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DRAFT

Project BUN - Background Paper

Bruce M. Owen

December 1972

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Three national networks dominate television. At the rate that affiliate stations clear prime time shows, over 90% of the evening television viewers watch network fare. For these viewers there are three sources of national television news, televised national public affairs and television entertainment. Advertisers seeking access to consumers have their potential audiences determined by the decisions of three networks. Program producers with shows to sell face three customers. The asymmetry of these relationships, three compared to many, is the source of substantial economic power. That power yields high profits for the networks, as well as freedom to make what are essentially political and social decisions without market discipline.

The networks' control of access to the television public gives them substantial social and political power. They have the ability to control the flow of information and of ideas to the people. They can significantly mold public opinion. This concentration of power is inconsistent with the diversity of opinion and freedom of expression that our society values so highly.

The economic consequences of network power are felt not merely in advertising and program supply markets, but by viewers as well. It is clear that viewers value television fare much more highly than the three or four cents per hour that advertisers pay per household. Reliable estimates of television's value to viewers are not available, but it is not unreasonable to suppose that the number is ten times that which advertisers are willing to pay. The market in question is thus worth many tens of billions of dollars per year, and justifies serious concern with economic performance.

The potential for misuse of economic, social and political power is a partial reason for regulatory activity. The fairness doctrine and equal time provisions are intended as safeguards for the public. Even with these regulatory constraints there exists an undesirable concentration of power. What restraint is imposed by regulation requires bureaucratic meddling in what should really be democratic interaction. Are there viable alternatives? That is, can we find alternative structures which provide a free and competitive market for programming and ideas? Can an alternative be found that requires little regulation of ideas and economic behavior by the Federal Government?

I. Sources of Power

The network triopoly was created by technology, demographics and policy. As in radio, anyone capable of receiving a signal may listen in without paying the broadcaster a cent. The station or the network must sell something in order to make a profit. So, they sell audiences to advertisers. The programming is "free" to the viewer, a lure for the sales pitch. Without cable, nationalized television, or expensive scrambling devices, there is no viable alternative to this arrangement. Consequently the more viewers tuning in a program, the cheaper the cost per viewer to broadcast it. Networks are the logical result. How many networks depends on the other two factors - policy and demographics.

The FCC decided that the initial development of television would occur in the VHF spectrum. That decision limited the number of local stations of equal signal quality that any area could support. Also, most of the first TV sets had only VHF reception capacity. As a result, the possibility for UHF networking was severely diminished.

In the late forties and early fifties the three networks moved to establish systems of affiliates. Where possible these were VHF stations. In 1968, with the exception of one station, in the top fifty markets these affiliations were exclusive agreements - the station could carry only one network. The dispersion of population meant that below market size fifty there was practically no profitable room for independents or a fourth network. This fact is critical because the cost per viewer of a program declines with the number of viewers. Consequently, technology, the initial push into VHF, demographics, and exclusive affiliations meant that only three networks were viable. These also meant that the first three networks were free from the economic discipline of potential entrants into national networking.

The fact that there are only three networks would not necessarily imply that these three have substantial power, if it is possible that affiliate stations could exercise their right not to clear network shows. There are powerful economic reasons why this option is seldom exercised. A station will maximize its profits by showing programs with the greatest net return subject to providing those levels of public affairs, news, and local origination necessary to retain its license. Local programming of network quality would cost far more per viewer than advertising revenue could bear. Made-for-syndication programs do not provide viable alternatives because of their higher distribution and financing costs. Reruns of old network shows are just that - reruns of old shows. Consequently, for affiliates the profitable course of action is clearing a high percentage of network fare.

Average Weekly Station Hours During 1968
(Sample Week for Affiliated Stations)
(7-11 P.M.)

	Top 50 Markets	Markets Below the Top 50	All Markets
Network Programming	23.2	23.8	23.7
Non-network Programming	4.8**	4.2**	4.3**
TOTAL	28.0	28.0	28.0

Source: A. D. Little Report, 1969, p. 178, as corrected.

** Heavily influenced by late evening news in central time zone.

This high clearance rate and the fact that they are three in number gives the networks their substantial economic power.

II. An Alternative

Any alternative to the present structure which continues to be predicated on advertiser support will have to incorporate certain features of the present system. First, economies of scale in audience size must be maintained. Cost per viewer falls as the number of viewers watching increases. In order to maintain program quality at or above present levels, the average program will need an audience similar to present audience size. Second, given the distribution of population and the economies of large audiences, probably no more than three networks can be on the air at any one time. However, there is no reason why this trio should be the same trio every night of the week.

Proposed Rule: No network may supply more than X continuous hours of programming per week to a particular market.

