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### [Reply Comments for the NBA and NAACP]

J. Clay Smith Jr.

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RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

NOV 7 1984

FCC  
Office of the Secretary

In the Matter of	)	
	)	
Inquiry into Section 73.1910 of the	)	
Commission's Rules and Regulations	)	Gen. Docket No. 84-282
Concerning the General Fairness	)	
Doctrine Obligations of	)	
Broadcast Licensees	)	

REPLY COMMENTS: THE NATIONAL BAR ASSOCIATION\* AND THE  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE\*\*

The Fairness Doctrine has traditionally been viewed as implementing the First Amendment in the broadcast area by assuring the opposing sides of controversial issues are aired so that the truth would emerge and so that the public will have suitable access to ideas and experiences. Both parts of the Fairness Doctrine have been considered necessary--the first part to assure the mere presence on the airwaves of speech concerning controversial issues and the second part to assure that all sides were expressed with regard to such issues so that a variety of

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\*/ The National Bar Association (NBA) is a professional membership organization of predominantly eight thousand Black lawyers. Founded in 1925, the NBA has been concerned about the impact of regulatory decisions on the American population as a whole and the minority community in particular.

\*\*/ The National Association for the Advancement of Colored People (NAACP) founded in 1909 has been interested in fairness in the media. Its interest peaked in 1929 and 1934 with the creation of the Radio and Federal Communications Acts. The NAACP is very concerned about the deregulatory direction of the FCC. NAACP opposes any changes to the Fairness Doctrine.

points of view could compete in the arena with truth being the ultimate victor. See para. 50, Notice of Inquiry on the Fairness Doctrine, 49 Fed. Reg. 20317 (May 14, 1984) (Hereinafter referred to as "Notice" or "Inquiry.")

The purpose of these comments is to reply in opposition to comments, taking a position that the Fairness Doctrine should be abrogated, filed in this Inquiry.

REPLY 1. FAIRNESS DOCTRINE IS NEEDED.

The Fairness Doctrine has served the public interest standard well for thirty years and the Notice of Inquiry and opposing comments to the doctrine should be rejected with regard to their having basis in fact or law to suggest that any revision or elimination of the Doctrine is warranted.

REPLY 2. FCC, BY ITS PAST CONDUCT HAS MORE THAN DEMONSTRATED THAT IT HAS NO AUTHORITY TO ALTER THE FAIRNESS DOCTRINE.

For years the Federal Communications Commission (FCC) has suggested that Congress abolish the Fairness Doctrine. In fact, some Chairmen of the FCC, without the concurrence or consultation with the full Commission, have unilaterally forwarded legislative proposals to Congress which included legislative proposals urging the repeal of the Fairness Doctrine. This course of action suggests that Chairmen of the FCC have, heretofore, believed that any change in the Fairness Doctrine was exclusively within the domain of Congress. Secondly, there is no history within the FCC

which indicates that the full Commission has determined that it, independent of Congress, has the authority to abrogate the Fairness Doctrine. Hence, any reference to prior FCC proposals to Congress suggests two things: (1) That the FCC has no authority to alter the Fairness Doctrine; and (2) the absence of action by the Congress to alter the Fairness Doctrine suggests that it is satisfied with the status quo.

REPLY 3. FCC IS WITHOUT AUTHORITY TO DEROGATE THE FAIRNESS DOCTRINE.

The FCC is a delegatee of Congressional authority. Only Congress can withdraw a right predicated on the purposes of the Communications Act of 1934. Those arguing the contrary must answer the following questions: if FCC has the authority to derogate the Fairness Doctrine, why has it consistently sought authority from Congress to do so? Since Congress has never acted on FCC proposals to abrogate the Fairness Doctrine, isn't that persuasive evidence that Congress is in accord with the Fairness Doctrine and the purpose for which it is designed to serve? See Timothy E. Wirth, Freedom and the Fairness Doctrine, Washington Post, 10-25-81, at c7, col. 2. (Attachment 1)

REPLY 4. SCARCITY IS NOT THE SOLE BASIS OF THE FAIRNESS DOCTRINE.

The Fairness Doctrine is based on two independent premises: (1) scarcity and (2) the public interest standard. Comments filed during this Inquiry erroneously suggest that the increase

in new technology undermines the scarcity premise. The Red Lion discussion made this clear. In that opinion the U.S. Supreme Court stated, "...the public interest language of the [Communications] Act authorized the Commission to require licensees to use their stations for discussion of public issues, and that the FCC is free to implement this requirement by reasonable rules and regulations which fall short of abridgment of the freedom of speech and press..." Red Lion Broadcasting v. FCC, 395 U.S. 367, 382 (1968).

Both the FCC and commentators are attempting to create an absolute national community standard. Such a standard puts blinders on the localism standard and argues that the spectrum is pregnant enough now that the entire listening population of America can give birth to enough ideas so as to make the Fairness Doctrine unnecessary. Not so! In the last four years, the FCC on a case-by-case basis has transferred its authority to regulate the broadcast industry to the broadcast industry. It has voted to increase the number of outlets that any single entity can own: from 21 to 36 stations. See Reply 10, infra. However, the Commission is unable to do the one thing that would abrogate the Fairness Doctrine. It cannot and will never be able to provide access to use the electromagnetic spectrum to each citizen in America. Hence, it matters not how many new outlets it authorizes.

Secondly, Great Lakes Broadcasting, 3 F.R.C. Annual Rep. 32 (1929), rev'd on other grounds, 37 F.2d 993 (D.C. Cir. 1930)

stands for a terribly important principle: independent of scarcity, the principle of fairness is a condition placed on the broadcaster upon the grant of any license. More specifically, no broadcast license shall be granted, unless the application of the licensee directly or indirectly promises to conform to the concept of fairness.

Thirdly, the comments which focus on new technologies as a basis for the abrogation of the Fairness Doctrine are in error because, even if they are correct, the doctrine cannot be abrogated without legislative decree because it is inextricably tied to the "public interest, convenience and necessity" provision of the Communications Act of 1934.

REPLY 5. THE FAIRNESS DOCTRINE SHIELDS THE PUBLIC FROM GREED.

Commentors challenge the Fairness Doctrine on the basis that it violates the First Amendment privileges of broadcasters. Broadcasters assume that they are not obliged to be concerned about the First Amendment privileges of the public when it impedes broadcast interests to make a profit. The Fairness Doctrine exists as a means by which the public can be exposed to the widest array of ideas in the marketplace. The overriding desire for profit cannot impede that objective. See e.g. Griffin, Broadcast Advertising: What Has It Done to the Audience, 23 Washburn L.J. 237 (1984).

REPLY 6. THE SPECTRUM IS OWNED BY THE PEOPLE FOR PRIVATE USE, NOT PRIVATE DOMINION.

The comments confuse who owns the spectrum: the broadcasters or the people of this nation. Broadcasters are servants of the people, not their masters. The FCC by this Inquiry and the broadcasters by their response have assumed that they are masters of the people; that they own the spectrum; that the spectrum is their property and that the people, by their desire to retain the Fairness Doctrine, are trespassers of the spectrum. This revisionism is both dangerous and outrageous because it assumes that the government can exploit and the marketplacers can steal the people's spectrum. Of course, this is not possible because the people are not powerless or ignorant of what is going on. The broadcast industry and the FCC is moving towards a regulatory objective that converts the spectrum into private property overnight without alerting the American people of the full consequence thereof. This is outright theft against the true owners. It will not be tolerated and cannot withstand judicial review in law or fact, as broadcasters have no property rights in the use of the spectrum. NBC v. U.S., 319 U.S. 190, 226 (1942); FCC v. NBC, 319 U.S. 239, 247 (1942).

