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Draft Statement on the  
F.C.C. Notice of Proposed Rule Making

(released October 28, 1964  
calling for written comment  
without hearings by  
January 3, 1964)

ALLOCATION OF UHF TELEVISION BROADCASTING CHANNELS

in relation to

GOALS FOR TELEVISION BROADCASTING POLICIES

IN THE PUBLIC INTEREST

This finalized proposal of the F.C.C. for allocating substantially all 2,000 remaining U.S. television broadcasting channels has had little if any public circulation yet requires written comment without hearings by January 3, 1964.

The proposal is a geographical scheme for allocating 1,980 commercial and educational stations to 810 cities, filling the 70 channels in the unused UHF band. All television receivers manufactured after April 30, 1964, are required by law to incorporate UHF tuners.

The stated criteria for allocation are restricted to geographical location, city populations, and technical propagation factors, exclusively. No other operational criteria are described. Nowhere in the proposal is the system and methodology of allocation related to the proposal's own introductory

statement of purpose: "That a basic goal of the Commission is to provide spectrum space for a system of competitive nationwide and local services . . . with the largest possible number of program choices and competing outlets . . ."

The certain effect of this allocation will be to delimit if not extinguish all future power of the Congress and of the citizens over the real shaping and enforcement of broadcasting policies in the public interest. In 1947, a similar premature and faulty rule-making which divided television broadcasting into two bands, followed by a protracted freeze in both bands, created our present inadequate and inequitable "system" which has defied 16 years of corrective efforts.

A broadcasting license is a franchise to operate a communications utility service in a monopoly channel of a public resource - the radio frequency spectrum, which is a public domain in scarcity. These public franchises have evolved into property and trading privileges of private entrepreneurs, exploited to maximize private gains from operations, trafficking, and sale.

Station licenses are untaxed, yet have supplied the essential monopoly basis for building mass communications properties whose current market values exceed \$15 billion. The prices and terms of the sale of station advertising time, individually and in chain and network combinations, are unregulated and substantially beyond the scope of antitrust and fair trade restraints. The monopoly leverage of the stations and networks has been exercised to acquire new and strategic centers of power and earnings throughout the communications arts and industries.

Thirty-five years of U.S. broadcasting history prove that governmental regulation has failed to promote or to protect:

equality of opportunity of access to entrepreneurs, communicators,  
and advertisers

- . . equality of opportunity of expression of minority needs and interests
- . . quality, honesty, and diversity of program content
- . . assurance of free competition throughout the arts and industry as well as among advertisers.

Federal regulation has failed to protect the public from:

- . . horizontal combinations of stations into independent chains, network chains, network affiliate groups, combinations with radio stations and newspapers to create local media monopolies, etc.
- . . vertical combinations in restraint of a free and competitive marketing of information and ideas, including news, editorial, and entertainment gathering and producing services; motion picture, record, and tape producers; performers' and artists' agencies; advertising services, etc.

The dominant broadcasting concentrations are the triopoly of so-called "networks" which are both horizontal and vertical. The networks are unlicensed and unregulated by the F.C.C. except as owners of stations - of which each has acquired the maximum number in the largest metropolitan areas which are indispensable to national advertising and program coverage.

As a consequence, the networks and station chains have acquired unprecedented types and magnitudes of social, economic, and political power over the entirety of U.S. systems of mass communications.

These new combinations have proven to be substantially immune from restraint or regulation in the interests of both the communications freedoms and the maintenance of free, competitive enterprise in the communications arts and industries.

For example, it is currently reported that the three television networks now own or have profit participations in all but 15 of their hundreds of cleared programs. These participations and "co-production" concessions have been coerced from independent producers and advertisers in exchange for time clearances and preferences.

A free, diversified, responsive, and competitive system of mass communications is the sine qua non of a self-governing society. It is the palladium of an enlightened, progressive nation in a world of international competition and cooperation. The printing press and the newspaper were the vanguard of the democratic revolutions. The press, the low-cost duplicating machines, and a utility system of uncensored post offices, carriers, telephones, and cables now gives sinew to the freedoms of speech and the press. But the restricted channel television and radio receiver, the monopoly newspaper, the publication censored by management dependent on advertising revenue, can be the instruments of commercial and governmental totalitarianism and human stultification.

Television, radio, and print are inseparable components of our expanding requirements for diversified mass communications. Our survival and growth as a self-governing society demand the fullest freedom for the circulation of information, ideas, and culture, as well as the fullest opportunity of access for every citizen and proponent of political viewpoints and candidacies.

Clearly, existing legislation and regulatory power has been inadequate to maintain the public interest in the foregoing policy matters, and in other policy considerations that will be later enumerated.

Therefore, we submit that the F.C.C. cannot and must not allocate the remainder of the television broadcasting spectrum until policy lines are laid down by due process of adequate public notice, open hearings, regulatory or legislative drafting, and full debate before enactment. When enacted, such policies will govern the type, location, eligibility, duration, control, and terms of licenses.

We therefore call on the F.C.C. to set a date for public hearings on these inseparably related matters of allocation and public policy. Such hearings should also be held in a central location within the 21 television areas which contain 52% of U.S. households with television receivers.

The F.C.C. should take no further actions in the licensing of TV and radio stations until there has been determination of public policy.

We believe these basic terms of public policy should be enacted by the Congress, and call upon the Congress, as recommended by former F.C.C. Chairman Minow and ex-Senator William Benton, to establish a Joint Committee on Mass Communications Policies, to be assisted by a Citizens Advisory Council to represent all segments of the public as well as the broadcast and publishing arts and industries.

