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THE COMMUNICATIONS ACT OF 1978

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 13015

TITLE VI

PUBLIC TELECOMMUNICATIONS

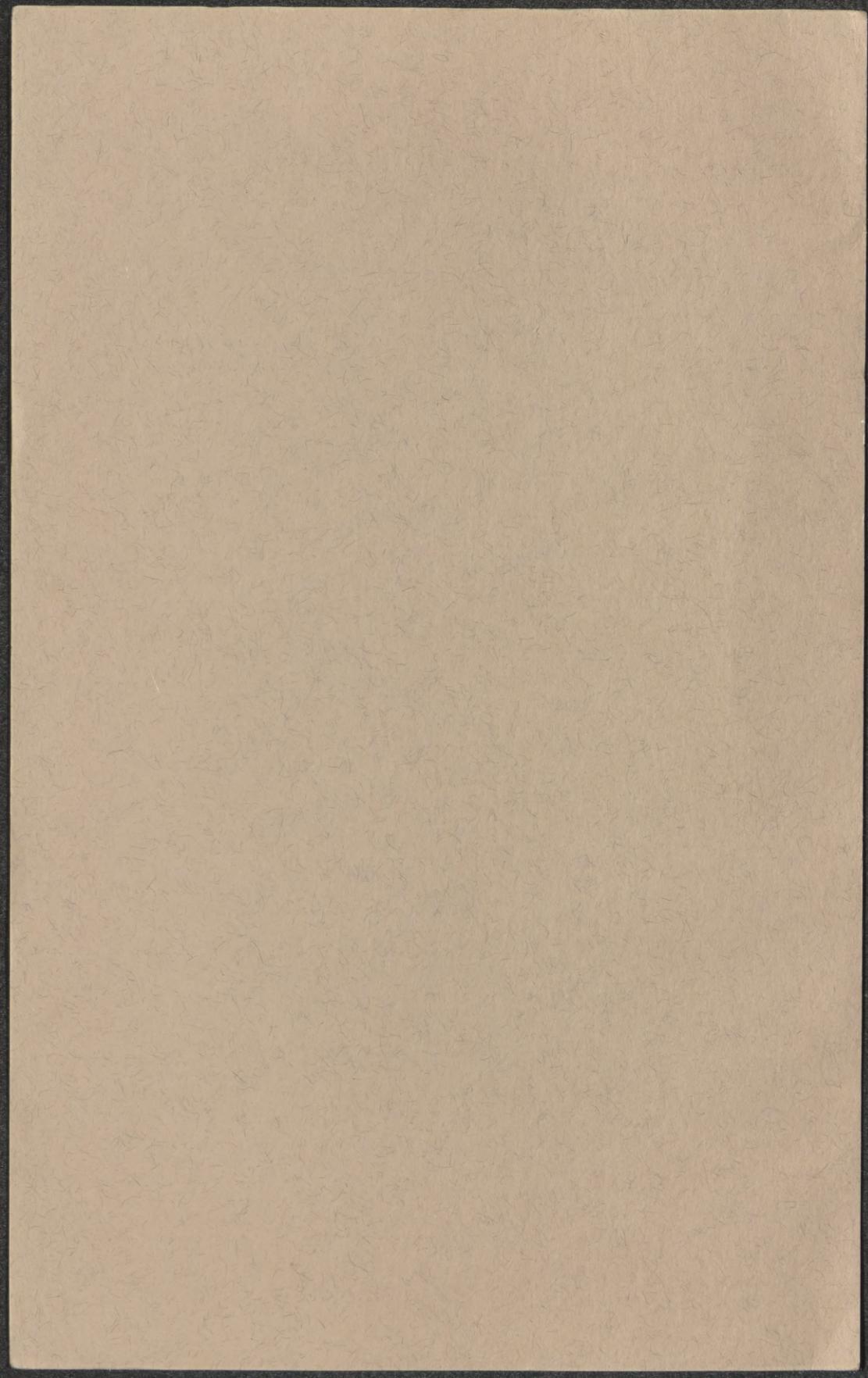
SEPTEMBER 26, 27, AND 28, 1978

Serial No. 95-198

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THE COMMUNICATIONS ACT OF 1978

TUESDAY, SEPTEMBER 26, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Timothy E. Wirth presiding, Hon. Lionel Van Deerlin, chairman.

Mr. WIRTH. Good morning. We start today our final week of hearings. Chairman Van Deerlin is in San Diego this morning.

Since H.R. 13015 was introduced in June, we have had more than 30 days of hearings and heard from over 450 witnesses. As one who has heard a good deal of that testimony I am pleased to report that we have received many helpful suggestions which will make the task of revising the bill significantly easier.

We look forward to receiving the same kind of productive advice from our witnesses on public telecommunications this week.

Before we begin today let me once again run over the basic ground rules.

As mentioned in the invitations to our witnesses we have adopted strict time limits for testimony. Hopefully we can adhere to the allotment of time that each witness has been given. If your prepared statement exceeds the limit I would urge you to summarize and your statement will of course be included in full in the record.

We hope that the witnesses will be able to make their presentations uninterrupted by questions unless there is need for clarification on some particular point.

After the last witness has finished his or her presentation all witnesses will be called back to the table to be questioned as a group. We have tried to adhere to this procedure throughout the rewrite hearings and have found it worked pretty well for both witnesses and the subcommittee.

Our first witness today is Henry Geller, Assistant Secretary of Commerce.

Thank you for being with us, Mr. Geller.

STATEMENT OF HON. HENRY GELLER, ASSISTANT SECRETARY FOR COMMUNICATIONS, NATIONAL TELECOMMUNICATIONS AND IN- FORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. GELLER. Mr. Chairman, on behalf of myself and the National Telecommunications and Information Administration, I am again pleased to participate in your hearings on the Communications Act of 1978.

My testimony today will deal primarily with title VI of the bill: Public Telecommunications. As in previous appearances before your subcommittee, I will confine my remarks to the principles underlying H.R. 13015 rather than the specific mechanisms contained in it.

Having testified in April on the Public Telecommunications Financing Act of 1978, many provisions of which have been incorporated in the rewrite, I request that the subcommittee take into account my testimony at that time in considering this legislation.

At the outset, let me say that my comments today should be regarded only as NTIA's preliminary observations. The executive branch has not yet completed its study and coordination of title VI with all interested agencies so as to be able to take a final position.

We plan to commit more resources to the subject of public telecommunications in the coming months and after the report of the Carnegie Commission on the future of public broadcasting is issued. That study was undertaken as a private initiative by the Carnegie Commission at the request of the Corporation for Public Broadcasting and with the endorsement of the President. It promises to be the most comprehensive study of public broadcasting produced in a decade. As such, we believe the Carnegie report will provide a natural focal point for debate of the future course of public broadcasting in the United States.

You will recall, Mr. Chairman, that it was the first Carnegie Commission report on educational television which led to the enactment of the Public Broadcasting Act of 1967 establishing the Corporation for Public Broadcasting and laying out a course for the development of public television in the United States.

Now, 10 years later, we will soon have the results of another Carnegie Commission reexamination, carried out over the course of a year-and-a-half, at the cost of \$1 million by a distinguished private group headed by William J. McGill, president of Columbia University.

Before making any judgments as to the worthiness or practicality of Carnegie's recommendations, we will have to analyze carefully the commission's work product. In so doing, we will want to evaluate it in light of the proposals contained in H.R. 13015, such other proposals as may be put forward during the course of your hearings and our own studies to be conducted in the coming months.

Finally, Mr. Chairman, you will recall that 1 year ago when the President sent proposals to Congress designed to strengthen public broadcasting and insulate it from political pressures, he made a commitment to revisit public broadcasting after the Carnegie report was issued. I reiterated that commitment during my testimony last April and I do so again today.

Given those considerations and the time, money, and energy which have been spent by Carnegie, we do not think it proper to offer any further proposals until we have had a chance to review fully Carnegie's findings.

My testimony this morning is therefore somewhat confined. I will not be offering broad, affirmative recommendations or new proposals. However, within these limits, I will make some comments which I hope will prove helpful as you redraft H.R. 13015.

First, one of the difficulties we have had in analyzing this title of the bill is the absence of a clear statement of objectives. Even

with the helpful findings set forth in section 611, one can only surmise what the objectives of several of the provisions really are.

While the same might be said of other titles of the bill, the problem here seems particularly acute, perhaps because so many different sets of objectives for public broadcasting can be imagined.

For instance, use of the phrase "public telecommunications" throughout title VI raises the possibility of a system which would be radically different from the public broadcasting system that exists today.

It is easy to imagine a system providing a wide variety of information services along the lines of the British Ceefax and Oracle teletext systems.

Programs produced for the system could be distributed through the use of broadcast and nonbroadcast technologies, including cable and home video systems.

Some programs, in fact, might be produced solely for nonbroadcast distribution to schools, libraries, and other community institutions.

A public telecommunications system could expand in many other directions as well. It is unclear, however, whether H.R. 13015 contemplates such expansion. If it does, then it is unclear how the bill intends resources to be allocated among competing instructional, educational and cultural, and informational activities.

It would be most helpful, therefore, to have more knowledge about the thinking and reasoning underlying this title. If a statement detailing title VI's objective could be issued in conjunction with the reintroduction of the legislation, we believe it would greatly aid in evaluation. History has shown that a broad and unclear congressional charter in this area can lead to serious problems of interpretation in implementation.

Second, broadcast programming is an area where the role of government vis-a-vis communicators is most sensitive, and therefore there are certain principles which I believe must guide our actions in the area of public broadcasting.

In my testimony last April, I spoke at some length about these but let me take a few minutes here to review them.

Of paramount importance is the principle that the public broadcasting system be insulated from Government interference and control in order to guarantee editorial and artistic independence. Lacking such insulation, there is the risk of public broadcast stations becoming Government mouthpieces—something which I know we would all find anathema.

A second guiding principle is that there be strong nongovernmental leadership within public broadcasting. Such independent leadership is necessary for several reasons:

To speak out in the face of improper Government manipulation or interference; to set long-range goals for system growth; and to see that public funds are spent efficiently and economically.

It is difficult to imagine the satellite system coming into being without such strong leadership in the corporation.

A third guiding principle I would suggest to you is that the public broadcasting industry should be open to participation by all citizens.

Minority interests should be well represented at all levels of public broadcasting, and public broadcasting stations should be open and accountable to the public they serve.

Finally, public broadcasting's radio and television services should be available to all citizens in all parts of the country, with priority for new facilities given to those areas of the United States presently unserved by public television or public radio.

As experience has taught us, it is frequently easier to agree upon a set of principles than on how to implement them. I do not underestimate the difficulty in trying to devise a public broadcasting structure that provides both insulation from extraneous interference and accountability for the use of public moneys. Thus, I commend the fact that you have offered a plan which attempts to do this and which contains more than simply proposals for minor remedial changes.

Central to your plan appears to be the premise that the funding of programing should be separated from the funding of station operations, facilities, and interconnection systems, and that so long as the former is insulated from governmental pressure, the latter may and should be left in the Government's hands.

It is this underlying premise which causes me greatest concern. Whatever the merits of separating programing from operations, I believe that it is fundamentally wrong for Government to be directly involved with station operations and systems of interconnection.

In this context, I am also concerned about direct Government administration of a facilities program, for I think that here, too, opportunities exist for the exertion of control over public broadcasting operations.

Thus, I believe that the benefits which might be derived from the creation of a private Public Telecommunications Programing Endowment (PTPE), whose sole function would be to fund non-commercial educational, instructional, and cultural programs, should not be obtained at the cost of giving a Federal agency, the proposed National Telecommunications Agency (NTA), the functions of making operational grants to public broadcast stations and of financing the public radio and television interconnection systems. We strongly oppose the latter.

While H. R. 13015 provides that funds distributed by NTA could not be used by stations to meet direct program costs, it allows the proposed NTA discretion to award operational grants to stations based on administrative cost efficiencies. Since one of the areas of greatest controversy involving administrative expenditures has been program overheads, a Federal agency, if so inclined, could easily apply the pressure of the purse to stations producing or carrying programs that displeased the agency or the incumbent administration. Of course, this would all be done in the name of reducing administrative costs.

I am also wary of vesting a Federal agency with the power to directly administer funds for the construction or lease of interconnection facilities to be used by public television and radio stations. Despite the fact that the bill would prohibit the agency from controlling any such facilities, the power of the purse again brings us much too close to the power of control.

For similar reasons, Mr. Chairman, I think that consideration should also be given to placing the facilities construction program under private auspices.

Furthermore, I believe that the public system itself and not the Federal Government should map and plan for future growth and

development of the system, including the construction of telecommunications facilities. I think that it is perfectly appropriate for the Federal Government to help finance the system. My only concern is that there be adequate insulation between Government and public broadcasting operators.

I'd like to turn now to the concept of the Public Telecommunications Programing Endowment.

As proposed in H.R. 13015, PTPE would be a private nonprofit corporation with a nine-member board chosen by the President with the advice and consent of the Senate. Though smaller in size than the CPB board, the PTPE board would be selected in precisely the same manner as CPB board members are chosen today. And though private in name, PTPE would be quasi-governmental in character, subject to many of the same conditions CPB is today or may soon be subject to under H.R. 12065, the Public Telecommunications Financing Act of 1978.

While the concept of such an endowment is one which is appealing, I fear that it would not fulfill the purposes you intend for it unless it were truly independent. Thus, a major consideration here must be selecting its board in a politically insulated way.

The problem of devising a more politically insulated system for the appointment of members to the board of such an organization is one which now challenges us. It is my hope that the Carnegie Commission will be able to offer some constructive recommendations in this regard. We at NTIA plan to give further scrutiny in the months ahead to this matter, which is so crucial to public broadcasting's future.

Another concern I have about the proposed PTPE pertains to its financing.

As outlined in H.R. 13015, the Public Telecommunications Program Endowment would be financed through direct appropriations of up to \$200 million a year through fiscal year 1983. Thereafter, the endowment would be financed by license fees deposited in the PTPE account of the Telecommunications Fund to be established in the Treasury. That fund would also be used to cover the administrative costs of the proposed Communications Regulatory Commission (CRC) and rural telecommunications and minority ownership loan programs.

As I indicated to you during my testimony on commercial broadcasting, NTIA is currently studying whether and how to infuse economic considerations into spectrum usage. And as I said at that time, we have not yet reached any conclusions. I thus cannot now address the issue of what, if any, funds would be available.

But I do urge that whatever moneys might be collected—whether from spectrum fees or lease charges to radio broadcasters in lieu of their present public trustee obligations—simply go to the general treasury and not be dedicated to specific purposes such as public broadcasting, fostering minority ownership, or rural telecommunications.

Rather, Congress should make separate judgments as to whether and how such social programs should be carried on. Congress, if and only so long as it wishes to do so, could take into account the funds realized through spectrum or lease fees in appropriating sums for the aforementioned activities.

I would like to turn for just a moment to one other aspect of H.R. 13015 regarding the funding if public broadcasting programming.

As drafted, H.R. 13015 would effectively prohibit corporate and foundation underwriting of specific public broadcasting programs or series and might even bar the funding of such programs or series by the National Endowments for the Arts and Humanities and the Department of Health, Education, and Welfare.

At the same time, the bill would require public broadcasters and other program producers to raise significant amounts of money from non-Federal sources or Federal sources other than the PTPE in order to obtain certain matching grants from the endowment.

It seems to me that the approach recommended in H.R. 13015 would make it difficult for producers, particularly producers of radio programs, to even qualify for those programing funds which are made available on a matching basis through the endowment. What I fear might be created is a programming fund which only the largest public broadcasting stations with fund-raising finesse would be able to draw upon.

Finally, I would like to talk for a few moments about the need for strong nongovernmental leadership within public broadcasting.

The recommendation for strong nongovernmental leadership in public broadcasting was the cornerstone of the first Carnegie Commission's plan for public broadcasting. In recommending to Congress that a nonprofit, nongovernment corporation be federally chartered, the Carnegie Commission said that it considered "the creation of the Corporation fundamental to its proposal and would be most reluctant to recommend other parts of its plan—to extend and strengthen public broadcasting—unless the corporate entity is brought into being."

The Commission envisioned an organization that would serve as the system overseer and planner and that would support such activities as minority training and development, technological research and development, and audience research.

H.R. 13015, on the other hand, would assign system planning responsibilities to the Federal Government and leave these other activities up to existing or yet to be created public broadcasting organizations.

I believe it essential that public broadcasting have strong central leadership in programing, budgeting, planning, resource allocation, research development, fund raising, and in pioneering the development of ancillary telecommunications services.

For unless there is such strong central leadership, I fear we will find ourselves 10 years from now with a public telecommunications system that has failed to keep pace with technological developments, to use resources wisely, or to maximize the potential that that system has today.