REPLY 7. THE FAIRNESS DOCTRINE IS BLACK LETTER

Commentors favoring the abrogation of the Fairness Doctrine have bottomed their arguments on the basis that new technologies cry out for its abrogation. Yet, the premise of such an argument

is faulty because it is contrived on a myth that the marketplace is capable of uprooting Black Letter principles such as the Fairness Doctrine. Political whim often seeks to realign neutral principles of jurisprudence. This Inquiry is based on political whim.

REPLY 8.      PROMISES TO BREAK.

Commentors to this Inquiry have tried to create a record of faith. They say, "trust us and we will provide you with diverse views within your freedoms under the First Amendment." It is not their promise that concerns us, it is our present recognition that they cannot keep their promise.

REPLY 9.      CONGRESS HAS ALREADY CODIFIED THE FAIRNESS DOCTRINE.

Commentors argue that the Amendments to 315 of the Communications Act did not broadly codify the Fairness Doctrine. They want the public to view the amendment which included the Fairness Doctrine as a legislative aberration. Well, it is not. Congress, recognized that if it exempted news-type programs from the equal-time provisions of Section 315, there would still exist a need for the Fairness Doctrine. Hence, Congress codified the Black Letter law and therein lies the basis of this entire argument.



REPLY 10. NO BASIS IN FACT TO SUPPORT BROAD CONCLUSIONS OF  
SUBSTITUTABILITY: FCC IS GUESSING AT A POLICY.

Commentors favoring the abrogation of the Fairness Doctrine based their arguments on the premise that new technologies provide sufficient substitutes for points of view and that the need for diversity imposed by the Fairness Doctrine is unnecessary. The Inquiry and these comments assume a fact that cannot be substantiated: that every American citizen can afford to purchase substitutes for free television and radio. The record upon which FCC and initial commentors proceed is based upon result oriented conclusions, and no more. See Testimony of the National Bar Association Before the House Subcommittee on Telecommunications, September 19, 1984. The truth is that the FCC and initial commentors are ignorant of how the media satisfies individual informational needs. The FCC proceeds from a posture of arrogance from its vantage point of regulatory power. It is the FCC that is attempting to transform the marketplace, with the public being the helpless predicate of this subject matter. This is the reason why Congress, and not the FCC, is the only body competent to abrogate the Black Letter Law embodied in the Fairness Doctrine. In truth, scarcity exist and will exist as long as a person must apply for a frequency. The application process is clear evidence of scarcity. Scarcity is not a global communications term. It is a term that questions whether a community in this nation can have unlimited allocation of channels assigned to it for use through a tenant (broadcaster) of the public airwaves;

namely, a licensee. So long as a community or a service is limited by a quota of opportunities, scarcity exist. Access is limited. Diversity is limited.

REPLY 11.     THE PUBLIC IS BEING HELD HOSTAGE WHILE THE WAR FOR MARKETPLACE DOMINANCE IS DETERMINED: THAT WAR HAS TARGETED THE FAIRNESS DOCTRINE AS A CASUALTY.

Commentors would have the American population conclude that there are now enough new technologies to equate them as a single informational mix. They say -- broadcast stations should be viewed as newspapers for purposes of First Amendment guarantees. Commentors cite the figures made available in this Inquiry to support their claims of media integration. Media integration is a matter of market manipulation not public choice. The poor public is being held hostage to the fierce marketing war going on to please the public. It is a war governed by who can sell the public entertainment sports and sex programming. It hasn't a thing to do with the war of ideas. Cable television is being challenged by MDS and the videotape recorder (VCR) market. Local television and radio are now viewed as stepchildren, not as before, when they were deemed to be the mothers of broadcasting. The FCC and commentors anxious to do away with the Fairness Doctrine, desire to create a "new wave" of "new tech" devoid of substance, and latent with bright video lights and rock. It desires music to classify this media as one informational mix.

If this were the only public obligation of users of the spectrum, we would agree with those who desire to abrogate the

Fairness Doctrine. What does the Fairness Doctrine add to entertainment and movies? The point is that use of the spectrum is conditioned upon a legally protected interest that the public can expect its intelligence to be challenged by opinion and points of view so antagonistic so as to allow groups, discreet groups or individuals to make choices on where their country is and where it is going.

Newspapers and the newspaper industry are different than broadcasters and the broadcast industry. We are being told that they are alike. We refuse to accept this conclusion. The facts won't permit its acceptance and the rationalizations offered by FCC and commentators do not support the premise of their arguments.

Query, who owns the spectrum? Answer, the people. Query, do newspapers use the spectrum? Answer, No. They use printing presses. If they use the spectrum, they do so with the consent of the American population as embodied in the Communications Act of 1934. Query, can anyone publish a newspaper? Answer, Yes. Query, How? Answer, by buying a printing press, or by printing their ideas on pieces of paper. Query, does everyone who publishes a newspaper desire a broad audience? Answer, No. A newspaper market may be limited to a neighborhood, a section of the city, state. Query, what about users of the spectrum, can such use be limited to a neighborhood? Answer, no. Why? Spectrum is too valuable, such use must be uniform and cost effective to the user. No matter how the FCC and commentators attempt to compare broadcasting and newspapers they are faced with one

unalterable difference: one is free and the other costs; the public owns the spectrum, it has no direct proprietary interest in the print industry.

REPLY 12. THE FAIRNESS DOCTRINE MAY ALREADY HAVE BEEN WOUNDED BY THE FCC'S LACK OF ENFORCEMENT: THE PUBLIC SHOULD BEWARE SO AS NOT TO ALLOW GOVERNMENT BLAME TO BE SHIFTED TO US.

We have observed that many commentators favoring the abrogation of the Fairness Doctrine have filed comments in other proceedings which on a case-by-case basis is dispossessing the American people's interest in the spectrum without their full knowledge or understanding of the effect thereof. People in the smallest markets are at the mercy of the networks. The FCC has so deregulated the requirement for news and public information type programming that outside the major markets, people are starving for information, let alone diversity. Hopefully, the courts will not place their blinders on and allow the self proclaimed expertise of the FCC to blur the naked truth being faced by the American people in smaller markets: the lack of diversity.

So it is with Americans in larger markets. There is no doubt that citizens in larger markets have many more broadcast choices. However, choice does not guarantee diversity or fairness, especially if the sources are interrelated or dominated by concentration and control. The FCC has authorized networks to own cable systems, telephone companies to own cable systems, outside their service areas. Networks could own as many as 36 broadcast

stations, unless Congress steps in to permanently bar the recently adopted Rule of 12. What does all of this mean? It means that the top fifty markets have many outlets, more listeners, but not necessarily diversity. The FCC while touting First Amendment rights at every other breath is through deregulating in the area of the Fairness Doctrine, negating the public's First Amendment Rights. We shall not be fooled by such "regulatory mumbo jumbo".

The Fairness Doctrine is in furtherance of the First Amendment. Red Lion Broadcasting v. FCC, 395 U.S. 367, 401, n. 28 (1968). The FCC and other commentators refer to it as an exception to the First Amendment. Only Congress can clarify this. It is clear where the FCC is moving and where it stands. It is far from clear where the people who own the spectrum stand. They are without knowledge that broadcasters have carved out a spectrum property right under the heading of "expectancy of renewal" and, as such, doctrines such as Fairness are wrapped up in promises which cannot be verified because the mechanisms to do so have been deregulated. We cannot anticipate how the American people will respond when they realize what their government has done to them.

REPLY 13. "NEW WAVE" ECONOMICS IS A FALLACIOUS BASIS FOR DEROGATION OF FAIRNESS DOCTRINE.

