

SPEECH BY
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It wasn't very long ago that I could have appropriately addressed this fine gathering as "Fellow Broadcasters" and we could have shared many common problems and, possibly, some solutions. But, my broadcasting days are over and I must now view those problems from a different perspective. Cast in this quasi-judicial role of an FCC Commissioner, I see many of the same problems I saw as a responsible broadcaster. . . and I hope and believe that my 30 years of coping with the practicalities of broadcasting -- an insider's understanding, if you will -- will aid in solving them to the benefit of the public and broadcasters alike.

Along with some understanding of broadcasting, I also bring considerable humility to the job -- with much to be humble about. You may recall that I have the dubious distinction of surviving the longest confirmation hearing on record -- longer than Vice President Ford or Secretary of State Kissinger. But, of course, they were trying for relatively placid, non-controversial jobs. I might add that my record is in no danger from new FCC appointees since we now have a "full house" with the addition of Commissioners Washburn and Robinson and the recon-

firmation of Commissioner Lee. Commissioner Lee had some opposition in getting renominated . . . but his confirmation hearing may have been one of the shortest on record. He stopped by my office when he returned from the Hill to announce, rather smugly, but good naturedly, that his appearance lasted about four minutes. I said, "Well, I'm glad for you, but not really" remembering that I spent 8 grueling days fending off attackers. I must say, however, that the full hearing was conducted in a fair objective manner by Chairman John Pastore and I was given ample opportunity to state my own case before the membership of the Communications Subcommittee. The hearing was beneficial for me in the sense that I became aware of concerns and aspirations of those opposing me and many of those concerns and aspirations will be weighed in my consideration of the complex and far-reaching issues which regularly come before us.

A good friend of mine, Congressman John Dingell of Michigan, asked me, when I expressed an interest in the Commission. . . "Why do you want the damned job -- Congress will beat you up and the courts will overrule you." There seems to be a certain amount of logic in what he said. But, after a long and satisfying career as a broadcaster, I felt I might have something to contribute.

The principal, over-riding objection to my nomination and confirmation was the massive hostility of various coalitions and consumer activist groups to having a broadcaster on the Commission. (They mentioned an FPC

precedent). The opposition came from people I had never met and who were not familiar with my public service record or my work on previous government commissions. The opposition was based mostly on surmise and suspicion because I was a broadcaster. Now, consumer activists represent a sizable constituency whose views merit careful consideration. I respect and value many of their views -- I believe many of their proposals have served as catalysts and have benefited the public. However, their views should not be the sole factors in determining public interest. There are many other consumer viewpoints and public groups, many in disagreement with consumer activists, that must also be considered in determining total public interest. There is considerable disagreement among many intelligent individuals and organizations of sincere intentions and worthy purposes as to what does constitute public interest in any given issue.

Naturally, I can't agree with groups strongly advocating that this industry and other major industries be subjected to daily regulatory and judicial decisions exclusively by appointees without firsthand knowledge of the industry or of business -- or a full understanding of the practical impact of their decisions and actions. (I favor a new, socially conscious, free enterprise system over bureaucratic control.)

I'm grateful for my broadcast experiences. At least, I can understand about 65% of the agenda without a prolonged orientation period. Even

with some experience, the deliberations and decisions are awesome. You realize that 50 % of the interested parties in heavily-contested FCC issues are going to object to your decisions either way -- all you can do is study issues, objectively evaluate all evidence and try to arrive at recommendations or decisions that best serve total public interest.

You know, as you get older, three things begin to happen. One is that you begin to lose your memory. . . and I don't remember the other two. You do have the luxury of a great deal of hindsight and, if you work it right, you can make it appear to be foresight to the generations coming along behind. And, you might just be able to advance some principles and philosophies that need advancing. I'm under no illusions that I can singlehandedly turn this agency around, nor in most cases do I want to. But, I'm delighted to have a role in forging the policies for regulating this vitally important field of communications at a time when many exciting things are happening.

