutrition, governmental affairs, women, and recreation. Likewise, as noted in chapter 4, approximately one-third of the lists surveyed were incomplete and, in several cases, we could not tell which program addressed which problem.

CONCLUSIONS

The fairness doctrine lies at the heart of the public trustee system of broadcasting established by the Congress in the Radio Act of 1927 and the Communications Act of 1934. Based on the proposition that there is a relative scarcity of broadcast frequencies compared to the number of persons wishing to use the broadcast media, the fairness doctrine requires broadcasters to act as a proxy or fiduciary by presenting views and voices which are representative of their community but which would otherwise be barred from the airwaves. This procedure is intended to promote the basic goal of the first amendment by encouraging open, robust debate of public issues over the airwaves.

Widely differing opinions exist, however, as to the need for a Government-mandated and Government-regulated fairness doctrine to achieve the doctrine's underlying goals. Specifically, various broadcast spokesmen and Government officials, among others, have suggested that market forces may be sufficient, particularly in large markets, to ensure fair coverage of controversial issues.

While certain *a priori* arguments have been made in favor of the fairness doctrine, whether one favors such action is largely a function of one's belief in the ability of the market to produce appropriate social results or whether one concludes there are sufficient market forces. While we take no position on the appropriateness of the fairness doctrine, we believe its consequences could be more clearly weighed if a legislative framework existed from which FCC could assess market forces.

The fairness doctrine has primarily been established and maintained on the principle of scarcity--that there are more persons who wish to broadcast than there are broadcast licenses. Thus, it has been reasoned that Government regulation is necessary to ensure that controversial issues are covered fully and fairly by the broadcast media. At the same time, however, it has been recognized that administering the fairness doctrine can lead to undue Government involvement in broadcasting--a concept which runs contrary to the principles of the first amendment.

The controversy will continue as to the need for a Government-mandated and Government-regulated fairness doctrine as long as little evidence exists to show the impact of market forces in broadcast regulation. Without such information to serve as a decisional basis, the Commission and the Congress are faced with subjective reasoning as their sole directive force.

Considering the 1959 amendments to the Communications Act which require broadcasters to afford reasonable opportunity for the discussion of conflicting views of public importance, we believe congressional action is needed to provide FCC the legislative framework from which it can evaluate market forces. In our judgment, legislation which would allow FCC to exempt licensees in markets of different sizes from the doctrine's requirements could provide the Commission and the Congress the basis to assess the need for the doctrine.

Given FCC's existing requirements that broadcast licensees provide a reasonable amount of time for the presentation of programs devoted to the discussion of controversial issues of public importance, we believe that current Commission action to determine improved means for ensuring that its requirements are being met represents a positive step in identifying alternative enforcement methods.

RECOMMENDATION TO THE CONGRESS

To provide the Congress, the Commission, and thereby the American people the basis to assess the continuing need for the fairness doctrine's principles in broadcasting, we recommend that the Communications Act of 1934 be amended to provide FCC legislative authority to consider and test alternative methods to determine whether market forces are adequate to ensure full and fair broadcast coverage of controversial issues.

CHAPTER 8

CHARGING FOR USE OF THE SPECTRUM

Controversy exists as to whether the Government should charge the broadcast licensee for using the radio spectrum. This controversy reflects the differing views on the purpose, basis, and method of implementing spectrum charges. In light of this controversy, we believe the Congress should provide legislative guidance on whether such charges are needed, and if so, the regulatory objectives they should serve and the use to be made of the revenues they generate.

STATION SALES AND LICENSE VALUE

The Communications Act of 1934 provides that a licensee does not own a broadcast frequency and that a license does not create any rights beyond its terms, conditions, and periods. The act also provides that, subject to FCC approval, a license can be assigned or transferred. However, the act says nothing about the value of a license at the time of assignment or transfer.

FCC concern with station sales prices

A high station sales price, one higher than the fair value of the physical facilities plus goodwill and going-concern value, implies that part of the price represents the value of the broadcast frequency. Even though the frequency itself cannot be purchased, it seemed clear to the Commission in the 1940s that buyers were willing to pay more than book and goodwill value because they expected licenses would be renewed.

In 1944-45, the Commission asked for congressional direction in reviewing station sales and stated that a means was needed to measure appropriate sales prices. FCC concern was heightened by the tremendously high prices radio stations were commanding--$500,000 for one local station and $1 million or more for regional stations. The Commission felt that the law was unclear regarding its duty or power to disapprove a transfer just because the price was inordinately high, even though it could be deduced that a substantial value was being placed on the frequency. FCC noted that uncontrolled prices tended to limit potential transfers to the wealthy--an undesirable situation; however, limiting the price to the value of a station's physical facilities, an option the Congress considered but rejected for the Radio Act of 1927, would deprive the station owner of the rewards of enterprise. Moreover, it was argued that if the owner were not entitled to compensation for accumulated goodwill, he might try to reap the fullest possible profit from day-to-day operations to the detriment of service in the public interest. The Commission felt it could not properly decide the matter and that the Congress should establish standards.

In October 1945, legislation which provided standards was introduced into the House of Representatives. The bill proposed that no transfer or assignment would be approved if the total consideration for the tangible and intangible property exceeded the property's fair value. In addition, the fair value could not exceed twice the depreciated cost of the tangible property. The justification for these provisions was that uncontrolled prices made it possible for only persons of great wealth to operate stations, with the result that control of radio tends to be concentrated with a select few. The bill was not enacted.

Today, the Commission generally does not care how high or low a station sales price is and does not maintain aggregate data on station sales or perform overall analyses of sales prices.

Station sales prices have increased substantially from the $500,000 to $1 million FCC cited in 1944. Recent sales reported in the trade press include $16 million for an AM-FM radio combination in Washington, D.C., and $5.56 million plus $500,000 consulting agreement for a single FM station in Miami. During 1970-77, the average annual sales price of a television station without accompanying radio properties ranged from $2.7 million to $9.9 million. The largest television station sale in 1975 was $22.7 million and, in 1976, $19 million. While the sale was not consummated, the price of one Washington, D.C., TV station was negotiated in 1977 for an amount estimated at up to $100 million, although the station's tangible property had a book value of about $2.6 million and a replacement value of about $7.6 million. The highest previous price for a single television station was $35 million in 1974.

Value of the license in station sale

The excess of sales price over book value of tangible assets is partly due to such factors as earning capacity, advertising contracts, network affiliation, audience size, prosperity of the sales area, and general goodwill. FCC officials believe that the broadcaster's license also is one of the components of this excess. Their position is supported by several studies which attribute a value to a broadcast license. 1/

Standard and Poor's industry survey on communications found that the right to a broadcast license often can be as valuable as a station's physical property. A 1964 study estimated that about 40 percent of the net worth of 31 television stations sold during 1960 represented the value of the broadcast license. A subsequent publication concluded that this percentage had undoubtedly increased by 1973. 2/ Moreover, we noted that several television station balance sheets specified a value for the license.

A 1971 study compared the value-creating effects of a licensee's business discretion with those of FCC's licensing allocation function. Business discretion included investment and programing decisions. FCC's function was reflected in the size of the market to which a license permitted access, and the number, age, and signal power of the stations authorized to operate in the area. The study found that the number of TV homes to which a license permitted access unquestionably had the greatest relative impact on sales price. The age of the station also was significant. The study concluded that sales price was affected more by FCC's licensing allocation function than by a licensee's business discretion. 3/

A 1977 article on spectrum usage contrasted radio and television broadcasting's rate of return on net worth with the returns for newspaper publishing, periodical publishing, wholesale and retail trade, service industries, and manufacturing. While cautioning that there is no agreement on which industries have risk and capital structures similar to broadcasting, the author concluded that broadcasting

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1/A license may have value in the context of a station sales price. On the other hand, a licensee with no assets is required to surrender its license to the Commission.

2/Noll, Roger G., Peck, Merton J. and McGowan, John J., "Economic Aspects of Television Regulation" (The Brookings Institution: Washington, D.C., 1973), p. 53, citing Harvey J. Levin, "Economic Effects of Broadcast Licensing," in "Journal of Political Economy," Vol. 72 (April 1964), pp. 151-162.

3/Levin, Harvey J., "The Invisible Resource" (The Johns Hopkins Press: Baltimore and London, 1971), pp. 371-374.

profitability is above the normal rate of return for other industries. 1/

A commercial broadcast license commands a high sales price because it affords its holder an opportunity to earn substantial profits from use of a public resource which is limited by technical factors and FCC frequency-assignment policies. This is particularly the case for VHF television because nearly all of the VHF assignments established by the Commission are occupied. For example, in 1977 the pretax profit returns on net revenues and original cost of tangible property were substantially higher for VHF stations than for UHF stations.

ARGUMENTS FOR AND AGAINST SPECTRUM CHARGES

There has been a great deal of discussion concerning the appropriateness of a charge for spectrum use. Some critics have contended that the public should share in the financial benefits derived from private use of a limited public resource. In addition, economists have argued that broadcasters have no incentive in the absence of spectrum charges to conserve spectrum use. For example, a 1973 study states that, because it is in a station's interest to have its signal heard as far away as permitted as long as the costs are incidental, the station has no interest in using less than its assigned portion of the spectrum. On the other hand, if it had to pay a charge based on spectrum usage, the station would have an incentive to employ more efficient transmitting equipment or adopt other spectrum-conserving technology. 2/

It also has been argued that the Commission could use spectrum charges to defray regulation costs or to promote specific regulatory objectives. For example, the Commission could encourage growth of UHF television by charging less for access to the UHF spectrum than to the VHF spectrum. Similarly, public broadcasting could be promoted by charging fees below those for commercial broadcasting.

1/Webbink, Douglas W., "The Value of the Frequency Spectrum Allocated to Specific Uses," "IEEE Transactions on Electromagnetic Compatibility," Vol. EMC-19, No. 3 (August 1977), pp. 343-51.

2/Noll, Roger G., Peck, Merton J. and McGowan, John J., *op. cit.*, pp. 53, 54.

On the other hand, several arguments have been made against spectrum charges. Opponents have pointed out that the Government traditionally has relied on private licenses to foster development of the broadcast spectrum, with the condition that the licensees serve the public interest. A spectrum charge would place an additional and unwarranted obligation on licensees which already are required to meet certain programing and other public interest obligations. Opponents also have argued that spectrum charges would treat current station owners unfairly because these owners paid a premium for license value on the assumption that they would fully realize that value. Further, opponents have noted that, in the past the Government has given away public resources to private interests without charging for resource development and use. An example is land grants to homesteaders.

Another argument against spectrum charges centers on the use of the revenues generated. If the revenues were to support separate programs, such as public telecommunications, pressures could develop to adjust spectrum charges to meet the programs' funding needs, thereby undermining the original regulatory objectives. For example, charges intended to promote spectrum efficiency and used to fund public broadcasting could eventually be dictated by public broadcasting's funding requirements rather than the need to improve spectrum efficiency.

WAYS OF CHARGING FOR SPECTRUM USE

In an August 1976 report on economic factors in spectrum management, the FCC Office of Chief Engineer assessed ways to measure the spectrum's economic value and incorporate that value into spectrum management. These include shadow pricing, auctioning, and user fees.

Shadow pricing

Shadow pricing means using simulated station sales to estimate spectrum value. Based on the shadow prices obtained, a value for the spectrum is derived and then used to design a spectrum fee schedule. Ideally, the shadow price would be identical to the price that the spectrum assignment would command if it were offered in the open market. According to the 1976 FCC report on spectrum management, due to the cost of collecting and analyzing the necessary data, it is doubtful that the ideal shadow price can be obtained. The report concluded, however, that there is still considerable merit in pursuing a means to determine approximate spectrum shadow prices.

Auctioning

Auctioning is one way that would permit the Government to award licenses and receive payment reflecting the license's economic value. Under this alternative, after meeting basic qualifications of license stewardship, each prospective licensee would offer to pay license value representing the difference between anticipated station revenues and operating costs (including normal profits). In other words, the station's potential profitability would determine license value. The Commission could recover license value either by assessing periodic lease payments based on the auction price or, as in the case of shadow pricing, use the auction price to extrapolate a value of the broadcast spectrum and design a user fee schedule. An auction-lease combination would not be unprecedented. As noted by the 1976 FCC report on spectrum management, oil, coal, timber, and grazing land are examples of natural resources which are in the public domain and leased to private individuals.

In addition to providing a measure of license value, auctioning could replace the comparative process which the Commission uses to select the best qualified applicant for a new license. Under this process, the Commission consolidates for simultaneous consideration all license applications in which the grant of one application would preclude the grant of any other. The Commission compares the applicants' character and other qualifications to determine which applicant is best qualified. This comparative process has been widely criticized for its uncertain criteria; speculative judgments about future licensee performance; and complex, prolonged, and expensive hearing procedures. 1/ In contrast, auctioning new licenses offers speed, economy, and objectivity. 2/ Implementation of auctioning would require amending section 309 of the 1934 Communications Act to eliminate the comparative licensing process.

Auctioning has been criticized on the grounds that it would (1) create the appearance that the broadcaster has a property right in the license and (2) favor the wealthy.

1/For a more detailed discussion of the comparative process, see chapter 2.