This rule would create 3 times 168/X networks by forcing the present networks to release their affiliate from their network ties for the rest of the week. For example, if X were 24, then ABC, CBS, and NBC would each divest themselves of six nights a week. Eighteen new networks could then come into existence. Although at any one time only three networks are broadcasting, twenty-one networks compete with each other over the week. Advertisers may place their commercials with any set of the 21, whichever group gives them the right exposure at the least cost. The program producers can seek out a larger group of customers, each with far less economic power than one of the present networks. The consumer will gain by having a choice <u>over the week</u> of up to 21 different sources of news, public affairs and entertainment.

The Rule leaves X a variable. In practice it must be fixed at some level that satisfies either the courts or the FCC. X should be large enough so that the possible failure of one network program does not pose overwhelming risks. Although the network can diversify its risks by engaging in non-network activity, larger X will mean lower risk to the network. X should probably be no shorter than 24 hours. Lead-in and lead-out programs can have a substantial impact on the audience size of a particular show and consequently its potential revenue. Such cross effects are best kept within the firm.

Left uncoordinated, the imposition of the Rule <u>could</u> lead to an initial period of chaos. Each network could be trying to affiliate Monday night in one market, Thursday in another, etc. This could turn into a world not unlike the syndication market for present independents. The new networks would be providing lower quality programs than now provided, and doing it at higher cost because of higher selling and distribution costs. Over time such a system would gradually gravitate toward the existence of only three or four networks operating at any one time, but this adjustment process might take some years. The FCC and the courts must orchestrate the transition so that such chaos is avoided. The coordination would consist of assigning each new network to a particular time period or allowing each network to bid for a period. Then the new networks could acquire on their own affiliations in their time period. In the acquisition process, the three Monday night networks in the 21 example would have to compete for affiliations. This would mitigate any arbitrariness in the orchestration effort.

Although the transition problems have been solved it will be alleged that the present structure is cheaper than that of the proposed rule. The argument will be that there are economies over time as well as audience, and that the AT&T tariffs give a full time user a cost advantage over an occasional one. This argument ignores the possibility of interconnection by satellite and/or specialized common carriers.

Even if neither of these appear, independent brokers could become full time users, renting particular days of the week to individual networks. There are other industries that have economies of scale and use such arrangements. An example is joint publishing agreements for competing newspapers.

If the choice of X in the Proposed Rule is large enough so that there results a small number of networks, we may want to prevent movie studio ownership of networks. With seven or eight networks we could find ourself in a situation like that prior to the Paramount decision. Such vertical integration with a small number of competitors creates substantial economic power.

III. Other Methods of Dealing with Network Power

The proposal in Part II is by no means easy to achieve, nor is it guaranteed to be successful. The argument in its favor is that an agglomeration of power on the scale of that enjoyed by the three television networks is unacceptable in the United States, whether it is viewed from antitrust or First Amendment perspectives. Furthermore, the specific approach suggested seems most likely to achieve both antitrust and First Amendment objectives with the least risk of reducing the quality and quantity of entertainment programming, programming which is obviously valued very highly by the public. The comparative virtue of the proposal in Part II can best be illustrated by examining some of the alternative structural remedies which might be attempted.

1. Making the networks into common carriers some or all of the time.

This remedy has many desirable properties. It reaches the First Amendment objectives, and it preserves access to a national audience for each program. But it has two serious deficiencies: (1) There are "lead-in" and "lead-out" problems, where the supplier of any one program does not have an incentive to take account of the effects of his programming on contiguous programs. This is not an overwhelming objection, but it could be a problem. (2) Making the networks into common carriers - in effect brokers of transmission facilities - raises questions of rate regulation and the other concomittants of common carrier status. This again is not an overwhelming difficulty, but the two objections on balance seem to make this approach less desirable than the proposal above. Finally, it is likely that a common carrier approach would deprive the public of all "unprofitable" programming - such as national news and public affairs.

2. Limiting the number of stations with which any network may affiliate.

This proposal denies access to national audiences for any program, substantially lowers the quality of national programming, and circumscribes the economies of scale which networking is designed to take advantage of. It would probably create new networks, but all networks would likely be economically marginal operations.

3. Create new VHF stations in each market.

This might make a fourth or fifth network possible, but it would be an extremely marginal network and hardly a serious competitive threat to the existing networks. The process of creating new VHF stations would be very time-consuming, and it is unlikely that access to a national audience could be achieved for many years. Meanwhile, it seems to be the case that there is insufficient national advertising demand available to support additional networks. An alternative with the same effect would be to move all stations to the UHF band.