As to the specific organizational structure, I would prefer to make a judgment after having the benefit of the Carnegie Commission's reflections on this question. In any case, however, I can tell you that I believe that there is a need for strong independent leadership within public broadcasting.

Similarly I believe it would be a serious mistake to leave long-range planning responsibilities in this area up to the Federal Government. It is not that the Federal Government lacks the ability to do such planning which troubles me, but rather that if we want to have a truly independent public broadcasting system of any form in the United

States, then we cannot have Government deciding what direction it takes every step of the way.

That concludes my statement. I of course will be glad to participate in the panel and answer any questions you may have.

Mr. WIRTH. Thank you very much, Mr. Geller. We will get back to the panel hopefully within the hour.

Our next witness is Mr. Abbott Washburn, Commissioner, Federal Communications Commission.

Mr. Commissioner, good morning.

Mr. WASHBURN. Good morning.

STATEMENT OF COMMISSIONER ABBOTT WASHBURN, FEDERAL COMMUNICATIONS COMMISSION

Mr. WIRTH. Mr. Washburn, we are going to have the House in session very shortly. While you are proceeding with your testimony I will go and answer the quorum call and come right back. That will save us some time.

Mr. WASHBURN. Certainly. Mr. Wirth and counsel Shooshan, I am speaking for myself. The Commission as a whole has not examined title VI nor discussed it together. Commissioner Quello, however, who is the Educational Broadcasting Commissioner of the FCC, joins me in the positions contained in my statement with the one exception of the reference to the fairness doctrine and the equal-time provision. He stands with the subcommittee on that and not with me. He is sorry not to be able to be here this morning, but he will be submitting a written statement later on.

Section 611 of title VI properly emphasizes that it is appropriate and necessary for the Federal Government to take an interest in funding, facilitating, and fostering public telecommunications:

Funding the expansion and development of public telecommunications by private and public moneys;

Fostering diversity of instructional, educational and cultural programs and services;

Facilitating delivery of these programs in the most effective and efficient manner; and

Freeing these programs and services from extraneous interference and control.

The very heading of title VI, "Public Telecommunications," rather than the term "Public Broadcasting," recognizes the great technological advances in telecommunications. For example, with FCC encouragement and authorization, the stations making up the public television network by January 1 will be fully interconnected by satellite. The same will very likely be true of the public radio network one year from now. It is right that title VI should encompass non-broadcast as well as broadcast technologies.

The language of section 611(4) is designed to assure that public programing be made available to "all the people of the United States in the most effective and efficient manner." We still have a long way to go to reach that goal. Today no more than 60 percent of American homes can receive public radio, and only approximately 60 percent of them can get an acceptable quality public TV signal. The Commission has just recently undertaken a rulemaking, which I strongly supported,

requiring technical improvement in all UHF receiving sets. This is of particular importance to public broadcasters, since two-thirds of them are licensees of UHF stations, and virtually all future expansion must be in the UHF band. In this docket—No. 21010—we propose reducing the “noise level” figure to 14 dB from 18 dB by October 1979, to 12 dB by October 1982, and eventually, we hope, to 10 dB.

With the All-Channel Receiver Act, Congress took a giant step. Your continued help is essential to the task of eventually closing the gap between UHF and VHF.

Rural areas, in particular, are underserved. This problem is being focused on in a broad inquiry (docket 78-253) which the Commission has initiated into the roles of low-power television broadcasting and translators.

I am happy, too, that the draft bill reflects a commitment, absent from the 1934 act, to expand employment and ownership opportunities for minorities and women in these public telecommunications entities. As you know, the FCC administers its own EEO rules and policies as to public television and radio licensees. These efforts flow from our conviction, upheld by the U.S. court of appeals, that such employment and participation result in better overall programming to the community.

It's good to see that you have thrown out the current restrictions against editorializing and against endorsement of political candidates. However, this makes it all the more important to retain the fairness doctrine and the equal-time provisions, in order to insure that all sides of controversial issues reach the public and that all qualified candidates in an election are treated evenhandedly. Such fairness is particularly necessary where tax dollars are involved in providing the facilities and programs.

In the above aspects, title VI would be an improvement over the present statute. However, as drafted, it would not accomplish one of the most crucial goals, namely; to insure financial stability. It does not insure the kind of funding that permits long-range planning by public broadcasters while insulating them from pressures of the executive and legislative branches.

The spectrum-use fee concept, in my view, is a quagmire. I believe it will raise more difficulties and problems than it will solve. But if it is to be retained, the proceeds should go into the general fund of the Treasury. Such license fees might or might not encourage efficient use of the electromagnetic spectrum. But they most certainly are not the preferred way of funding public broadcasting, particularly when tied to other social concerns such as rural telecommunications and minority broadcast ownership. Funding for public radio and television should be responsive to their own unique needs, not shackled to a mechanical percentage of fee-revenues collected in this way.

The history of the achievements of public broadcasters, Mr. Chairman, has earned them the right to their own authorizations and appropriations free from unrelated entanglements. We have all been enriched by their programs in drama, dance, music, science, medicine, education, news analysis, public affairs, and local programming—not to mention the revolution public broadcasting has brought about in children's television. “Sesame Street,” for example, has set a standard against which all children's programs, via whatever media, are today judged.

More than any other network PBS, through signing and captioning has taken the lead in making television programs more accessible to the 13 million Americans with hearing impairments. In addition, 3 years ago PBS filed a comprehensive petition with the FCC which eventually led to our adoption of a rule permitting the reservation and use for "closed captioning" of blanking interval line 21 on the TV screen. When this procedure comes into general use, it will vastly enhance the ability of hearing-impaired persons, young and old, to share in the benefits of the television medium.

Essential to all these accomplishments has been the autonomy of the local stations. As the Carnegie Commission emphasized in 1967: "The local stations must be the bedrock upon which [the system] is erected, and the instruments to which all the activities are referred." Under H.R. 13015 the degree of control which the Federal Government, specifically the National Telecommunications Agency, exercises in funding nonprogramming activities, would render public broadcasting vulnerable to interference in their programming decisions.

I was happy to hear that same position from Mr. Geller.

In addition, the bill centralizes in NTA the source of Federal contributions. This is inconsistent with section 611 which recognizes the importance of a variety of funding sources. Currently, Health, Education, and Welfare, Commerce, the National Science Foundation, the National Endowments for the Arts and Humanities, and other Federal sources of money, in addition to the Corporation for Public Broadcasting, contribute to the diversity of these programs. For example, the excellent TV series on science called "Nova" came into being through the contributions and effort of the National Science Foundation. Such variety could be lost under the proposed structure. In addition, the proposed structure would tend to discourage contributions from States and school systems.

In my view it is entirely proper and useful for public broadcasting to receive support from private corporations and foundation. To hamper them from receiving credit for such contributions, as section 642 does, would be shortsighted. For example, the superb series of programs sponsored by the National Geographic Society represents the medium at its very best. One of them, "The Incredible Machine," on the human body, has taken its place as a classic.

It is too much to expect that foundations and private corporations would continue such funding at anything like present levels without receiving recognition for their contributions on the television screen and through general publicity. And this loss, I fear, would particularly hurt local programming. Again, it seems to me that this result is contrary to the stated purposes, namely, to assure a variety of funding sources and to provide local and regional programming.

Rather than working to diminish private-sector contributions, the legislation should encourage them, and should require the disclosure to the public of all funding sources. Such disclosure is consistent with the spirit of openness and accountability so evident throughout the bill.

The current funding of public broadcasting flows from a healthy variety of sources. It comes from a multitude of private individuals and groups throughout the land, from corporations, foundations, and State, local, and Federal Government entities. It is this pluralism

that has given public television and radio their vitality, variety, willingness to experiment, and their distinctive characteristics State by State.

I see in this draft title VI, Mr. Chairman, a move in the other direction—toward Government centralism. The proposed NTA would be a sub-Cabinet body under the control of whatever administration happens to be in office. This could work to undermine the freedom and autonomy of the local stations and their networks. It would subject their operators to uncertainties and built-in pressures. Section 627 prohibits Federal interference or control, it's true; but that is not enough.

It would be far better to keep these functions within the responsibilities of the Corporation for Public Broadcasting with a smaller, strengthened Board of highly respected Americans. The CPB is a better buffer.

The legislation which Chairman Van Deerlin introduced entitled "The Public Telecommunications Financing Act of 1978," which the House passed last July and which passed the Senate last week, redefines the goals and responsibilities of the Corporation for Public Broadcasting. It will make the CPB a better instrument.

Finally, the Carnegie Commission, as we know, has been working hard and will be releasing its report in just a few months. We are all awaiting with keen interest its findings and recommendations. The members of the subcommittee and staff will, I am sure, allow sufficient time to give it deliberate study before committing to a final version of title VI.

I earnestly hope that the Carnegie report will call for a substantially higher level of funding—of the order of \$1 billion a year. Our sights have been far too low for far too long. Consider that we are perfectly prepared to accept expenditures of \$25 billion annually for new military weapons; and some agencies, we're told, seem to lose a few billion dollars in their accounting systems. There has got to be something wrong with our priorities when, at the same time, these public broadcasting funds which are needed for strengthening the creative and cultural life of our Nation go begging.

It is sad, not to say shocking, that 40 percent of America's homes still cannot receive any of these enriching programs, even though their tax dollars are helping pay for them. We need to adopt a master blueprint to correct that situation in the shortest possible time, and we should make the money available to carry it out.

It is sad, too, that more American creative works and actors are not appearing on the public networks. My ninth-grade daughter knows more about the wives of Henry VIII and the members of the Churchill family than she does about George Washington. The Father of our Country gets about as much attention on TV as Millard Fillmore—maybe less. We all enjoy those "Masterpiece Theater" dramatizations of Tolstoy and Trollope and Thomas Hardy; and, heaven knows, Dickens wrote enough to keep them going for another decade single handed. They are superbly done by the BBC. But, Mr. Chairman, this is U.S. public television.

We've got a few names of our own—Twain, Sandburg, O'Neill, Hemingway, Cather, Hawthorne—that deserve "equal opportunities." Frankly, excellent though he is, I'm so tired of seeing Alistair Cooke

every Sunday night that I'd even welcome Howard Cosell telling us all about the literary scene. Well, maybe. We have our own critics and experts, plenty of them, and actors who are also scholars, like George C. Scott and Hal Holbrook.

What is the reason for this incongruous situation? Money. It is because the budgets available for public programing are so niggardly that the operators can't afford very often to use U.S. actors and producers or to commission new works based on our own history and the men and women who shaped it. Here, again, we should lose no time in making funds available to correct the situation. One approach of American producers, writers, actors, composers, to give the American people each week a production of the quality of "The Adams Chronicles"—with the advice and help of Leonard Bernstein, James Michener, Joanne Woodward, Nancy Hanks, Walter Kerr, Helen Hayes, Alex Haley, and other outstanding members of the creative community.

Of course, I have no idea what the Carnegie Commission will recommend, but if they should call for higher levels of funding, these are some of the reasons why I would hope the Congress and the White House would agree and would act without delay.

Thank you for this opportunity to present these comments on title VI of H.R. 13015.

Mr. SHOOSHAN. Thank you, Commissioner Washburn.

Mr. Wirth has requested that the witnesses continue with their testimony.

Our next witnesses are Mrs. Lillie Herndon, chairman of the board of the Corporation for Public Broadcasting and Bruce Cardwell, vice president of finance of the Corporation for Public Broadcasting. Do you both have statements?

Mrs. HERNDON. Yes.

Mr. SHOOSHAN. Why don't you begin.

STATEMENTS OF LILLIE E. HERNDON, CHAIRMAN, AND JAMES B. CARDWELL, VICE PRESIDENT AND TREASURER, CORPORATION FOR PUBLIC BROADCASTING

Mrs. HERNDON. Thank you, Mr. Shooshan.

With me today representing the Corporation for Public Broadcasting is Bruce Cardwell, our vice president and treasurer. We are also fortunate to have with us today several members of our board and I would like to introduce them if I may. Lucius Gregg, our new vice chairman from Chicago. Would the board members stand so that each one might know them?

We also have Sharon Rockefeller, from West Virginia; Charles Roll, from New Jersey; Diana Dougan, from Utah, and Louis Terrazas, from Texas.

We would like to thank the subcommittee for extending to us the opportunity to testify on title VI of H.R. 13015. We also congratulate Mr. Van Deerlin and Mr. Frey, members of the subcommittee, and the staff, for taking such an important initiative on behalf of American communications.

We have noted Mr. Van Deerlin's statement that he views H.R. 13015 as only a "starting point" toward this important objective, and

that the subcommittee intends to redraft this proposal for reintroduction next year. We would like the subcommittee to view CPB as a contributor to this effort, particularly as it relates to title VI. We hope to be helpful in your efforts to arrive at a final bill—one that will be accepted by the subcommittee, the Congress, the public broadcasting community, and, of course, the American people.

As many of you are aware, the past year has been one of change for the corporation. This has not only affected our ongoing operations, but has also caused us to reexamine our policies, practices, and priorities.

For example, although the Public Broadcasting Financing Act of 1978, extending CPB's authorization and appropriations past 1980 is not yet final, the debate that has surrounded it so far suggests many changes in the way in which CPB conducts its affairs—changes that are already underway.

The corporation is also going through fundamental changes in leadership. A new chairman and vice chairman of the board of directors have just been elected this month. At present, we are awaiting the confirmation of 7 of 15 CPB board members, of whom only 3 have been nominated. With one exception, all the board members are continuing to serve until all their successors are nominated and confirmed. Also the full-time services of our new chief executive Robben Fleming, now president of the University of Michigan, will not be available until next January. I would emphasize, however, that the corporation is operating smoothly under the direction of the executive vice president, Cortland Anderson, who was designated by the board to serve as acting president until Mr. Fleming arrives.

Finally, we are awaiting the report of the Carnegie Commission on the future of public broadcasting. The Commission has been engaged in an intensive study of the entire industry for the past year, but its final report and recommendations will not be available until the first part of 1979.

It was in direct recognition of this difficult and changing environment that the corporation's board initiated a comprehensive review of its operating policies and practices. The corporation is engaged in a self-examination intended to put itself in a position to contribute significantly to change, not just react to it. Included in this review will be an appraisal of CPB's own performance, relationships, organization, and plans for the future.

This process started last November with the beginning of an examination of CPB's program funding procedures. Additionally, the CPB board has undertaken an assessment of the effectiveness of all Corporation activities. While much of this inquiry is now underway, we anticipate a final report and a clear set of recommendations after the Corporation's new leadership is in place and has had the time to secure informed input from the entire public broadcasting community. It is our hope that this will coincide with your review of the Carnegie II recommendations and your further deliberations on H.R. 13015.

The board wants you to know of its steadfast commitment to the principle of a dedicated, insulated source of income for public broadcasting. We believe the present funding arrangement is inadequate for the achievement of this top priority. Mr. Cardwell will address this matter further as this pertains to title VI.

Perhaps, Mr. Chairman, at this point it would be helpful to review, at least in highlight, the events which have led from the recommendations of the first Carnegie Commission to today's consideration of title VI. In 1966-67, as Congress considered public broadcasting legislation, it wisely sought the counsel and advice of a wide variety of individuals and organizations. Chief among these was the Carnegie Commission on the Future of Educational Television. It was the Commission's recommendations that provided the framework for the public policy calling for a Federal presence in the growth, development, and support of public broadcasting.

Subsequently, the Public Broadcasting Act of 1967 determined that the Corporation for Public Broadcasting should have three primary, essential purposes: The support of high quality and diverse program services; the establishment and support of an interconnection service for public broadcasting licensees; and the protection of public broadcasting from "extraneous interference or control."

CPB's testimony today will address the fundamental question of whether these key purposes can or will be achieved under either the present arrangements within public broadcasting or those proposed in title VI.

There is, of course, a great deal of information that must be reviewed to adequately answer such a basic question. The corporation has compiled a brief summary of the major policy trends in public broadcasting over the past 10 years which we would like to submit for the record as an appendix to our testimony.

Mr. Bruce Cardwell, who will deliver the balance of the corporation's testimony, will cover some of our concerns with title VI and those policy aspects and trends which have had a significant impact on CPB.

Thank you.

STATEMENT OF JAMES B. CARDWELL

Mr. CARDWELL. Mr. Chairman, members of the subcommittee.

Before commenting on the specifics of title VI, I would like to establish the context within which our comments are offered. Title VI would materially change much of the organization and structure of public broadcasting, particularly at the national level. The Corporation for Public Broadcasting, as we now know it, would be legislated out of existence. Also, I am sure it's no secret that many of the changes in organization and mission proposed in title VI were placed there because of the committee's concern about the shortcomings and missed opportunities of the present arrangement.

Recognizing that it is very natural for both individuals and institutions to resist dissolution or even change, we want to establish clearly CPB's position that it is more interested in the broader cause of public broadcasting than in preservation of the status quo. It is with this spirit that we address H.R. 13015 and title VI not just in our testimony today but in what we hope will be a series of contributions to improve public telecommunications.