The economics of the spectrum is the centerpiece of many comments. This is consistent with the Notice of Inquiry. In the

N.O.I., trucks that transport newspapers are called "scarce" and compared to the electromagnetic spectrum. All this manipulation of the thought process seeks to convince the public, and some say the courts, that newspapers and broadcasting are the same. They are not. Any person with money can purchase a truck -- even a used truck to transport newspapers. We defy the commentators to establish that any person may have access to the spectrum. It is an impossibility. Why don't we face the fact that in order to understand where the FCC is taking the nation is down a road of spectrum condemnation of the people's property. The FCC is attempting by regulating policy to give away the people's property without authority of law. We remind the FCC that "Licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them." Red Lion Broadcasting v. FCC, 395 U.S. 367, 394 (1968). We challenge FCC sua sponte authority to alter the Fairness Doctrine because it is without authority under the original Act of 1934, and under the First Amendment to the United States Constitution.

REPLY 14. LIMITED EXCEPTIONS TO APPLICATION OF FAIRNESS DOCTRINE MAY BE PERMISSIBLE BUT CAN ONLY BE DONE BY AN ACT OF CONGRESS.

Perhaps the most persuasive arguments presented by commentators is that teletext is in the nature of a newspaper. This argument may have more substance but it is not sufficient to create a strawman that all broadcast technologies have "converged" into

the indistinguishable media mix for after all it is only one of many technologies. As related to teletext, perhaps the Congress should evaluate this technology and its application of the Fairness Doctrine. Perhaps there are other data systems for the transmission of textual and graphic information intended for display on viewing screens. This may be an area for Congress to consider making an exception to the Fairness Doctrine.

REPLY 15.    IMBALANCE EXISTS WITH OR WITHOUT THE FAIRNESS DOCTRINE UNDER CURRENT FCC.

Commentors urging repeal of the Fairness Doctrine are caught in a bind. They argue for the repeal of a doctrine that is not enforced by FCC. What makes the Fairness Doctrine effective is that it stands as a mighty ideal in a society that substitutes ideals for profit. The Fairness Doctrine, like affirmative action for minorities, has become a subject of administrative lynching by the lack of government protection, and callous disregard. Imbalances in programming will occur without the Fairness Doctrine. It exists now with it. Imbalance with or without the Fairness Doctrine is contrary to the public interest standard of the Communications Act of 1934, and its constitutional justification. When one uses the people's spectrum for profit, more than ordinary conduct is imposed. The First Amendment does not allow the risks that those clamoring for the demise of the Fairness Doctrine offer. The risks of imbalance and constitutional diversity urges, if not compels a sane policy that doesn't dance around the obvious: the destruction of diversity. See, FCC finds 1st fairness violation since Fowler, Broadcasting, Oct. 29, 1984, at 24 (Attachment #8).

REPLY 16. FORMER FCC CHAIRMAN RICHARD E. WILEY ON 1ST AMENDMENT: HAS FCC DISTORTED WILEY'S VIEWS?

Commentors and the FCC have based this Inquiry on a separate statement by former FCC Chairman Richard E. Wiley urging the FCC to "look more favorably on the idea of reforming the Fairness Doctrine..." Paragraph 6, Notice of Inquiry. It is submitted that Richard E. Wiley was a supporter of the Fairness Doctrine, and that the reference to Wiley's statement does not accurately reflect his views. Commenting on the Fairness Doctrine on January 8, 1975, Chairman Wiley said, "[T]he Commission's recent Fairness Doctrine report placed considerable emphasis on the licensee's affirmative obligation to devote a reasonable proportion of his broadcast time to coverage of controversial issues of public importance. As to the 'balance' to be expected of such coverage, we sought to confirm our role to establishing 'general guidelines concerning minimum standards of fairness,' reserving to the licensee 'wide journalistic discretion' renewable by the Government only in terms of the broadcaster's reasonableness and good faith." See, Wiley, "FCC Chairman [Wiley] on 1st amendment," Variety, Jan. 8, 1975. (Attachment 2). The current FCC has not represented the views of Chairman Wiley in an accurate or balanced manner.



REPLY 17. THE HARVARD LAW REVIEW AND THE FAIRNESS DOCTRINE.

The FCC and commentators urging repeal of the Fairness Doctrine are reminded to review, Note, Regulation of Program Content by the FCC, 77 Harvard Law Review 701, 708-712 (1977). These pages may assist the colorblind regulator to appreciate the absurdity of the present Notice of Inquiry and why the National Bar Association and the National Association For the Advancement of Colored People object to this Inquiry.

REPLY 18. A LACK OF BLACK FACES AS NETWORK ANCHORS: AN ANCIL-LARY PROBLEM OF THE FAIRNESS DOCTRINE.

The Fairness Doctrine as a principle is not detached from related claims of racism in the broadcast industry. See e.g., Citizens Communications Center v. FCC, 447 F.2d 1201, 1210 (D.C. Cir. 1971). The industry remains committed to exclusion of Black voices both as policy makers and as on-air personalities. Hence, no new technologies will remedy such discrimination and it is our hope that these comments will be brought before the full Commission and the courts as a basis to preserve the Fairness Doctrine (See Von Hoffman, A Lack of Black Faces as Network Anchors, Washington Post, Nov. 10, 1976. Attachment 3). See also, Employment In Cable TV, National Black Media Coalition Bull., October 1984, Attachment 6, relating to the dearth of Blacks in the Cable Television industry; Davis, The Black Executive In The Broadcast Industry Experience for the 80's, 12 Nat'l Bar Assn. J. 59 (1983).

REPLY 19. SHOULD THE FAIRNESS DOCTRINE BE REPEALED - SO SHOULD THE SHIELD OF MALICE UNDER DEFAMATION CLAIMS.

Some commentators argue that a broadcaster is like a newspaper. No sane American can accept such an assertion. However, if the FCC moves to ultimately abrogate the Fairness Doctrine, it is submitted that broadcasters should be liable for defamation as private citizens without proof of malice, or proof of intent. See K. Lane, New Technology v. 1st Amendment, Nat'l Law J., 11-1-82 (Attachment 4)

REPLY 20. TWO SCHOOLS OF THOUGHT: THE FIRST AMENDMENT -- BLACK AMERICA SIDES WITH THE FAIRNESS DOCTRINE.

There are two schools of thought relevant to the Fairness Doctrine. One school of thought is that the First Amendment bars the FCC's review of citizen complaints arising from broadcasters's failure to satisfy the Fairness Doctrine. The other view is that the First Amendment compels broadcasters to adhere to the Fairness Doctrine. Let this record reflect that the National Bar Association and the National Association For the Advancement of Colored People reject the primitive position that FCC has authority to abrogate the Fairness Doctrine. The third branch of government, if ever called upon to affirm the abrogation of the Fairness Doctrine, must yield to what is real -- minorities and poor whites need the Fairness Doctrine; they have very little use for new technologies without diversity. See West Michigan Broadcasting Company v. FCC, 735 F.2d 601, 603 n.5 (D.C. Cir. 1984). See also, REPLY 22, infra.

REPLY 21. THE FAIRNESS DOCTRINE IN THE MIDST OF DECLINING AFFAIRS PROGRAMMING.

See Attachment 5, James Brown, Los Angeles Times, May 3, 1981, at 8. The FCC and commentators bent on eliminating the Fairness Doctrine are compelled to assess whether the deregulation posture of the FCC makes news and public affairs such myth as to compel continued regulatory scrutiny of the broadcast industry on the question of fairness. See Citizens Communications Center v. FCC, 447 F.2d 1201, 1214, n. 38 (D.C. Cir. 1971).