4. Create many powerful regional stations in place of the present system of local stations.

This proposal could make many more channels available to each viewer, and possibly more networks as well. But in order to do so, one has to destroy hundreds of equities in existing local stations - an extremely difficult task.

5. <u>Make the networks into common carriers, but allow them to sell time only in large discrete chunks of 24 continuous hours or more.</u>

This is essentially the same proposal as that put forward in Part II above. It avoids the need to "orchestrate" the creation of new networks, but raises questions about common carrier regulation.

6. <u>Expand the prime time access rule to three or four hours.</u>

This proposal results in a syndication market for virtually all prime time programming, and would fail to work for the same reasons the prime time access rule now fails: high distribution costs and lack of access to national audiences. It would drastically reduce the quality of programming.

IV. Conclusion

Because of the enormous concentration of economic, political, and social power in the three networks, and because that power stands in the way both of creating more freedom and diversity of expression and reducing the role of Government in the media, an effort to deal with this power is long overdue. By the same token, precisely because of the importance of this medium to the public, efforts at reform must be undertaken carefully and with full understanding of the underlying economics of an advertiser supported entertainment system. There are, in short, many desirable objectives which can be achieve if they are pursued in a sensible way, but there is much harm that can come from taking the wrong approach to the problem.

MEMORANDUM FOR THE FILE

Summary

Objectives: More diverse TV programming and less biased TV news; reduced regulatory control of broadcast programming.

Principal problem: Concentration of power over programming in the three networks and lack of management control over news departments.

Remedy I: Cable TV: Probably the most effective and most lasting approach, but ten years or so for significant impact.

Remedy II: Creation of new networks: Improving the network anti-trust suit and/or launching an FCC inquiry into network economic power might bring results in the five-year time frame. Having the "network dominance" issue actively alive in the meantime would help.

Remedy III: Prime time rule and reruns: Rescinding the rule would improve Hollywood employment more than rerun restrictions and appear to lessen regulation. Network intransigence on reruns and failure of the rules give the opening for Remedy II.

Remedy IV: Support license renewal legislation lessening FCC program control: Gives us credibility on First Amendment issues to soften political overtones of II. Degree of support can depend on getting affiliate involvement in network news per upcoming invocation.

MEMORANDUM FOR THE FILE

SUBJECT: Broadcasting Policy and Network Power

Our two principal objectives with respect to the broadcast industry have been (1) less biased and more diverse TV news coverage and (2) reversing the growth of regulatory intervention in the private enterprise broadcasting system. These objectives have occasionally conflicted, but they are not incompatible. So far, we have mostly temporized--it is now time for an effective strategy in both areas to accomplish some lasting change.

Politically, economically, or philosophically, the barrier to progress on either front is the concentration of power in the three networks. This power arises from the limited number of TV stations and the practice of exclusive network affiliations--making more than three full-time national networks uneconomic. With only three networks, it is not surprising that they are uncompetitive, if not anticompetitive, in entertainment programming and advertising; and cliquish, if not incestuous, in news and public affairs.

This memorandum outlines several policy options available for dealing with this problem over the next few years. There are two major areas in which we can take affirmative action: cable television and encouraging new networks. Moreover, there are a number of broadcasting issues pending before the FCC and the Congress on which we will have to take positions and which can be used to further our objectives: license renewal legislation, Fairness Doctrine, the FCC prime time rule, and reruns.

I. Cable Television

There is no technological limit on the number of cable TV channels. The number of channels actually available will depend on supply and demand in programming, advertising, and direct viewer payment. Properly structured, cable is likely to bring more diversity in entertainment, news, and public affairs programming, and new national and regional television networks (not unlike the diversity found in the magazine business today). Unless restricted, cable would bring about two new revenue sources for programming--specialized advertising and direct viewer payment. Cable TV could reach about 50 per cent of the nation's homes by 1980, depending on the policies we decide to follow. There is currently great confusion and uncertainty about the proper direction for cable growth and the regulatory authority of the FCC.

Option 1. Introduce legislation next year following the recommendations of the Cabinet committee on cable television

Effect: Positive Presidential recognition of cable television as an exciting new TV medium for the future, expanding viewer choice and diversity, would have direct political benefits. Unlike FCC rules, our approach provides for broadcaster participation in cable and for fair copyright protection that should help soften expected broadcaster opposition. Hollywood would support this, and the cable industry would have little choice but to do likewise, although they will oppose certain provisions of our policy. The most volatile political issue will be "pay TV," which must not be overly restricted if cable is to provide the revenues to support the diversity we seek. Congress has consistently avoided dealing with cable, and it will take some effort to overcome Congressional inertia.