2/A lottery, in which licensees are selected at random from a pool of qualified applicants, is similar to auctioning in its advantages over the comparative process. (See ch. 2.) Unlike auctioning, however, a lottery by itself would not enrich the public coffers or ensure efficient allocation of spectrum space.

Counterarguments have been offered to both of these criticisms. The appearance of a property right may exist under present conditions since a broadcaster has bought the license at transfer time or had it renewed under FCC's practice of granting renewal except in cases of egregious misconduct. The objection that auctioning would favor the wealthy is countered by three arguments. First, it is contended that the licensing process already favors the rich, particularly when the Commission holds a comparative proceeding to select the best qualified license applicant. Second, it is held that any pricing system favors the wealthy. Third, certain licenses could be reserved for minority or other financially disadvantaged persons in much the same fashion that timber rights are set aside for small business. In addition, a grant or loan program could be established to provide auction funds or finance acquisition of broadcast properties.

User fees

User fees is another alternative for incorporating license value into spectrum management and charging for access to the broadcast spectrum. This alternative also can serve as an incentive for broadcasters to conserve spectrum space.

User fees would depend on the amount of spectrum used (or denied to other potential users) and the demand for access to a broadcast area. Several factors have been suggested for measuring spectrum occupancy, such as the type of broadcast service (that is, VHF television, AM radio), number of frequencies assigned to a market, size of the potential audience, or amount of time a station is on the air. User fees could be determined by relating spectrum occupancy to the license value set by shadow pricing or auctioning. Alternatively, the Congress could mandate, or require the Commission to devise, a method for calculating user fees.

As in the case of shadow pricing and auctioning, objections have been raised against user fees. One objection is that the fees would have to be quite high before broadcasters would be motivated to conserve their spectrum use. A related objection is that large fees could render some stations unprofitable and discourage entry into commercial broadcasting. However, the fee schedules could be made flexible and could incorporate a partial or complete exemption for those stations with marginal profits or losses. In addition, adjustable fees could allow experimentation to determine what fee level would best promote specific regulatory objectives. For example, the Commission might promote development of UHF television by setting UHF fees at a level below the fees for VHF television.

Implementing user fees would require legislative action expressing congressional intent concerning the purpose of charging for spectrum usage and granting FCC the authority to carry out that purpose.

Current Commission action

The Commission has not charged for use of the broadcast spectrum since it suspended license fees in January 1977 as a result of court challenges. 1/ Those fees were intended to recover regulatory costs that benefited licensees and did not reflect the spectrum's economic value. In December 1976, the U.S. Court of Appeals ruled that the Commission had failed to justify or adequately explain the basis for its licensee fees. The court ordered the Commission to recalculate its 1970 and 1975 fee schedules and refund money collected in excess of the standard permitted by the Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a). 2/

In January 1978, the Commission began a comprehensive effort to recalculate and refund excess fees. Furthermore, in October 1978 it issued a Notice of Inquiry regarding fee refunds and the need for future fees. The notice specifically addressed spectrum user charges and auctions and provided some examples of possible formulas for relating fees to spectrum use. Factors such as the type of broadcast service, the number of frequencies assigned to a market, the size of the potential audience, and the amount of time a station is on the air have been suggested as bases for calculating user fees. At the time of our review, FCC was evaluating the comments it received.

CONCLUSIONS

A commercial broadcast license has value because it provides access to a limited public resource--the spectrum. This limitation arises in part because of technical factors and FCC's frequency-assignment policies. As a result, a licensee has an opportunity to make large profits and capitalize on a high sale price for its station.

1/Although the Commission does not now collect fees, we have stated, in our report entitled "Establishing A Proper Fee Schedule Under The Independent Offices Appropriation Act, 1952" (CED-77-70 dated May 6, 1977), that sufficient guidance is contained in the Court of Appeals decision from which a proper fee schedule can be established.

2/*National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (1976).

Considerable controversy has existed as to whether the Government should charge the broadcast licensee for using the spectrum. Those in favor of such charges have argued that the public should share in the financial benefits derived from using a public resource or that charges could promote spectrum efficiency or other regulatory objectives. On the other hand, opponents have argued that the Government has relied on the private licensee to foster development of the broadcast spectrum and, under the public interest standard of the Communications Act, has placed special obligations on the licensee. In addition, opponents have argued that spectrum charges would treat current broadcast licensees unfairly.

We believe the Congress should provide legislative guidance on whether spectrum charges are needed, and if so, their purpose, basis, and method of implementation. In this regard, the Commission has requested public comments concerning the need for and methods of charging for spectrum use. We support the Commission's action and believe that such information should provide the Congress, as well as the Commission, with a basis for assessing the appropriateness of spectrum charges.

If the Congress decides that spectrum charges are warranted, we believe the revenues generated from such charges should only be used to support underlying regulatory objectives or placed in the general fund of the Treasury. This provision is needed to assure that charges established for a specific regulatory purpose are not subsequently revised or rationalized as a source of revenue for separate telecommunications programs.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress decide whether the broadcast licensee should pay a charge to the Government for using the broadcast spectrum. If it decides that a charge should be assessed, the Congress should

--specify the regulatory objectives to be served by the charges and the use to be made from the revenue;

--either specify criteria or methods for calculating spectrum user fees or require the Commission to experiment with valuation techniques and devise its own fee schedules; and

--provide the Commission with sufficient flexibility to adjust fee schedules as regulatory conditions change.

BROADCASTING AND PUBLIC INTEREST ORGANIZATIONS

WE INTERVIEWED

We met with officials, managers, and other representatives of the following broadcasting and public interest organizations:

American Broadcasting Co., New York, N.Y.
Booth American Company, Detroit, Mich.
Citizens Communications Center, Washington, D.C.
CBS Inc., New York, N.Y.
Combined Communications Corporation, Phoenix, Ariz.
Cox Broadcasting Corporation, Atlanta, Ga.
KLVL(AM), Pasadena, Tex.
KPRC-TV, Houston, Tex.
Media Access Project, Washington, D.C.
Metromedia, Inc., Washington, D.C.
National Broadcasting Co., Washington, D.C.
National Organization for Women, Washington, D.C.
National Radio Broadcasters Association, Ft. Lauderdale, Fla.
Nationwide Communications, Inc., Columbus, Ohio
RKO General, Inc., New York, N.Y.
Storer Broadcasting Co., Bay Harbour Islands, Fla.
United Church of Christ, Office of Communication, New York, N.Y.
WAYD(AM)/WAYD-FM, Ozark, Ala.
WCAU-TV, Philadelphia, Pa.
WECA-TV, Tallahassee, Fla.
Westinghouse Broadcasting Co. (Group W), Washington, D.C.
WFOM(AM), Marietta, Ga.
WIZO(AM)/WIZO-FM, Franklin, Tenn.
WTUF(FM), Thomasville, Ga.
WTVY, Dotham, Ala.
WZTV, Nashville, Tenn.

TECHNICAL NOTE ON EXAMINATION OF VARIATIONS IN TELEVISION PROGRAMING

The discussion in chapter 3 on quantitative programing standards and factors accounting for variations in percentages of commercial television station nonentertainment and local programing is based on standard stepwise multiple regression. This technique permits analysis of the influence of several independent variables (factors) on a given dependent (programing) variable. The general form of the analysis is expressed by the equation

$$Y_i' = A + B_1X_1 + B_2X_2 + \ldots + B_kX_k$$

in which Y_i' represents the expected value of a given programing variable, A represents a constant quantity, X_k represents a given station variable, B_k represents the X_k coefficient or weight, and the subscript k represents the station variable number.

As stated in chapter 3, we analyzed several nonentertainment and local programing variables (Y_i) for a sample of commercial television stations in relation to certain station variables (X_k) to identify factors which accounted for variation in programing, the degree of variation attributable to the factors, and whether the relationships observed for the sample data were "statistically significant." The following sections describe the population of stations and sample size, discuss the definitions and selection of the variables examined, and provide detailed results of the analyses.

POPULATION AND SAMPLE SIZE

Our sample was drawn from FCC's Television Broadcast Programming Data report for 1976 showing station-by-station percentages of nonentertainment and local programing. Although this report listed 708 commercial stations, we defined the population as those stations (1) for which complete programing data was given and (2) which were located in the coterminous United States. A total of 676 stations met these conditions. 1/ After the stations in the population

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1/Five of the 708 stations did not have complete programing data, and an additional 27 stations located in Alaska, Hawaii, or U.S. territories were excluded because data was not readily available on the number of TV households in their markets.

had been numbered consecutively, numbers generated at random by computer were used to select a sample of 250 stations. Subsequently, because profit data was not available for 8 stations, the sample size was reduced to 242.

Definitions and selection of variables

Table 7 gives the definitions of the 13 programing variables (Y_i) and 6 station variables (X_k) we examined. All variables data is for 1976 and, except for profitability (X05), was obtained from FCC publications or other public sources, such as "Broadcasting Yearbook." Financial data for individual stations is usually not released publicly, but was provided to us by the Commission.

The programing variables pertain to categories of non-entertainment and locally produced programing during two broadcast periods--"sign-on to sign off" and "prime time"--for the 1976 "composite week." Sign-on to sign off varies among individual stations while virtually all stations operate throughout prime time, defined by the Commission as 6 p.m. - 11 p.m., Eastern and Pacific time, and 5 p.m. - 10 p.m., Central and Mountain time. The composite week is comprised of 7 days randomly selected by the Commission for station reporting of programing data. Each programing variable is defined as the ratio of (1) minutes spent on the particular program category (e.g., news) to (2) total minutes of operation (including commercial matter) during the broadcast period.

The station variables were selected based on (1) factors previously used by the Commission in proposing quantitative programing standards or suggested by public interest advocates as a basis for evaluating programing performance, (2) preliminary analyses of those factors and several additional station variables, and (3) reasonableness and practicality of a variable as a basis for a standard.

In proposing quantitative standards of "substantial" service (see ch. 3), the Commission used frequency type (UHF or VHF), affiliation status (network affiliate or independent), market size, and station revenues in setting percentage ranges for television news, public affairs, and local programing. In addition, public interest spokesmen have suggested station profitability and expenditures on programing as factors to consider in evaluating program service. All of these factors except program expenditures were included in preliminary analyses of

Table 7
Definition of Variables (Note a)

Programing variables

Y01 Ratio of news program minutes to total minutes, sign-on to sign off

Y02 Ratio of public affairs program minutes to total minutes, sign-on to sign off

Y03 Ratio of other nonentertainment (i.e., agricultural, religious, etc.) program minutes to total minutes, sign-on to sign off

Y04 Ratio of total (news + public affairs + other) nonentertainment program minutes to total minutes, sign-on to sign off

Y05 Ratio of news program minutes to total minutes, prime time

Y06 Ratio of public affairs program minutes to total minutes, prime time

Y07 Ratio of other nonentertainment (i.e., agricultural, religious, etc.) program minutes to total minutes, prime time

Y08 Ratio of total (news + public affairs + other) nonentertainment program minutes to total minutes, prime time

Y09 Ratio of local program minutes (including nonentertainment, entertainment and sports) to total minutes, sign-on to sign off

Y10 Ratio of local program minutes (including nonentertainment, entertainment and sports) to total minutes, prime time

Y11 Ratio of local news, public affairs, and other nonentertainment program minutes to total minutes, prime time

Y12 Ratio of news and public affairs program minutes to total minutes, sign-on to sign off

Y13 Ratio of news and public affairs program minutes to total minutes, prime time

Station variables

X01 Frequency type (UHF or VHF; UHF = 1)

X02 Affiliation status (independent or affiliated with either the ABC, CBS, or NBC television networks; independent =1)

X03 Market competition (number of additional TV stations, commercial and noncommercial, in the market)

X04 Station size (total number of employees)

X05 Profitability (ratio of station profits before Federal income tax to broadcast revenues)

X06 Group ownership (group-owned or non-group owned, where group-owned was either (a) crossowned with one or more newspapers, (b) owned with at least one other TV station and/or three or more radio stations, or (c) owned by ABC, CBS, or NBC; group-owned = 1)

Note a: All variables data is for 1976.

the programing variables. 1/ Profitability was measured by the ratio of station profits to revenues because the FCC financial form 324 provides reasonable uniformity in station reporting. Profits in relation to station assets or capital employed is generally regarded as a more meaningful measure, but the Commission has not prescribed uniform accounts or procedures for reporting station assets or invested capital. Our preliminary analyses also included more than 50 other variables relating to station operations, such as the age and power of a station, its specific network affiliation (ABC, CBS, or NBC), number of stations in a given market, station employment levels, and licensee ownership interests in other communications media.

Based on the preliminary analyses, some station variables were eliminated even though they accounted for programing variation because we believed they would not be practical as bases for quantitative standards. For example, in certain cases we found that the specific network affiliation (e.g., ABC rather than CBS or NBC) accounted for some of the variation in programing ratios. However, this variable was dropped on the grounds that it would be impractical to hold the stations serving the same market to different standards by virtue of their affiliation with a particular network. We also redefined certain variables included in the preliminary analyses to represent a broader common characteristic so that the factors used in setting standards would be kept to a reasonable number. In this regard, several variables which had represented a variety of ownership patterns (e.g., TV and radio stations, TV station and newspaper) were combined to represent either "group-owned" or "non-group-owned." (See table 7.)