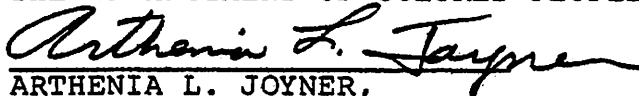
REPLY 22. THE DEARTH OF MINORITY OWNERSHIP AND THE REFUSAL OF THE FCC TO CREATE REGULATORY INCENTIVES IN EXISTING AND PROPOSED NEW TECHNOLOGY SERVICES IS EVIDENCE THAT THE SCARCITY DOCTRINE IS ALIVE AND WELL.

Access to the electromagnetic spectrum by Blacks in the new technology services is as difficult as it was in 1934 when the Federal Communications Commission was created. As to Blacks and minorities, the scarcity doctrine remains alive and a viable argument for assessment against the repudiation of the Fairness Doctrine. The FCC has hardened its position on allowing minorities and women greater access to the spectrum. This hardening in the new technological services supports the scarcity claim. See

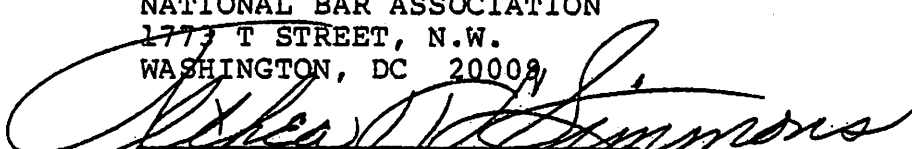
e.g., Statement by the Honorable Mickey Leland of Texas, "Ownership of Telecommunications Properties By Minorities." Cong. Rec. E4543 (October 12, 1984) (Attachment 7). But see, Garrett v. FCC, 513 F.2d 1057 (D.C. Cir. 1975).

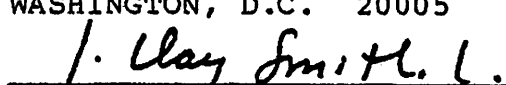
Respectfully submitted  
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November 7<sup>th</sup>, 1984

Timothy E. Wirth

Washington Post, 10-25-81, C7, col. 2

## Freedom and the Fairness Doctrine

The Federal Communications Commission has voted to recommend elimination of the Fairness Doctrine and equal-time provisions. FCC Chairman Mark Fowler, writing in *The Post* (op-ed, Sept. 20), said the commission wants to "extend the full rights of the First Amendment to the electronic media." He argued that Section 315 of the Communications Act is "censorship," "shackles the country's most pervasive medium with government oversight" and raises a "frightening specter . . . antithetical to our most precious freedom: speech itself."

That is an overblown characterization of a policy that the Supreme Court has consistently upheld as serving the First Amendment right of the public to have the fullest access to a diversity of information and ideas.

The First Amendment was first for a reason. The framers of the Constitution, with memories of political persecution still fresh in their minds, institutionalized the rights of the press to publish what it wished, and for people to speak out about whatever they wished, free from government interference. Underlying that right was the principle that democracy required robust public debate, that citizens should, in order to make informed

political judgments, be able to read and hear as many conflicting ideas as possible.

We must look carefully at the arguments being used to support the abolition of Section 315, for they are based neither on true First Amendment values nor on any understanding of today's broadcasting realities.

The first argument is constitutional: that Section 315 is an infringement on freedom of press and speech. The Supreme Court has clearly held such regulation constitutional, balancing the public's right to hear conflicting views, and broadcasters' editorial discretion.

The other argument advanced by Fowler is that Section 315 was designed to compensate for a scarcity of broadcast outlets, but that with the advent of new technologies such as cable television, direct broadcast satellite and low-power television—scarcity no longer exists.

Many of my colleagues and I have fought for years to allow these new competing technologies to flower. The prospect of this great multiplicity of communications services is exciting—but for most Americans it is still only a prospect. An exhaustive report now being issued by the House subcommittee on telecommunica-

tions empirically documents this. Direct broadcast satellites and low-power television, for example, are not yet available at all.

And most citizens do not yet even have access to cable television. Detroit, for example, is not yet wired for cable, nor are St. Louis, Denver, nor three-fourths of New York City. Nor, as we well know, is Washington.

We are approaching a time when spectrum scarcity will no longer limit the number of channels of available video information, and thus, the availability of diversity, on this most pervasive of all media. When the public has access to a full range of opinion from a full range of competing video channels then, and only then, will the scarcity rationale no longer be valid.

In the House, we are now exploring how we can assure the public a true abundance of competing information sources, and how we can promote and encourage First Amendment values through the new technologies. When the public has those assurances, then we can safely eliminate Section 315.

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*Rep. Wirth (D-Colo.) is chairman of a subcommittee on telecommunications*

# FC Chairman On 1st Amendment

By RICHARD E. WILEY  
(Chairman, Federal Communications Commission)

Washington.

In the past few months the Federal Communications Commission has, among other actions, published a new report on the Fairness Doctrine and Public Interest Standards; issued a notice of inquiry following court remand of revisions in the Prime Time Access Rule; adopted a Children's Television Report and Policy Statement; and undertaken, at the request of Congress, a new study of its authority and responsibility in the area of alleged television violence and obscenity.

Each one of these issues, taken alone, justifiably raises the question of appropriate limits on governmental intervention in the programming judgments of broadcast licensees. When all four are taken together, as they have been recently, the importance and timeliness of the First Amendment considerations involved become even more apparent — and I appreciate the invitation from *Variety* to comment on them.

Section 303 of the Communications Act speaks affirmatively of the Commission's authority — as the "public interest" may require — to "prescribe the nature of service" by each broadcast station, for example, or to "make such regulations not inconsistent with law as it may deem necessary to ... carry out the provisions of this Act."

At the same time, Section 326 admonishes negatively that "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," nor may any FCC regulation "interfere with the right of free speech" in radio communication.

## Commission On 'Tightrope'

The difficulty in striking a proper balance between such positives and negatives was acknowledged by the U.S. Court of Appeals for the D.C. Circuit in *Banzhaf v. FCC* (1968), later affirmed by the Supreme Court:

*"In applying the public interest standard to programming, the Commission walks a tightrope between saying*

*too much and saying too little. In most cases it has resolved this dilemma by imposing only general affirmative duties ... The licensee has broad discretion in giving specific content to these duties."*

Thus, the Commission's recent Fairness Doctrine report placed considerable emphasis on the licensee's affirmative obligation to devote a reasonable proportion of his broadcast time to the coverage of controversial issues of public importance. As to the "balance" to be expected of such coverage, we sought to confine our role to establishing "general guidelines concerning minimum standards of fairness," reserving to the licensee "wide journalistic discretion" reviewable by the Government only in terms of the broadcaster's reasonableness and good faith.

## 'Exposure On Merits'

With respect to the Commission's current reconsideration of its Prime Time Access Rule, we have operated from a premise stated as early as 1963, when the FCC was examining the practice known as "option time" and a station's right to reject network programs:

*"(W)e believe that programming in television should be left to free operation of the forces of competition, with programs from all sources obtaining exposure on their merits."*

To the extent that the Commission perceived actual or potential network dominance to be suppressing competition, it found in the first Prime Time Access Rule — and apparently continues to feel — that the public interest is best served by some restriction on network programming. The restraint involved continues to be minimal, its practical effects limited to seven half-hours of primetime per week, and does not operate to preclude specific programs or kinds of programs. Moreover, we intend — and it is fervently to be hoped — that by exempting certain kinds of network programming from the primetime restrictions, we will

reduce the frequency with which the Commission must consider requests for waiver of the rule.