Option 2. Publish the report of the Cabinet committee and seek to implement it through the FCC

Effect: The FCC would likely bastardize the policy and dissipate its effectiveness, although pay TV may well suffer fewer restrictions there than at the hands of Congress. As cable investment grows under FCC rules, cable system owners will become stronger and increasingly committed to the status quo, making it very difficult to correct the FCC by legislation later on. Further, the FCC is likely to restrict the growth of cable channels in order to protect broadcasting profits.

II. Encouraging New Networks

This has been tried many times before and it has never worked because of the need to reach a national audience. It cannot be done without a significant expansion of TV stations or a mandatory reduction of the number of hours a network is allowed to affiliate with the stations in each city.

Option 3. Expand the number of television stations in each market

Effect: Although one or two new stations could be added in many major cities without significant technical problems, the FCC proceedings would be protracted and bitterly contested by broadcasters. Even if achieved (5 years minimum), resulting in one or two new networks, the TV advertising dollar would have to be spread over more programming. "Quality" as the networks define it would be reduced, and there would be fewer profits available for specials and news programming.

Option 4. Expand the time denied to the networks by the FCC prime time rule and require them to make their interconnection facilities available to others during that time

Effect: Broadcasters, particularly networks, would oppose, but Hollywood producers might go along if access to national network facilities did not increase their financial risks. This would have little effect on national news coverage, but could result in as many as three new part-time national networks for entertainment programming.

Option 5. Correct deficiencies in the network antitrust suit and begin FCC proceedings on network affiliation rules to create several new networks

Effect: The antitrust suit as drawn does not deal effectively with network dominance. Moreover, there are ample grounds for the FCC to launch an inquiry into network monopoly power with the aim of creating new competitive national networks by providing realistic access to national audiences. This can be combined with efforts to reduce ATT charges for part-time network interconnection. Broadcasters would oppose and Hollywood would have mixed reactions. Congressional committees probably would become seriously concerned, and this would be viewed by many as the "other shoe" after Agnew. If accomplished, there should be no noticeable effects on the "quality" of entertainment shows, but it is likely there would be more diversity (or at least more competition) in entertainment shows.

Option 6. Initiate FCC and/or antitrust actions to divest the networks of the stations they own

Effect: If successful would weaken the financial power of the networks, but probably would result in lower program quality. The quantity of news and public affairs would probably shrink. Success is highly uncertain, and the principal effect would be punitive.

III. Prime Time Rule and Reruns

Several attempts have been made to correct or alleviate specific symptoms of the problem of network power. The FCC prime time rule was designed to increase diversity in programming by requiring affiliates to obtain one-half hour of programming nightly during prime time from non-network sources. The rule has not worked because only very low budget shows are profitable without access to a nationwide audience. Rerun restrictions have been proposed because of the steady decrease in original network programming and the resultant decrease in Hollywood employment.

Option 7. Repeal the prime time rule

Effect: Restoring the half hour nightly to the networks would increase Hollywood employment, and only a few independent producers would oppose. Most broadcasters will support repeal of the rule on principle. Because the half hour now taken away is a loss-leader for the networks, ABC, as the weakest network, apparently is content with the rule. Repeal of the rule could be conditioned by a prohibition of network ownership of prime time entertainment programming.

Option 8. Change or expand the prime time rule without requiring the networks to make their interconnection facilities available to others

Effect: Returning more time to the local stations without access to interconnect facilities for a nationwide audience would result in lower quality programming, lower network revenues, and lower Hollywood employment. It would hurt the networks and Hollywood, and local broadcasters would also oppose.

Option 9. Press for reduction of network reruns

Effect: NBC and CBS have stated they will not make any such commitments voluntarily. ABC will do so only if the others do and if the Hollywood unions and producers also make concessions. Even if successful, the network reaction might well be the substitution of lower cost programming. Thus, an FCC rule would be effective only if accompanied by rules on program "quality" or national production.

IV. Other Broadcasting Issues

Broadcasters have serious problems with existing license renewal procedures and the Fairness Doctrine. Fairness Doctrine enforcement has become increasingly detailed, and its scope has steadily expanded. Activist groups have been using both procedures to gain free broadcast time or to blackmail broadcasters into making programming and employment concessions. There is considerable pressure to expand the Fairness Doctrine's application in the area of product advertising.

Option 10. Support a license renewal bill that extends the license term and prohibits FCC establishment of program standards

Effect: This approach is consistent with the idea of private enterprise broadcasting without Government control of content. Broadcasters would much prefer a simple extension of the license term. This does little directly to counter network power. Support for this kind of bill would significantly improve our credentials as opponents of programming controls and supporters of the First Amendment. (Further legislation to abandon case-by-case Fairness enforcement would round out our policy. However, it would unduly burden this legislation and can await more evidence of broadcaster responsibility.)