We submit that the following policy considerations, among others, must be answered by the F.C.C. in order to permit the Congress, the communities for which the services are planned, and all citizens to evaluate this and alternative systems of allocating, licensing, and regulating television broadcasting stations:

1. Former F.C.C. Chairman Minow defined the second most important public concern with television broadcasting (second only to the first and successful goal of "lighting up the UHF band") as "how can we open up broadcasting to sources of financial income other than advertising revenues?"

The purposes and functions of a service are formed by those who directly pay for them. The functions and standards of radio and television broadcast programs have too long been controlled and monopolized by the requirements of a tiny ratio of U.S. businesses whose advertising audiences are by-products of mass merchandised programming.

On June 20, 1960, the Board of Directors of the American Civil Liberties Union called for a gradual changeover to an all-UHF 70-channel system, "provided that the channels opened by such re-allocation permit all types of television broadcasting including commercial stations selling time to advertisers, commercial stations receiving payments from viewers electing to pay for specific encoded programs, and stations owned by governmental agencies and non-profit corporations, thus promoting practicable diversity of programming to the public."

The incredibly valuable potentials of television broadcasting for information, voluntary education, and culture demand that facilities for public-payment broadcasting be no less in number and useability than facilities for advertiser-payment broadcasting.

2. How will public payment broadcasting systems be accommodated into the overall allocation and licensing systems?
  - by permitting commercial stations to convert in part or in whole to encoded pay broadcasts, thus depriving the public of all or part of its "free" programs?
  - by creating another band or group of channels exclusively for encoded pay broadcasts?

The British government, after extensive studies by citizens' bodies, has authorized initial pay television operations in five areas, using exclusive channels.

3. What provisions are incorporated in the plan to employ available technology to maximize viewers' program choices such as satellite transmitters, interconnections with cables and community antenna systems, multi-plexing two or more services per channel, utilizing home receivers to record and play-back

- programs and even print newspapers in non-viewing hours?
4. How does the allocation proposal provide competitive systems of new national and regional networks for commercial, educational, and pay services?
  5. Under what licensing and regulatory safeguards can the benefits of live, satellite, cable, film, and tape networking be retained without the evils of monopoly concentration, unfair trade practices, and unregulated pricing of services to the pay viewers?
  6. What is the responsibility of the F.C.C. for coordinating its regulatory processes with other Federal regulatory and judicial agencies concerned with monopoly restraints? Does the F.C.C. possess or exercise a regulatory responsibility over station, chain, and network combinations with print publishing, motion pictures, drama and music, film, tape, and record reproduction, news and entertainment resources, producers, performers, artists, etc.?
  7. What precautions will be made to prevent station licenses from being acquired by, or sold to, newspaper and radio station owners, and solidifying local information monopolies? What provisions are being taken to compel already established metropolitan information monopolies to divest themselves of their station licenses?
  8. How will the F.C.C. prohibit or restrain the formation of multi-media communications monopolies, embracing movie production, magazines and books, business papers, etc.? This week, it was alleged that a network is negotiating to acquire Paramount Pictures (which controls a pay-TV system), and a leading

magazine publishing combine. Another network, which now owns movie producing and exhibiting properties, is reported to be negotiating with the largest diversified U.S. business paper publisher.

9. What provisions will be made to insure access to broadcasting of all viewpoints on public policy, and all major candidates for national and local party and public office?

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The foregoing comments have been chiefly directed to the proposal's failure to deal with the total public interest in broadcasting policies that must underly and govern any plan of channel allocation. The ensuing comments deal only with flaws in the methodology of this particular scheme of allocation.

The principal criteria in this proposal for the allocation of the <sup>1305</sup> ~~1135~~ 5 new commercial stations is a fairly rigid distribution of one or more stations to 810 "target" cities down to 10,000 population. These cities are falsely equated with "television communities" throughout the scheme and its methodology. In fact, as every television broadcaster and advertiser knows, there are only 195 (2 or 3 more or less) unduplicated television viewing areas in the United States which contain every county in the United States. These real, functional "television communities" are structured by useable signal coverage, not by municipal boundaries. The 21 most populous areas contain 51% of all U.S. TV households; the 57 most populous areas contain 76% of all U.S. TV households. No plan of allocation based on 810 incorporated city boundaries can possibly maximize freedom and diversity of choice locally, or throughout the U.S.

Secondly, there is no rationale for the "system" of allocating UHF educational channels, except a possibly misleading deduction that every town with an educational institution of any type was entitled to at least one channel, regardless of the population

of the area served, the educational and cultural originating resources of the area, or the number of students in the area. It has created such absurd situations as allocating only one UHF educational channel to the City of New York with 1,100 major educational and cultural institutions and nearly 2,500,000 enrolled students, on a parity with Bridgeton, Freehold, New Brunswick, and Montclair, New Jersey; New York City is apparently foreclosed out of additional UHF educational outlets by approximately 25 other educational channels within its interference area.

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In summary, our comments on this <sup>PROPOSAL</sup> ~~proposal~~ are that it is

- . . unsound, because it licenses out the remaining two-thirds of all television broadcasting channels without safeguarding provisions in the public interest,
- . . premature, because the rule-making procedures are being conducted with lack of public awareness and without due process of hearings, deliberation, and debate,
- . . of doubtful legality, since the unstated, underlying, but governing considerations of public policy should be enacted by the Congress.