Results of analyses

Table 8 presents results of the analysis of each of the 13 programing variables. The terminology and data in the table are explained below, with analysis I of table 8 cited for illustration.

Mean

The mean is the arithmetic average of the sample station programing ratios. In analysis I the mean equaled .091,

1/As discussed in chapter 3, we could not examine program expenditures because they are not reported by program categories.

indicating that the sample stations on the average provided news programing representing about 9.1 percent of their operating time during the sign-on to sign-off broadcast period.

Standard deviation

This statistic is a measure of dispersion, or variation, of the sample station programing ratios about the mean. The higher the standard deviation, the greater the degree of variation to be accounted for. In analysis I the sample news programing ratios, on average, deviated from the mean ratio by .027.

Number of valid sample stations

As previously noted, each of the analyses is based on a randomly selected sample of 242 commercial stations for which complete variables data was available.

Multiple R, R square, and standard error

Multiple R (multiple correlation coefficient) is an index of the strength of the relationship between a given programing variable and set of station variables. The higher the value of multiple R, the greater the strength of the relationship. R square (coefficient of multiple determination) indicates the proportion of total variation in the programing variable accounted for (or "explained by") the joint effects of the station variables. In analysis I the multiple R equaled .775 and R square equaled .591, indicating that about 59 percent of the total variation in news programing during sign-on to sign off was explained by the set of station variables which entered the regression equation. 1/ Conversely, about 31 percent of total variation was not accounted for.

The standard error is a measure of accuracy which indicates how closely the regression equation predicts the value of the programing variable. In analysis I the standard error was .017, indicating that, on average, the news programing

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1/In three of the analyses (see analysis V, VII, and XI), one or two of the six station variables did not enter the equation because the computer determined that their influence on the programing variable was so minor that they were not worth considering once the other station variables had been entered.

ratio predicted by the regression equation deviated from the actual ratio by .017. 1/

Analysis of variance

The analysis of variance and related statistics (degrees of freedom, sum of squares, mean square, and F ratio) are used to determine statistical significance of multiple R, i.e., whether the multiple R observed for the sample data is due to sampling fluctuation or measurement error and that its value for the population of stations is equal to zero. In each of the analyses in table 8, multiple R was determined to be statistically significant at a 95-percent level of confidence. Therefore, the risk or probability is no greater than 5 percent that the multiple R values equaled zero for the population from which the sample was drawn.

R square change

This statistic represents the increment in explained variation (R square) attributable to a particular station variable. In table 8, the station variables are listed in the order in which they entered the regression equation. The order of entry was determined as follows. The station variable that explained the greatest amount of variation in the programing variable entered first; the station variable that explained the greatest amount of variation in conjunction with the first variable entered second, and so on. 2/

In analysis I, affiliation status (independent) entered first and had an R square change of .467, indicating that this variable accounted for about 47 percent of total variation explained (R square) by the variables in the equation (59 percent). Frequency type (UHF) entered second and had an R square of .088, indicating that this variable explained an additional 8.8 percent of variation after affiliation status had been taken into account. Frequency type was followed by station size (3.5 percent), group ownership (0.04 percent), etc.

1/From analysis I, the predicted ratio of news programing, sign-on to sign off, is given by the equation

$$Y01' = .09101 - .01235(X01) - .04490(X02) - .00086(X03) + .00011(X04) + .00276(X05) + .00406(X06).$$

2/More precisely, the station variable chosen for entry at each step the one which had the largest squared partial correlation with the programing variable.

Simple correlation coefficient

Simple (or bivariate) correlation indicates the degree to which variation in a given programing variable is related to variation in a given station variable, without considering any confounding effects of other station variables. The square of the simple correlation coefficient represents the proportion of variation in the programing variable explained by the station variable, and the sign (positive or negative) of the coefficient indicates the direction of the relationship.

For example, in analysis I frequency type (UHF) had a simple correlation of -.527, indicating that (without considering the other station variables) about 28 percent of the variation in news programing during sign-on to sign off was explained by variation in frequency type, and that UHF stations tended to be associated with lower news programing ratios.

Standardized partial regression coefficient

This coefficient, unlike the simple correlation coefficient, controls for the confounding effects of the station variables. For example, in analysis I frequency type had a standardized partial regression of -.207, which was lower than its simple correlation of -.527. This indicates that over half of the bivariate correlation of frequency type and news programing, sign-on to sign off, was due to the fact that frequency type was also correlated with the other station variables. (See table 9, which shows bivariate correlation coefficients of the programing and station variables.)

The sign of the standardized partial regression coefficient indicates the direction of the relationship between a programing and station variable when the effects of the other station variables are taken into account. In analysis I the relationship between frequency type and news programing was negative, indicating that UHF stations tended to be associated with lower news programing ratios when the effects of the other station variables were accounted for.

Unstandardized partial regression coefficient (B)

As in the case of the standardized regression coefficient, the sign of the B coefficient indicates the direction of the relationship between a programing and station variable. In addition, the B coefficient indicates the quantitative effect of a station variable on programing when the other station variables in the equation are controlled for (i.e., held constant).

In analysis I the B coefficient of affiliation status was -.04490. This indicates that, when the other variables in the equation were held constant, (1) independent stations tended to be associated with lower ratios of new programing, sign-on to sign off, and (2) on average, the ratio of news programing by independent stations was about 50 percent less than stations overall ($(B_{Xo2}) \div$ Y01 mean = $\div$.04490 $\div$ .0908 = -.494, or -49.4 percent). Similarly, UHF stations tended to be associated with lower news ratios and, on average, their ratio was about 14 percent less than stations overall. The B coefficient for station size (+.00011) indicates that (when the other five variables were held constant) stations with larger numbers of employees tended to be associated with higher news ratios and, on average, an increase of 1 employee was associated with an increase of .00011 in the ratio of news programing.

F ratio

This statistic is used to determine whether the B coefficients of the station variables in the equation are statistically significant. The coefficients were tested at a 95-percent level of confidence, with each variable treated as if all the other variables had entered the equation. In analysis I the statistically significant variables were affiliation status, frequency type, and station size. This indicates the risk is no greater than 5 percent that the B coefficient was equal to zero for each of these variables in the population from which the sample was selected. Because the risk is greater than 5 percent for each of the other three variables in the equation, the effect of each on news programing was not considered statistically significant.

Constant

This term represents the predicted value of the programing variable when each of the station variables in the regression equation is equal to zero. In analysis I the constant had a value of .091, or about 9.1 percent.

APPENDIX II

Table 8
Analysis I

Dependent variable: Ratio of news to total program minutes, sign-on to sign off (Y01)
Mean value of dependent variable = .0908
Standard deviation = .0267
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.7752					
R square =	.5907	Regression	6	.1036	.0173	a/58.97
Standard error =	.0171	Residual	235	.0688	.0003	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X02	Affiliation status (independent)	.4673	-.68356	-.51205	-.04490	a/92.88
X01	Frequency type (UHF)	.0882	-.52690	-.20711	-.01235	a/17.36
X04	Station size	.0352	.34694	.23317	.00011	a/15.95
X06	Group ownership	.0044	.35331	.06860	.00406	2.22
X03	Market competition	.0038	-.20450	-.08472	-.00086	2.00
X05	Profitability	.0020	.37867	.05095	.00276	1.20
	Constant				.09101	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

Table 8 (cont.)
Analysis II

Dependent variable: Ratio of news to total program minutes, prime time (Y05)
Mean value of dependent variable = .1211
Standard deviation = .0448
Number of valid sample stations = 242

	Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R = .6558					
R square = .4155	Regression	6	.2084	.0347	a/29.55
Standard error = .0343	Residual	235	.2762	.0012	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X02	Affiliation status (independent)	.3253	-.57036	-.51999	-.07646	a/67.07
X04	Station size	.1030	.37745	.32069	.00025	a/21.13
X01	Frequency type (UHF)	.0015	-.34551	-.04582	-.00458	.60
X06	Group ownership	.0002	.22200	-.01139	-.00113	.04
X03	Market competition	.0001	-.07823	-.01476	-.00025	.04
X05	Profitability	.0001	.26455	-.00761	-.00069	.02
	Constant				.11378	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis III

Dependent variable: Ratio of public affairs to total program minutes, sign-on to sign off (Y02)
Mean value of dependent variable = .0431
Standard deviation = .0193
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.4153					
R square =	.1513	Regression	6	.0156	.0026	a/ 8.16
Standard error =	.0178	Residual	235	.0746	.0003	

Variables in the equation:

Independent variable	R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X03 Market competition	.0828	.28766	.27224	.00200	a/ 9.95
X02 Affiliation status (independent)	.0268	-.02234	-.18921	-.01120	a/ 6 12
X05 Profitability	.0414	-.15398	-.26968	-.01056	a/16.18
X04 Station size	.0161	.26275	.15462	.00005	3.38
X06 Group ownership	.0054	.09382	.07793	.00333	1.38
X01 Frequency type (UHF)	.0001	-.05106	-.00907	-.00039	.02
Constant				.03179	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis IV

Dependent variable: Ratio of public affairs to total program minutes, prime time (Y06)
Mean value of dependent variable = .0301
Standard deviation = .0240
Number of valid sample stations = 242

		Analysis of variance of	degrees of freedom	Sum of squares	Mean square	F
Multiple R=	.3436					
R square =	.0955	Regression	6	.0164	.0027	a/ 5.24
Standard error=	.0228	Residual	235	.1222	.0005	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X05	Profitability	.0942	-.30685	-.35664	-.01731	a/26.54
X04	Station size	.0176	.04204	.07365	.00003	.72
X06	Group ownership	.0026	-.02499	.04432	.00235	.42
X03	Market competition	.0018	.12492	.07272	.00066	.67
X01	Frequency type (UHF)	.0018	.02802	-.04944	-.00264	.45
X02	Affiliation status (independent)	.0001	.10016	-.01088	-.00086	.02
	Constant				.02704	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis V

Dependent variable: Ratio of other nonentertainment to total program minutes, sign-on to sign off (Y03)
Mean value of dependent variable = .1091
Standard deviation = .0940
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.5446					
R square =	.2817	Regression	5	.6316	.1263	a/19.90
Standard error =	.0797	Residual	236	1.4980	.0064	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X05	Profitability	.2120	-.46042	-.35634	-.06781	a/33.78
X02	Affiliation status (independent)	.0769	.41279	.25987	.08010	a/13.91
X04	Station size	.0017	-.17040	-.10311	-.00017	1.97
X03	Market competition	.0041	.17132	.08891	.00317	1.29
X06	Group ownership	.0020	-.15475	.04883	.01015	.67
	Constant				.10370	

The variable "frequency type" (X01) did not enter the equation.

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis VI

Dependent variable: Ratio of other nonentertainment to total program minutes, prime time (Y07)
Mean value of dependent variable = .0479
Standard deviation= .1081
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of square	Mean square	F
Multiple R=	.5866					
R square =	.3274	Regression	6	.9691	.1615	a/20.55
Standard error =	.0887	Residual	235	1.8473	.0079	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X05	Profitability	.2385	-.48836	-.36700	-.08031	a/37.80
X02	Affiliation status (independent)	.0994	.45794	.30238	.10718	a/19.71
X04	Station size	.0021	-.18308	-.09438	-.00018	1.59
X03	Market competition	.0030	.18047	.07386	.00303	.92
X06	Group ownership	.0011	-.18201	.03812	.00911	.42
X01	Frequency type (UHF)	.0001	.26829	.01016	.00245	.03
	Constant				.04286	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis VII

Dependent variable: Ratio of total (news + public affairs + other) nonentertainment to total program minutes, sign-on to sign off (Y04)
Mean value of dependent variable = .2428
Standard deviation = .0868
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R=	.4628					
R square =	.1975	Regression	5	.3885	.0777	a/12.86
Standard error =	.0777	Residual	236	1.4253	.0060	

Variables in the equation:

Independent variable	R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X05 Profitability	.1737	-.41673	-.43196	-.07586	a/45.37
X03 Market competition	.0261	.18655	.12682	.00418	3.79
X06 Group ownership	.0081	-.03688	.09227	.01769	2.05
X02 Affiliation status (independent)	.0030	.23189	.08389	.02386	1.36
X01 Frequency type (UHF)	.0033	.08454	-.06572	-.01272	.99
Constant				.22613	

The variable "station size" (X04) did not enter the equation.