Option 11. Support the broadcaster-endorsed license renewal bill

Effect: With appropriate compromises in the Congress, a bill providing for simple extension of the license renewal term and putting the burden of proof on the license challenger rather than the incumbent might well pass. There would be considerable opposition to this bill, and many would view it as a sellout to the broadcast industry. It would not provide the statesmanlike image we need to accomplish the network objectives and would invite more extensive FCC program regulation.

V. Discussion

Cable television is the most effective means of achieving our objectives. Properly structured, cable could provide a multitude of channels, numerous networks, more opportunity for viewer choices, in entertainment programming and news and public affairs discussion. However, this is a long-term solution, since it will not have a significant effect for about 10 years.

The creation of new television networks as described in Section II above could be an intermediate step. Anything that appeared purely punitive against the three networks would probably be counterproductive. An approach predicated on the establishment of new networks and more competition, together with a good renewal bill and recision of the prime time rule, might well succeed. Even if that approach were to get bogged down in the FCC or the courts, the explicit action and public attention to the network power issues should make the networks more conscious of news objectivity and anticompetitive exercise of their economic power.

All broadcasters would, no doubt, oppose any serious attack on network power simply because they profit from it. Even if we fully supported the broadcasters' positions on everything else, they would oppose us on the network issue. Moreover, the press and the Congress will question our motives. The best approach, therefore, is likely to combine some (but not too much) action on the "broadcast freedom" front with a clear signal that things can get rough in other areas if there isn't more exercise of management responsibility over programming and news.

One approach for combining all these factors might be as follows:

1. Support cable television legislation next year as an exciting new initiative. It is coming anyway, so get it started right and get the President associated with its future in a positive way.

2. Introduce a license renewal bill like that described above (Option 10). Make clear to networks and key affiliates that vigorous support depends on real evidence of news objectivity. Endorse eventual removal of case-by-case Fairness enforcement, but only when broadcaster responsibility has improved sufficiently to offer hope of Congressional passage.

3. Call public attention to the responsibility of station and network managers for the objectivity of their news departments. Privately urge key affiliate stations to press network management on this issue. Make clear that progress on this front is a prerequisite to vigorous Administration support of a license renewal bill next year.

4. Use the networks' intransigence on the rerun issue to call attention to network power. Propose that the FCC rescind the prime time rule (to improve programming and reduce Hollywood

unemployment) and immediately issue a Notice of Further Inquiry into all aspects of network monopoly power, including the desirability and feasibility of establishing additional networks. Action by February.

5. Sharpen and/or expand the pending network antitrust suit against the networks and their affiliates to parallel the FCC action and press it more vigorously.

6. As a diversionary tactic, release the Interdepartment Radio Advisory Committee's conclusion that 100 or more new VHF TV stations could be added in the top 100 markets without significant interference. Send to the FCC for comment, suggesting they initiate proceedings to add stations in a few major cities. Because of the short-run effect new stations would have on broadcaster profits, they would have to devote considerable effort to opposing this action.

7. Trust that concerned citizens will point out to the new management of the two largest networks that exercise of management responsibility for network news operations cannot but have an effect on the FCC inquiry into network power.

8. Push the FCC harder on radio deregulation to establish our stand on principle and as a "carrot" for television broadcasters.

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

1. Bm - cable
   * timing; decisive PTA action; LR & speech following
2. Burch, Wiley, Freeman
3. politics & Hill; Senate vs. House { oversight / CPB / LR / cable
4. OTP & reorgn ; him to π after CC (viz Lamb)
5. substantive intl, comm carriers, govt program
   * oversight hearing
* { 6. What does π want done ?
  7. Whither OTP & its resources ?

CPB/Marks

Action Items

~~1.~~	~~Call John Gavin~~	~~December 19~~
2.	Memo for the President on reruns	Jan 8 ~~December 22~~
3.	Send Cabinet committee report to the President	" Jan 15 ~~Before December 31~~ "
4.	Personnel changes	~~December 31~~
5.	Circulate rerun papers	January 5.
6.	Line up Hollywood and others on PTA	Early January
7.	Meet with Antitrust Division	Early January
8.	Release Cabinet committee report	Late ~~Early~~ January
9.	Cable legislation into OMB clearance	~~Late~~ Mid-Feb ~~Mid-January~~
10.	Letter to FCC on PTA ~~and reruns~~	January 15
11.	State of the Union reference to cable/cm	Late January
~~12.~~	~~Meet with Howard Baker~~	~~Late January~~
13.	License Renewal bill to Congr.	February 1
14.	International initiatives	Early February
15.	Common carrier initiatives	Early February
16.	Cable legislation	Early March ~~February~~
17.	Amend antitrust suit ?	Early March
18.	Letter on VHF drop-ins/UHF community stns	March 10
19.	FCC action on PTA	March 15
20.	FCC Notice of Inquiry on networks	April-June
21.	Letter on BUN	June-August