Mrs. Herndon has suggested that the true test for title VI is whether it will facilitate the fulfillment of the proper aspirations of public telecommunications—whether it will really solve the problems and

overcome the limitations of our current approach to this important cause.

ASPIRATIONS AND GOALS

With this test in mind, we offer the CPB view of the aspirations and priorities of public radio and television and our view of significant problems, unmet needs, and issues facing public broadcasting. The corporation's own proposals for change and improvement, including CPB self-improvement, will be forthcoming early next year, after CPB's new management is in place and after we complete the review and analysis described earlier by Chairman Herndon.

The origin of public telecommunication's aspirations and goals preceded the Carnegie Commission study and the advent of CPB. Both the original Carnegie report and the 1967 act emphasized the need for high quality programing from diverse sources. Today, more than 10 years later, it is almost certain that quality programing would stand as a top priority on any list of unmet needs. It is a top priority of CPB, the stations, the producers, the Public Broadcasting Service and National Public Radio. Title VI also, of course, gives it priority attention.

Next, is the continuing expectation that noncommercial educational radio and television services will be extended to more of our citizens. While there has been tremendous growth in the number of noncommercial broadcast stations since 1967, many parts of the country and too many of our citizens are still beyond the reach of these services.

Public broadcasting seeks improved facilities, additional stations, stronger signals, and improved home reception. It shares the public policy goal of increased service to more people.

Public broadcasting seeks not only additional financial support, but more predictable and stable sources of such support. After 10 years of steadily increased Federal support, public broadcasting still faces an uncertain financial future. This is true despite the contributions of listeners and other generous public and private supporters. It is true despite the fact that, today, the Corporation spends 58 percent of every dollar for basic support of individual stations through the community service grant process. We will speak more about this later.

Public broadcasting seeks public recognition, acceptance, and support. With but few exceptions, it is not satisfied with a select audience of the well-educated, the well-informed, and the relatively well-to-do. It takes seriously the public policy goal of special services for particular regions of the country and particular segments of the population.

Public broadcasting seeks its own self-respect—respect earned for its own efforts to serve minorities, women, the socially deprived, and physically handicapped. It takes seriously the public policy goals of equal treatment for all and compensatory services to the disadvantaged.

Finally, public broadcasting continues to care about its own independence and insulation. It seeks to avoid dependence and to avoid outside intervention. To these ends it seeks its own self-reliance and its own leadership.

These are not new goals, nor are they inappropriate ambitions for public broadcasting. That we recount them here today should not be

taken as an indication that they are either beyond the reach of public broadcasting or that progress has not been made. Significant strides have been made during the more than 10 years since the first Carnegie Commission study and enactment of the 1967 legislation. An efficient distribution system has been established for both television and radio. The reach of public radio and television signals has been extended and the audience has been enlarged. Today, at least some part of every State in the Union receives public radio and television signals with regularity, although it is not true that every State has its own internal capacity to do so. The variety and quality of programming has been enhanced and the role of educational/instructional radio and television has been enlarged.

Most dramatic among these achievements is the development of the television and radio satellite interconnection system. It provides for greater variety and diversity and improved signal quality for both radio and television.

While much of what we have to say today, Mr. Chairman, centers on unfulfilled needs, problems, and issues, we would not want our presentation to overlook the significant progress and strides that have been made through the efforts of the industry itself; with the support and help of the Government as well as the general public.

PROBLEMS AND ISSUES

We would like to summarize our view of the major problems and issues facing public radio and television. Many of them have been discussed many times during this committee's deliberations of this and other bills. Many have been touched on this morning. Many of them are seen differently depending on the eyes of the beholder; still others represent what are probably conflicting goals. Almost all reflect the diverse character and nature that have always distinguished public broadcasting.

For example, while we seek unity and the safety of numbers, we at the same time demand individuality and independence. We advocate diversity but often look first to our own kind for innovation and ideas. Public broadcasting, and CPB, in particular has to make Solomon-like choices between television and radio resources, between popular programs and those for specialized audiences. Among us are those who espouse large audiences as well as those who believe that less is more

NEED FOR BETTER LEADERSHIP

It is CPB's view that one of the greatest needs facing public broadcasting is the need for industrywide planning. We would like to see improved direction and planning come from within, but are quick to acknowledge that, so far, public broadcasting has failed to develop its own machinery and methods for planning and evaluation, for allocating resources, and for the setting of priorities. I might mention that we are not alone among enterprises in having this deficiency. We believe these improvements are within our reach and we now have a number of initiatives under way which, if successful, should provide both CPB and the industry in general with some of the instruments needed for leadership.

We have been working within the corporation since last fall on new criteria and new processes for allocating CPB resources to television program productions. We are about to embark on a program of financial management improvement, the first phase of which will begin next month when financial managers at the local level come together to help plan a comprehensive program that will include model accounting systems, cost and production accounting criteria, and improved auditing. We will follow this with the development of CPB grant and contract guidelines to help speed up the process of funding applications and proposals. This will also improve accountability of the corporation's funds.

Included in the review described in Chairman Herndon's remarks will be still other areas, including methods for evaluating audience interests and the effectiveness of public broadcasting generally.

PUBLIC RADIO AND TELEVISION ARE UNDERFINANCED

This has been said many times; it is addressed in title VI. But what has not been said often enough and what is not addressed adequately in title VI is our view that, whatever the dollar levels, flexibility and maximum opportunity for effective allocation must be provided. There is more to this subject than total dollars. Also an increase in dollars must not result in diminished independence and insulation.

We would urge that any new funding legislation for public telecommunications avoid fixed formulas or fixed percentages and entitlements for selected activities and interests within the system. For example, although the need for basic operational support represents a continuing and significant need within the system as a whole, the level of such need varies from recipient to recipient. Whatever the funding mechanism, it must allow for these differences and must permit shifts in resources from one category to another without having come back to Congress.

It is interesting to note that, within the CPB experience, the demand for operational support funds has tended to take precedence over program funds. It is as if a public broadcasting "Gresham's Law" had evolved—operational funds always driving out program funds. This shift has occurred because of the demonstrated need for such funds—and despite the strong consensus and commitment that exists throughout public broadcasting for increased program funding.

I will call attention to our appendix which I will not read, but which gives the history of how this all came to be. It points out the fact that, given the design of the legislation in 1967 and the failure to provide funds for these purposes, there are really no other choice.

In short, Mr. Chairman, we must have operational capacity in order to produce and deliver programing. Our goal is to meet both needs.

In addition to dollars, we believe that three elements not now present are needed to improve the funding of public broadcasting. First, standards and criteria are required to measure and evaluate the relative needs of the various segments of public telecommunications. Acceptable methods are needed to permit allocations among these needs and to permit shifts within these allocations as the needs change.

The third requirement is that the Federal funding authority permit the reallocation of funds in the face of changing circumstances and that it avoid inflexible and fixed categories or formulas.

PUBLIC BROADCASTING NEEDS TO FIND A WAY TO INCREASE THE VARIETY, DIVERSITY, AND QUALITY OF ITS PROGRAMMING AND OTHER SERVICES

This is as much a matter of imagination and creativity as it is a matter of funding. although funding is an important part of the problem. A greater effort must be made to bring the full impact of American talent and creativity to bear on public broadcasting.

Title VI would increase the aggregate Federal funds available to finance such programing. But, at the same time, it would cut off one of the most vital sources of program production support presently available—the support derived from private sources. Thus, in aggregate, title VI would give with one hand, while taking away with the other. While we share the concern to which we assume this provision is directed—the risk of exploitation for commercial gain—the best way to prevent such interference is to insure that stations and producers are less dependent on those who might be tempted to exercise undue influence. This can be achieved by more adequate and diverse funding, both public and private. It may also be possible to design safeguards without denying this source of funding.

PUBLIC BROADCASTING IS HESITANT AND DOUBTFUL ABOUT THE INTENTIONS OF GOVERNMENT

There is a growing concern on the part of the industry that increased Federal financing may come only at the cost of greater governmental imposition, if not outright intervention. We need to find a better way to insulate governmental support. This has also been said many times.

In our judgment this insulation must protect, not just from direct political activity, but from government, generally. This is not to say that public telecommunications should not be accountable for its stewardship of public funds. Insulation and accountability are not mutually exclusive. We can find a way to achieve both.

We would comment at this point that we see nothing in title VI to allay the concerns of the industry about the risk of an excessive Federal presence. We believe that by appearance, if not in fact, the concern about Government increasing its role is encouraged by the title VI proposal to place Federal funding for distribution, facilities, operations, and expansion in the hands of a direct Federal agency—the National Telecommunications Agency.

PUBLIC BROADCASTING FACES OPERATIONAL AND MANAGEMENT CHALLENGES

We must recognize them. We must accept them as being true. Recent review by the General Accounting Office and audits by CPB show that not all public broadcasting organizations have yet reached the level of financial management capability expected by the Congress. Many of the smaller stations lack the size and scale of operations that permit a full range of financial and other management services.

We must recognize that some of these operations are carried on by two, three, or four employees. In other cases, basic broadcasting and programing services have taken priority over management support. In the case of institutionally-based stations, it is often a matter of

being required to follow practices of the parent organization rather than their own.

It should be recognized that public broadcasting is still developing and growing. At the same time, however, steps must be taken to bring management capability abreast of basic broadcasting activities and up to standard. CPB is committed to help the system do just that.

A number of efforts to provide technical assistance in the general and financial management areas, including those described earlier in our testimony, are now under way. Management improvement is an important goal for public broadcasting—as a means of assuring public confidence and as a means of avoiding governmental intervention.

Before closing we would like to comment on a very significant and important feature of the bill. I refer to the provision that would establish for the first time a dedicated source of revenue for Federal telecommunications financing.

This has been advocated by public broadcasting for a long time, almost from the beginning. It has been assumed that a dedicated source of financing would solve the problem of financial uncertainty, as well as the need for insulation.

We think it would be a mistake to make that assumption. Because it fails to specify the share of the fund to be available for public broadcasting compared to other activities to be financed from the same source, we do not see this provision of title VI as providing improved financial predictability.

We recognize that the provision assumes that eventually this might come about. Because it would appear to subject public broadcasting, along with the other activities covered by the fund, to annual reviews by both the executive branch and the Appropriations Committees, we have concerns about the provision's capacity to improve insulation.

We believe that a dedicated source of revenue alone will not solve the problems that the provision apparently seeks to address. Despite what we see as its faults, we sense that the provision is intended to improve both insulation and stability. We believe that this intent can be achieved by including first, an arrangement for advance funding not subject to the regular appropriations process. This does not mean that that cannot and should not be included in the budget. And second, a mechanism that would provide a predetermined share of the fund for public telecommunications.

We would urge the committee to reexamine and rethink this provision. We would very much like the opportunity to participate in further deliberations on this, as well as other aspects of the bill.

That concludes our prepared statement, Mr. Chairman. We will be glad to try to answer any questions, but I would first ask for an opportunity to submit for the record at this time a CPB section-by-section analysis of title VI and, in the near future, a similar analysis of titles II, III, IV, V, and VII of H.R. 13015, as they relate to public telecommunications.

Thank you.

[Testimony resumes on p. 86.]

[Appendices 1 and 2 to Mr. Cardwell's statement follow.]

APPENDIX 1 TO CPB TESTIMONY ON TITLE VI, H.R. 13015

The Public Broadcasting Act of 1967 encompasses an imaginative and daring national policy to foster public broadcasting and to make its services available to all citizens of the United States. Through the Act, Congress departed from conventional concepts and authorized the creation of a private corporation that would have as its mission the achievement of a number of challenging goals delineated in the Act's declaration of policy.

The goals established for the Corporation in 1967 were:

- to facilitate the full growth and development of educational broadcasting in which programs of high quality, obtained from diverse sources, would be made available to noncommercial educational radio and television stations;
- to assist in the establishment and development of an interconnection system for the distribution of educational television or radio programs, and a system of noncommercial radio and television stations throughout the United States; and
- to perform a variety of program procurement and

program support activities, for a diverse collection of local, autonomous, and independent public broadcasting stations while performing in a manner designed to effectively assure maximum freedom for those stations from interference with, or control of, program content or other activities.

Although the Corporation has not achieved its full potential and some goals remain unmet, the concepts and goals established by the Public Broadcasting Financing Act of 1967 remain basically sound. However, we must now candidly address the question of why CPB has not achieved more.

The ten years of empirical experience that the Corporation has gained in carrying out its responsibilities clearly show that public broadcasting is most certainly not -- as some would believe -- a system or network which has a set of common goals, priorities, directions, or fixed program schedules. In fact, public broadcasting is the antithesis of the commercial networking system. Any commonality of direction and purpose that has evolved over the past 25 years of public broadcasting has been by consensus of opinion.

If any "system" direction evolved at all, it was the result of the almost coincident efforts by educational institutions, who hold the licenses for 62% of all public television and 81% of all public radio stations, to establish goals and priorities for themselves.

This is not a very orderly way of doing business, and certainly a more centralized and efficient method could have been chosen. But the paramount concern at that time was that this new endeavor keep as its most fundamental precepts the ideas of localism and decentralization -- no national body supported with public funds should have the power to dictate or control, through program production, scheduling or distribution, the goals and priorities of the widely divergent, locally licensed broadcasting operations. The result is a conglomeration much more complex than either the first Carnegie Commission or the 90th Congress ever envisioned -- with many entities, dispersed authorities, and an abundance of stresses and strains. This is what has prompted, in large measure, the highly publicized and frustrating conflicts in public broadcasting.

In 1966-67, Congress sought counsel and advice from a wide variety of pre-eminent individuals and organizations. Chief among these was the Carnegie Commission on The Future of Educational Television. It was the Carnegie Commission's recommendations, more than any others, that provided the framework for the original legislative proposal for federal support of public broadcasting.

One of the principal recommendations of the Commission -- eventually embodied in the 1967 Act -- was that the main purpose of the proposed Corporation was to provide high quality program and interconnection services for the public broadcasting licensees. The Commission did not recommend that the Corporation become in any way a financing source for the support of day-to-day station operations, although the Commission recognized the demonstrated need for station operational support.¹ Rather, the Commission recommended that the Corporation implement a set of very specific program-related goals. Indeed, in hearings before the Senate Communications Subcommittee considering the Public Broadcasting Bill, Dr. James R. Killian stated:

(I)t is essential that the responsibilities of the Corporation be confined to the task it will be able to do best: make programs available to the stations. Giving the Corporation the responsibility of supporting the operating expenses of all noncommercial radio and television stations cannot help but dilute the overall effectiveness of the Corporation.²

Dr. Killian strongly recommended that funding support for station operations be administered by the Department of Health, Education, and Welfare.

While the Commission and the Administration anticipated the need for support of station operations, it greatly underestimated the major weaknesses in the infra-structure of day-to-day station

1. The Report and Recommendations of the Carnegie Commission on Educational Television, pp.74-79.

2. Hearings before the Senate Subcommittee on Communications of the Committee on Commerce, 90th Congress, 1st Session, on S.1160, p. 145. See also Carnegie Commission recommendation for HEW support of station operations (Recommendation #11), pp.74-79.

operations. CPB's 1978 Survey of the Facilities Requirements for Public Television Stations alone estimates that approximately \$305 million is presently required to bring these operations up to recommended comparable commercial levels. In testimony before the Senate in 1967, HEW estimated that the total needs of public broadcasting for facilities, studio costs and operating expenses would be approximately \$100 million annually.³ The Carnegie Commission Report concluded that by 1980, public television facilities would be "completely built and no capital costs aside from amortization of existing equipment" would be required.⁴

A similar disparity exists in the area of instructional programming. In hearings before the Senate on the 1967 Act, Dr. Killian stated that the Commission "...felt that instructional television programming should be appropriately supported, so far as Federal funds are concerned, by HEW, and that the corporation should stay out of the instructional business."⁵

Notably, the Commission omitted any study of public radio's condition and needs, and the financial accountability responsibilities attendant with station support (Community Service Grants) both of which presently demand extensive involvement by the Corporation.

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3. Hearings before the Senate Subcommittee on Communications, p. 164.
 4. Carnegie Commission Report, p. 77.
 5. Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 6736 and S. 1160, 90th Congress, 1st Session, p. 145.

What has developed in the intervening period is now a matter of record. The Corporation's present responsibilities include station operational support, instructional programming (both originally intended to be lodged at HEW), public radio support, and a system of financial reporting and auditing related to station operational support; all of which the Carnegie Commission did not even contemplate. The need that evolved for these services, coupled with the existence of CPB as the only funding source available to support such activities, resulted in CPB's expanded role. These activities now account for almost 70% of the Corporation's annual expenditures.