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis VIII

Dependent variable: Ratio of total (news + public affairs + other) nonentertainment to total program minutes, prime time (Y08)
Mean value of dependent variable = .1988
Standard deviation = .1088
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R=	.4748					
R square =	.2057	Regression	6	.6430	.1072	a/11.40
Standard error =	.0970	Residual	235	2.2093	.0094	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X05	Profitability	.1973	-.44420	-.44605	-.09823	a/47.28
X03	Market competition	.0217	.17380	.08172	.00338	.96
X02	Affiliation status (independent)	.0018	.24277	.08470	.03021	1.31
X04	Station size	.0027	-.01791	.05529	.00010	.46
X06	Group ownership	.0018	-.09625	.04200	.01010	.43
X01	Frequency type (UHF)	.0002	.13171	-.01854	-.00450	.07
	Constant				.18365	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis IX

Dependent variable: Ratio of local nonentertainment, entertainment and sports to total program minutes, sign-on to sign off (Y09)
Mean value of dependent variable = .0932
Standard deviation = .0617
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R=	.5207					
R square =	.2526	Regression	6	.2487	.0414	a/14.57
Standard error =	.0533	Residual	235	.6684	.0028	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X03	Market competition	.1432	.37839	.04608	.00108	.32
X02	Affiliation status (independent)	.0324	.32661	.29253	.05917	a/16.60
X04	Station size	.0691	.33413	.38467	.00041	a/23.77
X05	Profitability	.0242	-.16066	-.16711	-.02087	a/ 7.05
X06	Group ownership	.0013	-.06524	-.04732	-.00645	.58
X01	Frequency type (UHF)	.0010	.00752	-.03858	-.00531	.33
	Constant				.06171	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)

Analysis X

Dependent variable: Ratio of local nonentertainment, entertainment and sports to total program minutes, prime time (Y10)
Mean value of dependent variable = .0906
Standard deviation = .0816
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.4436					
R square =	.1763	Regression	6	3159	.0527	a/ 9.59
Standard error =	.0741	Residual	235	1.2896	.0055	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regressior coefficient (B)	F
X02	Affiliation status (independent)	.1035	.32168	.24794	06636	a/10.82
X04	Station size	.0381	.16136	.26237	.00037	a/10.03
X05	Profitability	.0528	-.26694	-.23948	-.03957	a/13.14
X06	Multiple ownership	.0023	-.12782	-.05064	-.00914	.60
X03	Market competition	.0001	.27025	.01264	.00039	.02
X01	Frequency type (UHF)	.0001	.10418	.00818	.00149	.01
	Constant				.06707	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

APPENDIX II

Table 8 (cont.)
Analysis XI

Dependent variable: Ratio of local news, public affairs and other nonentertainment to total program minutes, prime time (Y11)
Mean value of dependent variable = .0823
Standard deviation = .0653
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.4163					
R square =	.1594	Regression	4	.1778	.0445	a/12.42
Standard error =	.0598	Residual	237	.8483	.0036	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X05	Profitability	.0684	-.26156	-.30420	-.04018	a/21.23
X04	Station size	.0923	.21903	.32660	.00037	a/27.28
X02	Affiliation status (independent)	.0104	.17856	.09846	.02107	2.40
X06	Group ownership	.0022	-.08992	-.05136	-.00741	.64
	Constant				.06436	

The variables "frequency type" (X01) and "market competition" (X03) did not enter the equation.

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 8 (cont.)
Analysis XII

Dependent variable: Ratio of news and public affairs to total program minutes, sign-on to sign off (Y12)
Mean value of dependent variable = .1339
Standard deviation = .0352
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.6687					
R square =	.4330	Regression	6	1335	.0222	a/31.67
Standard error =	.0265	Residual	235	.1650	.0007	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X02	Affiliation status (independent)	2827	-.53172	-.49310	-.05690	a/62.18
X04	Station size	.1265	.40804	.26217	.00016	a/14.55
X01	Frequency type (UHF)	.0186	-.42846	-.16237	-.01274	a/ 7.70
X05	Profitability	.0078	.20313	-.10950	-.00780	a/ 3.99
X06	Group ownership	.0080	.32005	.09496	.00739	3.07
X03	Market competition	.0034	.00269	.08524	.00114	1.46
	Constant				.12280	

a/Indicates that the equation or variable is statistically significant at the 95-percent confidence level.

APPENDIX II

Table 8 (Cont.)
Analysis XIII

Dependent variable: Ratio of news and public affairs to total program minutes, prime time (Y13)
Mean value of dependent variable = .1512
Standard deviation = .0531
Number of valid sample stations = 242

		Analysis of variance and degrees of freedom		Sum of squares	Mean square	F
Multiple R =	.5482					
R square =	.2826	Regression	6	.2045	.0341	a/16.82
Standard error =	.0450	Residual	235	.4761	.0020	

Variables in the equation:

Independent variable		R square change	Simple correlation coefficient	Standardized partial regression coefficient	Unstandardized partial regression coefficient (B)	F
X02	Affiliation status (independent)	.1902	-.43610	-.44369	-.07731	a/39.79
X04	Station size	.0868	.33747	.30383	.00028	a/15.45
X05	Profitability	.0205	.08481	-.16730	-.01800	a/ 7.36
X01	Frequency type (UHF)	.0027	-.27891	-.06096	-.00723	.86
X03	Market competition	.0002	-.00966	.02035	.00041	.07
X06	Group ownership	.0001	.17606	.01038	.00122	.03
	Constant				.14082	

a/Indicates that the equation or variable is statistically significant at a 95-percent confidence level.

APPENDIX II

Table 9
Bivariate Correlation Coefficients

	Y01	Y02	Y03	Y04	Y05	Y06	Y07	Y08	Y09	Y10	Y11	Y12	Y13
Y01	1.00												
Y02	0.14	1.00											
Y03	-0.43	-0.11	1.00										
Y04	-0.13	0.15	0.93	1.00									
Y05	0.74	0.14	-0.30	-0.07	1.00								
Y06	0.13	0.42	0.09	0.23	0.11	1.00							
Y07	-0.44	0.05	0.90	0.85	-0.36	0.15	1.00						
Y08	-0.10	0.20	0.79	0.87	0.08	0.42	0.88	1.00					
Y09	0.02	0.39	0.17	0.28	0.04	0.39	0.29	0.40	1.00				
Y10	0.00	0.34	0.24	0.34	0.19	0.53	0.38	0.58	0.82	1.00			
Y11	0.13	0.40	0.16	0.30	0.35	0.56	0.31	0.57	0.75	0.94	1.00		
Y12	0.84	0.66	-0.39	a/	0.64	0.33	-0.31	a/	a/	a/	a/	1.00	
Y13	0.68	0.31	-0.21	a/	0.89	0.54	-0.24	a/	a/	a/	a/	0.69	1.00
X01	-0.53	-0.05	0.24	0.08	-0.35	0.03	0.27	0.13	0.01	0.10	0.04	-0.43	-0.28
X02	-0.68	-0.02	0.41	0.23	-0.57	0.10	0.46	0.24	0.33	0.32	0.18	-0.53	-0.44
X03	-0.20	0.29	0.17	0.19	-0.08	0.12	0.18	0.17	0.38	0.27	0.23	0.00	-0.01
X04	0.35	0.26	-0.17	-0.02	0.38	0.04	-0.18	-0.02	0.33	0.16	0.22	0.41	0.34
X05	0.38	-0.15	-0.46	-0.42	0.26	-0.31	-0.49	-0.44	-0.16	-0.27	-0.26	0.20	0.08
X06	0.35	0.09	-0.15	-0.04	0.22	-0.02	-0.18	-0.10	-0.07	-0.13	-0.09	0.32	0.18

	X01	X02	X03	X04	X05	X06
X01	1.00					
X02	0.37	1.00				
X03	0.08	0.43	1.00			
X04	-0.36	-0.10	0.52	1.00		
X05	-0.33	-0.33	-0.06	0.29	1.00	
X06	-0.37	-0.27	0.03	0.25	0.31	1.00

a/Not computed.

APPENDIX II

METHODOLOGY AND RESULTS OF QUESTIONNAIRE SURVEY

OF BROADCAST STATION GENERAL MANAGERS

We surveyed a sample of general managers from commercial radio and television stations about their opinions of several FCC policies, rules, and regulations affecting the broadcast industry. A questionnaire was mailed to the general managers to solicit their opinions on issues such as licensing, ascertainment, and ownership of broadcast stations. Two samples, one for television and one for radio, were randomly selected from FCC lists of licensed commercial broadcast stations in the United States.

Sampling plan

In July 1977, there were 7,959 licensed commercial broadcast stations in the United States. One sample was selected from the 708 television stations and one from the 7,251 radio stations. Both samples were selected to yield sampling errors no greater than approximately 5 percent at a 95-percent level of statistical confidence. The combined sample of television and radio stations would yield a somewhat smaller sampling error. Sample sizes are shown below.

Station type	Total number of stations	Sample size
Television	708	276
Radio	7,251	399
Total	7,959	675

Survey method

On April 10, 1978, questionnaires were sent to the general managers of the television and radio stations sampled. To assure an adequate response rate, two additional followup mailings were used to encourage general managers to respond. As of June 6, 1978, a total of 527 usable questionnaires had been returned. General managers or owners of 19 television and radio stations replied in writing that their stations would not participate in our survey. The final response and nonresponse rates are shown below.

Station type	Sample size	Number of usable questionnaires	Response rate	Nonresponse rate
			(percent)	
Television	276	202	73.5	26.5
Radio	399	325	81.4	18.6
Total	675	527	78.1	21.9

Survey results

The questionnaire responses for television are shown beginning on page 203 and those for radio on page 212. The percentage of station managers choosing each response is reported for each question. Reported response percentages do not always total 100 percent because, for most of the questions, a response was not included in a small number of the 527 usable questionnaires.

As shown above, the nonresponse rates were 26.5 percent for television stations and 18.6 percent for radio stations. These nonresponse rates increase the sampling error slightly above 5 percent at a 95-percent confidence level. It should be noted that for several questions (numbers 34, 36, and 38, TV and radio; 41 radio only; and 41 to 43, TV only) responses were solicited from only a subgroup of those sampled. For example, only managers of stations which are crossowned with newspapers were asked about the effect of crossownership on the diversity of information and ideas. Sampling errors for these questions would be higher than for those asked of all sample stations.

TV STATIONS

U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF BROADCAST STATION GENERAL MANAGERS

INTRODUCTION

As mentioned in our letter, the U.S. General Accounting Office, an agency of the Congress, is studying the Federal Communications Commission's (FCC) broadcast rules, regulations, and policies affecting commercial radio and television stations and thus the American public.

This questionnaire is designed to be answered by station general managers. Its purpose is to obtain information concerning the opinions and experiences of station managers relating to the FCC and the broadcast field. Because station general managers are closest to the every day broadcast operations and activities, your response is of vital importance to our review.

The questionnaire is numbered only to permit us to delete your name from our list when we receive your completed questionnaire and thus avoid sending you any unnecessary follow-up requests. All responses will be treated as confidential and released only in summary form.

Throughout this questionnaire there are numbers printed within parentheses to assist our keypuncher in coding responses for computer analysis. Please disregard these numbers.

If you have any questions, please call Robert Allen, Jr. at (202) 634-1967.

After completing the questionnaire, please return it in the preaddressed, postage-paid envelope.

Thank you for your cooperation.

BACKGROUND

1. How many years experience do you have in the broadcast field? (Enter number years.)

   ______ years *(CARD 1)* *(6-7)*

   Mean 24.8
   Median 25.2

2. How many years experience as a station general manager do you have? (Enter number years.)

   ______ years Mean 11.3 *(8-9)*
   Median 9.3

3. How many years have you been general manager of this station? (Enter number years.)

   ______ years Mean 8.5 *(10-11)*
   Median 5.9

4. How much interest, if any, do you own in this station? (Check one.) *(12)*

   1) ☐ own no interest 64.4
   2) ☐ own less than 50% interest 27.7
   3) ☐ own greater than 50% interest 7.4

5. When was the last time the FCC conducted an engineering inspection of your station? (Enter month and year. e.g., January 1975 = [0][1] month [7][5] year.)

   [ ][ ] month [ ][ ] year *(13-16)*

25%	July 1964 - Feb. 1975*
25%	March 1975 - Sept. 1976
25%	Oct. 1976 - Aug. 1977
25%	Sept. 1977 - May 1978

   *Percents based on 166 who provided date.

 APPENDIX III

TV STATIONS

FCC REGULATION

6. Which agency, if any, should regulate broadcast activities in the following areas specified below? (Check one box per line.)

	1) FCC should regulate	2) Federal agency other than FCC should regulate	3) Should not be regulated	
1. Number of co-owned stations in same market	80.7	6.4	8.4	(17) 45
2. Number of co-owned stations in different market	73.3	4.5	18.3	(18) 40
3. Total number of stations co-owned	74.8	6.4	14.9	(19) 40
4. Cross-ownership of broadcast station and newspapers	42.6	12.9	40.6	(20) 40
5. Ascertainment of community problems and needs	55.9	2.5	39.1	(21) 2.5
6. Program Service (non-entertainment requirements)	38.6	2.0	55.9	(22)
7. Network-affiliate agreements	40.6	4.0	53.3	(23)
8. Political broadcasts	60.4	5.4	31.2	(24)
9. Controversial issues (Fairness Doctrine)	43.1	4.5	50.5	(25)
10. Employment (EEO requirements)	33.2	28.7	34.2	(26)
11. Public access (air time)	34.7	3.0	60.9	(27)
12. Assuring interference-free transmission	96.0	1.0	1.0	(28)
13. Licenses for technical positions	94.1	1.5	3.0	(29)
14. Business practices such as lotteries	55.0	29.2	12.9	(30)
15. Business practices such as double billing	63.9	27.7	5.9	(31)
16. Other (please specify) ________				(32)

7. As you realize, the FCC requires stations to air some amount of public interest programs, i.e., news, public affairs, other non-entertainment programs etc.. Should the FCC document and publish quantitative standards specifying the amount (fixed percentage) of air time for these types of programs? (Check one.)

