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Cases and Materials on Federal Regulation of the Electronic Media

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CASES AND MATERIALS

ON

FEDERAL REGULATION OF THE ELECTRONIC MEDIA

by

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PREFACE

Regulation of the electronic media has some definite first amendment overtones. Nevertheless, the actual process of regulation operates on a far more detailed -- and perhaps even nit-picking -- level than the process of constitutional adjudication. This is not, of course, to say that broad constitutional and policy considerations are irrelevant to regulation; indeed, as these materials indicate, the two usually go hand in hand. At the same time, however, the game often is played -- and either won or lost -- on the comparatively dull and low-visibility administrative level. For example, it indeed is pleasant to contemplate methods of restructuring the television industry in order to make it more responsive to the needs and interests of viewers. Any kind of massive change, however, is highly unlikely for the next generation. Accordingly, the real advocate of the public interest -- or of any other interest for that matter -- often must work on a fairly unexciting case by case basis.

Reaching a full understanding of the whole area of communications regulation is either a pipe dream or the work of a lifetime. Perhaps the best as well as most realistic goal for the novice therefore is to attain a starting point for future problem-solving. These materials thus do not attempt to teach all -- or even most -- of the fine points in practice. Instead, they are designed solely to touch lightly on most of the major regulatory issues of the day.

The materials thus begin by considering the general powers and responsibilities of the FCC and related federal agencies. One real caveat is in order here: it always is much easier to attack than to defend the Commission. To be sure, the Commission is not the model administrative agency. Nevertheless, its staff is not composed of boobs, incompetents, and drunks. The Commission tries to regulate by its best lights -- which may or may not coincide with other peoples' views.

The discussion then moves on to perhaps the Commission's most important and time-consuming task, that is, regulation of radio and television stations. As might be expected, the Commission and the courts have evolved a whole set of very complex and often confusing rules governing both direct and indirect regulation of the broadcast media. Though it would take years to learn these in any kind of real detail, at least a summary overview is in order.

Finally, the materials take a quick look at regulation of common carriers and cable television. The portion of common carriers really is inadequate, for the simple reason that only about five people in the country really understand common carrier regulation; nevertheless, this is perhaps the most important part of communications policy,

since it has a very real and tangible impact on day-to-day private lives and business affairs. On the other hand, cable television has been touted recently as the last best hope for a responsive national communications policy; in fact, cable does not appear likely to fulfill these aspirations and thus is treated rather lightly.

Although this represents a second "edition" of these materials, they obviously are far from being perfect. Indeed, the yearly change in them guarantees a certain amount of flux, which is not likely to cease in the immediate future. Nevertheless, these materials hopefully are more comprehensive than anything else which is currently available, and their continual testing in the laboratory of the classroom can only help to improve them.

INC.

DOCKET NO. 19813
File No. BPH-7946

INDIANA BROADCASTING, INC.
Bloomington, Indiana

DOCKET NO. 19814
File No. BPH-8030

INDIANAPOLIS MEDIA CORPORATION
Indianapolis, Indiana

DOCKET NO. 19815
File No. BPH-8032

See Description Page 12

MEMORANDUM OPINION AND ORDER

Adopted June 3, 1974 ; Released June 4, 1974

By the Review Board:

This proceeding involves the mutually exclusive applications of Indianapolis Broadcasting Co., Inc., Indiana Communications, Inc. (ICI), and Indianapolis Media Corporation (IMC), for authorization to construct a new television station on Channel 24.4A in Bloomington, Indiana. These applications were referred for consolidated hearing on a standard form under FCC Order 80-227. In this case, the standard form was filed on June 1, 1974, and the hearing was held on June 3, 1974.

I. AN OVERVIEW OF FEDERAL REGULATION OF THE ELECTRONIC MEDIA

A. STRUCTURE OF THE COMMISSION

With almost two thousand employees and several hundred sub-divisions, the FCC is obviously a rather complex organization -- although it does not even begin to approach the almost Byzantine convolutions of even more massive agencies like HEW. In theory, the organization of the Commission is comparatively simple, as the excerpt below indicates.

Federal Communications Commission, 38th Annual Report Fiscal Year 1972 (1973).

How the FCC Operates

The Chairman and the Commissioners

The Commission functions through a chain of command headed by the Commissioners with specific operating responsibilities delegated through 11 offices and bureaus.

The Commissioners operate as a unit, supervising all activities. They hold regular weekly agenda meetings, executive sessions, and special meetings to act on Commission matters. Commission action may also be taken between meetings by "circulation"—a procedure in which a document is submitted to each of the Commissioners individually for consideration.