Nevertheless, the Commission's principal recommendations laid the foundation for the 1967 Act. The major purposes of the Corporation as defined in the 1967 Act⁶ focused on the provision of program services and the establishment of an interconnection for the distribution of national programs to augment local station programming. The key to effective achievement of the aims of public broadcasting was the existence of an independent corporation receiving federal support in the form of dedicated funds, while insulating these funds from undue political interference.

As the Carnegie Commission stated:

Recognizing areas of special sensitivity, the Commission is persuaded that a nongovernmental institution is necessary to receive and disburse at least a part of those funds. The purpose is not to escape scrutiny but to minimize the likelihood that such scrutiny will be directed toward the day-to-day operations of the sensitive program portions of the Public Television system.⁷

6. 47 U.S.C. Sec. 396(g) (1) (A-D).

7. Carnegie Commission Report, p. 37.

The 1967 Act created such a structure, but without the key insulated and dedicated funding component. This was a serious flaw, as was shown within the first years after its enactment. Because the Johnson Administration delayed in making its first appointments to the Board of Directors of the Corporation -- a problem we are still living with today -- CPB did not receive its first federal appropriation of \$5 million until one year after passage of the bill. During the first seven years of its existence, CPB was under a continuing resolution better than 60% of the time and suffered one veto of its first multi-year authorization bill (H.R. 11807). Because of a lack of predictable funds prior to 1976, CPB was forced to survive under an annual subsistence funding arrangement. Historically, this has made comprehensive planning and evaluation difficult, a situation which the Corporation is only now starting to overcome.

It was within this uncertain environment that the Corporation's first Board and Management set out to fulfill its statutory responsibilities. Nevertheless, these years were marked with notable achievements, despite limited funds: \$5 million in FY 1969; \$15 million in FY 1970; \$23 million in FY 1971; and \$35 million in FY 1972. During this initial four-year period, three-fourths of the CPB appropriation supported program-related activities. The Public Broadcasting Service, National Public Radio, NPACT, and the Public Broadcasting Laboratories were established and funded. A number of award-winning programs such as THE GREAT AMERICAN DREAM MACHINE, SESAME STREET, BOLERO, and VD BLUES, were produced with production support reaching up to half of CPB's total budget. In

1972, with a \$35 million budget, 78% of CPB's funds went into program-related support (28% for interconnection, 50% for program production and acquisition); only \$6 million, or 16% of the total budget was devoted to unrestricted television and radio station operating grants (what we now call Community Service Grants). This past year, with an appropriation of \$107 million, \$33.5 million (or 34%) went to program-related services (17% for program production and acquisition) and \$62 million (or 60% of the total budget) went to support direct station operations. The chart on the following page details this reversal in allocation priorities.

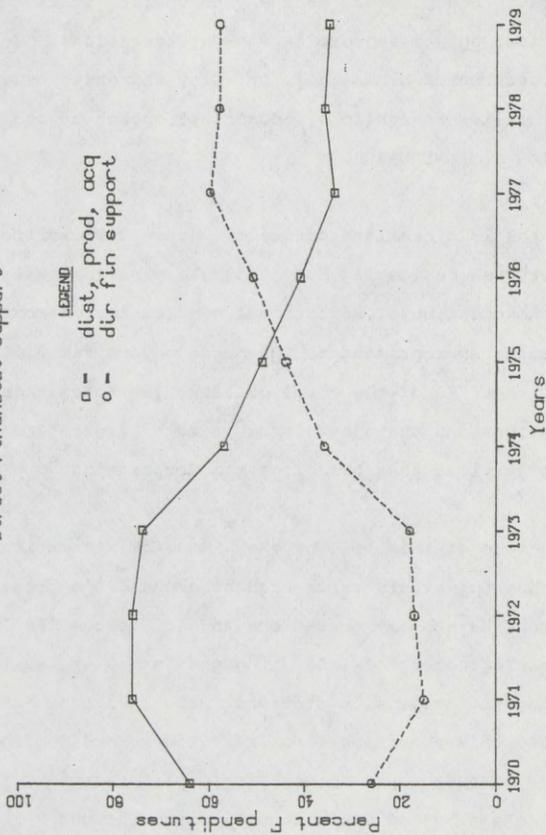
This fundamental change in CPB support activities was brought about by the general underestimation of public broadcasting's needs and services to which we have referred, and the unrealized expectations that other entities would administer and support such activities. As a result, the Corporation became the sole significant source of national support for public broadcasting.

Indications of a change in public broadcasting priorities came as early as 1969. In that year, an amendment to CPB's authorization supported by a group of stations was introduced on the House floor which would have required a 50% pass-through of CPB's FY 1970 \$15 million appropriation for support of local station operations.⁸ It was defeated. The first Long Range Funding Bill for Public Broadcasting, H.R. 11807, introduced in

8. Congressional Record, October 9, 1969. p. H9350.

PLANT THESE TO THE 8 SEP, 1978 . BISHOP DISCUSSOR 7.3

Comparison of Expenditures for Distribution
Production and Acquisition with Expenditures for
Direct Financial Support



1971 by this Committee's former chairman, the late Torbert MacDonald, called for a 30% pass-through for operating grants to licensees. CPB endorsed this proposal as a way to upgrade station performance capabilities, not to support day-to-day operations. Just prior to the introduction of H.R. 11807, Dr. Clay Whitehead made his now famous "localism in public broadcasting" speech at the 1971 NAEB convention in Miami Beach.

In the 1972 hearings before the House Subcommittee on Communications considering H.R. 11807, a panel representing the National Association of Educational Broadcasters recommended that, as the amount appropriated to CPB moved beyond the \$150 million mark, "...that 70% of the total dollars, the total federal dollars... go to stations and that 30% of such a much larger fund could meet the basic services that come from the Corporation.⁹

The veto of this bill by the Nixon Administration in 1972 ended a chain of events which brought about CPB's present role as financier of day-to-day operations and led to the CPB/PBS Partnership Agreement of 1973 which guaranteed at least 50% pass-through to television stations. The 1975 Long Range Financing Act enacted this provision into law. Today, and for the past few years, the combined pass-through for public radio and television stations equals 58% of CPB's annual appropriation.

9. Statement of Mr. Lloyd Kaiser, member of NAEB panel, House Commerce Committee Serial #92-62, 1972, p. 135.

It is our hope that this brief summary of the development of public broadcasting policies and practices over the past 10 years will give the Committee an appreciation of the situation today.

With additional stations eligible for unrestricted Community Service Grants and the potentially great increase in diverse program distribution methods brought about by the satellite interconnection system, CPB finds it increasingly difficult to meet the operational and program service support demands of the licensees.

APPENDIX 2SECTION-BY-SECTION ANALYSIS AND COMPARISON
WITH EXISTING POLICY, LAW, AND PRACTICE

H.R. 13015

TITLE VI - PUBLIC TELECOMMUNICATIONS

PART A -- GENERAL PROVISIONS

FINDINGS

Section 611 recites the Congressional findings upon which the rest of Title VI is based. The Section's six specific findings generally track those recited in the Public Broadcasting Act of 1967,^{1/} but three major changes are readily apparent.

The first is the expansion of the scope of the Congressional findings from the 1967 Act's focus upon "noncommercial educational radio and television broadcasting" to a new focus upon "public telecommunications."

The second major change from the 1967 Act's findings is the weight instructional and cultural programs and services are given in the Bill's finding that the general welfare is served by the development of public telecommunications. Instructional uses of public broadcasting programs and services appeared to be given tag-at-the-end treatment in the 1967 Act's findings,^{2/} and there has been consistent Congressional interest in the priority, or lack of priority, given instructional programs by public broadcasters over the years.^{3/} The Bill's specific, up-front reference to instructional programs and services seems to be designed, along with other provisions of the Bill, to set the priority issue to rest.

1. The Public Broadcasting Act of 1967, 47 U.S.C. 396 ff., hereafter the "1967 Act".
2. See 47 U.S.C. 396(a)(1).
3. In 1975, the House of Representatives adopted an amendment to the 1967 Act that would have required that a "significant portion" of funds appropriated to CPB and distributed to stations by CPB be used for development and dissemination of instructional programs. The amendment was deleted in House-Senate Conference. See House Report No. 94-713 (94th Cong., 1st Sess.) p. 6 (1975).

Although "educational television or radio programs" were defined as "programs...primarily designed for educational or cultural purposes" under the 1967 Act,^{4/} that Act's Congressional findings did not specifically refer to "cultural programs". The Bill's findings give new weight to the role of cultural programs in the overall scheme of public telecommunications services, a role that many observers believe has already contributed to the evolution of "noncommercial educational broadcasting" into "public broadcasting" as presently practiced.

The third major difference in Congressional findings concerns "facilities." The Bill's findings are specific: "the Federal Government should make funds available to assist in the construction and operation of public telecommunications facilities..." 611(5). Although the Educational Broadcasting Facilities Act^{5/} pre-dated the Public Broadcasting Act of 1967, and the Federal Government has, over the years, made tens of millions of dollars available for the construction or acquisition of noncommercial educational broadcasting facilities, this is the first time that Federal support for construction of facilities has reached Congressional findings "rank", and the first time that Federal support for the operation of facilities has achieved any specific endorsement in Congressional "findings".

DEFINITIONS

Section 612 contains the statutory definitions used in Title VI. A number of definitions contain drafting inconsistencies and undefined terms. The following definitions are critical to

4. 47 U.S.C. 397(9).

5. 47 U.S.C. 390 ff.

an understanding of the Bill's general thrust and specific provisions. They have been regrouped here into two "packages" to provide easier examination of the relationships in, and between, the definitions and the groups of definitions.

The "Entities Package" of Definitions

As used in the Bill:

"Public broadcasting station" and "noncommercial telecommunications entity" are mutually exclusive terms. "Public broadcasting station" means the noncommercial or public broadcasting station as we know it today. 612(9).

"Noncommercial telecommunications entity" means a government, or private, nonprofit entity with a translator, cable system, ITFS system, etc., organized primarily to deliver noncommercial program services to the public via some means other than traditional radio or television broadcast. 612(10). Neither PBS nor NPR would be included in this definition.

"Public telecommunications entities" applies to both "public broadcasting stations" and "noncommercial telecommunications entities" and to any other "enterprise which...disseminates noncommercial educational, institutional, or cultural television and radio programs and services to the public." 612(13). Neither PBS nor NPR would be included in this definition.

"System of public telecommunications entities" means any combination, "formal or informal," of public broadcasting stations, or of noncommercial telecommunications entities, or of both, acting cooperatively to produce, acquire, or distribute programs, or to conduct related activities. 612(16). As station membership organizations engaged in these activities, both PBS and NPR would be "systems of public telecommunications entities." So would SECA, EEN, etc.

The "Facilities Package" of Definitions

As used in the Bill:

"Interconnection facilities" are defined broadly and simply to mean "apparatus" or equipment necessary for the exchange of public telecommunications services. 612(6).

"Public telecommunications services" are noncommercial educational, instructional, and cultural television and radio programs and other noncommercial instructional or informational material. 612(15).

"Interconnection system" means "any system of interconnection facilities" used for the distribution of programs and services to public telecommunications entities. 612(7). This definition would seem to include both carrier-owned and user-owned facilities, or combinations of them.

"Public telecommunications facilities" is defined to include any piece of hardware necessary to produce, caption, interconnect, broadcast, or distribute "programming". A lengthy, but not exclusive, list of "facilities" items is included in the definition. 612(14). The definition contains no "use test". It should be compared to the defined terms "interconnection facilities" and "interconnection system", which do require use for public telecommunications purposes. Although the context of Title VI indicates that its drafter intended the latter, defined terms to be species of "public telecommunication facilities", the absence of any "use test" in the definition of "public telecommunications facilities" gives rise to the inference that the hardware items listed in the Section are "public telecommunications facilities", whether or not they are used for "public," (noncommercial) purposes.

"Construction" of "public telecommunications facilities" means acquisition, installation, and modernization of them, "including acquisition by lease," and planning and preparation incidental to such "construction." Inclusion of equipment leasing in the "construction" definition provides a significant expansion of financing alternatives to applicants for and recipients of grants under Part C of Title VI. 612(3).

PART B - PUBLIC TELECOMMUNICATIONS PROGRAMMING ENDOWMENT

Section 621 authorizes the establishment of a private, non-profit corporation, to be known as the Public Telecommunications Programming Endowment ("PTPE" or the "Endowment"). The Endowment may be established "in any of the several States," but, consequently, not in the District of Columbia.

The Endowment will not be a Government agency, but will be "subject to" the provisions of Title VI of the Bill and, to the extent consistent with Title VI of the Bill, to the laws of the State in which it is incorporated. The Section creates a form of Federal "preemption", in which the Bill would take the precedence in a conflict between the express terms of the Bill and the law of the incorporating State.

Section 622 requires that the Endowment have a Board of Directors of nine members, appointed by the President of the United States, with the advice and consent of the Senate. Not more than five members of the Board may be members of the same political party. 622(a)(1).

As with the CPB Board, members must be citizens of the United States who are "not regular full-time employees" of the Government and who are "eminent" in such fields as education, cultural and civic affairs, and the arts, including television and radio. As in the 1967 Act, the word "eminent" and the phrase "regular full-time employees" are not defined.

This Section does not, however, maintain the "diversity" requirement set out in the 1967 Act: that Board members "shall be selected to provide as nearly as practicable a broad representation of various regions of the country, various professions and occupations, and various kinds of talent and experience appropriate to the functions and responsibilities of the Corporation."^{6/}

Instead, the Bill substitutes a requirement that "The members of the Board ...shall include women and members of minority groups." 622(a)(2)(B). This Section would mean that, if, as the result of a vacancy, there were no women on the Endowment's Board, the President would be required to appoint a woman; and if the President did not, the Senate could not lawfully consent to the nomination. The same would be true regarding the absence of minority persons from the Board.

Traditionally, statutory qualifications for Presidential appointments are sex-neutral and "color-blind"; though Congressional objectives are sometimes advanced through hortatory language in an authorization or appropriation act. No similar, sex and race requirements have been found in statutes relating to appointments to Federal office. Indeed, it could be argued that such requirements, for appointment to Federal office, would violate Constitutional equal protection guarantees, existing anti-discrimination laws, or even the Constitutional separation of powers.

6. 47 U.S.C. 396(c)(2)(B).

Section 622(a)(3) provides that the initial Board members shall serve as incorporators, establishing the Endowment under the laws of any State selected (presumably by the incorporators), but not of the District of Columbia. It is not clear why incorporation in the District is barred, but it should be noted that a bar on incorporation of the Endowment in the District does not, per se, bar location of the Endowment, including its principal place of business, in the District, since the Endowment could easily qualify to do business there as a foreign nonprofit corporation.

Section 622(a)(4) establishes staggered, six-year terms for Endowment Board members, with vacancy and start-up provisions respecting Board member terms very similar to those contained in the 1967 Act.

Section 622(a)(5) sets a one-full-term limit on Board member service, but provides for the continuation in office of a member whose term has expired but whose successor has not yet been appointed and confirmed. The one-term limit contrasts with that in the otherwise similar Section in the 1967 Act, which permitted a Board member to serve two full terms.^{7/}

Section 622(a)(6) prevents a Board vacancy from affecting the powers of the Board and also requires that a vacancy shall be filled in the same manner as the original appointment was made.

Section 622(b) requires the election for a Chairman from among the voting members of the Board, each year. The Section establishes no minimum Board service as a qualification for the Chairmanship. The Chairman's term will be one year, with no restrictions upon re-election. The Bill's drafters did not adopt the provision, contained in the 1967 Act, that empowered the President of the United States to appoint the Corporation's first Chairman.

7. 47 U.S.C. 396(c)(4).

Section 622(b) also requires the election of one or more Board members as Vice Chairman or Vice Chairmen of the Board, but it does not establish the term of the Vice Chairman or Vice Chairmen since it does not require the annual election of either or both.

Section 622(c) expresses the Congressional determination, also found in the 1967 Act, that members of the Board shall not, by reason of their Board membership, be deemed to be officers or employees of the Federal Government. Neither this disclaimer nor the requirement that members of the Board "be appointed from among citizens... not fulltime officers or employees of the United States" bars service on the Board by a member who, after confirmation by the Senate, accepts Federal office or employment.

This Section also provides Board member compensation at a rate of \$100 per day (including travel time) and travel expenses (including per diem in lieu of subsistence) pursuant to laws and regulations governing such expenses for Government consultants and intermittent employees. The \$100 rate was first established in the 1967 Act. Although statutory and regulatory amendments have increased the compensation and expenses available to Government officers, employees, and consultants, CPB Board members still receive compensation at the \$100 rate. The Bill would freeze Endowment Board compensation at the same 1967 rate.

Section 622(d) requires that all meetings of the Board, or of any executive committee of the Board, or of any advisory committee established by the Board, or by the Endowment, shall be open to the public, and that any Minutes of these public meetings be made available to the public. The Section also contains exceptions to the "open meetings" requirement. These are apparently designed to protect personal privacy, the rights of litigants, negotiating positions and strategies, trade secrets, and information obtained on a privileged or confidential basis.