   1) ☐ definitely yes 5.9 (33)
   2) ☐ probably yes 12.4
   3) ☐ uncertain 6.4
   4) ☐ probably no 17.3
   5) ☐ definitely no 56.9

8. Assume that the FCC dropped its current requirement to produce some amount of non-entertainment programming. What effect if any, would this have on the amount of news, public affairs, and other non-entertainment programs that your station would produce? (Check one.)

   1) ☐ greatly increase - (34)
   2) ☐ moderately increase 5.9
   3) ☐ no change 78.7
   4) ☐ moderately decrease 10.4
   5) ☐ greatly decrease 1.0

9. How would you rate the clarity of the published FCC rules and regulations? (Check one.)

   1) ☐ very clear .5 (35)
   2) ☐ generally clear 36.1
   3) ☐ of marginal clarity 44.6
   4) ☐ generally unclear 12.9
   5) ☐ very unclear 5.0

TV STATIONS

10. How often do you use an attorney in your dealings with the FCC? (Check one.)

1) ☐	always or almost always	71.3	(36)
2) ☐	often	18.8	
3) ☐	about half the time	1.5	
4) ☐	sometimes	7.4	
5) ☐	never or hardly ever	.5	

11. How satisfied or dissatisfied are you with each of the following areas as related to the FCC's performance in regulating your broadcast activities? (Check one box per line.)

	1) Very satisfied	2) Generally satisfied	3) Neither satisfied nor dissatisfied	4) Generally dissatisfied	5) Very dissatisfied	
1. Time it takes FCC to respond to your questions -requests for information	12.9	56.4	15.8	7.9	5.0	(37)
2. Time it takes FCC to process applications	5.9	19.8	14.4	37.1	21.8	(38)
3. Reasonableness of requests for information	9.4	40.6	27.2	15.3	6.4	(39)
4. Competency of FCC staff	11.4	47.0	31.2	4.5	3.5	(40)
5. Courtesy of FCC staff	29.7	51.5	14.9	2.0	1.0	(41)
6. Other (please specify)____						(42)

12. In general how satisfied or dissatisfied are you with FCC overall performance in regulating your broadcast activities? (Check one.)

1) ☐	very satisfied	3.0	(43)
2) ☐	generally satisfied	47.5	
3) ☐	neither satisfied nor dissatisfied	24.3	
4) ☐	generally dissatisfied	20.8	
5) ☐	very dissatisfied	3.0	

13. The FCC has equal employment opportunity (EEO) requirements that go beyond what is required of other business concerns (e.g., stations must have affirmative action plans if they have 5 or more employees, whereas other businesses are required to do so if they have 50 or more employees). Do you feel that broadcasters should meet EEO requirements beyond those of other business concerns? (Check one.)

1) ☐	definitely yes	2.0	(44)
2) ☐	probably yes	8.4	
3) ☐	uncertain	3.5	
4) ☐	probably no	22.8	
5) ☐	definitely no	61.4	

LICENSING

14. For the station you manage, to what extent, if any, does the current 3-year license period adversely affect each of the following? (Check one box per line.)

	1) Very great extent	2) Substantial or great extent	3) Moderate extent	4) Some extent	5) Little or no extent	
1. Ability to secure needed financial resources	4.5	10.9	18.8	16.8	48.0	(45)
2. Facilities planning	6.9	11.4	24.8	18.3	37.6	(46)
3. Facilities development	5.4	13.4	22.3	19.8	37.6	(47)
4. Recruitment and retention of staff	2.0	5.0	17.3	13.9	60.9	(48)
5. Other (please specify)__						(49)

TV STATIONS

15. Overall, how satisfied or dissatisfied are you with the current 3 year license renewal period? (Check one.)

1) ☐	very satisfied	1.5	(50)
2) ☐	generally satisfied	11.9	
3) ☐	neither satisfied nor dissatisfied	13.9	
4) ☐	generally dissatisfied	42.1	
5) ☐	very dissatisfied	30.2	

16. In your opinion, how long should the license renewal period be? (Check one.)

1) ☐	less than 2 years	-	(51)
2) ☐	2 years	-	
3) ☐	3 years	3.5	
4) ☐	4-5 years	52.5	
5) ☐	6-10 years	24.8	
6) ☐	Some limited period over 10 years	3.0	
7) ☐	Unlimited	14.9	

17. Has the station you currently manage ever had a "petition to deny" filed against it at license renewal time? (Check one.)

1) ☐	yes	23.3	(52)
2) ☐	no	74.8	
3) ☐	uncertain	2.0	

If yes, when? (Enter month and year for each occurrence) ____________

18. Has the station you currently manage ever had a competitive challenger at license renewal time? (Check one.)

1) ☐	yes	2.0	(53)
2) ☐	no	96.0	
3) ☐	uncertain	1.5	

If yes, when? (Enter month and year for each occurrence) ____________

19. What influence, if any, does the <u>possibility</u> of a competing application for your license have on your practices in each of the following areas? (Check one box per line.)

	1) Very large influence	2) Substantial influence	3) Moderate influence	4) Some influence	5) Little or no influence	
1. Program time devoted to news and public affairs	5.4	8.4	10.4	14.9	57.9	(54)
2. Program time devoted to local problems and needs	5.4	7.4	9.9	12.9	61.4	(55)
3. Employment (minorities and women)	5.0	10.9	8.9	18.8	53.0	(56)
4. Ascertainment of community problems and needs	5.4	11.9	12.4	9.4	57.4	(57)
5. Other (please specify) ____						(58)

20. What influence, if any, does the <u>possibility</u> of an objection to your license renewal by citizen's groups (petition to deny) have on your practices in each of the following areas? (Check one box per line.)

	1) Very large influence	2) Substantial influence	3) Moderate influence	4) Some influence	5) Little or no influence	
1. Program time devoted to news and public affairs	5.4	6.9	14.9	19.3	52.0	(59)
2. Program time devoted to local problems and needs	6.4	6.9	13.9	17.8	53.5	(60)
3. Employment (minorities and women)	7.4	10.9	14.4	21.3	44.6	(61)
4. Ascertainment of community problems and needs	7.4	10.9	13.9	17.3	48.5	(62)
5. Other (please specify) ____						(63)

TV STATIONS

21. Have you ever entered into a formal citizens' agreement with a group in your broadcast service area? (Check one.)

1) ☐	yes (continue)	8.4	(64)
2) ☐	no (go to no. 23)	89.6	

22. If you did enter into a citizens' agreement, do you feel this action was necessary to avoid or resolve a petition to deny? (Check one.)

1) ☐	definitely yes	25.0*	(65)
2) ☐	probably yes	50.0	
3) ☐	uncertain	6.3	
4) ☐	probably no	18.8	
5) ☐	definitely no	-	

*Percent based on n = 16.

23. In your opinion, how adequate or inadequate is FCC's definition of criteria for "petition to deny" at license renewal time? (Check one.)

1) ☐	very adequate	3.0	(66)
2) ☐	adequate	18.8	
3) ☐	marginal	20.8	
4) ☐	inadequate	14.4	
5) ☐	very inadequate	13.4	
6) ☐	no basis to judge	28.2	

24. Do you feel that the FCC should assess and make judgment of an incumbent's performance before allowing challenges for the license at renewal time? (Check one.)

1) ☐	definitely yes	73.3	(67)
2) ☐	probably yes	18.3	
3) ☐	uncertain	3.5	
4) ☐	probably no	2.5	
5) ☐	definitely no	.5	

25. Starting with February 1977 license renewals, the FCC began using a new renewal form. Have you had the opportunity to examine the new form and its requirements? (Check one.)

1) ☐	yes	70.8	(68)
2) ☐	no (go to 27)	28.2	

26. In your opinion, is the new form better or worse than the form it replaces? (Check one.)

1) ☐	significantly better	10.9*	(69)
2) ☐	somewhat better	29.2	
3) ☐	about the same	22.3	
4) ☐	somewhat worse	6.4	
5) ☐	significantly worse	1.0	

* Percent based on n = 141

27. What do you feel the chances are that your station would lose its license at each renewal time? (Check one.)

1) ☐	very great chance	.5	(70)
2) ☐	substantial chance	-	
3) ☐	moderate chance	6.4	
4) ☐	some chance	14.4	
5) ☐	little or no chance	59.9	
6) ☐	no basis to judge	14.9	

LOCALISM-PUBLIC INTEREST

28. How important or not do you feel each of the following elements is to the concept of localism? (Check one box per line.)

	1) Essential	2) Very important	3) Moderately important	4) Somewhat important	5) Little or no importance	
1. Programming addressing the problems and needs of local community	65.8	29.2	4.0	.5	.5	(71)
2. Programming produced locally	40.6	31.2	19.8	6.4	2.0	(72)
3 Programming which features local talent	15.3	17.8	26.7	20.3	19.3	(73)
4. Local ownership of broadcast facilities	12.4	12.4	15.3	11.9	47.5	(74)
5. Local management of broadcast facilities	47.5	38.1	8.9	2.0	2.5	(75)
6. Station employment of local community members	33.2	32.2	15.3	12.9	5.9	(76)
7. Other (please specify) ____						(77)

1 (80)

TV STATIONS

29. Do you feel the assessment as to whether or not your station is serving the "public interest" should be limited only to the amount of news, public affairs, or other non-entertainment programming you air? (Check one.)

1) ☐ definitely yes 5.0
2) ☐ probably yes 16.3
3) ☐ uncertain 7.4
4) ☐ probably no 30.2
5) ☐ definitely no 38.1

(Card 2) *(6)*

ASCERTAINMENT

30. To what extent if any, do you feel ascertainment procedures currently required by FCC help you identify problems, needs and interests of the community you are licensed to serve? (Check one.)

1) ☐ little or no extent 17.8
2) ☐ to small extent 21.8
3) ☐ to moderate extent 33.7
4) ☐ to large extent 18.3
5) ☐ to very large extent 8.4
6) ☐ nonapplicable – small market exemption

(7)

31. If there were no ascertainment requirements, which of the following procedures would you use, or not to identify community problems, needs and interests? (Check one box per line.)

	1) Definitely would utilize	2) Probably would utilize	3) Uncertain	4) Probably would not utilize	5) Definitely would not utilize	
1. Formally interview leaders of majority and minority elements of the community (ongoing)	44.6	38.1	5.4	6.4	3.0	*(8)*
2. Conduct a formal annual survey of community citizens at large	17.3	32.7	17.3	24.3	5.4	*(9)*
3. Make informal contacts (by management, news team, sales staff, and other station employees) with local community leaders and citizens (ongoing)	75.7	20.8	.5	-	.5	*(10)*
4. Document unsolicited telephone calls received from listening or viewing audience as to their needs and interests (ongoing)	36.3	28.7	13.4	10.9	7.9	*(11)*
5. Prepare formal annual reports of all contacts with community leaders and citizens	13.4	23.8	17.8	31.7	10.4	*(12)*
6. Prepare formal annual reports of problems or needs facing community and programs presented to address community problems and needs	16.8	36.6	18.3	18.3	6.9	*(13)*
7. Prepare formal annual reports of impact of public interest programs in eliminating or reducing problems or in serving an established need (e.g., letters from the public or community leaders or community service awards as indicators of serving local needs and interests)	11.4	38.1	18.8	20.3	7.9	*(14)*
8. Prepare formal annual statements explaining how station determines and serves its listening or viewing audience's needs and interests, containing examples of programs or activities undertaken to satisfy those needs and interests (no formal ascertainment procedures)	19.8	38.6	16.8	15.8	5.4	*(15)*
9. Other (please specify) ______						*(16)*

TV STATIONS

32. To what extent, if any, do you feel that FCC's current ascertainment procedures result in programs which contribute to resolution of community problems and needs in your service area? (Check one.)

1) ☐	very large extent	5.4	*(18)*
2) ☐	substantial extent	14.4	
3) ☐	moderate extent	41.1	
4) ☐	some extent	21.3	
5) ☐	little or no extent	16.3	

DIVERSIFICATION OF INFORMATION

33. Does the owner (individual or corporation) of the station you manage own another broadcast station(s) in your market area? (Check one.)

1) ☐	yes (continue)	31.7	*(19)*
2) ☐	no (go to no. 35)	67.3	
3) ☐	uncertain (go to no. 35)	.5	

34. To what extent, if any, do you feel this ownership of another broadcast station in your area retards or advances the diversification of information and ideas? (Check one.)

1) ☐	substantially or greatly retards diversification	.5	*(20)* *
2) ☐	moderately or somewhat retards diversification	12.9	
3) ☐	neither retards nor advances	5.0	
4) ☐	moderately or somewhat advances diversification	13.4	
5) ☐	substantially or greatly advances diversification	68.3	

* Percents based on n = 64

35. Does the owner (individual or corporation) of the station you manage own another broadcast station(s) in another market area(s)? (Check one.)

1) ☐	yes (continue)	75.7	*(21)*
2) ☐	no (go to no. 37)	23.3	
3) ☐	uncertain (go to no. 37)	.5	

36. To what extent, if any, do you feel this ownership of another broadcast station(s) in another market(s) retards or advances the diversification of information and ideas? (Check one.)

