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Network Television and Public Interest

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Network Television and the Public Interest

A Preliminary Inquiry

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Introduction

Michael Botein

Ever since the latest flurry of activity concerning the television networks began at the Federal Communications Commission (FCC) in 1976,¹ my colleagues at the Communications Media Center and I had been thinking about presenting a conference to discuss some of the issues. We should not have been as surprised as we were to find out that some friends at the Edison Electric Institute—the national trade association of electric utilities—had many of the same concerns about network television as did media-reform groups. As an official of the institute later wrote about its attempts to place issue advertising on network television, “we found ourselves somewhere between that croquet game in *Alice in Wonderland*, where the wickets got up and moved around, and the most frustrating trial in *Kafka*.”²

New York Law School and the institute thus jointly sponsored a conference at the law school, “Network Television and the Public Interest: A Preliminary Inquiry,” on 19-20 October 1978. (Even the timing appeared to be propitious; on 19 October 1978 the FCC issued a new and expanded document in its Network Inquiry.³) We called on the expertise of five principal speakers and sixteen panelists to discuss the legal, economic, and operational aspects of network television. The results (edited to reflect subsequent developments and augmented by a chapter by David M. Rice, associate director of the Communications Media Center) appear in this volume.

Some interest groups’ concerns about network television are fairly specific—for example, inadequate children’s programming. But the narrow nature of many of these concerns led us to ask another question—that is, why people were so interested in network television in the first place. As is common with complex regulatory issues, no one answer emerges; rather, a variety of factors seems relevant.

Concern about network television is hardly new and may even be somewhat cyclical in nature. For example, the FCC’s 1941 Chain Broadcasting Rules were prompted largely by a popular perception that CBS and NBC controlled most of a comparatively small number of radio stations through affiliation agreements.⁴ Each generation thus seems to have its own distinct set of problems and motivations.

There appear to be at least three moving forces behind today’s call for close scrutiny of the television networks. First, U.S. society increasingly distrusts private concentrations of economic power. One manifestation of this attitude has resulted in amendment of the antitrust laws to impose stricter penalties and in the Justice Department’s inclination to seek criminal prosecutions. The three commercial networks conveniently fit the traditional image in the United States of economic villains. Their profits are

generally high,⁵ and they openly assert first amendment and other rights to be free from government supervision.⁶

Second, citizens' groups have become increasingly aware of and concerned about the power of the electronic media. Indeed, the number of media-reform organizations has grown dramatically during the last decade.⁷ To a large extent this change in attitudes is probably a result of the role that the electronic media—particularly network television—played in bringing the Vietnam War into the living rooms of the United States. A recent study of audience attitudes thus found that most viewers were content with television programming, but that an increasingly large number favored close government scrutiny of the media.⁸ Once again, network television is the most visible medium and thus perhaps the most convenient target.

Third, many observers today seem to believe that television has a quasi-mystical power to grab—and thus manipulate—a viewer's attention. To a certain extent, this is just a regurgitation of the teachings of now-discarded gurus like Marshall McLuhan.⁹ More recent history, however, has witnessed institutions ranging from the American Civil Liberties Union¹⁰ to the Supreme Court of the United States¹¹ talking about the "impact" or "power" of television. If the television mystique actually exists, its primary beneficiary naturally would be the networks, which reach more people than any other electronic medium.¹²

This new level of consciousness about the media leads different groups to focus on different problems that concern them. These issues cover a wide variety of economic, social, and legal areas.

In terms of economics, there appear to be three basic problems: advertisers' inability to buy time on network programs; the price of advertising time; and the impact of the networks' dominant positions in the advertising market on competing media. (Parts I, II, and III discuss the economic and business policies of the networks.) Groups as dissimilar as the Mobil Oil Company and the Democratic National Committee perceive unfairness in the networks' refusal to accept editorial advertisements on controversial issues.¹³ They feel that it is somewhat anomalous for the networks to sell them time to advertise their products but to deny them time to air issue-oriented messages. Second, many advertisers believe that the price of network advertising time is unduly high, because of the oligopolistic structure of network television and the limited amount of advertising time; indeed, the Justice Department's antitrust suit against the National Association of Broadcasters' Television Code claims that restrictions on the amount of advertising time have driven up the price of commercials.¹⁴ Third, independent program producers and owners of independent stations or other media argue that the networks have used their large audience shares and political resources to prevent the development of new programming and distribution systems. For example, the cable-television industry has claimed

for a decade that the networks are largely responsible for regulatory restrictions on its growth.¹⁵

Network television also has been held responsible for many of the nation's social ills. Some of these complaints clearly relate to program content—for example, too much violence in children's programming and too little news coverage of minority groups.¹⁶ Just as the business community wants more commercial minutes at lower prices, citizens' groups want the ability to place their messages on network television. Part V discusses the regulatory and constitutional aspects of this situation.

Finally, the federal government has its own vested interest in regulation of network television, as parts I and IV explain. On the congressional level, the networks have a substantial impact on the political fortunes of all representatives and senators through coverage of them and their campaigns. On an equally immediate level, hundreds of employees of the FCC and other federal agencies make their livings from regulating the networks—regardless of the policy directions in which the regulatory winds blow at any given time. For this subgovernment, regulation of the networks is not only a way of life but also a justification of their very existence.

The networks have aroused intense public interest and scrutiny for more than two generations. On the one hand, the networks have no inclination to relinquish their large shares of the viewing audience. On the other hand, many inherent pressures are pushing the regulatory regime in precisely this direction. This book thus attempts to examine economic, operational, and regulatory developments in network television.

Notes

1. See S. Robb, *infra* at 83-86.
2. Young, *Network Television and the Public Interest*, 79/2 *Electric Perspectives* 2, 3 (1979).
3. Further Notice of Inquiry, Docket No. 21049, 69 F.C.C.2d 1524 (1978).
4. See S. Robb, *infra* at 76-77.
5. See A. Pearce, *infra* at 12-14.
6. See R. Jencks, *infra* at 51-52.
7. See Schneyer, *An Overview of Public Interest Law Activity in the Communications Field*, 1977 *Wis. L. Rev.* 619.
8. The Roper Organization, Inc., *Public Perceptions of Television and Other Mass Media: A Twenty-Year Review 1959-1978* (1979).
9. E.g., M. McLuhan & Q. Fiore, *The Medium is the Massage* (1967).
10. American Civil Liberties Union, Policy No. 19 (March 5, 1978).
11. FCC v. Pacifica Foundation, 438 U.S. 726 (1978). See also O. Chase, *infra* at 140.

12. See S. Robb, *infra* at 73.
13. See R. Jencks, *infra* at 50-52.
14. United States v. National Ass'n of Broadcasters, Civ. No. 79-1549 (D. D.C., complaint filed June 14, 1979).
15. See P. Gross, *infra* at 176-177.
16. See A. Schwartzman, *infra* at 64-65.