These exceptions generally track existing CPB exceptions to CPB's own, non-statutory "open meetings" rules, though one major difference is apparent.

The Bill requires that the Endowment issue a written statement to the public explaining the reasons for closing a meeting. Unlike the statement required by the CPB rules, the Endowment's statement must contain "a list of the individuals who attended the meeting, including identification of any organization represented by each individual." The requirement that the names of individuals attending a "closed meeting" be published in every instance, including a meeting closed to consider "personnel matters", would seem inconsistent with the privacy exception. Other inconsistencies may be discerned by further examination of the list of exceptions in the light of the identification requirement.

Section 622(e) is a conflicts of interest provision. The Section bars the participation by a Board member in any decision, action, or recommendation regarding a matter which "directly benefits" that member, or which "pertains specifically" to a firm or organization with which such member is presently associated, or with which such member has been associated during a two-year period immediately preceding the decision, action or recommendation. The terms "directly benefits", "pertains specifically" and "associated" are not defined.

Even in the absence of such a conflict of interest provision from the 1967 Act, the Senate Committee on Commerce, has, in the past, given specific and careful attention to potential conflicts of interest on the part of Board member nominees.^{8/}

Although by its terms Section 622(e) applies only to Board members, and not to Board nominees, the Section would probably

8. See, e.g., Hearings on the Nominating of Joseph Coors to be Member of the Board of Directors of the Corporation for Public Broadcasting, U.S. Senate Committee on Commerce, Sept. 9, 1975.

have an impact on Presidential and Senatorial consideration of actual and potential nominees. Since persons in recent or present association with organizations doing substantial present business with the Endowment would be required to recuse themselves on all matters affecting those organizations, the President and the Senate might consider their usefulness to the Endowment Board, overall, as substantially impaired.

The Section's proscription of Board member participation in decisions or actions "pertaining specifically" to "any firm or organization with which such member is ...or has been associated" is not limited to cases in which the firm or organization involved has a financial or profit interest. Thus, it may be concluded that the Bill will proscribe Board member participation in Endowment decisions, actions, and recommendations that affect non-profit firms or organizations with which the Board member in question is, or has been, associated.

A concrete example of such an association might be a Board member's association with a public radio or television station, NPR or PBS. Since no level or rank of "association" is specified, it must be assumed that any responsible, official association with such an organization will disqualify a Board member from participation in decisions, actions, or recommendations that "pertain specifically" to the station. It seems clear that a Board member who has been associated with a public television or radio station within the two-year period specified in the Section will be barred from participation in any Board decision or action on, for instance, a program production proposal from that station. It is not clear, however, whether such a Board member will be barred from participation in a Board decision or action whose benefits will accrue to a small or large group of public broadcasting stations, one of which is the station with which that member has been associated.

Conflicts of interest standards are often formulated in terms of a "direct, personal, and substantial financial interest" of the person whose conduct is being regulated, or of a family, organization, or institution with which he is associated. The Bill's creation of its own standard must be weighed against the public interest as measured by the participation in the work of the Board, of persons who are, in the Bill's own words, "eminent in such fields as education, cultural and civic affairs or the arts, including television or radio...." 622(a)(2)(A).

It should also be noted that the conflicts of interest laws, whether statutory or court-made, of the State in which the Endowment is incorporated will apply to the conduct of Endowment Board members, unless those laws are "inconsistent" with the terms of this Section. Courts around the Nation have been giving increased attention to conflicts of interest matters regarding the Boards of nonprofit corporations. The case regarded as "progressive" with respect to conflicts of interest on the part of Board members of nonprofit corporations is a District of Columbia case, known commonly as the Sibley Hospital Case.^{9/} The standards set in Sibley and the standard established in Section 622(e) appear to be consistently high.

Section 623(a) requires the Board to appoint an "administrator of the Endowment," who will "exercise all the executive and administrative functions of the Endowment". The use of the title "Administrator" to demoninate the chief executive officer of the Endowment appears at least symbolically significant. The term is not commonly used for this purpose in private, non-government enterprises, but is commonly used to describe the principal officers of Government agencies.^{10/}

9. Stern v. Lucy Webb National Training School, 381 F. Supp. 1003 D.C.D.C. 1974).

10. For example, the heads of the Environmental Protection Agency, the Farm Credit Administration, the Veterans Administration, and the General Services Administration are all "Administrators."

Section 623(a) also permits the Board to appoint "other officers" of the Endowment, "as the Board determines to be necessary." The Section makes no statement regarding the officership of the Chairman or any Vice Chairmen of the Board. The 1967 Act was more specific, including the Chairman and any Vice Chairman among the officers of the corporation.^{11/}

Section 623(a), like the 1967 Act, restricts the holding of Endowment office to citizens of the United States and also prohibits receipt by any Endowment officer of salary or other compensation from any source other than the Endowment during that officer's term of employment. Unlike the 1967 Act, however, Section 623(a) permits the Board to make exceptions to this rule. In addition, Section 623(a) narrows the scope of the prohibited compensation to "salary or compensation for services" (emphasis added). This limitation is consistent with traditional, internal CPB interpretation of the 1967 Act, which did not include the "for services" limitation.

Like the 1967 Act, Section 623(a) fails to make clear whether it is the receipt of compensation for services rendered before, or during, or both before and during, service with the Endowment that is proscribed. During employment by the Endowment, an officer may otherwise be legally entitled to receive compensation that has been fully vested, though deferred, for services performed before he or she became an Endowment officer. Unless the source of such deferred compensation itself gives rise to a real or apparent conflict of interest, it would seem unfair, and likely unconstitutional, to prohibit its owner from receiving it merely because he or she is serving as an Endowment officer.

Section 623(a) provides that all officers serve at the pleasure of the Board. Since the Chairman of the Board is not an officer, and since Section 622(b) provides a one year term for the Chairman,

11. "No officer of the Corporation, other than the Chairman and any Vice Chairman..." 47 U.S.C. 396(e)(1).

it may be concluded that the Chairman will not be subject to recall at the pleasure of the Board during that one-year term. Since Vice Chairmen are not officers, and since Section 622(b) provides no term length for Vice Chairmen, it may be concluded that a Vice Chairman will not be subject to recall at the pleasure of the Board during the term specified by the Board at the time of the Vice Chairman's election.

Section 623(a) contains a specific salary limitation upon officers and employees of the Endowment. None may be compensated by the Endowment at an annual rate of pay exceeding that for Level I of the Federal Government's Executive Schedule. Like many other administrative and procedural constraints in the Bill, this restriction appears inconsistent with the private nature of the Endowment and the non-government status of its officers and employees. Even if a significant Congressional interest in the level of salaries paid to Endowment officers and employees is conceded, it would seem that this interest could be reflected in a limitation upon the amount of compensation paid them from Federal sources.

Under the Bill, the Endowment is supposed to be a private, nonprofit corporation, established pursuant to the laws of some State. The laws of every State permit private, nonprofit corporations to receive gifts, grants and donations from various sources. It would seem that the allocation of the Endowment's income from all sources ought to be a matter for the Endowment's Board. The limitation on officer and employee compensation to the Level I rate of pay leaves the Board no room to consider the varying circumstances that a prudent Board, seeking competent professional administration, might wish to take into account in establishing an officer's salary. These include cost of living at the place where the officer will work, salaries paid for similar positions, the presence or absence of "fringe benefits" like those available

to Government officers or employees, the presence or absence of a contractual term of office, and similar factors.

Finally, this limitation on compensation of Endowment officers and employees, when combined with a specific Board authority to relieve an officer from the "no other compensation" restriction, may lead to a situation in which Endowment officers are recruited for limited-salary positions with the understanding that they may, through outside employment, supplement their incomes. Whether officers would be able to devote full time and attention to their Endowment duties under such circumstances is open to question.

Section 623(b)(1) permits the Administrator of the Endowment, subject to general policies adopted by the Board, to appoint such employees of the Endowment "as are determined to be necessary to carry out the purposes of the Endowment." The Section does not specify who shall do the "determining."

Section 623(b)(2) proscribes the application of any political test or any political qualification in selection, appointment, promotion, or other personnel action respecting any officer, agent or any employee of the Endowment. The 1967 Act contained a similar proscription, but specifically excepted the "political test" established elsewhere in the Act for Board composition: "not more than eight members of the Board may be members of the same political party."^{12/} The Bill also contains a political test for Board composition: "not more than five members of the Board may be members of the same political party." 622(a)(1). Since the Chairman and Vice Chairman are not officers under the Bill's terms, the 1967 Act's exception may not be required. If the Bill is amended to make the Chairman and Vice Chairman officers, then the Bill should also include the exception found in the 1967 Act.

^{12.} 47 U.S.C. 396(c)(1).

Section 623(b)(2) extends the proscription against political tests or political qualifications to the selection or monitoring of any "grantee, contractor, or person or entity receiving financial assistance under this part."

Notwithstanding the Bill's statutory requirements and restrictions upon the hiring, compensation, and other terms of office of Endowment officers and employees and many restrictions upon Endowment activities, that otherwise lead to a contrary conclusion, Section 623(c) states that "officers and employees of the Endowment shall not be considered officers and employees of the Federal Government."

Section 624(a) is a statutory prohibition against the issuance of any shares of stock, or the payment of any dividends, by the Endowment.

Section 624(b) restates the nonprofit nature of the Endowment, tracking the language in the 1967 Act: "no part of the income or assets of the Endowment shall inure to the benefit of any director, officer, employee, or any other individual, except as salary or reasonable compensation for services." This language comprises the traditional statutory definition of a nonprofit organization. However, it should be noted that the Bill contains a slightly inconsistent definition of the term "non-profit" at Section 612(11), where the focus is on the net earnings of the non-profit organization, as opposed to the income or assets of the Endowment, and where the further focus is upon benefit to "any private shareholder or individual" as opposed to "any director, officer, employee, or any other individual." Section 612(11) does not contain the exception for salary or other reasonable compensation contained in Section 624(b). The definitions should be conformed to avoid the inconsistencies.

Section 625(a) establishes the purposes of the Endowment.

Section 625(a)(1) charges the Endowment to facilitate the development of public telecommunications by making available to public telecommunications entities "noncommercial, educational and cultural program and services"...of high quality and diversity". The Bill does not define "noncommercial, educational and cultural programs and services". The use of the undefined term "noncommercial" to modify "programs" is especially problematic. It is unclear whether a program is "noncommercial" because it has been produced by a noncommercial entity, or because it has been or is to be distributed without commercial sponsorship, or because it has been produced for distribution to, or use by, noncommercial entities. The 1967 Act spoke of "programs of high quality obtained from diverse sources." Section 625(a) speaks instead of "programs...of high quality and diversity." Coming as this phrase does in Congress' statement of the Endowment's principal purpose, the shift in emphasis from diversity of sources to diversity of programs may be regarded as significant.

Section 625(a) of the Bill also differs from its counterpart in the 1967 Act by the omission of the so-called "objectivity and balance test". The 1967 Act authorized CPB to facilitate the full development of educational broadcasting in which programs would be made available to stations "...with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature".^{13/} The "objectivity and balance" language has long been a source of controversy within and without public broadcasting. Some critics have claimed the language constituted a violation of the First Amendment; others that it denied public broadcasters equal protection of the law (since the language does not apply to commercial broadcasters); still others that it created a "stricter standard" than the "fairness

13. 47 U.S.C. 396(g)(1)(A).

doctrine" (which does apply to commercial broadcasters). The United States Court of Appeals for the District of Columbia Circuit rejected all of these claims, however, declaring that the language was not a substantive standard for enforcement by either the FCC or CPB, but only "hortatory language" -- a general Congressional guide to the CPB Board as it went about its work in "facilitating" the full development of public broadcasting.^{14/} The Court also ruled that the FCC's fairness doctrine applied with equal force to both commercial and noncommercial broadcasting.^{15/}

The absence of "objectivity and balance" language in the Bill is consistent with one of the express overall themes of its drafters-- the reduction or elimination of inquiry into, or involvement in, program content matters by the Government: the Bill would also effectively eliminate the FCC's "fairness doctrine."

The Endowment's second purpose is stated in Section 625(a)(2). It is support for the development of "noncommercial...programs" for use in elementary and secondary schools and institutions of higher learning "in connection with regular courses of study"; that is, support for "instructional" programs and services.

Section 625(a)(3) requires that the Endowment support the development of "local, regional and national noncommercial... programming" to meet the needs and interests of communities and "communities of interest" in the United States. The Bill neither defines such "programming" nor distinguishes between, or among, the geographic types of programs it presumes to exist. Thus, the Bill raises a number of questions: What is it that makes a program "regional"? It's theme? The intention of its producer? The interest group it seeks to inform or entertain? It's primary distribution objective? It's post-production acceptance? The same questions may be asked about "local" and "national" programs.

14. Accuracy in Media vs Federal Communications Commission
521 F. 2nd 288 (DC Cir. 1975).

15. Ibid., p. 297.

Section 625(a)(4) charges the Endowment to "diversify...the sources from which public telecommunications services [noncommercial, educational, instructional and cultural television or radio programming or other noncommercial, instructional, or information materials] may be obtained for dissemination to the public. Here, in contrast to Section 625(a)(1), it is "sources" that are to be diversified, rather than "programs". The Endowment is to "diversify" these sources "to the maximum extent possible."

The Endowment's final statutory purpose is spelled out in Section 625(b)(5), which closely tracks the 1967 Act's language that is generally thought to create CPB's role as "insulator of the system" from "interference with, or control of, program content or other activities." As in the 1967 Act, the Bill does not identify the perpetrators of the interference or control to be protected against. Reading the similar provision in the 1967 Act, some believed the "source" Congress wished to thwart was the Government; but after 1967, and most especially in the mid-1970's, Congress itself began to legislate what some regarded as "interference in" or "control of" program content or station activities. Others believed that stations and programs required protection from commercial interests or underwriters or foundations. Still others opined that CPB, itself, was the "source" of the interference or control that CPB was to protect against. The vagueness in the 1967 Act's "insulation" language has contributed to the controversy surrounding its interpretation. Unless substantially improved, the Bill's "insulation" language is likely to do the same.

The list of Endowment purposes is exclusive: Section 625(a) says "the purposes of the Endowment shall be--". The five purposes set out there all relate specifically, and exclusively, to programs. The Endowment's only role in the development of public telecommunications institutions will be exercised through program-related assistance.

Section 625(b) underscores the Endowment's strictly limited purposes by permitting it to engage in one, single, categorical function--"[providing] financial assistance, [to specified recipients] for the purpose of developing, producing, or acquiring noncommercial, instructional, educational or cultural programs or services, for local, regional, or national distribution." Although the Section literally says that the Endowment "may" provide financial assistance for the purpose stated, the effect is the same as saying "shall" or "shall only", since only one function is permitted, and to refrain from engaging in that single function is to obviate the need for the Endowment altogether.

This single function "may" be performed, exclusively, through two specified types of activity: making grants and making contracts. The field of recipients of Endowment grants and contracts is similarly restricted:

--"public telecommunications entities" and "systems" of them, which are defined in the Bill;

--"program production entities", which are not defined in the Bill, but, by the Bill's terms, do include "independent producers" and "independent production centers", which are not defined;

-- "States", which are defined in the Bill, and "political subdivisions of states" which are not; and

-- "elementary and secondary schools and institutions of higher learning."

Section 625(c) further limits the Endowment's operational flexibility within the program assistance area. Exclusively for the purposes listed in Section 625(a) and exclusively to conduct its grant making and contracting with the entities mentioned in Section 625(b), the Endowment will have the powers of a nonprofit corporation in the State in which it is incorporated; but it

will be prohibited from exercising those powers to "own or operate any public telecommunications entity or system, or any interconnection system or any interconnection facility, or any programming facility," or to "produce, acquire, schedule or distribute programs..."