1) ☐	substantially or greatly retards diversification	.5	*(22)* *
2) ☐	moderately or somewhat retards diversification	.5	
3) ☐	neither retards nor advances	24.8	
4) ☐	moderately or somewhat advances diversification	17.3	
5) ☐	substantially or greatly advances diversification	32.7	

* Percents based on n = 153

37. Does the owner (individual or corporation) of the station you manage own a newspaper(s)? (Check one.)

1) ☐	yes (continue)	25.2	*(23)*
2) ☐	no (go to no 39)	73.8	
3) ☐	uncertain (go to no. 39)	-	

38. To what extent, if any, do you feel this ownership of a newspaper(s) retards or advances the diversification of information and ideas? (Check one.)

1) ☐	substantially or greatly retards diversification	-	*(24)*
2) ☐	moderately or somewhat retards diversification	-	
3) ☐	neither retards nor advances	14.9	*
4) ☐	moderately or somewhat advances diversification	3.0	
5) ☐	substantially or greatly advances diversification	7.4	

* Percents based on n = 51

39. Who usually has final authority in deciding programming at your station? (Check one.)

1) ☐	myself – as station manager	75.7	*(25)*
2) ☐	program director	2.0	
3) ☐	owner (e.g., President, etc.)	7.4	
4) ☐	owner representative	.5	
5) ☐	other (please specify)________	3.0	

(26-28)

NETWORK RELATIONSHIPS

40. Is the television station you manage a network affiliate? (Check one.)

1) ☐	yes (continue)	91.1	*(29)*
2) ☐	no (go to no. 44)	7.9	

TV STATIONS

41. In your opinion how much beneficial or detrimental impact, if any, do network activities/policies in each of the following areas have on your station's operation? (Check one box per line.)

	1) Significant beneficial impact	2) Beneficial impact	3) Little or no impact	4) Detrimental impact	5) Significant detrimental impact	
1. Amount of compensation to station	33.7	50.0	11.4	3.3	1.6*	(30)
2. Amount of entertainment programming	73.4	23.4	2.7	.5	-	(31)
3. Amount of non-entertainment programming	48.9	40.2	10.3	.5	-	(32)
4. Amount of time allocated for local advertising	18.7	28.0	34.1	17.0	2.2	(33)
5. Program content	33.9	46.4	14.2	5.5	-	(34)
6. Program schedule	41.3	42.4	9.2	6.5	.5	(35)
7. Other (please specify)___						(36)

42. Overall, how much does the network hinder or facilitate, if at all, your local broadcast practices? (Check one.)

1) ☐ significantly hinders 1.1* (37)
2) ☐ somewhat hinders 13.3
3) ☐ neither hinders nor facilitates 41.4
4) ☐ somewhat facilitates 20.4
5) ☐ significantly facilitates 23.8

43. What effect, if any does the current amount of network programming have on your station's programming alternatives? (Check one.)

1) ☐ greatly increases 7.1 (38)
2) ☐ somewhat increases 15.3
3) ☐ no effect 39.9
4) ☐ somewhat decreases 36.6
5) ☐ greatly decreases 1.1

SATELLITES AND CABLE

44. If the networks were to use satellites for direct network to home transmission, what would be the impact, if any, on your TV station? (Check one.)

1) ☐ significant beneficial impact 2.5 (39)
2) ☐ beneficial impact 4.0
3) ☐ little or no impact 1.5
4) ☐ detrimental impact 10.4
5) ☐ significant detrimental impact 77.7
6) ☐ no opinion 3.5

45. What impact, if any, does cable TV have on your TV station? (Check one.)

1) ☐ significant beneficial impact 2.0 (40)
2) ☐ beneficial impact 8.4
3) ☐ little or no impact 13.4
4) ☐ detrimental impact 35.1
5) ☐ significant detrimental impact 35.1
6) ☐ no opinion 2.0

*Percents for questions 41, 42, and 43 based on 184 managers of network afiliate stations.

APPENDIX III

TV STATIONS

PRIME TIME ACCESS RULE

46. Overall, has the "prime time access rule" been an advantage or disadvantage for each of the following? (Check one box per line.)

	1) Great advantage	2) Some advantage	3) Neither advantage nor disadvantage	4) Some disadvantage	5) Great disadvantage	
1. Networks	5.4	19.3	15.8	37.6	15.3	(41)
2. Syndicators	61.9	27.2	5.0	2.0	.5	(42)
3. Independent Producers	47.5	38.6	7.9	2.0	.5	(43)
4. Local affiliates	22.8	45.5	13.9	11.4	3.5	(44)
5. Local independents	19.3	16.3	30.2	17.3	5.4	(45)
6. Viewing public	9.4	22.8	28,7	24.8	7.4	(46)

ADDITIONAL COMMENTS

47. If you have any additional comments on any of the questions or related points, or topics not covered please write your comments below.

(47)

2 (80)

 APPENDIX III

RADIO STATIONS

U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF BROADCAST STATION GENERAL MANAGERS

INTRODUCTION

As mentioned in our letter, the U.S. General Accounting Office, an agency of the Congress, is studying the Federal Communications Commission's (FCC) broadcast rules, regulations, and policies affecting commercial radio and television stations and thus the American public.

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The questionnaire is numbered only to permit us to delete your name from our list when we receive your completed questionnaire and thus avoid sending you any unnecessary follow-up requests. All responses will be treated as confidential and released only in summary form.

Throughout this questionnaire there are numbers printed within parentheses to assist our keypuncher in coding responses for computer analysis. Please disregard these numbers.

If you have any questions, please call Robert Allen, Jr. at (202) 634-1967.

After completing the questionnaire, please return it in the preaddressed, postage-paid envelope.

Thank you for your cooperation.

BACKGROUND

1. How many years experience do you have in the broadcast field? (Enter number years)

_______ years *(CARD 1)* *(6-7)*

Mean 20.8
Median 20.7

2. How many years experience as a station general manager do you have? (Enter number years.)

_______ years Mean 11.2 Median 9.7 *(8-9)*

3. How many years have you been general manager of this station? (Enter number years.)

_______ years Mean 8.8 Median 6.8 *(10-11)*

4. How much interest, if any, do you own in this station? (Check one.)

1) ☐ own no interest 38.8 *(12)*

2) ☐ own less than 50% interest 32.9

3) ☐ own greater than 50% interest 28.0

5. When was the last time the FCC conducted an engineering inspection of your station? (Enter month and year, e.g., January 1975 = |0|1| month |7|5| year.)

|_|_| month |_|_| year *(13-16)*

25%	March 1964 - Dec. 1973
25%	Jan. 1974 - June 1975
25%	July 1975 - Dec. 1976
25%	Jan. 1975 - March 1978

*Percents based on 212 who provided date.

RADIO STATIONS

FCC REGULATION

6. Which agency, if any, should regulate broadcast activities in the following areas specified below? (Check one box per line.)

	1) FCC should regulate	2) Federal agency other than FCC should regulate	3) Should not be regulated	
1. Number of co-owned stations in same market	86.2	3.4	8.0	(17)
2. Number of co-owned stations in different market	72.6	2.8	22.5	(18)
3. Total number of stations co-owned	71.4	2.8	22.5	(19)
4. Cross-ownership of broadcast station and newspapers	52.3	15.4	28.3	(20)
5. Ascertainment of community problems and needs	37.5	5.8	54.5	(21)
6. Program Service (non-entertainment requirements)	29.2	2.8	65.2	(22)
7. Network-affiliate agreements	42.8	4.9	48.3	(23)
8. Political broadcasts	43.7	10.5	40.6	(24)
9. Controversial issues (Fairness Doctrine)	42.2	7.4	47.4	(25)
10. Employment (EEO requirements)	20.9	25.5	50.8	(26)
11. Public access (air time)	39.1	3.1	54.5	(27)
12. Assuring interference-free transmission	94.5	1.5	1.5	(28)
13. Licenses for technical positions	92.3	1.2	4.3	(29)
14. Business practices such as lotteries	54.2	27.7	14.5	(30)
15. Business practices such as double billing	64.9	26.8	4.3	(31)
16. Other (please specify) ______				(32)

7. As you realize, the FCC requires stations to air some amount of public interest programs, i.e., news, public affairs, other non-entertainment programs etc.. Should the FCC document and publish quantitative standards specifying the amount (fixed percentage) of air time for these types of programs? (Check one.)

1) ☐ definitely yes 8.9 (33)

2) ☐ probably yes 14.8

3) ☐ uncertain 4.9

4) ☐ probably no 19.7

5) ☐ definitely no 50.5

8. Assume that the FCC dropped its current requirement to produce some amount of non-entertainment programming. What effect if any, would this have on the amount of news, public affairs, and other non-entertainment programs that your station would produce? (Check one.)

1) ☐ greatly increase .3 (34)

2) ☐ moderately increase 2.5

3) ☐ no change 80.3

4) ☐ moderately decrease 14.2

5) ☐ greatly decrease .6

9. How would you rate the clarity of the published FCC rules and regulations? (Check one.)

1) ☐ very clear .9 (35)

2) ☐ generally clear 33.2

3) ☐ of marginal clarity 37.8

4) ☐ generally unclear 16.6

5) ☐ very unclear 9.8

RADIO STATIONS

10. How often do you use an attorney in your dealings with the FCC? (Check one.)

1) ☐ always or almost always 49.5 *(36)*

2) ☐ often 16.0

3) ☐ about half the time 8.3

4) ☐ sometimes 15.4

5) ☐ never or hardly ever 10.4

11. How satisfied or dissatisfied are you with each of the following areas as related to the FCC's performance in regulating your broadcast activities? (Check one box per line.)

	1) Very satisfied	2) Generally satisfied	3) Neither satisfied nor dissatisfied	4) Generally dissatisfied	5) Very dissatisfied	
1. Time it takes FCC to respond to your questions -requests for information	15.1	49.5	17.5	11.1	4.9	*(37)*
2. Time it takes FCC to process applications	4.0	21.2	15.1	27.7	30.5	*(38)*
3. Reasonableness of requests for information	12.0	39.4	28.3	12.3	6.2	*(39)*
4. Competency of FCC staff	13.2	47.7	24.3	8.0	5.2	*(40)*
5. Courtesy of FCC staff	31.7	48.0	14.2	2.5	2.5	*(41)*
6. Other (please specify)____						*(42)*

12. In general how satisfied or dissatisfied are you with FCC overall performance in regulating your broadcast activities? (Check one.)

1) ☐ very satisfied 2.8 *(43)*

2) ☐ generally satisfied 43.7

3) ☐ neither satisfied nor dissatisfied 28.3

4) ☐ generally dissatisfied 20.0

5) ☐ very dissatisfied 4.3

13. The FCC has equal employment opportunity (EEO) requirements that go beyond what is required of other business concerns (e.g., stations must have affirmative action plans if they have 5 or more employees, whereas other businesses are required to do so if they have 50 or more employees). Do you feel that broadcasters should meet EEO requirements beyond those of other business concerns? (Check one.)

1) ☐ definitely yes 2.5 *(44)*

2) ☐ probably yes 4.3

3) ☐ uncertain 4.3

4) ☐ probably no 15.7

5) ☐ definitely no 71.4

LICENSING

14. For the station you manage, to what extent, if any, does the current 3-year license period adversely affect each of the following? (Check one box per line.)

	1) Very great extent	2) Substantial or great extent	3) Moderate extent	4) Some extent	5) Little or no extent	
1. Ability to secure needed financial resources	11.4	7.1	16.9	13.8	48.6	*(45)*
2. Facilities planning	10.8	10.5	20.3	18.2	39.1	*(46)*
3. Facilities development	12.6	9.8	20.0	17.5	38.8	*(47)*
4. Recruitment and retention of staff	3.7	5.2	12.3	14.5	62.5	*(48)*
5. Other (please specify)____						*(49)*

RADIO STATIONS

15. Overall, how satisfied or dissatisfied are you with the current 3 year license renewal period? (Check one.)

1) ☐	very satisfied	.3	(50)
2) ☐	generally satisfied	8.0	
3) ☐	neither satisfied nor dissatisfied	10.2	
4) ☐	generally dissatisfied	37.5	
5) ☐	very dissatisfied	42.5	

16. In your opinion, how long should the license renewal period be? (Check one.)

1) ☐	less than 2 years	-	(51)
2) ☐	2 years	-	
3) ☐	3 years	1.5	
4) ☐	4-5 years	47.7	
5) ☐	6-10 years	28.0	
6) ☐	Some limited period over 10 years	1.5	
7) ☐	Unlimited	19.4	

17. Has the station you currently manage ever had a "petition to deny" filed against it at license renewal time? (Check one.)

1) ☐	yes	5.2	(52)
2) ☐	no	90.8	
3) ☐	uncertain	2.2	

If yes, when? (Enter month and year for each occurrence) ______________________

18. Has the station you currently manage ever had a competitive challenger at license renewal time? (Check one.)

1) ☐	yes		(53)
2) ☐	no	96.9	
3) ☐	uncertain	1.2	

If yes, when? (Enter month and year for each occurrence) ______________________

19. What influence, if any, does the possibility of a competing application for your license have on your practices in each of the following areas? (Check one box per line.)