## FCC Obligation On Kidvid

The Commission's role with respect to children's television, as I see it, involves another essentially affirmative obligation. Our 1960 programming policy statement listed programs for children among "the major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located as developed by the industry ..." Nearly a decade later the Supreme Court in the *Red Lion* case reaffirmed its view of a quarter-century earlier that the FCC does not transgress the First Amendment by "interesting itself in general program format and the kinds of programs broadcast by licensees." This provides the legal support for our conclusion in the Children's Television Report that "the broadcaster's public service obligation includes a responsibility to provide diversified programming designed to meet the varied needs and interests of the child audience."

At first glance, any FCC role with respect to allegedly violent and/or obscene broadcast programming would appear to be basically negative — even when it involves the nurture and protection of young children. The Commission, for example, is charged with civil enforcement of a section of the U.S. Criminal Code, which prohibits the utterance of radio communication of "any obscene, indecent or profane language."

↙

**The Chairman's Crede**

I personally believe that radio and television must continue to be permitted to engage in sensitive, controversial programming, programming which may prove to be offensive to some people under some circumstances. This, perhaps, is a price we must pay if broadcasting is to fulfill its true promise in terms of educating and informing our citizens on issues of public importance. At the same time, however, we must remember that the broadcast medium comes directly into the homes of America — homes in which young, impressionable minds may be listening and watching. For this reason I am hopeful that sensitive, controversial programming can be performed — but with taste, discretion and decency, and with whatever particular protections, such as warnings and later-hours scheduling, as may be feasible and appropriate for children and other viewers.

The point I would leave you with harkens back to the quotation from the Banzhaf case — that in these areas where programming judgment is involved, the Commission truly has been conscious of the First Amendment, public-interest tight-rope upon which it seeks to maintain equilibrium. I recognize the sensitivity of the press to this same problem, and am pleased to congratulate *Variety* on its 69-year membership in our valued "Fourth Estate."

# A Lack of Black Faces as Network Anchors

A Commentary

By Nicholas von Hoffman

The murmuring about NBC black network news stars, or the absence of them, has begun again. Not that the other two networks are overloaded with black anchor people, but for some reason the National Biscuit network gets blamed more than the others. That may be because only NBC bothers to reply to complaints about the matter, such as the one made by Ken Dean, the president of NBC's Jackson, Miss., affiliate, WLBT-TV. Richard Wald, president of NBC News, was quoted by Broadcast magazine as saying Dean's criticism about the lack of black faces covering the Democratic National Convention last summer was "unfortunately part right."

Last spring John Chancellor, in an interview with Philip Nobile of More magazine, talked about these questions, and what he had to say is painful for an old pal of his to have to repeat.

**Nobile:** There must be one black reporter talented enough to be featured on network news. Yet there isn't. (Black persons do occasionally hold microphones on the Chancellor-Brinkley Hour of Power, usually Carole Simpson, who is typecast doing welfare stories and pieces about cuddly animals at the National Zoo.)

**Chancellor:** Believe me, it is not for want of looking. We are scouring the country. Women file suit against us. The National Broadcasting Company is a profit-making enterprise concerned with its image. And they have not been able to solve this problem.

**Nobile:** For a network that spent a half-million on a logo, it's incredible that you cannot discover a single black correspondent. (Nobile is numerically wrong but poetically right.)

**Chancellor:** If we'd taken the logo money and used it for a minority talent office, I'm not sure that we could have found them because I'm not certain they exist. On a network level, they are extremely hard to locate. What NBC refuses to do, unlike local stations around the country, is put some poor unqualified black on the air and then say privately that so-and-so is terrible but we've got to have him or her on.

Let's not humiliate the creature and put "a poor unqualified black" on the air. Lord, lordy, no! No, but what we will do instead is make Miss Teenage America an anchor person. You don't even have to know how to read without moving your lips because you're reading out loud. Index fingers are verboten, though.

Not long ago, Variety, the show-biz magazine that probably covers TV news better than any other publication, carried an item that said a New York judge had dismissed a libel suit against a television news program on the grounds that everybody knows television news is entertainment, that it is not intended to be a representation of fact and so it couldn't libel anyone any more than Robert Louis Stevenson or any other inherently un-

believable teller of tall tales. If television news is primarily entertainment, a conclusion disputed only by people in television news, why can't the dear old Biscuit Company find a few black stars? Baseball, football, the movies, TV sit-coms, every other branch of the entertainment industry has been able to discover a plenitude of black stars.

Chancellor is a dear man, personally, and an excellent journalist, professionally, but his considerable talents aren't tested in his present position. TV newscasting doesn't require the skills we ordinarily associate with journalism—an ability to write well, quickly and concisely, a capacity to organize complicated and technical subjects rapidly and lucidly so that people not familiar with them can understand, a knowledge of history, philosophy, etc., etc. Last summer on coast-to-coast TV, Jimmy Carter's mother had to explain who Tom Watson, a major figure in southern and national history, was to Walter Cronkite.

There are well-read, studious and skilled people in TV journalism but they don't use those qualities in the performance of their work. If ABC can take John Lindsay or David Hart-

man and turn them into newsmen, if NBC can call Tom Snyder a journalist, then it is palpably ridiculous to speculate that similar black talent doesn't exist. If NBC can make a star out of a white woman with a speech impediment, it can call up central casting and find a glamorous person of the black or Mexican persuasion to share the NBC news update slot with Tom Snyder. Can't find a person qualified to do that? What about looking in the typing pool?

The work isn't that hard. Mostly what you need for it is presentable looks and the gift of gab. He or she who can wave his or her mouth around so as to extrude a seamless flow of dimmed-out, conventional vacuities should do admirably. There are some well-educated anchor people, but it's not a job qualification. You don't need to know very much or have the kind of information that is the basis for good judgment because other people do that for you. A few anchor people do some writing for their shows, but for the most part the script is written and assembled by others. The anchor person is to the news gathering, collating, editing and disseminating chain as the display screen is to the computer.

In view of the fact that news anchor people are of such large symbolic importance in our society—vide the fuss over the arrival of La Walters at the pinnacle of evening news—it's important that each network have one who's black. The ultimate in tokenism. True, but the difference between faithless gestures and symbolic promises is too fine to make. The Biscuit Company, and the rest of them—including noncommercial TV, which is the worst of the four networks in this regard—should get on the case fast.

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# New Technology v. 1st Amendment

**D. MATHLEEN LANE**  
Special to The National Law Journal

**F**OR THE first 100 years following the passage of the First Amendment, the courts had a fairly easy time applying the law to the facts. The only medium was print and few arguments could be made against its full protection under the law. However, the second 100 years have not been so simple; the advent of radio and television, and, more recently, the explosion of new media in the last 10 years have raised more questions than the courts have been able to answer. The legal practitioner who is struggling to keep abreast of fast-breaking technological developments in the industry is amazed when he stops to contemplate such questions as: how hard can soft pornography be on cable?; who is liable and what is the standard for defamation and libel?; and who is responsible for protecting the individual and collective privacy and security of a population whose personal information is stored in the databases of telecommunications companies?

The central issue that must be decided before all other questions are answered is whether the new electronic delivery systems should be treated like print media entitled to the fullest protection under the First Amendment; or, because of their unique characteristics, or scarcity, fall under the special rules that have been developed to regulate the broadcast media of radio and television.