The former restriction tracks one applicable to CPB under the 1967 Act. The latter is similar to a restriction contained in the Public Telecommunications Financing Act of 1978, as passed by the House of Representatives, and, in some respects, similar to a restriction in the Senate version of that legislation. In its analysis of that Act, House Committee on Interstate and Foreign Commerce noted:

[P]resently, the Corporation does not perform any of the latter functions, but does make grants or contracts with a variety of other entities to assist in the production of programs. Business prudence may require that CPB provide for the acquisition of distribution or broadcast rights to programs produced with its assistance. However, since the Corporation is disbarred from owning or operating any distribution system, these rights must be acquired on behalf of public telecommunications entities. Nothing in this subsection is intended to impair CPB's ability to secure rights not related to the distribution of programs in exchange for assistance nor to preclude the assignment of such rights, in whole or in part, as CPB may deem prudent. 16/

The Senate Act version is less restrictive. Under the Senate version, the Corporation is prohibited from "producing programs, scheduling programs for dissemination, or disseminating programs to the public".^{17/}

Although the specific restrictions on Endowment activities contained in Section 625 are very significant, what is omitted from Section 625 may be even more significant. In contrast to

16. See House Report No. 95-1178, p.24, p. 58.

17. See Senate Report No. 95-858, p. 30, p. 44.

the CPB role under the 1967 Act, the Endowment will have no role in the establishment and development of interconnection systems,^{18/} nor in the development of systems of public telecommunications entities.^{19/} Its statutory activities will not include the general support of existing public telecommunications operations, or fostering the creation of new public telecommunications entities,^{20/} or the publication of a journal, or the maintenance of a library,^{21/} or the conduct of research, demonstrations, or training relating to public telecommunications. It's ability to accept a grants and contributions in support of its purposes will be severely limited. Section 628(a)(2). Section 625 is a radical departure from traditional Congressional determinations that public policy is best served by a public telecommunications system in which the entity receiving and dispensing appropriated support is a broadly-chartered and multi-disciplined institution with a central planning and leadership role and a great breadth of institutional freedom in pursuing that role.^{22/}

Section 626(a) introduces the Endowment's grant-making authority with the injunction that "no payment" under the Section's terms be made, "except upon application for such payment" submitted pursuant to rules or procedures established by the Endowment's Board. The meaning of the injunction is unclear, since the Section does not otherwise relate to "payments", but only to "grants," "contracts", and "distributions." General contract law would

18. Compare, 47 U.S.C. 396(g)(1)(B), (g)(2)(E).

19. Compare, 47 U.S.C. 396(g)(1)(C).

20. These activities are entrusted to NTA under Part C of the Bill. See *infra*.

21. Compare, 47 U.S.C.(g)(2)(D).

22. 47 U.S.C. 396(a)(1)-(6), (g)(1)-(3).

ordinarily require that "payments" related to such arrangements be made according to the terms of the agreements constituting them. The drafter may have intended only to ensure regularity in grant-making and contract formations, in which case the term "grants or contracts" should be substituted for the word "payment" wherever it appears in the Section. Better still, the Section, should be redrafted and combined with Section 626(c)(3), with which it is at least partially redundant.

Section 626(b) requires the Endowment to distribute to public broadcasting stations "...50 per cent of the funds available to the Endowment in any fiscal year for use in making grants...."

The term "funds" is undefined, and may be read to mean any or all of the liquid assets or income of the Endowment. Without any qualification, the term would seem to apply to all receipts of the Endowment, rather than merely those from Federal sources. Understanding of the Section as drafted is made more difficult by the use of two additional phrases to modify the undefined "funds": (1) "available to the Endowment in any fiscal year" and (2) "for use in making grants".

The first phrase is problematic when read in conjunction with Sections 629(b) and 626(C)(1). The former provides that "funds appropriated to the Endowment in any fiscal year shall remain available until expended." The latter requires the expenditure of "funds which remain available" after the 50% distribution required in Section 626(b). Read together, the three Sections are an enigma wrapped in a conundrum.

The second phrase modifying "funds available" is "for use in making grants." The Bill provides no guidance regarding who will determine what funds are "available for use in making grants", how such determination will be made, or as of what date "in any fiscal year" the amount "available for use in making grants" will be determined. Determining what 50% of this amount is, as required by Section 626(b), will be no easier than determining what 100% of it is.

If Congress determines that the Endowment must "pass-through" 50% of some amount to public broadcasting stations, it should avoid the problems presently inherent in Section 626(b), by more closely tracking the pass-through language of the Public Broadcasting Financing Act of 1975.

That Act required pass-throughs at stated percentages of

"...an amount equal to not less than []
percentum of the funds disbursed to the
Corporation from the...Fund during the
fiscal year..." 23/

Under the Bill, once the amount "available for use in making grants" is determined, fifty percent of that amount must be distributed as "basic programming grants" to "[e]ach public broadcasting station that is in operation during any fiscal year..." No guidance is given in the Section regarding the treatment of a station that goes into operation late, or very late in a fiscal year; nor is any exception provided to relieve the Endowment from the mandate to make a grant to a station that was in operation during a fiscal year, but then ceased to operate early or late

23. 47 USC. 396(k)(5).

in the same fiscal year. The result in these instances, which are admittedly uncommon, serves, however, to underscore the rigidity of Section 626(2).

Under Section 626, the Endowment lacks the flexibility necessary to preserve and protect its assets, or to see their prudent disposition. The ability to make rules and regulations regarding the mandated distributions is not sufficient to negate the absolute statutory requirement to make distribution to each station operating during the fiscal year in question.

One place in which flexibility is provided is in the amount to be distributed to individual stations as a "basic programming grants". There is no requirement that these basic grants be equal, only a requirement that every station in operation during a fiscal year receive one. Presumably, this flexibility would support variations in the amounts granted to stations based on factors like those relating to the "incentive" portion of the community service grants made by CPB under the Public Broadcasting Act of 1975 to:

"...(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations providing incentives for increases in such support; and

(iii) assure that each eligible licensee and permittee of a non-commercial educational radio station receives a basic grant..." 24/

Basic programming grants are to be used "at the discretion of the stations for meeting the direct costs of program production

24. 47 U.S.C. 396(k)(6)(A). See also Senate Report No. 95-858, p. 51, and House Report No. 95-1178, pp. 28-29, p. 63.

and acquisition". The term "direct costs" is not defined in the Bill, and the effects of its application to "production" and "acquisition" may be inconsistent. The term "direct costs" usually means "...those costs which can readily be identified with and charged directly to the product... Direct costing is not a generally accepted method of accounting for costs..."^{25/}

"Direct cost" would not generally include "overhead" or "general or administrative costs" or "imputed costs" of program production, but any or all of those costs would likely be included in the "direct costs" of program acquisition. Thus, the Section must be regarded as placing heavy premium on the acquisition of programs from other sources, as opposed to the production of programs by a "basic programming grant" recipient.

Section 626(c)(1) requires the Endowment to use the remaining fifty percent of its grant funds for any fiscal year, in that fiscal year, to "make grants and contracts for the development, production, and acquisition of public telecommunications programs and services," by providing up to 50% of the "cost" of the "project" that is the subject of the grant or contract.

Section 626(c)(2) permits the Endowment to provide more than 50% of such costs, if the Endowment determines "that highly meritorious proposals...could not otherwise be supported from non-Federal sources or from Federal sources other than the Endowment". The Section gives no guidance on how or by whom such "waiver" determinations are to be made, and leaves open the question of whether such determinations must be made on a general or a case-by-case basis. More importantly, perhaps, the Section effectively characterizes the Endowment as a "Federal" source. The characteri-

25. Sellin, Attorney's Handbook of Accounting (Bender, 1971) pp. 5-37.

zation of the Endowment as a "Federal" source of funding for the production or acquisition of programs appears inconsistent with other provisions of the Bill and may invite challenges to the constitutionality of the Bill and the Endowment's program support operations.

The total of all such "waiver" grants, in any fiscal year may not exceed 15% of the amount "remain[ing] available" to the Endowment after distribution of basic programming grants..." Since Section 626(b) requires the distribution of 50% of the funds "available" to the Endowment, the amount "remaining available" will always be 50% of the funds "available". In short, the ceiling on the waiver grants in any year is 15% of 50% or 7.5% of the Endowment's "grant and contract" money.

Section 626(c)(3) requires the Endowment to publish, at least once each year, a statement of the procedures for applying for grants under Section 626(c), but does not require publication of the procedures under which grant or contract proposals will be evaluated.

Section 626(c)(4) does require the Endowment to evaluate applications for such grants or contracts by "[utilizing]...panels of outside experts representing diverse interests and perspectives, appointed by the Endowment." The Section gives no further guidance on the nature or composition of these panels. The Section does say the panels must be used "to the maximum extent possible", but gives the Endowment the final word on whether or not to make any specific grant or contract, in the exercise of "its prudent

business judgement." In doing so, the Section closely tracks language in the House-passed Public Broadcasting Financing Act of 1978.^{26/}

Sections 626(d)(1) and (2) are grant and contract audit and records-access Sections, essentially transposed from the 1967 Act. The Endowment and the Comptroller General of the United States will have the ability to audit all financial aspects of the Endowment's grants and contracts with program suppliers who have not obtained their grants or contracts as the result of competitive bidding for fixed-price services and rights.

Section 627(1) appears intended to create an absolute presumption in favor of other Titles of the Bill whenever an inconsistency between Title VI and other Titles may arise. Although the language generally tracks language in the 1967 Act, it should be remembered that the 1967 Act was superimposed upon the Communications Act of 1934, as amended, after the latter had been in force many years. The impact of Section 627(1) cannot be fully evaluated, therefore, until all other Titles of the Bill have been firmed-up and fully analyzed.

Section 627(2) generally restates what has erroneously and consistently been mistaken as a "prohibition against Federal interference or control" of public broadcasting in a similar Section in the 1967 Act. In fact, neither the 1967 Act, nor

26. See House Report No. 95-1178, pp. 23-24, p. 57.

this Section of the Bill, prohibit anything. Each is merely a disclaimer that anything contained in it gives any Government agency, officer, or employee any direction, supervision or control, that agency, officer, or employee did not have (does not have) as a result of other parts of the 1934 Act (other parts of the Bill). This fact makes a searching analysis of the entire Bill important to an understanding of the Section's impact on the Endowment, every public station, and every public telecommunications entity.

Section 628 addresses "administrative provisions", apparently "restoring" in small part, some of the normal corporate powers set out for CPB in the 1967 Act but generally not repeated for the Endowment in this Bill. The power to "prescribe such procedures as it considers necessary governing the manner in which its functions shall be carried out" and the power "to utilize the services of voluntary and uncompensated personnel and reimburse them for their travel expenses" would generally be "implied powers" of any private, non-profit corporation under the laws of the State of incorporation. Their inclusion here, without the inclusion of other "implied powers" may, thus, give rise to the conclusion that all other "implied powers" are excluded. Worse, the absence of a "catch all" phrase acknowledging "such other powers as may be necessary and proper to the work of the Endowment," especially when read in the context of Section 621(2)'s statement that the Endowment "shall be subject to this Title, and to the extent consistent with this Title, to the laws of the State in which the

Endowment is incorporated", might support the conclusion that the Endowment has what amounts to a Federal charter, its powers to be strictly and narrowly construed by the courts.^{27/}

Section 628(a)(2)'s restriction on the Endowment's acceptance of money or property offered "for the purpose of supporting any particular program or any particular series of programs effectively forecloses "underwriting" of programs or series by government agencies, corporations, foundations, or individuals in cooperation with the Endowment. Experience has shown that common administration of such grants is prudent and productive. At present, other funders of program production often provide their assistance to a project through CPB when it is supporting the same project. As noted earlier, Section 625(b) requires that the Endowment restrict its grantees and contractors to the entities, governments, and schools enumerated there. Read literally, and in conjunction with Section 628(a)(2), that Section would require the Endowment to pass its support for a jointly-funded production through some "eligible" third party producing entity, or to permit the producer-grantee to "administer" the joint grant itself.

Section 628(2)'s restriction is particularly ironic in light of Section 626(c)(1)'s requirement that fifty percent of the cost of every Endowment-supported project must be funded by some other source.

Since Section 646(c)(2)(B) restricts the acceptance of "underwriting" by public broadcasting licensees receiving support from NTA, it is hard to see how any production will be

27. See, e.g., Logan County National Bank v. Townsend, 11 S. Ct. 496 (1891).

fully funded from outside the producing station: presuming that the Endowment can (generally) put up only 50 percent of the money required for a specific production,^{27A/} it cannot accept the other 50% to "match" its grant to the producing station. Neither can the producing station accept an "earmarked" grant or contract from an "outside" party.

Finally, other Titles of the Bill, and even Section 642(c)(2)(B) (which limits NTA support for station facilities and operations to stations which do not accept underwriting for specific programs and series), anticipate that the Communications Regulatory Commission will continue to permit, and that some noncommercial stations will continue to accept, specific program underwriting. The restriction flies in the face of traditional Congressional support for the propositions that "Federal" funds should not dominate program availability to public broadcasting, that funding sources for such programs should be diverse,^{28/} and that the receipt of non-Federal contributions provides a "market place" measure of public broadcasting's effectiveness significant enough to form an element of the "non-Federal financial support" determining the amount of Federal support received by public broadcasting.^{29/} In short, the net effects of Section 628(2)'s and Section 646(c)(2)(B)'s restrictions on specific underwriting donations or contributions, will be to:

27A. There is clearly an apparent inconsistency between Section 626(c)(1), which permits the Endowment to make grants or contracts for the the development, production, and acquisition of particular public telecommunications programs and services, and Section 646(c)(2)(B) which bars a station's acceptance of donations or contributions [from any source] to support "any particular program or any particular series of programs."

28. 47 U.S.C. 396(g)(1)(A).

29. 47 U.S.C. 396(k)(2) & (3).

- impair the Endowment's private status and (thus its constitutionality);
- frustrate its ability to generate the 50% "matching funds" required for it to make program grants under the Bill's own terms;
- concentrate financial support for the production or acquisition of programs in one, or a few, entities operating principally with Federal appropriations and therefore with increased potential for Federal interference or control over program content and operations;
- reduce, but not eliminate, specific program underwriting, making this form of corporate identification more valuable to commercial enterprises able to convince producing stations to accept their money, and thus forego NTA facilities and operations support;
- centralize production activities in the small number of public stations willing to eschew Federal support for facilities or operations in favor of more lucrative financial arrangements with program underwriters who attach fewer "strings" to their gifts than the Endowment.

Section 627(b)(1)(2) and (3) require annual audits of the Endowment's books by independent auditors and permit audits of Endowment financial transactions by the Comptroller General of the United States. These Sections generally track the CPB audit provisions in the 1967 Act. The important limitation of Comptroller General audits to "financial transactions" is maintained.

Section 629(2) authorizes the direct appropriation of \$200 million for each of fiscal years 1980, 1981, 1982 and 1983 to the Treasury for deposit in a "Public Telecommunications Programming Endowment Account," a constituent account of the "Telecommunications Fund" established in Section 413(d) of

the Bill. The Bill would, thus, restore the "traditional" authorization and appropriation process abandoned for CPB in the Public Broadcasting Financing Act of 1975.^{30/} There would be no guarantee that levels of Federal support "matched" or "followed" non-Federal financial support earned by either the Endowment or its grantees. Thus, those who hailed the 1975's "matching" mechanism as an "insulating device" may well regard the Bill's return to direct, annual appropriations as a further, substantial, erosion of public broadcasting's "insulation" from the vagaries of Congressional purse-string control. They will likely find little solace in the Bill's return to "no-year funds", especially since the Section is not clear as to whether sums appropriated for any fiscal year, but not "expended" in that year, remain available until they are "expended" by payment from the Fund to the Endowment, or until they are "expended" by either obligation or actual payment from the Endowment.

Unlike the 1975 Act's "single payment" disbursement method, the Bill provides for quarterly payments from the Fund to the Endowment, upon quarterly Endowment certification of the amount necessary to meet its financial obligations in the succeeding quarter. The "single payment" method has been the subject of much recent Congressional interest, and both the House of Representatives and the Senate Committee have returned to this method for Treasury payments to CPB in the legislation presently awaiting conference.^{31/}

30. 47 U.S.C. 396(k)(1)-(3).

31. See House Report No. 95-1178, p. 26, p. 62; Senate Report No. 95-5-858, p. 30, p. 50.

PART C--GRANTS FOR PUBLIC
TELECOMMUNICATIONS OPERATIONS,
FACILITIES, AND EXPANSION

Section 641 recites Congressional findings relating to Federal support for "the planning, construction, and operation of public telecommunications facilities". Congressional objectives in authorizing such support are:

- Section 641(1)--extension of public telecommunications services to "as many people of the United States as possible" through the "most efficient and economical means", including the use of both broadcast and non-broadcast technologies;
- Section 641(2)--assistance to public telecommunications entities in meeting their operating costs";
- Section 641(3)--growth in the number of public telecommunications services and facilities "available to and owned by minorities and women";
- Section 641(4)--strengthening the capability of existing public broadcasting stations to provide services to the public; and
- Section 641(5)--demonstration of innovative techniques for using telecommunications equipment to deliver public telecommunications services.

Section 641(1) must be compared to Section 396(a)(5) of the 1967 Act: "...it is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make noncommercial educational radio and television service available to all the citizens of the United States". The Bill would apparently abandon the 1967 Act's goal of providing "all" of the citizens of the United States with public radio and television services.

In addition, Congressional purposes now focus upon delivery of public telecommunications services by "the most efficient and economical means". As a result, public broadcasting may no longer lay exclusive claim to Federal public telecommunications support. For the first time,^{32/} nonbroadcast technologies are to assume equal priority with broadcast technologies as a means of providing communications services to citizens. 641(1).