	1) Very large influence	2) Substantial influence	3) Moderate influence	4) Some influence	5) Little or no influence	
1. Program time devoted to news and public affairs	4.3	5.2	10.5	10.5	66.8	(54)
2. Program time devoted to local problems and needs	4.0	5.8	8.9	9.2	6.9	(55)
3. Employment (minorities and women)	4.6	4.6	9.2	13.5	65.2	(56)
4. Ascertainment of community problems and needs	6.2	6.8	10.8	11.7	61.5	(57)
5. Other (please specify) ______						(58)

20. What influence, if any, does the possibility of an objection to your license renewal by citizen's groups (petition to deny) have on your practices in each of the following areas? (Check one box per line.)

	1) Very large influence	2) Substantial influence	3) Moderate influence	4) Some influence	5) Little or no influence	
1. Program time devoted to news and public affairs	4.0	5.5	12.3	11.7	64.0	(59)
2. Program time devoted to local problems and needs	3.7	5.8	11.4	12.0	64.6	(60)
3. Employment (minorities and women)	4.9	5.5	10.8	15.1	61.2	(61)
4. Ascertainment of community problems and needs	5.2	6.8	11.7	11.7	62.2	(62)
5. Other (please specify) ______						(63)

RADIO STATIONS

21. Have you ever entered into a formal citizens' agreement with a group in your broadcast service area? (Check one.)

1) ☐	yes (continue)	2.2	(64)
2) ☐	no (go to no. 23)	96.3	

22. If you did enter into a citizens' agreement, do you feel this action was necessary to avoid or resolve a petition to deny? (Check one.)

1) ☐	definitely yes	14.3	(65)
2) ☐	probably yes	14.3	
3) ☐	uncertain	28.6	
4) ☐	probably no	14.3	
5) ☐	definitely no	28.6	

Percents based on n = 7

23. In your opinion, how adequate or inadequate is FCC's definition of criteria for "petition to deny" at license renewal time? (Check one.)

1) ☐	very adequate	2.2	(66)
2) ☐	adequate	12.0	
3) ☐	marginal	23.1	
4) ☐	inadequate	13.2	
5) ☐	very inadequate	7.7	
6) ☐	no basis to judge	37.8	

24. Do you feel that the FCC should assess and make judgment of an incumbent's performance before allowing challenges for the license at renewal time? (Check one.)

1) ☐	definitely yes	71.7	(67)
2) ☐	probably yes	18.2	
3) ☐	uncertain	4.9	
4) ☐	probably no	1.5	
5) ☐	definitely no	1.2	

25. Starting with February 1977 license renewals, the FCC began using a new renewal form. Have you had the opportunity to examine the new form and its requirements? (Check one.)

1) ☐	yes	60.3	(68)
2) ☐	no (go to 27)	38.5	

26. In your opinion, is the new form better or worse than the form it replaces? (Check one.)

1) ☐	significantly better	25.6	(69)
2) ☐	somewhat better	43.6	
3) ☐	about the same	25.1	
4) ☐	somewhat worse	4.6	
5) ☐	significantly worse	1.0	

Percents based on n = 195

27. What do you feel the chances are that your station would lose its license at each renewal time? (Check one.)

1) ☐	very great chance	.6	(70)
2) ☐	substantial chance	.6	
3) ☐	moderate chance	.6	
4) ☐	some chance	11.7	
5) ☐	little or no chance	69.5	
6) ☐	no basis to judge	14.8	

LOCALISM-PUBLIC INTEREST

28. How important or not do you feel each of the following elements is to the concept of localism? (Check one box per line.)

	1) Essential	2) Very important	3) Moderately important	4) Somewhat important	5) Little or no importance	
1. Programming addressing the problems and needs of local community	59.1	24.0	10.2	3.7	2.2	(71)
2. Programming produced locally	35.7	28.6	16.9	10.2	7.7	(72)
3. Programming which features local talent	14.5	17.8	18.5	18.5	29.5	(73)
4. Local ownership of broadcast facilities	17.2	23.4	20.9	9.8	27.4	(74)
5 Local management of broadcast facilities	51.1	32.9	8.3	3.4	3.4	(75)
6. Station employment of local community members	20.9	24.6	20.6	15.4	17.5	(76)
7. Other (please specify) ____						(77)

1 (80)

RADIO STATIONS

29. Do you feel the assessment as to whether or not your station is serving the "public interest" should be limited only to the amount of news, public affairs, or other non-entertainment programming you air? (Check one.) *(Card 2)* *(6)*

1) ☐ definitely yes 7.1
2) ☐ probably yes 16.0
3) ☐ uncertain 8.3
4) ☐ probably no 25.5
5) ☐ definitely no 40.0

ASCERTAINMENT

30. To what extent, if any, do you feel ascertainment procedures currently required by FCC help you identify problems, needs and interests of the community you are licensed to serve? (Check one.) *(7)*

1) ☐ little or no extent 28.9
2) ☐ to small extent 23.7
3) ☐ to moderate extent 26.8
4) ☐ to large extent 9.2
5) ☐ to very large extent 1.5
6) ☐ nonapplicable – small market exemption 7.4

31. If there were no ascertainment requirements, which of the following procedures would you use, or not to identify community problems, needs and interests? (Check one box per line.)

	1) Definitely would utilize	2) Probably would utilize	3) Uncertain	4) Probably would not utilize	5) Definitely would not utilize	
1. Formally interview leaders of majority and minority elements of the community (ongoing)	39.1	28.9	9.5	12.6	5.5	*(8)*
2. Conduct a formal annual survey of community citizens at large	13.5	28.0	21.2	22.2	10.5	*(9)*
3. Make informal contacts (by management, news team, sales staff, and other station employees) with local community leaders and citizens (ongoing)	69.5	23.7	2.2	.6	1.2	*(10)*
4. Document unsolicited telephone calls received from listening or viewing audience as to their needs and interests (ongoing)	27.1	33.5	14.2	14.8	7.1	*(11)*
5. Prepare formal annual reports of all contacts with community leaders and citizens	8.3	16.0	24.9	27.7	19.7	*(12)*
6. Prepare formal annual reports of problems or needs facing community and programs presented to address community problems and needs	11.7	28.3	17.5	20.9	16.3	*(13)*
7. Prepare formal annual reports of impact of public interest programs in eliminating or reducing problems or in serving an established need (e.g., letters from the public or community leaders or community service awards as indicators of serving local needs and interests)	12.6	24.9	22.5	21.8	14.5	*(14)*
8. Prepare formal annual statements explaining how station determines and serves its listening or viewing audience's needs and interests, containing examples of programs or activities undertaken to satisfy those needs and interests (no formal ascertainment procedures)	19.1	32.0	17.2	14.5	13.5	*(15)*
9. Other (please specify) ____________						*(16)*

RADIO STATIONS

32. To what extent, if any, do you feel that FCC's current ascertainment procedures result in programs which contribute to resolution of community problems and needs in your service area? (Check one.)

1) ☐	very large extent	1.8	(18)
2) ☐	substantial extent	10.2	
3) ☐	moderate extent	23.1	
4) ☐	some extent	25.2	
5) ☐	little or no extent	37.2	

DIVERSIFICATION OF INFORMATION

33. Does the owner (individual or corporation) of the station you manage own another broadcast station(s) in your market area? (Check one.)

1) ☐	yes (continue)	35.7	(19)
2) ☐	no (go to no. 35)	61.2	
3) ☐	uncertain (go to no. 35)	.3	

34. To what extent, if any, do you feel this ownership of another broadcast station in your area retards or advances the diversification of information and ideas? (Check one.)

1) ☐	substantially or greatly retards diversification	1.7	*(20)
2) ☐	moderately or somewhat retards diversification	3.4	
3) ☐	neither retards nor advances	32.8	
4) ☐	moderately or somewhat advances diversification	19.0	
5) ☐	substantially or greatly advances diversification	43.1	

*Percents based on n = 116

35. Does the owner (individual or corporation) of the station you manage own another broadcast station(s) in another market area(s)? (Check one.)

1) ☐	yes (continue)	44.3	(21)
2) ☐	no (go to no. 37)	52.9	
3) ☐	uncertain (go to no. 37)	.6	

36. To what extent, if any, do you feel this ownership of another broadcast station(s) in another market(s) retards or advances the diversification of information and ideas? (Check one.)

1) ☐	substantially or greatly retards diversification	.7	*(22)
2) ☐	moderately or somewhat retards diversification	1.4	
3) ☐	neither retards nor advances	40.8	
4) ☐	moderately or somewhat advances diversification	23.2	
5) ☐	substantially or greatly advances diversification	33.8	

* Percents based on n = 142

37. Does the owner (individual or corporation) of the station you manage own a newspaper(s)? (Check one.)

1) ☐	yes (continue)	8.6	(23)
2) ☐	no (go to no. 39)	89.2	
3) ☐	uncertain (go to no. 39)	2.2	

38. To what extent, if any, do you feel this ownership of a newspaper(s) retards or advances the diversification of information and ideas? (Check one.)

1) ☐	substantially or greatly retards diversification	-	(24)
2) ☐	moderately or somewhat retards diversification	-	
3) ☐	neither retards nor advances	46.4	*
4) ☐	moderately or somewhat advances diversification	17.9	
5) ☐	substantially or greatly advances diversification	35.7	

* Percents based on n = 28

39. Who usually has final authority in deciding programming at your station? (Check one.)

1) ☐	myself – as station manager	73.8	(25)
2) ☐	program director	2.5	
3) ☐	owner (e.g., President, etc.)	10.5	
4) ☐	owner representative	1.2	
5) ☐	other (please specify)	3.4	

40. Is the station you manage AM/FM? (Check one.)

1) ☐	yes (continue)	60.0	(26)
2) ☐	no (go to 42)	36.0	

41. If you are AM/FM do you simulcast? (Check one.)

1) ☐	yes	42.5*	(27)
2) ☐	no	57.5	

Percents based on n = 193

ADDITIONAL COMMENTS

42. If you have any additional comments on any of the questions or related points, or topics not covered please write your comments on the back of this sheet.

(28)

CONSULTANTS USED DURING REVIEW

William C. Canby, Jr., LL.B., Professor, College of Law, Arizona State University, Tempe

Thomas A. McCain, Ph.D., Associate Professor, Department of Communications, The Ohio State University, Columbus

Wesley H. Wallace, Ph. D., Professor of Radio, Television and Motion Pictures, University of North Carolina, Chapel Hill

Charles C. Woodard, Private Consultant, Charles Woodard Associates, Inc., Hastings-on-Hudson, New York

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

March 22, 1979

IN REPLY REFER TO:

The Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 "G" Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

We appreciate the opportunity to review the General Accounting Office's (GAO) draft report concerning selected regulatory rules, policies and procedures relating to broadcasting.

The GAO report represents an accurate study of the history and competing arguments concerning some of the Commission's broadcasting rules, policies and procedures. It also sets forth some of the future options relating to those rules, policies and procedures. The report should therefore be very helpful to the Commission, Congress and other interested parties in determining the future role the federal government should play in regulating broadcasting in those selected areas.

Today, there is a growing debate over the extent of government regulation and its impact on industry and the public. Several years ago, therefore, this agency embarked on a course of action designed to re-evaluate many of its rules, policies and procedures to determine whether they should be retained, modified, or deleted. Pursuant to this study, we have already modified or deleted over 800 rules relating to the technical operation of broadcast stations.

More recently, we began an extensive re-evaluation of the Commission's more substantive policies, including many of those discussed in the draft report. The non-technical aspects of the Commission's regulatory policies are more difficult to deal with in view of certain statutory provisions contained in the Communications Act of 1934, as amended. There have, however, been many changes in the marketplace and our communication services since the adoption of the Communications Act, and these changes seem to demand new administrative approaches in our method of regulating broadcasting. We are, therefore, currently re-evaluating our policies and procedures to determine what changes can and should be made within the authority provided to us under the existing Act.

The Honorable Elmer B. Staats 2.

Similarly, during the last session of Congress the House Subcommittee on Communications considered extensive legislation relating to the Communications Act. It is our understanding that a revision of the legislation considered during the last session will also be introduced this year. Also, just recently, the Senate Subcommittee on Communications introduced legislation designed to revise the Communications Act of 1934.

Our internal study is only in its initial stages and we have not had the opportunity to fully consider our various policies and procedures and the numerous alternatives that are available. Neither have we yet fully evaluated the various legislative proposals that are just now being submitted. We feel, therefore, that it would be premature for the Commission to comment in detail on the GAO's recommendations at this time. Based on our preliminary analysis of the report, however, we believe it contains some useful suggestions and alternatives which deserve full consideration and debate.

Again, we appreciate the opportunity to review and comment on the GAO draft report. If we can be of further assistance, please let us know.

BY DIRECTION OF THE COMMISSION

William J. Tricarico
William J. Tricarico
Secretary

FCC COMPARATIVE RENEWAL DECISION: AN EXAMPLE

In June 1978, the Commission in a four to three decision granted the renewal application of a licensee operating a VHF-independent television station in New York City. This renewal had been challenged by an applicant which sought FCC authorization to construct a new station and take over the licensee's assigned channel. The challenger filed its application in 1969 when the Commission was holding the incumbent's renewal application in abeyance pending an investigation of certain station practices which had sought to increase audience ratings by "hyping" news programs. While it concluded that the content of the news had not been distorted, the Commission identified 30 instances in which the news had been "packaged" in a misleading manner. For example, the station had labeled as "via satellite" news film which it in fact had not obtained by satellite and had used old film to depict current news events.