The Commission has recently revised and, hopefully, simplified the Fairness Doctrine. There were many proposals presented to the Commission. Some proposed weekly access time to insure discussion of controversial issues; some proposed fairness opportunities to counter deceptive or unfair advertising (that never should be accepted by any media in the first place)---many other proposals, some with logical reasoning, have been made. I admit I can't understand the logic of more

and more regulation and controls to guarantee freedom. I admit to some ambivalence regarding a doctrine which causes a government agency to interfere in any way with rights guaranteed by the First Amendment. The First Amendment was written, after all, to protect us from government intrusion into our inherent rights to freedom of speech and religion and those rights must be protected. Philosophically, I believe broadcast journalists are entitled to the same freedom as journalists in other media, and that they have demonstrated over the years their ability to act independently and responsibly.

The Federal Communications Commission is charged, however, by statute, with the responsibility of maintaining a climate of fairness in the use of broadcast facilities and that responsibility must be met. The courts have held, of course, that this is affirmation of our First Amendment rights and the Commission seems to have been given considerable latitude in interpreting and enforcing the "fairness" concept. However, my position is that we should promote freedom of speech in the same affirmative sense the courts appear to have suggested rather than to erect a structure of rules and regulations so onerous to public and broadcaster alike that they have the effect of limiting, rather than promoting, this precious freedom.

I believe that the Fairness Doctrine as recently re-evaluated by the Commission does accomplish the protection which Congress mandated

in the Act (Section 315(a)) and, yet, does not impose a heavy regulatory burden on anyone concerned. Broadcasters who are concerned about First Amendment protection should have no trouble living with this new interpretation of the Doctrine even though they may share my philosophical view -- and the public will continue to have assurance that a variety of viewpoints will be presented on each significant issue of public importance.

Having said that, I will admit that I lived comfortably as a broadcaster with the Fairness Doctrine and an "open door" policy. I would not favor abolishment of the Doctrine as much as it offends my journalistic sensitivities. Because of the dominant impact of TV, there must be reasonable balances and counter-balances to protect against undue influence of (1) government or (2) private interests or even public interest activist groups with their own private version of public interest.

All broadcasters have a curiosity or at times an anxiety about the Commission and its processes and rules. As a relatively new Commissioner, I don't propose to speak definitively about all the issues that must be decided in the coming months. And I certainly don't propose to explain the complex inner working or legal procedures of the Commission itself -- since I'm now working and trying to understand those processes myself.

However, one observation -- perhaps a reassuring one from a former broadcaster -- If you tend, like some of us did, to regard the FCC Broadcast Bureau as an over-zealous, regulation-happy, antagonist, let me put your minds at rest. I have been impressed by the even-handedness of the Bureau

in administering the laws and rules it is charged with upholding. Far from being the gimlet-eyed policeman conjured up in the minds of many broadcasters, the Bureau works from a thoroughgoing understanding of broadcasting and a comprehension of the problems broadcasters face. It understands the basic fact that, in order to serve the public interest, convenience and necessity, you must also provide the wherewithal to pay your salaries, maintain your facilities and provide incentive for investment.

The Bureau must do its job, however, in a regulatory climate -- resulting from a popular mandate -- through the Congress -- that regulation of the broadcasting industry is necessary. In some cases, the statutes tell us -- in other cases, the Commission's established rules and precedents offer guidance -- and, in others, we must rely on common-sense determinations of how the public interest should best be served.

In your application for a license to operate, or a renewal of that license, you must inform the Commission how you intend to serve the public interest through certain categories described as "news", "public affairs", and "others". These promises by the broadcaster are considered by the Commission before a license is granted. The Broadcast Bureau has tended to review the record of performance against the broadcaster's promise with a great deal of understanding -- carefully considering changing circumstances which could lead to failure by a given broadcaster to perform up to the minimum level promised in his renewal application.

The Commission has recently noted, however, that the rate of failure to meet -- or in some cases even approach -- these minimums, has become rather high. As a result, the Bureau has been instructed to inform those stations which have failed to meet those minimum standards (which you must remember have been established by the stations themselves) -- that the Commission expects compliance -- or at least a timely explanation of non-compliance. The obvious message to broadcasters is -- "Don't let your zeal for public service at renewal time exceed your ability or desire to perform after the renewal has been granted." Ultimately, of course, this posture serves not only the public interest but your own self-interest as well.