TT

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

1. OTP lead
2. Brdcst - cable - speeches
3. Domestic / intl common carr program
4. Govt - $10B - importance defense C&C

Colson

[illegible]

- Brdcst - cable : timing & PTA decisive action
  licensing thud e.g.
- Burch, Wiley, ___
- substantive program outreach BC
- common carriers, intl, govt
- politics effort
- CPB & Macdonald
- clarify OTP → reorgn ; liaison to TT staff cc (Lamb)
- freeze.
- Freeman

call Gavin [Dec 19]

Memo TT on recess [Dec 22]

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

circ recess paper ~~Dec~~ 1 [Jan 5]

* line up Hurd, adv [Dec – Jan 15]

* replace Burch, appoint ___ recess [Dec]

~~*~~ letter on PTA, recess [Jan 15]

line up ATD [~~Feb~~] [Jan]

~~letter on Burr~~

~~cable initiative~~ [~~Feb~~]

~~[illegible] initiative~~

~~letter on [illegible] V's~~

* PTA action [~~Feb 28~~ Mar 15]

mtt & CC initiative [~~Mar~~] [early – mid Feb]

letter on Burr (pref after McD hearings) [~~Apr~~ June – Aug]

letter on V's [~~[illegible]~~ Mar 10] incl ch12

FCC rulemaking [Apr – Jun]

amend AT suit [Mar]

LR bill [before cable bill]

radio [Baker/Wiley]

NAB conv [Mar 25]

~~The~~ cable report [~~mid Jan~~ early] [early Jan]

cable leg clear ~~[illegible]~~ [mid-Jan]

cable leg ~~May ?~~ [early Feb] (soon reference) (Baker)

OFFICE OF TELECOMMUNICATIONS POLICY
WASHINGTON

+ LR
commentaries
FD
radio dereg

— net comment – FCC + A-T.
cable
renewal / PTAs
1st A speech & effort

Hersh speech E+H.

1. Cable television
2. FCC network inquiry
3. Network antitrust suit
4. VHF drop-ins and low-power UHF stations
5. Common carrier (Bell) competition
6. Ongoing Issues
   A. Public television
   B. License renewals
   C. Radio deregulation
7. Tactics
   A. NAB Convention
   B. Private meetings
   C. Signals to broadcasters
   D. FCC appointments
   E. CPB appointments

FD
debits & credits
Dec 18

1st A not settled.

5-6 pp for file.
Done on Coors.
before 15th Dec.

MEMORANDUM FOR THE FILE

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Discussion: If it is all fit together to combine good policy with carrot and stick for real progress, do it.

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There is no technological limit on the number of cable TV channels. The number of channels actually available will depend on supply and demand in programming, advertising, and direct viewer payment. Properly structured, cable is likely to bring more diversity in entertainment, news, and public affairs programming, and new national and regional television networks (not unlike the diversity found in the magazine business today). Unless restricted, cable would bring about two new revenue sources for programming--specialized advertising and direct viewer payment. Cable TV could reach about 50 per cent of the nation's homes by 1980, depending on the policies we decide to follow. There is currently great confusion and uncertainty about the proper direction for cable growth and the regulatory authority of the FCC.

Option 1. <u>Introduce legislation next year following the recommendations of the Cabinet committee on cable television</u>

<u>Effect</u>: Positive Presidential recognition of cable television as an exciting new TV medium for the future, expanding viewer choice and diversity, would have direct political benefits. Unlike FCC rules, our approach provides for broadcaster participation in cable and for fair copyright protection that should help soften expected broadcaster opposition. Hollywood would support this, and the cable industry would have little choice but to do likewise, although they will oppose certain provisions of our policy. The most volatile political issue will be "pay TV," which must not be overly restricted if cable is to provide the revenues to support the diversity we seek. Congress has consistently avoided dealing with cable, and it will take some effort to overcome Congressional inertia.

Option 2. <u>Publish the report of the Cabinet committee and seek to implement it through the FCC</u>

<u>Effect</u>: The FCC would likely bastardize the policy and dissipate its effectiveness, although pay TV may well suffer fewer restrictions there than at the hands of Congress. As cable investment grows under FCC rules, cable system owners will become stronger and increasingly committed to the status quo, making it very difficult to correct the FCC by legislation later on. Further, the FCC is likely to restrict the growth of cable channels in order to protect broadcasting profits.