For the first time, public telecommunications entities (including not only public broadcasting stations but also nonbroadcast communications disciplines) will receive direct Federal support for their operations, through the National Telecommunications Agency (NTA). 641(2).

For the first time,^{32/} participation of minorities and women in the provision of public media services is given specific legal weight. 641(3).

32. In this respect, the Bill does follow recent House and Senate action, not yet law, expanding Congressional support for nonbroadcast technologies. See House Report No. 95-1178 and Senate Report No. 95-858.

Finally, the use of innovative telecommunications methods and techniques, formerly endorsed by the Congress through CPB's authority to "...conduct...research, demonstrations, or training related to...use of nonbroadcast communications technologies..."^{33/} and HEW's authority to "...promote the development of nonbroadcast telecommunications facilities and services [for health, education and other public service purposes]"^{34/} is reemphasized. 641(5).

In effect, the drafters of the Bill are saying that previous Congressional hopes for delivery of public broadcasting services to the wide variety of communities and communities of interest in the United States must be rethought in light of the rapid advancement of technology, and the limitations, technical or otherwise, upon the broadcasting delivery mode. Part C of the Bill is at once a reconfirmation of social service objectives first established by the Carnegie Commission on Educational Television, and a turning away from the institutional imperatives in the public broadcasting sector that grew out of that Commission's recommendations after passage of the 1967 Act.

Thus, the drafters of the Bill have determined to separate the program-related, and operations-related support efforts previously channelled through the Corporation for Public Broadcasting, and the facilities-related and demonstration-oriented support previously channelled through the HEW Educational Broadcasting Facilities Program and the HEW Demonstration Grants Program, respectively.

33. 47 U.S.C. 396(g)(2)(H).

34. 47 U.S.C. 392a(a).

Section 642(a) requires that NTA carry out a program of grants to public broadcasting stations, to assist in meeting the costs of facilities and operations of those stations. NTA's support for the cost of facilities and operations of public broadcasting stations may not exceed 50% of the "total budget" of the station involved, as measured by the "total budget" for the station's fiscal year second preceding the fiscal year in which NTA's support is paid. The 50% limitation has a built-in two-year "lag." Thus, over a period in which a station's revenues from other sources, and consequently, its "total budget" grows, the statutory limitation will effectively limit NTA assistance to a percentage substantially below 50% of the station's budget for the year in which the NTA grant is paid.

The Director is to execute his responsibilities under this Section "in consultation with public broadcasting station licensees and others as appropriate...."

Section 642(b) requires the Director of the NTA to establish, and review annually, eligibility criteria for facilities and operations assistance under the Bill. A traditional Congressional objective, encouragement of the growth and development of all noncommercial, educational broadcasting stations, is to be given renewed emphasis in those criteria.

Section 641(c), however, establishes a new regimen for facilities and operations assistance. Stations desiring to share in Federal support for facilities or operations must now certify annually that they are in compliance with specified Congressional objectives:

Applicant stations must be "non-profit" entities, donations to which are allowable as charitable contributions under the Internal Revenue Code. 642(c)(1).

Applicant stations must be "more noncommercial" than before, broadcasting no announcements that promote the sale of a product or service, and no announcements of sponsorship (or "underwriting") related to any particular program or series of programs. 642(c)(2)(A).

Recipient stations must accept no donations or contributions offered for the purpose of supporting any particular program or any particular series of programs. 642(c)(2)(B).

Applicant stations must reach out to local communities for "input" by establishing community advisory boards. 642(c)(3).

Applicant stations must hold their board meetings and advisory board meetings open to the public. 642(c)(4).

Applicant stations must comply with the special equal employment opportunity provisions of the Bill. 642(c)(5).

Applicant stations must demonstrate financial accountability in accord with specific provisions of the Bill. 642(c)(6).

Finally, Applicant stations must provide reports in form and substance complying with directives of NTA (but NTA may not require reports regarding "programming or program content"). 642(c)(7).

Section 642(c) is apparently intended to respond to certain perennial criticisms of public broadcasting. Public broadcasting stations that wish to enjoy Federal support for the construction of facilities and maintenance of facilities, and for their general

operations, must comply with specific codes designed to achieve established Congressional objectives. The codes are rigorous: in some respects, even burdensome. They reflect a traditional "carrot and stick" approach to legislation providing Federal financial assistance. They also establish a new level of Federal involvement in the internal workings of hitherto autonomous broadcasting units.

Section 642(d)(1) fixes the aggregate annual allocation of funds available for public broadcasting facilities and operations support at 75% for public television stations and 25% for public radio stations. This statutory ratio would, in most respects, replace the annual CPB determination on division of aggregate television and radio support known as the "radio-television split". Although the Public Broadcasting Financing Act of 1975 ("the 1975 Act") gave statutory status to the radio-television split,^{35/} that Act merely required a division of funds; it did not establish the respective shares of the sharers. Thus, this Section of the Bill constitutes a significant new Federal involvement in matters formerly entrusted to the the discretion of the non-governmental CPB Board. The Section is absolute and inflexible. It clearly forecloses consideration of the relative needs and priorities of the public television and public radio licensees, as those needs and priorities may change from time to time.

Section 642(d)(2) does provide a measure of flexibility regarding the total portion of appropriated funds to be distributed among public television stations and public radio stations, respectively:

35. 47 U.S.C. 396(k)(5).

The Director may allocate to eligible television stations equal basic grants not to exceed, in the aggregate, two-thirds of the 75% available for public television stations (or 50%): and to eligible public radio stations equal basic grants not to exceed, in the aggregate, two-thirds of the 25% available for public radio stations (or 16.5%).

Section 642(d)(3) requires that the remainder of the funds available for public television and public radio station support (no less than 25% of the "funds available to carry out [Section 642]") shall be distributed to eligible public television and public radio stations "in accordance with [a formula that is based on] criteria designed to provide for the financial needs and requirements of stations in relation to the communities and audiences those stations undertake to serve", and to "encourage administrative cost efficiencies", and to "encourage programs to train women and minorities and to increase their participation in public broadcasting". These incentive grants are the successors to the incentive grants provided for in the 1975 Act,^{36/} but new emphasis is placed upon "administrative cost efficiencies" and upon the training and other participation of women and minorities in the activities and benefits of public broadcasting. Under the 1975 Act, incentive grants to stations were based upon a formula, designed, in part, to encourage the maintenance of existing, and the stimulation of new, sources of non-Federal financial support for stations. The Bill abolishes fund-raising incentives.

^{36.} 47 U.S.C. 396(k)(6)(A).

Section 642(e) prohibits the use of either basic grants of incentive grants made under the Bill as "matching" funds to earn other Federal grants. The Section would, thus, make it unlawful to use NTA basic or incentive grants to "match" Federal funds from, for instance, the National Endowments for the Arts and Humanities. Whether this Section would prohibit the use of such grants to earn Endowment grants is a moot issue, since Section 625(b) strictly limits Endowment grants to support for program production and acquisition, and Section 642(f) bars the use of Section 642 grants to meet costs of program production or acquisition.

Section 642(f) prohibits the use of either basic grants or incentive grants to meet the "direct program costs associated with program production or acquisition by the licensee." Otherwise, both basic and incentive grants may be used, at the discretion of the recipient station, to support the construction or acquisition of facilities, operations, maintenance, or improvement of the station. It is in Section 642(f) that the symbolic and the substantive impact of the Bill's separation of program and operational support becomes most apparent. The Section contains no definition of "direct program costs associated with program production or acquisition by the licensee". Indeed, a precise identification of such costs might elude the most sophisticated accounting systems. But the Section, and the Bill overall, create more than a challenge to accounting skills: they impose a statutory division of daily station operations that are otherwise coherent. They legislate a separation of the

inextricable. While doing so, they also merge disparate forms of business undertaking, capital (or facilities) and operations, into a single category for Federal financial support and administrative purposes. The effect, here and throughout the Bill, is a mismatch of purposes and activities.

Section 642(g)(1) bars distribution of NTA support funds to any public broadcasting station that does not have a "community advisory board". The community advisory board's membership must, "to the maximum extent feasible", include individuals representative of the community served by each station.

Section 642(g)(2) and (3) govern the role of these advisory boards as they relate to each station's operations. At a minimum, each advisory board will advise the governing body of the station regarding "the educational, cultural, and informational needs of the communities served by the station", making recommendations as deemed appropriate by the advisory board. Although Section 642(g)(2) states that the community advisory board "may be delegated any other responsibilities" the station's governing body chooses to delegate, Section 642(g)(3) prohibits the delegation to any community advisory board of "any authority to exercise any control over the daily management or operation of the station".

Section 642(g)(4) establishes the effective date for station implementation of the community advisory board requirement. For a station in existence on the enactment date of the Bill, an advisory board must be created within 180 days of enactment. For a station beginning operations after the enactment date, Section 642(c)(3) requires the creation of an advisory board before application for NTA assistance.

Section 642(h)(1) prohibits distribution of basic grants or incentive grants to a station unless that station's governing board, committees of the governing board, and its advisory board all hold open meetings preceded by reasonable notice to the public.

Section 642(h)(2) permits the closing of sessions of boards, committees, and advisory bodies when specified matters are under consideration. This Section closely tracks similar provisions applicable to the Endowment under Section 622(d), and appears to contain the same inconsistencies manifest in that Section.^{37/}

Section 643 requires the Director of NTA to establish and carry out a program of grants designed to: (1) assist in the planning and construction of new telecommunications facilities; (2) expand the availability of public telecommunications services to the public; (3) assist in meeting the costs of operations of noncommercial telecommunications entities; and (4) demonstrate innovative methods of expanding the availability of telecommunications services.

Section 643(b)(1) requires the Director to establish criteria under which NTA will make construction and planning grants for noncommercial telecommunications facilities and operations. The criteria are to be designed to: promote new telecommunications facilities to serve areas presently unserved by public broadcasting; to expand the service areas of existing public telecommunications entities; and to "develop" the number of facilities owned by, and available to, minorities and women.

37. See discussion of Section 622(d), supra.

Section 643(b)(2) establishes basic eligibility criteria for telecommunications facilities construction grants. The applicant must be a public broadcasting station, or a non-commercial public telecommunications entity, or a system of public broadcasting stations or noncommercial telecommunications entities, or a non-profit organization organized primarily for instructional, educational, or cultural purposes, or a state or political subdivision of a state. 643(b)(2)(A)(i) through (v).

The applicant must show that:

- it has a five year plan for its facilities' requirements and has projected the costs of meeting those requirements;
- that the funds necessary to construct, operate and maintain the facilities will be available when needed;
- that the operation of the facilities will be controlled by the applicant;
- that the facilities will be used exclusively for non-commercial, instructional, educational, or cultural purposes;
- that the applicant has participated in comprehensive planning for telecommunications facilities in the area it proposes to serve, and that the planning has included the evaluation of alternative technologies; and that
- the applicant will make the "most efficient use" of the grant.

The requirements regarding control of the facilities by the applicant, availability of funds for construction, operation, and maintenance, and exclusive use for statutory purposes essentially track existing requirements of the Educational Broadcasting Facilities Program.

The requirement that the applicant participate in comprehensive planning for public telecommunications facilities is substantially like the existing requirement that applicants for radio facilities grants participate in such planning.^{37A/}

As to both television and radio facilities grants, existing law requires an applicant to notify the appropriate state educational broadcasting agency of the submission of an application, and the HEW Secretary to advise the same agency of any disposition of the application.^{38/} The specific requirement that participation in such planning include "an evaluation of alternative technologies" is new. The Section does not offer specific guidance on how such an evaluation is to be conducted, but the further requirement that "the applicant will make the most efficient use of the grant" may be read to create a presumption in favor of cost-benefit analysis. Existing law applies the "most efficient use" test to the radio station applicant's use of the station's "frequency assignment" -- not its grant.^{39/}

Section 643(b)(4) imposes a 75% limitation on the amount that may be granted in support of a public telecommunications facilities construction project. This percentage limitation is the same as provided in existing law,^{40/} but the merger of facilities and operations support for public broadcasting stations in Section 642 of the Bill effectively erases any percentage limitation upon Federal support for a station's hardware

37A. 47 U.S.C. 392(a)(5).

38. 47 U.S.C. 392(c)(1) and (2).

39. 47 U.S.C. 392(a)(5).

40. 47 U.S.C. 392(e).

purchases: if a station wishes to buy facilities with its Section 642 grant, it may do so, though at the expense of operations. The Bill leaves unclear whether Section 642 money may be used as a station's portion of a Section 643 facilities project.

Existing law (47 U.S.C. 392(b)) imposes an 8.5% limit on HEW facilities grants allotments to any one state in a fiscal year. The Bill contains no similar limitation.

Section 643(b)(5) permits the NTA to provide planning support to an applicant eligible for a facilities' construction grant under this Section. Section 643(b)(5) does not establish a percentage limit on the NTA participation in the costs of planning for individual facilities construction projects.

Section 643(c)(1) permits the Director to establish and carry out programs to support the "costs of operations" of non-commercial public telecommunications entities. (The term "non-commercial public telecommunications entities" does not include public broadcasting stations. Support for the operations of public broadcasting stations" is authorized in Section 642.)

The Director may provide up to 50% of the "total budget" of an eligible noncommercial telecommunications entity for the year second preceding the fiscal year in which the grant is made. In reviewing eligibility criteria for this operational support for public telecommunications entities, the Director is required to "take into account" the extent to which the entity is extending public telecommunications services to areas which are "not adequately served by public telecommunications". Here, the focus is on geographical areas, rather than the "communities" or "communities of interest" that are the focus of eligibility for grants from the Endowment. 625(2)(3).

Section 643 provides that the Director shall establish and annually review eligibility criteria for noncommercial telecommunications entity operational support, in consultation with noncommercial telecommunications entities and others as appropriate. There are only two statutory eligibility requirements: that the entity holds open board meetings, and that it refrains from seeking or accepting "underwriting" of specific programs or series of programs.

Section 644 requires the Director to arrange, "by grant" to appropriate public or private agencies, organizations, or institutions "for the construction or lease of interconnection facilities for distribution of programs to public telecommunications entities." The Agency itself is forbidden to own, operate or otherwise control interconnection facilities. The Section clearly anticipates that the NTA will be dealing with a variety of suppliers of interconnection facilities. There is no requirement that the suppliers of such services be nonprofit. Thus, communications common carriers, as well as public telecommunications entities, systems of public telecommunications entities, and others may supply Federally "arranged for" interconnection facilities. The issue of who should arrange for interconnection has a long history. In 1967, after much debate, and substantial differences between the House and the Senate, Congress determined to authorize CPB to undertake this activity.^{41/} Under the Bill, the Government will be directly involved in interconnection activity for the first time.

Section 644 is silent on how, and to whom, the Director will entrust the use or management of federally supported interconnection facilities, but Section 644(b) prohibits the operator or manager of any interconnection system acquired or constructed with funds

41. 47 U.S.C. 396(g)(2)(E). See also Senate Report No. 222 (90th Cong. 1st Sess.) p. 15 (1967).

available under Section 644 to: (1) produce or acquire programs; (2) act as a trade association representing public telecommunications entities; "and" (3) schedule programs or services for dissemination to the public at specific times. This is the Bill's "anti-networking" provision. It is not clear whether the word "and", between the second and third prohibitions is meant to be conjunctive or disjunctive. If it is read to be conjunctive (that is, to prohibit the conduct of all of the stated activities at any one time by any federally supported interconnection manager), then its net effect on the public broadcasting status quo would be to require the "spinning off" of certain PBS and NPR activities, so that only one or two of the prohibited activities could be conducted by those organizations. If, as the context otherwise seems to require, the "and" is read as disjunctive (that is, to prohibit the conduct of any one or more of the stated activities), then NPR or PBS will each have to cease both the acquiring of programs and the activities of trade associations in order to be eligible for interconnection facilities support under the Bill. The prohibition against "scheduling programs or services for dissemination...to the public at specific times" may not, strictly read, apply to present PBS and NPR operations, since each permits stations receiving interconnected programs to broadcast the programs they distribute "at times chosen by the stations".^{42/} (By choice, however, many public radio and television stations do broadcast programs at the times they are received from NPR and PBS, respectively.)

Section 644(c) is a restatement of the "free or reduced rate interconnection service" provision contained in the 1967 Act. This Section is permissive, not mandatory, upon domestic common carriers. Under the 1967 Act, CPB has arranged both terrestrial and satellite interconnection services at rates reduced below those offered or charged to commercial customers

42. 47 U.S.C. 396(g)(1)(B).

of the carriers. The predecessors to Section 644(c) have always permitted, but never required, common carriers to provide "free or reduced rate interconnection services" to be used for public television and public radio "services". Theoretically, any public television or radio user may apply for free or reduced rate interconnection from a carrier.