Cable television has been available as an alternative delivery system for television broadcast signals since the 1940s, but it did not come into its own until the 1970s, when cable system operators began to transmit satellite-delivered programming like Home Box Office to their subscribers. The success of HBO's movie service spawned a host of services like Showtime, Spotlight and The Movie Channel, as well as a league of other programming services ranging from ESPN (a sports network) to CBS Cable (a cultural network that recently announced its demise). The growing availability of all these programming services caused a clamor for the expansion of cable systems from 12-channel signal delivery to 24, 36 and even 100-channel capacity.

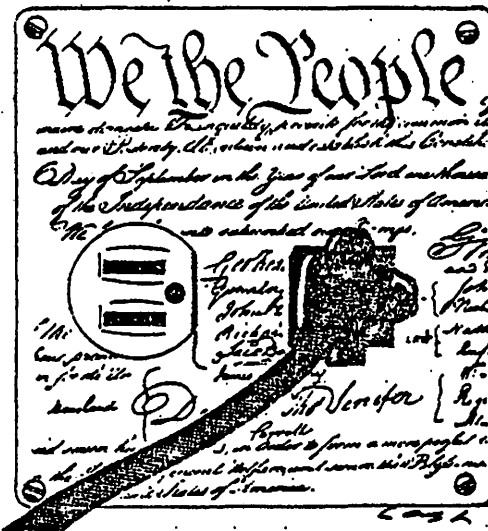
In turn, the cost of building and upgrading these systems has led cable operators to seek new ways to recover their investment in expanded channel capacity. This need has spawned the offering of multi-pay channels in addition to basic cable and an interest in the so-called "enhanced services" such as home security, teleshopping, telebanking and videotex. These latter services are either delivered via two-way interactive cable, which provides communication both downstream to the home and upstream to the cable system headend, or via one-way cable with the home telephone lines serving as the subscribers' return communications path.

This proliferation of programming, information and interactive services via the new media has created a persuasive argument that the new delivery systems are of such an abundant and diverse nature that the broadcast characterizations of scarcity and pervasiveness are inapplicable. Hence the content controls applied to the broadcast media to promote access and diversity are unnecessary; and instead would impede progress, innovation and competition. Although some content regulation is necessary to protect the rights of citizens in the news, the subscriber who transacts business electronically, and the fairness of our democratic process, the principles that will guide the new law should be drawn from the area of media regulation with its attendant degree of First Amendment protection.

the new electronic delivery systems are ac-

corded regulatory treatment similar to that of the traditional print media, what are the implications for content control of obscene or libelous material, content liability for fraudulent or erroneous transactions and content protection of personal information stored in on-line databases?

**I**N THE AREA of content control, the First Amendment lays out the parameters within which the various media may be regulated. Viewed on a continuum from most regulated to least regulated are over-the-air broadcasters on one end and print media on the other. Cablecasters and electronic publishers lie somewhere in between. Broadcasters are subject to strict national regulation of their editorial content by



reason of FCC regulations such as the Fairness Doctrine and the Equal Time Rule. They are liable on the state and local level for defamation and obscenity.

The print publisher also is liable for defamation, according to standards set up by the U.S. Supreme Court. However, if the material concerns news or information, and is printed about a public figure, it is constitutionally protected unless the plaintiff can meet the heavy burden of proving that the publisher made the defamatory statement with "actual knowledge of falsity or reckless disregard for the truth." Cablecasting and electronic publishing that carries news and information should clearly fall under this rule. However, what controls and protections should be applied to non-news and information programming such as entertainment and "commercial speech" that includes advertising on cable and electronic classifieds?

The U.S. Supreme Court has not yet decided to what degree "commercial speech" should enjoy First Amendment protection. However, whatever standards are ultimately applied to print media in this regard should be extended to cover these new media areas as well. And the entertainment programming, because of its abundance and diversity, as well as the elective nature of its receipt on a subscription-only basis, should be treated like its nearest traditional counterparts — printed material and theatrical motion pictures — subject to content control on a local level, according to prevailing community standards.

A more difficult issue with the new media is deciding where to affix liability in the transmission chain. A cable system operator serves as both a retransmission service for broadcast television signals as well as a source of original transmissions. If material in either case is obscene or defamatory, who is responsible? A reasonable solution here would be to apply the print standards

publication is a "primary publisher" and can be sued for defamation or held liable for obscenity. In the case of the print media, both the writer/reporter as well as the publisher are sued. Also, any party who "repeats" the statement is a republisher and is liable — for example, a defamatory article in one newspaper is picked up by another, and the second is liable.

However, "secondary publishers" — such as newspaper vendors, delivery services, etc. — who merely move the newspaper from one point to another, cannot be held liable unless the plaintiff can prove that they had actual knowledge of the defamatory nature of the material, an almost impossible burden to carry.

It is into this latter category, that of "secondary publisher," that the cable operator should be placed when the material in question is contained in a signal retransmission. It is also the category most appropriate for the electronic publisher when he merely takes material from others for storage and retransmission and identifies its source. This secondary-publisher protection is essential to maintain the inherent value in electronic publishing — the almost instantaneous flow of current information from database to user. If the electronic publisher had to stop and review or verify on-line information before transmission, the service would be no swifter than that of the traditional print media.

If, however, the electronic publisher exercises control over the content of the database through editing or otherwise, he can be held liable for it. This liability structure is similar to the one applied against common carriers such as the telephone company, which is only liable for its own errors.

**I**N the case of teleshopping and telebanking, the biggest issue is who is liable for unauthorized or disputed funds transfers and purchases. The law currently holds the customer fully liable for electronic funds transfers only if the financial institution can prove the transaction was "authorized." The banks can do so by producing computer evidence that the customer's identity was electronically checked. If the transfer was not authorized the customer is only liable if the system double-checked his identity and an access device was used that the customer had previously accepted. Even if the bank can prove that it used all of the available safeguards, the law still limits the customer's liability if he reports loss of the access device or the unauthorized transfer within a given time period. These laws were written to cover automated teller machines and it is expected that they will be modified to recognize electronic verification and the other realities of banking at home.

Teleshopping appears to be governed by an FTC rule intended to cover mail-order sales. It is also expected to fall under various state regulations. The provider of this service must come to grips with such regulations as warranty disclosures, credit disclosures, cooling-off rules and UCC contract provisions. He must then adapt them from the medium of a printed catalogue to an electronic page. Must the warranty be "printed" on each page where every electronic line is precious and limited? Or may it appear only when a customer begins to order a product?

And what about electronic signal transmission errors? One erroneous "bit" of information and your paycheck gets credited to your neighbor's account. The general rule is still that the service provider bears the risk of his error. But who is the service provider in the case of a cable system operator who leases a channel on his system to a financial institution to provide banking service at home? The common carrier liability would seem to rest with the cable operator who should ask the financial institution for an indemnification agreement against customers' claims.

And, who bears the responsibility for the security and privacy of personal data on subscribers and customers of these services? Currently there is no answer to this question, but, as in the case of the other issues raised above, industry trade groups and their lawyers are making noises about self-regulation and responsibility and are

The author would like to acknowledge assistance in preparing this article from Floyd Abrams and Dean Eingel of New York's Cahill Gordon & Reindel and the printed remarks of Benjamin E. Civiletti of Baltimore's Venable Baetjer & Howard and Richard Neustadt of Kirkland & Ellis' Washington, D.C., office. Ms. Lane is in New York.

RADIO BRIEFS

## NEWS, PUBLIC AFFAIRS SHOWS DECLINE

By JAMES BROWN,  
*Times Staff Writer*

In the Department of Suspicions Confirmed, the Radio Television News Directors Assn. has released a survey showing that the deregulation of radio has prompted some stations to cut back on their news and public affairs programming.