II. <u>Encouraging New Networks</u>

This has been tried many times before and it has never worked because of the need to reach a national audience. It cannot be done without a significant expansion of TV stations or a mandatory reduction of the number of hours a network is allowed to affiliate with the stations in each city.

Option 3. <u>Expand the number of television stations in each market</u>

<u>Effect</u>: Although one or two new stations could be added in many major cities without significant technical problems, the FCC proceedings would be protracted and bitterly contested by broadcasters. Even if achieved (5 years minimum), resulting in one or two new networks, the TV advertising dollar would

have to be spread over more programming. "Quality" as the networks define it would be reduced, and there would be fewer profits available for specials and news programming.

Option 4. Expand the time denied to the networks by the FCC prime time rule and require them to make their interconnection facilities available to others during that time

Effect: Broadcasters, particularly networks, would oppose, but Hollywood producers might go along if access to national network facilities did not increase their financial risks. This would have little effect on national news coverage, but could result in as many as three new part-time national networks for entertainment programming.

Option 5. Correct deficiencies in the network antitrust suit and begin FCC proceedings on network affiliation rules to create several new networks

Effect: The antitrust suit as drawn does not deal effectively with network dominance. Moreover, there are ample grounds for the FCC to launch an inquiry into network monopoly power with the aim of creating new competitive national networks by providing realistic access to national audiences. This can be combined with efforts to reduce ATT charges for part-time network interconnection. Broadcasters would oppose and Hollywood would have mixed reactions. Congressional committees probably would become seriously concerned, and this would be viewed by many as the "other shoe" after Agnew. If accomplished, there should be no noticeable effects on the "quality" of entertainment shows, but it is likely there would be more diversity (or at least more competition) in entertainment shows.

Option 6. Initiate FCC and/or antitrust actions to divest the networks of the stations they own

Effect: If successful would weaken the financial power of the networks, but probably would result in lower program quality. The quantity of news and public affairs would probably shrink. Success is highly uncertain, and the principal effect would be punitive.

III. Prime Time Rule and Reruns

Several attempts have been made to correct or alleviate specific symptoms of the problem of network power. The FCC prime time rule was designed to increase diversity in programming by requiring affiliates to obtain one-half hour of programming nightly during prime time from non-network sources. The rule has not worked because only very low budget shows are profitable without access to a nationwide audience. Rerun restrictions have been proposed because of the steady decrease in original network programming and the resultant decrease in Hollywood employment.

Option 7. Repeal the prime time rule

Effect: Restoring the half hour nightly to the networks would increase Hollywood employment, and only a few independent producers would oppose. Most broadcasters will support repeal of the rule on principle. Because the half hour now taken away is a loss-leader for the networks, ABC, as the weakest network, apparently is content with the rule. Repeal of the rule could be conditioned by a prohibition of network ownership of prime time entertainment programming.

Option 8. Change or expand the prime time rule without requiring the networks to make their interconnection facilities available to others

Effect: Returning more time to the local stations without access to interconnect facilities for a nationwide audience would result in lower quality programming, lower network revenues, and lower Hollywood employment. It would hurt the networks and Hollywood, and local broadcasters would also oppose.

Option 9. Press for reduction of network reruns

Effect: NBC and CBS have stated they will not make any such commitments voluntarily. ABC will do so only if the others do and if the Hollywood unions and producers also make concessions. Even if successful, the network reaction might well be the substitution of lower cost programming. Thus, an FCC rule would be effective only if accompanied by rules on program "quality" or national production.

IV. Other Broadcasting Issues

Broadcasters have serious problems with existing license renewal procedures and the Fairness Doctrine. Fairness Doctrine enforcement has become increasingly detailed, and its scope has steadily expanded. Activist groups have been using both procedures to gain free broadcast time or to blackmail broadcasters into making programming and employment concessions. There is considerable pressure to expand the Fairness Doctrine's application in the area of product advertising.

Option 10. Support a license renewal bill that extends the license term and prohibits FCC establishment of program standards

Effect: This approach is consistent with the idea of private enterprise broadcasting without Government control of content. Broadcasters would much prefer a simple extension of the license term. This does little directly to counter network power. Support for this kind of bill would significantly improve our credentials as opponents of programming controls and supporters of the First Amendment. (Further legislation to abandon case-by-case Fairness enforcement would round out our policy. However, it would unduly burden this legislation and can await more evidence of broadcaster responsibility.)

Option 11. Support the broadcaster-endorsed license renewal bill

Effect: With appropriate compromises in the Congress, a bill providing for simple extension of the license renewal term and putting the burden of proof on the license challenger rather than the incumbent might well pass. There would be considerable opposition to this bill, and many would view it as a sellout to the broadcast industry. It would not provide the statesmanlike image we need to accomplish the network objectives and would invite more extensive FCC program regulation.