The decision to grant license renewal turned on four comparative issues: (1) the incumbent's past broadcast record, (2) the challenger's proposed programing, (3) diversification of ownership, and (4) integration of station ownership and management. 1/

Incumbent's past broadcast record

The majority of the commissioners concluded that the incumbent's past program service warranted a plus of major significance. The minority assessed a minus of major significance against the incumbent.

The majority believed that none of the individual incidents involved in the news distortion issue amounted to intentional slanting or rigging of news content. In their opinion, those incidents were peripheral, relatively few in number, and insignificant in light of the incumbent's

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1/In a comparative proceeding, the Commission may award an applicant a "preference" or a "merit" on a given issue. A preference is a decision by the Commission that the applicant's qualifications are superior to those of another applicant. A merit is a recognition that a particular applicant has demonstrated certain positive qualities which may (but not necessarily) result in a preference. The Commission also uses terms, such as "plus," "minus," or "demerit" to denote an applicant's relative standing on a particular issue.

otherwise creditable news record. The majority then concluded that the incumbent deserved a plus of major significance because it had

--led the field among stations in its market in the amounts of religious, instructional, sports, and children's programing;

--devoted a sufficient amount of time to news and public affairs programing to be responsive to the needs of its community; and

--received accolades for its program service from leaders of religious, political, business, and other significant community groups.

The minority agreed that distortion of news content was not a primary issue. But they asserted that, taken collectively, the 30 instances in which news packaging had been distorted could not justify a plus of major significance for past service. Even without the news distortion issue, the minority considered the incumbent's service to have been only on "the borderline of mediocre to average." This judgment was based on programing data which showed that the incumbent's

--news programing had averaged 2.0 percent of its broadcast time, the lowest among all stations in its market and only half of the 4.0 percent it had originally proposed;

--public affairs programing (1.2 percent) also had been the lowest among all stations in its market;

--religious programing had been mostly recorded rather than locally produced; and

--local programing had been primarily sports.

Overall, the minority concluded that the incumbent should be assessed a "substantial demerit" because its (1) packaging of the news had deceived the public, (2) past performance had been borderline at best in the critical program categories of news and public affairs, and (3) religious, instructional, and children's programs had relied almost exclusively on nonlocal sources without a showing of how those programs were specifically intended to meet the community's particular needs.

Challenger's proposed programing

The majority of the commissioners gave the challenger a slight demerit on its programing proposal; the minority awarded the challenger a preference.

In its license application, the challenger proposed to devote 37 percent of its total broadcast time and 43 percent of prime time to locally produced programing. By comparison, the national averages for all VHF-independent stations were 18.2 and 17.2 percent respectively. The incumbent contended that the proposed amount of locally produced programing was financially infeasible and that the challenger had puffed its proposal to impress the Commission.

The majority found the local programing proposal impressive on paper, but noted that the challenger had made no attempt to show that its proposal was feasible. In this regard, they cited a previous comparative licensing case in which the Commission had held that an applicant proposing 36.3 percent local programing must show that its proposal is feasible and can be fulfilled. Because the challenger had failed to dispel inherent doubts as to the reasonableness and reliability of its proposal, the majority concluded that it should be assessed a "slight demerit."

The minority acknowledged that a preference should not be given simply for proposing a large percentage of programing, but asserted that not giving a preference is far different from giving a demerit. In their view, penalizing the challenger for proposing a large amount of local programing was contrary to FCC's historic emphasis on localism and would, in effect, impose a de facto limit on such proposals in the future. Further, the minority pointed out that the applicant which the majority cited in its precedent case had in fact gone to provide more local programing than the challenger had proposed in the instant case. Consequently, they believed that the majority's doubts about the challenger not being able to meet its proposal lacked foundation. In addition, the minority noted that the challenger had been called upon to demonstrate the financial feasibility of its proposal but that the incumbent had provided no data on its financial investment in programing. In their view, the proper comparison should have been between the challenger and incumbent's programing proposals. By using the incumbent's past service as an indicator of its future performance, the minority concluded that the challenger was due a "preference" under the proposed programing issue.

<u>Diversification of ownership</u>

The incumbent licensee was part of a large media complex which included four television stations, three radio stations, several newspapers, and cable television systems in two States. Within New York City, this complex controlled a radio station and the largest circulation newspaper in addition to the television station operating on the channel sought by the challenger. The challenger had no media interests. The majority of the commissioners awarded a slight preference to the challenger; the minority awarded the challenger a clear preference.

The majority held that the challenger should be accorded some preference under the diversification factor because its operation of the station would (1) clearly increase the diffusion of control of mass media communications, (2) permit dissemination of information and viewpoints from a new media voice, and (3) end the incumbent's crossownership of a television station and newspaper in the same market. However, the majority also believed that the nature of the incumbent's media holdings would not have an adverse effect on the flow of information to the audience because

--the New York metropolitan area contained numerous media outlets for the expression of diverse and antagonistic views,

--there was no evidence that the incumbent had attempted to promote any national or other uniform view in the station's programing,

--station management operated autonomously from the incumbent's other media properties, and

--the incumbent had always complied with FCC ownership limitation rules.

For these reasons, the majority concluded that their preference for the challenger was only "slight."

The minority recognized that comprehensive ownership rules, rather than case-by-case comparative renewal decisions, is a more appropriate vehicle for restructuring ownership patterns of broadcast stations. Because the incumbent controlled the largest circulation newspaper in New York City and other communications media, however, they asserted that the preference awarded to the challenger should be "clear" rather than "slight." Moreover, the minority felt that autonomy of station operations was a bogus issue. On one hand, they believed it was unrealistic to contend that the views of the incumbent station owners would not be taken into account by local management in making programing decisions. On the other hand, if the owners had indeed delegated such decisionmaking authority to local management, it could be argued that they had abdicated their responsibility as a broadcast licensee to supervise station operations.

Integration of ownership and management

The majority of the commissioners awarded a moderate preference to the incumbent; the minority awarded a preference to the challenger.

The primary difference between the majority and minority opinions was the treatment accorded minority interests in station ownership and operations. The majority held that minority ownership is a consideration under the integration factor. Accordingly, they gave some favorable consideration to the challenger because 6 percent of its ownership equity was held by minority persons who would be active in station operations. The majority also believed, however, that this favorable weight was counterbalanced by the credit due the incumbent for operating its station autonomously from its other media properties. In addition, the majority was impressed by the fact that 46 percent of the incumbent's voting stock was held by station employees compared with only 25 percent for the challenger.

The minority held that ownership interests of racial minorities should be an entirely separate comparative factor because it serves both objectives of FCC's 1965 comparative policy--diversification of mass media control and best practicable service to the public--by broadening community representation in station ownership and promoting programing attentive to minority viewpoints. In addition, as described above, the minority discounted the importance of autonomous station operations as a comparative consideration. In their view, the challenger must be awarded a preference for its minority ownership interests whether that preference is granted under the integration factor or under a separate minority ownership factor.

RELATIONSHIP BETWEEN STATION OWNERSHIP AND TV NONENTERTAINMENT AND LOCAL PROGRAMING

One argument against forcing divestiture of crossowned or group-owned broadcast stations is that they provide better service to the public. For example, during FCC's crossownership proceeding, opponents of divestiture asserted that newspaper owners, whose business is keeping the public informed, have a stronger commitment to the news and public affairs components of broadcasting than do other station owners.

It is difficult to determine the effect of station ownership on service to the public without making qualitative judgments about program content. Because such judgments are objectionable on first amendment grounds, the Commission places great reliance on quantitative programing data in evaluating broadcaster service. In this regard, the Commission reported during its crossownership proceeding that in 1973 crossowned TV stations on average had provided greater amounts of local news and other local nonentertainment programing than other TV stations.

Using data reported in 1976 by a randomly selected sample of 228 commercial TV stations, we examined nonentertainment and local programing in five different ownership categories. We computed the average (mean) percent of time spent on (1) total nonentertainment programing (news, public affairs, and other) and (2) total locally produced programing (including nonentertainment, entertainment, and sports) during the sign-on-to-sign-off and prime-time broadcast periods. We then determined whether differences between the sample mean programing percentages were statistically significant at a 95-percent level of statistical confidence. Table 11 shows the ownership categories, the number of sample stations in each category, mean programing percentage for each category, and the results of the test for statistical significance.

The test results show that the mean programing percentages are not significantly different. Thus, in 1976 group-owned or crossowned TV stations on average did not provide higher percentages of nonentertainment and local programing than stations with less pervasive patterns of media ownership.

Of course, the amount of programing provided by a particular group-owned or crossowned station may rank among the industry's highest. For example, three of the five stations held by one group owner ranked among the top 10 in percentage of local news and public affairs programing in 1976. The highest-ranking station, however, was neither group-owned nor crossowned.

Table 11
Average Percentages of Nonentertainment and Local Programing of Commercial Television Stations for 1976 by Ownership Category

Category of station ownership c/	Number of sample stations	Nonentertainment program a/ minutes as percent of total operating minutes (mean): Sign-on to sign off	Nonentertainment program a/ minutes as percent of total operating minutes (mean): Prime time d/	Local program b/ minutes as percent of total operating minutes (mean): Sign-on to sign-off	Local program b/ minutes as percent of total operating minutes (mean): Prime time d/
All categories	228	24.8	20.5	9.9	8.8
Group-owned but not cross-owned with newspaper	88	25.4	20.6	9.3	8.3
Cross-owned with newspaper but not group-owned	13	24.1	18.7	11.4	7.4
Crossowned with newspaper and (1) group-owned or (2) colocated with co-owned radio station	57	23.8	19.5	10.2	9.2
None of the above but co-owned and colocated with radio station	22	27.7	24.2	9.9	9.4
Neither group-owned, cross-owned, nor co-owned and co-located with radio station	48	23.6	20.5	10.0	9.1
Analysis of variance:					
Between groups - mean square		0.009	0.010	0.002	0.002
- degrees of freedom		4	4	4	4
Within groups - mean square		0.010	0.015	0.004	0.005
- degrees of freedom		223	223	223	223
F ratio e/		.891	.659	.360	.372

a/Includes news, public affairs, and other nonentertainment.
b/Includes nonentertainment, entertainment, and sports.
c/"Group-owned" means the station is owned by ABC, CBS, or NBC, or by another party which also owns at least one additional TV station and/or three or more radio stations.
d/Includes the hours 6 p.m. to 11 p.m., Eastern and Pacific time, and 5 p.m. to 10 p.m., Central and Mountain time.
e/F-ratio values indicate that mean programing percentages are not significantly different at a 95-percent level of statistical confidence.

APPENDIX VII

ELEMENTS OF BROADCASTER EEO PROGRAMS

1. General policy

A policy statement to the effect that the station will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin, or sex, and that the station has adopted an EEO program designed to utilize the skills of minorities and women.

2. Responsibility for implementation

Identity of the individual whom the station has designated to implement its EEO program.

3. Policy dissemination

Manner by which the station communicates its EEO policy to current and prospective employees.

4. Recruitment

Recruitment sources and other techniques which the station uses to increase the pool of minority and female job applicants. This element includes a list of all minority and female applicant referral sources which the station has contacted in the previous 12 months and the number of individuals who were referred from each source. The purpose of the listing is to determine whether the specialized referral sources are producing the desired results.

5. Training

Feasibility or use of training or other assistance programs (that is, scholarships, work study programs) to increase the pool of minority and female applicants. Training programs are not mandatory; however, if the station has employee training programs, FCC encourages the station to report tangible benefits of such training to women and minorities.

6. Availability survey

A statement on the percentages of women, Blacks, Orientals, American Indians, and persons with Spanish surnames in the station's labor recruitment area. This element is intended to assist the station in evaluating the effectiveness of its EEO program (see no. 10 below). The availability survey produces a means to determine whether the station's workforce percentages bear some reasonable relationship to those reflected in the relevant available labor force.

7. Current employment survey

An updated statistical employment report (form 395) if any change has occurred since the station filed its most recent form 395 (applies to stations with 5 or more but less than 50 full-time employees) or a list of all job titles and number of incumbent women and minorities within the nine job categories FCC uses (applies to stations with 50 or more full-time employees).

8. Job hires

A statement on the total number of women, minorities, and other persons the station hired for full-time and part-time positions during the 12-month period preceding the date of its current employment survey. (See no. 7.) Based on its hiring information and the data reported under the recruitment element of its program (see no. 4), the station must determine whether a sufficient number of women and minorities are applying for jobs. Should either women or minorities be inadequately represented among the applicants for available positions, the station is supposed to analyze its recruitment techniques and referral sources and propose additional methods to expand the applicant pool of women and/or minorities.

9. Promotion

A description of any promotional policies and practices which have benefitted minority or female employees during the preceding 12 months.

10. Effectiveness of EEO plan

An analysis by the station of the results of its efforts to recruit, hire, and promote minorities and women and an explanation of any difficulties encountered in implementing its EEO program. FCC suggests that the station compare the percentages of women and minorities on the station staff with their respective percentages in the relevant available labor force. (See no. 6.) If the percentages do not reasonably relate and the station can attribute the disparity to its employment policies or practices, the station should propose alternative policies to correct the deficiency.

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