The survey found the January, 1981, deregulation decision of the FCC—by which radio stations no longer were required to air a specific amount of news and public affairs programs—resulted in 8% of the nation's radio stations cutting back on public affairs programming. The figure is bound to give fuel to public interest groups whose original opposition to deregulation was that a significant number of stations would do precisely that.

Samuel A. Simon, executive director of the Telecommunications and Research Action Center, told the Associated Press that he "finds it incredible that nearly 10% of the stations admitted cutting back on public affairs. I think it shows a significant negative impact because it most assuredly understates the true total. The stations have a natural incentive to say they haven't changed anything because they want to preserve deregulation."

The RTNDA survey, conducted last summer by Dr. Vernon Stone, director of Southern Illinois University's journalism school, was based on responses from 335 commercial radio stations located in different size markets around the country.

"The overwhelming majority of stations reported no changes," Stone said. "However, we did receive responses along the lines of 'fewer useless public affairs programs,' 'no padding of public affairs material' and 'cleaning out the Sunday ghetto.'"

In Stone's view, while the figures are significant, they

represent a comparatively small percentage when weighed against the original fears of what deregulation might bring.

"The groups opposing radio deregulation had predicted a much higher proportion of broadcasters abandoning news and public affairs," he said. "This is a rather small percentage compared to what many expected."

MILITARY BENEFITS FOR DIVORCED SPOUSES OF SERVICE PERSONNEL

	Current law <sup>1</sup>	Defense Authorization Act of 1983 <sup>2</sup>	Future law <sup>3</sup>
Applied to those divorced	After Jan. 31, 1983	Anytime	Before April 1, 1985
Commissary and Exchange Military medical care and CHICKENS	Yes	Yes	No
Levels of coverage	Lifetime	Lifetime after Jan. 1, 1985	Lifetime after Jan. 1, 1985
Loss of benefits on remarriage or second employer	Yes	Yes	Yes
Health coverage	This law was prospective only	We made program retroactive	We picked up spouses already divorced with 15-20 years' coverage
			We addressed future divorced spouses with 15 to 20 years' coverage
			We address future divorced spouses with less than 15 years' coverage and reverse a statutory coverage opportunity.

<sup>1</sup> Qualifications: 20 years service in military, 20 years of marriage, 20 years overlap of military service and marriage.  
<sup>2</sup> Qualifications: 20 years service in military, 20 years of marriage, 15 years overlap of military service and marriage.  
<sup>3</sup> Qualification: Any time period.

**OWNERSHIP OF TELECOMMUNICATION PROPERTIES BY MINORITIES**

**HON. MICKEY LELAND**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 11, 1984

● Mr. LELAND. Mr. Speaker, I wish to address my colleagues on a most important subject.

Despite decades of discussion and support for increasing minority participation in the telecommunications industry, little has been accomplished with regard to ownership of telecommunications properties by minorities. Presently, minorities, in the aggregate, own less than 2 percent of all broadcast properties and less than 1 percent of all cable systems in the United States. The situation outside the broadcast and cable industries is even more abysmal.

The Commission must intensify its efforts to promote minority participation in the increasingly vital telecommunications industry. Specifically, it is critical that these efforts be broadened to include promoting minority participation in the ownership and operation of common carrier and other emerging new technologies. The Commission must work to guarantee that the ownership patterns which have taken root in the broadcast industry are not transplanted to nonbroadcast telecommunications.

There can be no doubt but that cellular mobile communications is one of the most exciting and most promising new telecommunications technologies. Eventually, the entire Nation will be served by an interconnected network of mobile telephone facilities. To a great extent the foundation of our Nation's telephone communications system for the next century is being built through cellular licensing deliberations at the Commission. These deliberations will determine just who will participate in that future telephone industry and who will not.

The Commission should develop a procedure, in both the context of a lottery and that of a comparative hearing, whereby minorities are en-

couraged to apply for cellular franchises. This can only be accomplished if some advantage is attached to applications which involve significant minority participation. Such preferences would work to advance both the level of minority ownership and the quality of service offered in the communities served by minority business persons.

A preference for minority applicants for cellular licenses is not without precedent and is consistent with the principle that minority participation in all industries and all markets is in the public interest. For more than 20 years Congress and the executive branch have recognized this principle. Congress has authorized and encouraged many agencies to assist efforts to increase minority business ownership and participation. Loan programs in the Small Business Administration, construction funding from the Department of Housing and Urban Development, procurement guidelines in the Department of Defense, and training and apprenticeship policies of the Department of Labor all are founded on the principle that increasing minority business ownership and participation is in the public interest. ●

**"LEST WE FORGET"—THE TRAGIC EVENTS OF OCTOBER 23, 1983**

**HON. THOMAS R. CARPER**

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 11, 1984

● Mr. CARPER. Mr. Speaker, Tuesday, October 23, 1984, marks the first anniversary of the tragic massacre at the Marine barracks in Beirut, Lebanon. Like another tragic day, it is a date which will live on in infamy.

Thomas J. Little, one of my constituents in Delaware, is a former marine and the father of a young marine who served in Beirut in 1983 and who survived that ordeal. Mr. Little has resolved that the awful occurrences of that day will be remembered and that those brave men who sacrificed their lives will be revered.

Toward that end, Mr. Little has organized a memorial service entitled "Lest We Forget" for those marines and sailors who died. This service will

take place in Wilmington, DE. Speaking at the event will be clergymen representing all denominations. The Marine Corps Color Guard and Rifle Guard will perform.

I would like to join Mr. Little in urging all Americans to remember the terrible events of October 23, 1983. And I ask all Americans to pause on that day and reflect on the meaning of the sacrifices of the men who fell, the men who were wounded, and their families who sacrificed so much.

In addition, as my colleagues leave for their home districts, I would like to urge them to share with their constituents Mr. Little plans for a day of remembrance so that other cities, towns, churches, and schools will follow Wilmington's lead in memorializing the marines and sailors who died in Beirut 1 year ago.

To: Senator William V. Roth, Jr., Senator Joseph R. Biden, Congressman Thomas R. Carper.

From: Thomas L. Little.

Re: "Lest We Forget", Finalized Agenda.

DEAR BILL, JOE AND TOM: The agenda for "Lest We Forget", is as follows:

October 23, 1983: 7 p.m.: Assemble.

7:30 p.m.: United States Marine Corps Color Guard, Call to the Colors; Pledge of Allegiance; Introduction, Thomas L. Little; and Peace on Earth, Sue Pine.

Homilies: (a) Rabbi Leonard B. Gewirtz, Adas Kodesch Shel Emeth Congregation; (b) Rev. Thomas Hanley, Department of Social Concerns, Catholic Diocese of Wilmington; (c) Pastor Robert Helms, Peninsula-McCabe United Methodist Church; and (d) Wes Reutter, layman representing all denominations.

8:15 p.m.: United States Marine Corps Rifle Salute to all fallen comrades; taps for all fallen comrades; light one candle; hymn, "Let There Be Peace On Earth"; Wes Reutter; and close and goodnight, Thomas L. Little.

I request you use your good office: submit this letter as an immediate release through your press secretary and use all your powers of persuasion to have it included in the Congressional Record and publicized as much as possible so that:

"Every village, town, city and other institutional setting, including churches, synagogues, and other places of worship, universities, schools, et al., may follow the same pattern and example in a local setting. In this manner, we will give the lives of the marines and sailors who died some meaning, some real, honest meaning—for their death may now contribute to world peace."

## FCC finds first fairness violation since Fowler

It says WTVH(TV) Syracuse has 20 days to develop plan on nuclear power plant issue; commission also adopts new rules on FM-TV channel 6 interference

The FCC appeared to be breaking fresh ground last week.