V. Discussion

Cable television is the most effective means of achieving our objectives. Properly structured, cable could provide a multitude of channels, numerous networks, more opportunity for viewer choices, in entertainment programming and news and public affairs discussion. However, this is a long-term solution, since it will not have a significant effect for about 10 years.

The creation of new television networks as described in Section II above could be an intermediate step. Anything that appeared purely punitive against the three networks would probably be counterproductive. An approach predicated on the establishment of new networks and more competition, together with a good renewal bill and recision of the prime time rule, might well succeed. Even if that approach were to get bogged down in the FCC or the courts, the explicit action and public attention to the network power issues should make the networks more conscious of news objectivity and anticompetitive exercise of their economic power.

All broadcasters would, no doubt, oppose any serious attack on network power simply because they profit from it. Even if we fully supported the broadcasters' positions on everything else, they would oppose us on the network issue. Moreover, the press and the Congress will question our motives. The best approach, therefore, is likely to combine some (but not too much) action on the "broadcast freedom" front with a clear signal that things can get rough in other areas if there isn't more exercise of management responsibility over programming and news.

One approach for combining all these factors might be as follows:

1. Support cable television legislation next year as an exciting new initiative. It is coming anyway, so get it started right and get the President associated with its future in a positive way.

2. Introduce a license renewal bill like that described above (Option 10). Make clear to networks and key affiliates that vigorous support depends on real evidence of news objectivity. Endorse eventual removal of case-by-case Fairness enforcement, but only when broadcaster responsibility has improved sufficiently to offer hope of Congressional passage.

3. Call public attention to the responsibility of station and network managers for the objectivity of their news departments. Privately urge key affiliate stations to press network management on this issue. Make clear that progress on this front is a prerequisite to vigorous Administration support of a license renewal bill next year.

4. Use the networks' intransigence on the rerun issue to call attention to network power. Propose that the FCC rescind the prime time rule (to improve programming and reduce Hollywood

unemployment) and immediately issue a Notice of Further Inquiry into all aspects of network monopoly power, including the desirability and feasibility of establishing additional networks. Action by February.

5. Sharpen and/or expand the pending network antitrust suit against the networks and their affiliates to parallel the FCC action and press it more vigorously.

6. As a diversionary tactic, release the Interdepartment Radio Advisory Committee's conclusion that 100 or more new VHF TV stations could be added in the top 100 markets without significant interference. Send to the FCC for comment, suggesting they initiate proceedings to add stations in a few major cities. Because of the short-run effect new stations would have on broadcaster profits, they would have to devote considerable effort to opposing this action.

7. Trust that concerned citizens will point out to the new management of the two largest networks that exercise of management responsibility for network news operations cannot but have an effect on the FCC inquiry into network power.

8. Push the FCC harder on radio deregulation to establish our stand on principle and as a "carrot" for television broadcasters.

TALKING POINTS

A. Broadcast regulation. OTP has prepared a bill that would provide the increased stability in license renewals that broadcasters desire. The vigor of the Administration's efforts to secure such legislation is clearly tied to improvements by the industry in counteracting network dominance and news bias. Answers — get on WH table (HRH)

B. Cable television. Your Cabinet committee will propose a policy for cable television by the end of this month. Their proposals deal with such issues as pay-TV, cable networks, cross-media ownership of cable, and division of regulatory authority between the Federal government and the states. You may wish to discuss how implementing legislation, a Federally-assisted demonstration program, and other actions can promote the growth of cable television.

Dick Moore - PR.

C. Network dominance of programming. You recently directed that we seek the repeal of the FCC's prime time rule and a subsequent vigorous inquiry into remedies for network dominance of television programming. In conjunction with the pending anti-trust suits against the networks, these remedies could provide a counter-balance to network power pending the full development of cable television. You may wish to indicate how vigorously and publicly you wish this effort to be pursued.

D. Public broadcasting. CPB is on the verge of funding decisions that will cut back controversial public affairs programming. You may wish to ask for a status report and to discuss where we go from here.

E. Other issues. OTP also develops policy for common carrier and international communications, emergency communications, and coordination of the Federal Government's own extensive communication networks. You may wish to discuss very briefly the directions being taken in these areas and ask about the most important forthcoming OTP actions.

comm carrier — competition (domsat, Datran, brokerage & attachments)
— ~~[illegible]~~ delimit ATT monop; capital problem.

intl — US (priv ent) rels foreign countries — tech adv / polit disadv.
— industry reg — monop vs. cartel (ATT again)

Feds — history; #; agency mission vs. interop; NCS; WH C&C