The practice of license challenges and "petitions to deny" continue to plague many broadcasters at renewal time and, as a former broadcaster, I believe I have a pretty fair understanding of both the practices and the burdens they place on many good operators. While there is some pending legislation which might offer some relief from capricious petitions, broadcasters simply must face the fact that the licenses under which they operate are considered public property and subject to review by the Commission at prescribed intervals. While you may agree or disagree with the aforementioned concept, I see no indications that radical changes are on the way. (The five-year renewal, if passed, will result in even closer scrutiny at license renewal time.)

This whole matter of "ascertainment of community needs and interests" is under continuing scrutiny since it goes to the heart of the licensee's responsibility to serve his community. There is certainly room for argument that the Commission's current rules governing ascertainment might not be the best approach. There have been arguments advanced that the Primer merely promotes "paper" compliance and imposes an unnecessary burden upon broadcast licensees. To the extent this is true, the Primer must be changed or even eliminated, to make way for another approach. However, I think it's safe to say that the old approach wherein it was assumed that a licensee was aware of and responsive to the needs and interests of his community simply because he lived there is gone forever. Some broadcasters are unquestionably well attuned to the needs and interests of the many elements of their communities and, with or without the Primer, they will be responsive to those needs and interests. Others may be so concerned with just the economic aspects of broadcasting that they overlook some of their responsibilities. Still others may just not be aware of some of the problems affecting groups in their communities unless and until those groups come pounding on the door. I think we can all agree that broadcasters must be aware of the concerns of the public they serve; we may not agree upon the methods required to gain that awareness. I take the position that the mechanics of ascertainment are secondary to the results and I would urge you who are directly concerned to come forward with

your recommendations in this area. I would advise, however, that arguments hinging solely upon the "burden" placed on the licensee by ascertainment are not likely to be persuasive.

Before closing, I should mention one more item of concern in your dealings with the Broadcast Bureau and, ultimately, with the Commission. Your representations must be scrutinized carefully before being submitted as factual to the Bureau. While your representations are assumed to be factual on their face, you should know that nothing sets off the alarm bells faster in the Bureau than indications that a licensee has attempted to pull the wool over their eyes. When you have made mistakes in failing to meet program or technical standards, you'll find that prompt, voluntary notification to the Bureau and a sincere effort to correct the problem will serve your best interests in the long run.

I've attempted to point out a few things that have become clearer to me since I joined the Commission than they were when I was a broadcaster in the hope that they might be helpful to you.

We have vital upcoming deliberations on multiple-ownership and cross-ownership, license renewal, children's television, TV violence, copyright, pay cable, minority employment and ownership and many others. Outside the broadcast and cable area, there are matters pending that will decide the future course of the nation's telephone system and the "regulated monopoly" concept. The continuing demand for frequencies for business radio

must be addressed. There are exciting new things ahead in the area of Emergency Medical Services which will depend to a great extent upon innovative use of radio communications.

Getting back to broadcasting, I'm glad to see the NAB Code Board seriously addressing this problem of commercial practices on children's television. And, there are indications that the "Independents" will similarly address the problem. I realize that it's sometimes painful to impose self-restraints which go directly to the revenue of your station, but there seems to be considerable public demand for restraint in this area. The arguments range from no commercials at all to whatever the traffic will bear and I doubt that there's a magic number. But, it's good to see the industry responding, through its own processes, rather than forcing a solution through regulation or legislation.

In closing I would like to remind each of you that my door is open at the Commission. Now I don't mean to imply that I don't have a busy schedule -- but if you have a problem that is substantial but not in the "ex parte" stage, I will make every effort to be helpful. I don't guarantee anything more than a sympathetic ear and a receptive mind -- but, you never know -- I might be of some help. In any case, my basic message is that I am here to serve you to the best of my ability.

If nothing else, you can tell me your problem and cry a little -- then I'll tell you some of my problems, and we'll both cry a lot.