At its open meeting, the FCC voted 3-1 (with Commissioner James Quello concurring, Commissioner Mimi Dawson dissenting and Commissioner Dennis Patrick leaning toward dissent but reserving judgment to consider one additional piece of evidence) to find that the Meredith Corp.'s WTVH(TV) Syracuse, N.Y., had been in violation of the fairness doctrine. Perhaps most surprising: FCC Chairman Mark Fowler, a Republican who has long voiced opposition to the doctrine as a violation of broadcasters' First Amendment rights, served as the swing vote (with Democrats James Quello and Henry Rivera) to rule against the station and in favor of a group that advocates nuclear disarmament.

According to an FCC official, this is the first time the Fowler administration has found a licensee to be in violation of the doctrine.

At issue were a series of editorial advertisements the station ran for the Energy Association of New York, a trade association for utilities, from July 7 to Sept. 7, 1982. The ads advocated the continued construction of the Nine Mile II nuclear plant in upstate New York. The Syracuse Peace Council alleged the ads presented only one side of the nuclear plant's being a "sound investment" in New York's future and had asked the station to "correct the programming imbalance." The station didn't, and the group complained to the FCC last November. In its defense, the station contended that the ads were really about eliminating the dependency on foreign oil and the need for electricity. The station also contended that controversial issues of public importance weren't at issue.

But the FCC majority said the station was being "unreasonable" and gave KTVH 20 days to advise the commission on how it plans to meet its fairness doctrine obligations.

According to Linda Figueroa, the attorney for the Mass Media Bureau who presented the item, the station had run 182 minutes of ads for the utility lobby during the period in question, but had only provided 22 minutes of coverage to contrasting views.

An FCC source said the one thing that turned this case in Peace Council's favor was that it had actually provided evidence of a public debate on the "controversial issue" it asserted. That evidence apparently consisted of six newspaper articles, evidence of consumer complaints filed with the New York State Consumer Protection Board and a statement by a New York public service

commissioner who charged the ads were misleading because it was questionable whether the plant was a sound investment.

None of the commissioners appeared to relish the prospect of finding against the station. Rivera may have said it best for the majority. He compared the commission's rationales for its regular denials of fairness complaints over the past few years to a shell game, with the commission regularly moving the pea around, again and again contending that complainants hadn't been able to put their fingers on the right shell. This time, the complainants had done their homework and designed a "clever" complaint, however. "I think they found the pea," Rivera said.

Andrew Schwartzman, the Peace Council's attorney and executive director of the Media Access Project, said that over the past few years, the FCC has thrown up some "incredible obstacles" to fairness complaints. This one, he said, was really just a "straightforward application" of the doctrine. He speculated that Fowler's vote may have been motivated by "a comprehension that this is what the law requires; he clearly wasn't happy about it."

OCTOBER 1984

# EMPLOYMENT IN CABLE TV

Employment opportunities in the cable industry range from franchising and construction of a cable company to cable system operation including marketing and advertising. As a growing field, it presents the unique advantage of allowing its employees to get in "on the ground floor" and grow with the industry.

The term "opportunity" is synonymous with professional, technical, and or management oriented positions. The new frontier, is quickly patterning its employment practices after the broadcast industry at large. Statistics provide a bleak and misleading picture for both blacks and other minorities in the cable industry. According to the 1983 television employment statistics published by the Federal Communications Commission, the cable industry is indeed growing. Annual Employment reports submitted to the FCC by 2081 cable units (employing five or more full-time employees) reveal a 13.3 increase in employment during 1983. Of these new employees 45.2% were women and 14.9% were minority group members.

On the surface these figures appear to offer some support for the "rosy opportunities premise," however statistics that are carefully scrutinized often distort reality.

Blacks form the largest of the four minority groups cited in the cable employment statistics. Overall black employment in cable reflects little or no growth, needless to say the statistics for other minorities are just as dismal. During a 1983 basic analysis of the figures reveals a total of 21,379 male cable workers to 2073 black female cable workers. Of these 1574 of the black female workers held office/managerial positions. Meanwhile black males comprised 2,959 of the total cable workforce as opposed to a total male workforce of 38,074. Faring somewhat better than their female counterparts, black male cable employment was concentrated in technical positions (910) and Operative positions (726).

In general, blacks comprise a small percentage of the "vision-making" process for the cable industry — this is particularly to employment in officer, professional,

and management positions. This situation is consistent with the media as an industry. However, the glaring difference stems from the fact that cable is a new industry. For example, professionals and salesworkers in cable are treading new territory, the skills are the same but there are few "seasoned" veterans of cable. This generation will shape the complexion of the cable industry. Unfortunately without intervention, the cable industry management, like its older media cousins will not reflect the diverse public it serves.

Citing statistics for black males and females only the figures drop more drastically.

Job Category	Black Females	Black Males
<b>Officials total 1983</b>	130	156
% of total 1983	1.5	1.8
% of total 1982	1.2	1.8
% of total 1981	1.0	1.6
% of total 1980	0.7	1.3
<b>Professionals total 1983</b>	63	64
% of total 1983	3.4	3.4
% of total 1982	2.4	3.6
% of total 1981	1.2	3.9
% of total 1980	1.1	2.0
<b>Technicians total 1983</b>	92	910
% of total 1983	0.7	7.0
% of total 1982	0.5	6.8
% of total 1981	0.3	5.8
% of total 1980	0.2	5.7
<b>Sales Workers total 1983</b>	164	509
% of total 1983	2.7	8.3
% of total 1982	2.1	5.2
% of total 1981	2.2	3.5
% of total 1980	2.2	5.4
<b>Office/Clerical total 1983</b>	1574	227
% of total 1983	9.4	1.3
% of total 1982	8.1	1.1
% of total 1981	7.4	0.9
% of total 1980	5.7	0.4
<b>Craftsmen total 1983</b>	6	298
% of total 1983	0.1	6.9
% of total 1982	0.5	8.8
% of total 1981	0.1	9.9
% of total 1980	0.1	6.7
<b>Operatives total 1983</b>	33	726
% of total 1983	0.4	9.2
% of total 1982	0.3	8.0
% of total 1981	0.2	7.5
% of total 1980	0.1	6.9
<b>Laborers total 1983</b>	7	43
% of total 1983	1.1	7.5
% of total 1982	0.7	7.5
% of total 1981	0.3	6.1
% of total 1980	0.4	5.7
<b>Service total 1983</b>	4	20
% of total 1983	1.3	6.3
% of total 1982	1.5	6.4
% of total 1981	2.2	7.3
% of total 1980	0.5	4.5
<b>Total for all jobs 1983</b>	2073	2959
% of total 1983	3.5	5.0
% of total 1982	2.9	4.7
% of total 1981	2.4	4.3
% of total 1980	1.9	3.5

## TOTAL CABLE UNIT EMPLOYEES

	No. of full-time employees		% of Employees	
	1982	1983	1982	1983
Male	29,150	32,646	55.6	54.3
Female	15,316	17,708	29.2	29.9
Male	5,097	5,428	3.7	9.1
Female	2,905	3,611	5.5	6.1

Employees classified in the upper four job categories — Officer & Manager, Professionals, and Technicians.

	No. of full-time employees		% of employees	
	1982	1983	1982	1983
Total	18,726	20,981	72.7	71.2
Female	3,721	4,643	14.5	14.8
Male	2,774	3,002	10.7	10.4
Female	540	762	2.1	2.6

Minority figure includes Blacks; Asian-Pacific Islander; American Indian/Alaskan; and Hispanics.

All statistics quoted from the 1983 cable television employment statistics published by the Federal Communications Commission