The Chairman presides at all meetings of the Commission. He coordinates and organizes its work and represents it in legislative matters and in communications with other Government departments and agencies. If the Chairman is absent or the office is vacant, the Commission designates one of its members to act temporarily as chairman.

The Executive Director

The Executive Director coordinates activities of all staff units. He is directly responsible for internal administrative matters including personnel, budget planning, and implementation of the Public Information Act of 1966. He also provides general direction for the Secretary and the Public Information Officer (see below). The Executive Director reports directly to the Commission and works under the supervision of the Chairman, assisting him in carrying out the Commission's organizational and administrative functions.

The Chief Engineer and the General Counsel

The Chief Engineer and the General Counsel advise the Commission on engineering or legal matters involved in establishing policy and implementing it. The two

act in regulatory areas that exceed the responsibility of a single bureau. They also act in international communications matters. The General Counsel coordinates preparation of the Commission's legislative program and represents the Commission in the courts.

The Operating Bureaus

Five bureaus conduct the principal operations of the Commission.

The Broadcast Bureau regulates broadcast stations and related facilities.

The Cable Television Bureau administers and enforces cable TV rules, gathering information and advising the Commission on cable matters generally. The Bureau also licenses private microwave radio facilities used to relay TV and other signals to the cable system.

The Common Carrier Bureau regulates wire and radio communications common carriers.

The Safety and Special Radio Services Bureau regulates all other radio stations, except experimental stations, including amateur stations and others engaged in communication for safety, commercial, or personal purposes.

Each of these bureaus is responsible for developing and implementing a regulatory program, processing applications for radio licenses or other filings, considering complaints, conducting investigations, and taking part in Commission hearing proceedings, as well as for other duties in its area of responsibility.

The Field Engineering Bureau detects violations of radio regulations, monitors radio transmissions, inspects stations, investigates complaints of radio frequency interference, and issues violation notices. The Bureau maintains field offices and monitoring stations throughout the United States. It examines and licenses radio operators, processes applications for painting, lighting, and placement of antenna towers, and furnishes direction-finding aid for ships and aircraft in distress.

Hearings and Review

The Office of Administrative Law Judges, the Review Board, and the Office of Opinions and Review are responsible for decisions in hearing cases. The Administrative Law Judges preside over hearing cases and issue Initial Decisions. Most Initial Decisions are subject to review by the five-member Review Board, a permanent body composed of senior Commission employees. Initial Decisions may also be reviewed by one or more Commissioners designated by the Commission. In such cases, the Board or Commissioner issues a final decision, subject to Commission review. In other cases, the Initial Decision is reviewed directly by the Commission. The Office of Opinions and Review assists and advises the Commission in the review of Initial Decisions and in drafting final decisions.

The Secretary

The Secretary signs the majority of the Commission's correspondence, orders, permits, licenses, and other instruments of authorization, and is custodian of the Commission's seal. He receives papers mailed to the Commission and filed with it. He is responsible for the preparation and custody of permanent records of Commission ac-

tions, and for official dockets of hearing and rulemaking proceedings, insuring their accuracy, authenticity, and completeness. He maintains the legislative history of Commission Rules, and comprehensive library and dockets reference facilities. He is responsible for publication of documents in the *Federal Register* and *FCC Reports*, and for printing of Commission Rules and Regulations.

The Public Information Officer

The Public Information Officer is the contact point for the press, industry, and public, and is responsible for distributing information on Commission actions. He issues daily news releases and public notices on Commission activities, prepares the *Annual Report* and other pamphlets and booklets on Commission functions, provides for mail and in-person information services, and organizes exhibits and displays, among other activities. He also provides a program of internal information services for the Commission.

Administrative Law Judges

Change in Designation

Sections 0.5(a)(9) and 0.5(b)(4) of the Commission's rules were amended and a new Section 0.151 was added to change the title of "Hearing Examiner" to "Administrative Law Judge". "Chief Hearing Examiner" was changed to "Chief Administrative Law Judge". The changes resulted from an action by the Civil Service Commission on August 19, 1972, under a proposed rule making announced in the *Federal Register* July 14, 1972, announcing an amendment to its rules which changed the title of all government "Hearing Examiners" to "Administrative Law Judges".

The Commission thus views itself as a crisply defined and highly efficient organization. In practice, however, this is somewhat less than accurate. Like any organization with more than half a dozen people, the Commission has developed its own uniquely complex set of internal politics and procedures. To some degree, these operate to insure more reasoned and analytical decision-making on the part of the Commission. To an equal or perhaps greater degree, however, they simply bog down its operations. For a distinctly cynical view of the Commission's internal functionings, Commissioner Johnson's parting shot at the Commission is hard to beat.