Section 644(d) creates a "priority" on the use of interconnection systems supported with funds appropriated pursuant to the Bill. The priority is in favor of "public telecommunications entities", meaning both public broadcasting stations and noncommercial telecommunications entities. The Section also grants "to other persons" access to "capacity" remaining after such priority use. Such access is limited to use for the purpose of transmitting noncommercial television and radio programs and services to public telecommunications entities. The access provided would therefore seem to exclude access for the purpose of "teleconferencing".

Access users will be entitled to "reasonable terms and conditions governing the use of capacity excess to the needs of public telecommunications entities," and the Section prohibits denial of access "whenever sufficient capacity is available" and requires that any charge made for such access "not exceed any cost which is directly attributable to transmitting the material involved."

"Directly attributable" is not defined. A reading of the term could thus result in subsidization of "access" use by whoever is paying for the services involved. It should be noted that Section 644 does not require the NTA Director to pay all of the costs of interconnection facilities he arranges. Whether the "person responsible for managing" an interconnection acquired or constructed with funds appropriated pursuant to the Bill would be compensated for operational costs, overhead, general

and administrative costs and other expenses not "directly attributable" to the transmission of access material is unclear. In Section 644(a), the NTA's Director's authority appears to be limited to arranging for the "construction or lease of inter-connection facilities". This might suggest that systems of public telecommunications entities operating or managing an inter-connection system constructed or leased with funds provided pursuant to the Bill would be paying their own operating costs. If that is the case, and those entities have operating costs not "directly attributable" to transmission of programs or materials for the access user, then Section 644(d)(2)'s requirement that those entities, in effect, subsidize the access user, may present a constitutional question.^{43/}

Section 645 contains "administrative provisions" relating to 641-644.

In Section 645(a), the Director is required, in consultation with the Director of the Office of Management and Budget, and with others, to develop "uniform accounting principles" to be used by all public telecommunications entities receiving facilities and operations support under Sections 641-644. The uniform accounting principles must be designed to "account fully for all funds received and expended for telecommunications purposes by such entities." This requirement seems over-broad, in that funds received and expended for telecommunications purposes by public telecommunications entities need not be only funds appropriated pursuant to the Bill's terms. To require a public telecommunications entity to adopt a uniform accounting system for funds received under the Bill's terms might be burdensome, but to do so would at least bear some relationship to a clear Federal interest--accountability for Federal funds received. To require hundreds of different

43. "No person shall...be deprived of...property without due process of law; nor shall private property be taken for public use without just compensation." U.S. Constitution, Amendment V.

entities to apply uniform accounting disciplines to recordkeeping for all funds they receive and expend, even when a substantial part of those funds may be from non-Federal sources, seems extreme. The Section does permit the Director to "adopt" different classes of accounting principles and require their use by different classes of public telecommunications entities.

Section 645(b) requires that each public telecommunications entity receiving funds under Sections 641 through 644 keep its books, records and accounts in a form that enables the Director of NTA to carry out his accountability functions. The types of records to be kept, and made available for inspection, are essentially the same as those required under the 1967 Act.

Section 645(b)(2) requires that each recipient be audited by an independent accountant each year and that the audit be conducted under auditing standards developed by the Director of NTA in consultation with the Director of the Office of Management and Budget.

Section 645(b)(3) requires each recipient to furnish the Director of NTA with a copy of the annual audit report required in Section 645(b)(2). This Section also requires each recipient to provide "such other information regarding financial operations that the Director may require."

Section 645(c) gives the Director and the Controller General, and their authorized representatives, access to books and records of recipients for audit purposes.

Section 645(d) gives the Director of NTA the general authority to prescribe rules and regulations necessary to carry out his functions. The Section also makes specific what otherwise would be the Director's implied powers to establish orders of priority

for the approval for applications for construction projects and to establish the amounts of each grant he makes for such projects.

Section 645(e) requires the Director to take "affirmative steps" to inform minorities and women of the availability of Federal support for public telecommunications facilities projects and about "the localities in which new [such] facilities are needed." It also requires the Director to "provide such assistance and information as may be appropriate."

Section 645(f) requires each recipient to provide the Director with a copy of any study made using funds received from NTA.

Section 645(g) relates to the recapture of appropriated funds granted for the construction of public telecommunications facilities. The Section maintains the ten-year "public benefit discount" theory upon which facilities grants have been made under the Educational Broadcasting Facilities Program. Should the recipient cease to be an eligible institution as described in Section 643, or should the recipient cease to use the facilities exclusively for noncommercial public telecommunications purposes, then the Government will be entitled to recover all or part of the costs granted, but not the facilities themselves. The amount recaptured will be based upon the ratio of the Government's contribution to the total costs of the project as funded. The recipient will owe the Government an amount equal to the fair market value of the facilities at the time of recapture, multiplied by that ratio.

Section 645(g)(2) transfers to the Director of NTA the authorities and responsibilities of the Secretary of HEW and the Secretary of Commerce under Section 392 of the Communications Act of 1974. The Section also transfers enforcement authority

authority over grants made under HEW's Educational Broadcasting Facilities Program to the Director of NTA. In doing so, the Section would specifically and retroactively change the terms under which those grants were made, by applying the Bill's criteria for [continued] eligibility to grants made before the Bill's enactment. Retroactive, unilateral changes of grant or contract terms are likely to prove unenforceable.

Section 645(h) requires the Director to submit an annual report for the preceding fiscal year to the President of the United States for transmittal to the Congress, on or before February 15th of each year. The report must include a comprehensive account of the activities and operations of the Agency under the Bill.

Section 646 creates a special equal employment opportunity requirement for all public telecommunications entities receiving funds from NTA pursuant to the terms of the Bill. This equal employment opportunity requirement would not apply to recipients of grants or contracts from the Endowment.

The Section requires that affected public telecommunications entities afford all persons equal employment opportunity and forbids them to subject any person to discrimination in employment on the ground of race, color, religion, national origin or sex. Discrimination on the basis of age is not prohibited. By parenthetical statement, the term "discrimination in employment" is made to include "discrimination in connection with appointments to governing or advisory bodies".

Most public broadcasters and many public telecommunications entities are already covered by equal employment laws, usually as a result of their receipt of Federal assistance from one or more Government sources, or their enjoyment of a license to broadcast.

This Section will, nevertheless, establish new, and additional, substantive and procedural EEO standards.

The extension of the anti-discrimination bar to "governing and advisory bodies" of these entities is noteworthy. Anti-discrimination laws of general applicability normally forbid discrimination in employment or other benefits for which Federal assistance is provided. Generally, uncompensated service on a governing board is not considered "employment". Whether unpaid service on the governing or advisory body of a recipient institution constitutes one of the "benefits" Congress intended in passing a specific Federal assistance program would otherwise be a question for case-by-case determination.

Section 646(b) requires and empowers the Secretary of HEW to enforce the special public telecommunications equal employment opportunity requirements of Section 646(a). The Secretary is authorized to prescribe such rules as may be necessary to carry out his functions in enforcing the Section.

Section 646(c)(1) requires the Director of NTA to make the anti-discrimination requirements of Section 646(a) and the rules and regulations of the Secretary authorized in Section 646(b) parts of each grant agreement or contract made after the date in which the Secretary of HEW has prescribed those rules and regulations.

Section 646(c)(2) requires each grant applicant to make preliminary showings to the Director of NTA that the applicant is "affording equal opportunity in employment". Unless the Director is satisfied with these preliminary showings, he must notify the Secretary of HEW, causing the

Secretary to review the matter, and to make a "final determination" whether the applicant is affording equal opportunity in employment.

Section 646(c)(3) requires the Director of NTA to make a grant, all other conditions having been satisfied, to an entity whose equal employment opportunity practices are under review by the Secretary pursuant to Section 646(c)(2) "pending a final determination of the Secretary..." Whether such a grant is to be unconditional or conditional, and the consequences of an unfavorable determination by the Secretary, are unclear, especially in light of Section 646(e)(1)'s definition of the word "recipient" to mean an entity "receiving funds under this part." This definition clearly excludes applicants, but Section 646(d), which establishes compliance procedures, relates only to recipients.

Section 646(d) establishes compliance review and correction procedures to be followed whenever the Secretary of HEW determines that a recipient is not in compliance with the equal employment opportunity provisions of the Section. Under such circumstances, the Secretary must give the recipient notice of the Secretary's determination within ten days, requesting the recipient to "secure compliance". If, within 120 days after receipt of the Secretary's notice, the recipient has not demonstrated to the Secretary's satisfaction that the violation has been corrected, or has not entered into a compliance agreement approved by the Secretary, then the Secretary is required to direct the Director of NTA to reduce or suspend any further payments of funds to the recipient. The Director is required to comply with the Secretary's directive. The payment of funds to the recipient will not be resumed

until the Secretary certifies to the Director that the recipient has entered into a compliance agreement approved by the Secretary. A recipient whose grant has been reduced or suspended may apply for a certification of compliance at any time.

Section 647 purports to "prohibit Federal interference or control" of public telecommunications entities and other recipients. The Section suffers from the same defects as Section 627; that is, it prohibits nothing.^{44/} Further, Section 647 specifically excepts the activities of the Director and the Secretary under Section 646 (equal employment opportunity enforcement) from the "prohibition" against government interference or control. Thus, "...to the extent authorized in Section 646..." (which extent cannot readily be determined) this part of the Bill (Part C - Grants for Public Telecommunications Operations, Facilities, and Expansion) may be deemed "to...authorize [a] Government agency, or [an] officer or employee of the Federal Government, to exercise...direction, supervision, or control over public telecommunications, or over the curriculum, program of instruction, or personnel of any elementary school, secondary school, institution of higher education, or over any public telecommunications entity." An intention to prohibit such direction, supervision, or control would be better served by re-drafting the Section.

Section 648(a) authorizes the appropriation to NTA of \$75 million for each of fiscal years 1980, 1981, 1982 and 1983, to provide assistance for public broadcasting facilities and operations (Section 642 support).

44. See discussion of Section 627, supra.

Section 648(b) authorizes the appropriation to NTA of \$25 million for each of fiscal years 1980, 1981, 1982, and 1983, to be used to support the expansion of public telecommunications facilities and for interconnection facilities (Sections 643 and 644 support).

Section 648(c) gives qualified "no year" status to appropriations made pursuant to Section 648. The language is confusing, but, read literally, it permits funds appropriated for facilities, and operations support to remain available to NTA until expended, if and to the extent that, by the end of the fiscal year in question, the Director has approved grant applications, submitted in that fiscal year, under which funds available in that fiscal year will be spent (in a subsequent fiscal year).

Section 648(d) permits the Director of NTA to pay the costs of administering NTA's functions under the Bill from the funds appropriated pursuant to the Bill.

Section 648(e) provides two year advance funding of amounts appropriated.

PART D - TELECOMMUNICATIONS DEMONSTRATIONS

Section 661 declares that it is Congress' purpose to support nonbroadcast communications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information.

Section 662 describe "nonbroadcast telecommunications facilities". The term includes both "equipment" and "methods", ranging from satellite systems and related terminal equipment to other methods of "transmitting, emitting, or receiving images or sounds or intelligence by means of wire, radio, optical, electromagnetic or other means." As thus described, the term "nonbroadcast telecommunications facilities" seems to include broadcast telecommunications facilities.

Section 663(2) permits the HEW Secretary to make grants and contracts with public and private nonprofit entities (whether or not "noncommercial telecommunications entities" or "public telecommunications entities") to carry out telecommunications demonstrations". Such demonstrations are not defined, but are generally described in Section 663(b) as:

--innovative methods or techniques of utilizing nonbroadcast telecommunications 663(b)(1);

--under the control of managerially and technically capable applicant; 663(b)(2) and (3); and

--using the facilities or equipment acquired or developed "substantially" for the transmission, distribution, and delivery of health, education, or public or social service information. 663(b)(4).

The Secretary may pay the full "reasonable and necessary cost" of a demonstration project, or any portion of it. 663(c).

Demonstration grants may not be used to pay for any but minor remodeling of buildings or structures incidental to installation of demonstration equipment or facilities. 663(d).

The Secretary may support demonstration projects for not more than 3 years.

Recipients must submit annual summaries and evaluations of their demonstration projects. 663(f).

Section 665 gives the Secretary the authority to make rules, including rules establishing priorities and grant amounts for various projects.

In Section 666, the Communications Regulatory Commission is permitted, but not required, to provide assistance to the Secretary, but the Secretary is required to provide "close cooperation" with the Commission in matters "of interest to" the Commission. The Secretary is also required to provide "close coordination" with NTA and the Endowment on matters "of interest to" them.

Section 667 authorizes the appropriation of \$5 million to HEW for demonstration grants in 1980.

Mr. WIRTH. Thank you very much, Mr. Cardwell.

Without objection, your analysis of title VI will be included in the record. We will leave the record open, of course, for further analysis.

Mr. CARDWELL. Thank you.

Mr. WIRTH. Thank you both very much. I hope you will be able to stay with us for further discussion.

Mr. HERNDON. You are welcome.

Mr. WIRTH. Our next two witnesses are McGeorge Bundy, distinguished president of the Ford Foundation and Fred Friendly, advisor, who has been in broadcasting for a long period of time.

STATEMENTS OF McGEORGE BUNDY, PRESIDENT, AND FRED W. FRIENDLY, ADVISOR, THE FORD FOUNDATION

Mr. BUNDY. Mr. Chairman, I will try to be brief and file my statement for the record.

Really, I have only three points to make and a couple of them have already been covered by other witnesses. I share the view expressed by a number of witnesses, notably Mr. Geller, that the bill as it stands is badly unbalanced in its effort to assure both freedom and accountability.

In public broadcasting, Mr. Friendly will tell you a number of particular provisions which as a professional he finds unwise, even dangerous.

Let me address a more general point, speaking from my experience both in making grants and in maintaining our accountability at the Ford Foundation. From the grant-making experience, I have learned that it is almost always a mistake to attempt to assure good performance by detailed regulation. Especially where creative energy is fundamental, as it is in all forms of broadcasting, the regulatory process is dangerous, and specific rules are seldom effective.

Conversely, as head of an institution regulated by statute—the Tax Reform Act of 1969—I can tell you with conviction that this committee in particular and the Congress in general have no need of detailed statutory requirements to insure that public broadcasters will pay attention to your general concerns. Your latent power to legislate against continuing abuse, and your patent power to publicize your concerns, are much more effective, and also less damaging, than the delegation of detailed regulatory authority to an executive agency.

For similar reasons I have doubts about the wisdom and effectiveness of the proposed reorganization of public broadcasting.

I am well aware of the difficulties existing arrangements have presented, but I believe the proposed cure is worse than the past disease. To put it bluntly, the worst troubles of the Corporation for Public Broadcasting arose from interference from the Nixon White House or from weakness in specific appointments often influenced from the same place.

Moreover, if at the same time a National Telecommunications Agency had been exercising the authority proposed in H.R. 13015, destructive political interference could only have been increased. The Corporation has been strengthened by recent appointments to its board. And, it has just made the truly distinguished choice of Robben Fleming as its next president.

I shall be surprised and disappointed if the works of the corporation in the coming year does not lead your committee to a thorough re-consideration of the organizational proposals in the current bill.

I believe that a close examination of the record of the Public Broadcasting Service will have a similar effect. In my judgment, PBS has done nothing that remotely justifies the notion that something bad called a "network" is threatening the real interests of individual stations.

Chronic undernourishment has made some public broadcasters a little touchy about other necessary players in the game, but before we take this understandable touchiness as a guide to action we should test the healing effect of the solid and regular diet that protected, long-range funding can provide.

That brings me back to my most important point, Mr. Chairman. In my opinion, the most important and constructive provision in the bill is the establishment of a license fee based on the scarcity value of the spectrum. This provision, as I read in the bill, is the fulcrum on which everything else turns.

The assessment of this fee is the only justification for the treatment of profitmaking broadcasters as if they were in a competitive market because only with this fee can they claim to have repaid the debt they owe the public for the enormous benefits they get from licensed access to limited spectrum space.

Similarly, and here I may have differences with earlier witnesses, I think that a dedication of a major share of these fees to public telecommunications programing is highly desirable. It does offer public broadcasting the prospect of the protected long-term financial resources that have been its most fundamental need throughout its history.

If Congress is ready to adopt this basic principle, then all the rest of your bill is worth fighting over to give it the best possible chance of achieving purposes that I think we all share. But without the spectrum use fee this package of carrots and sticks will fall apart.

I believe, therefore, that anyone who opposes the fee is really telling you to start all over again.

Finally, let me say, Mr. Chairman, while I appear as an individual, as Mr. Friendly does—perhaps even more so—the Ford Foundation takes no stand on this legislation. We learn from our work there. We do feel that this bill as it stands is a constructive opening to a very important discussion which we deeply hope will lead to definitive legislation not too far in the future.

[Mr. Bundy's prepared statement follows:]

STATEMENT OF McGEORGE BUNDY

I am glad to be here, at your invitation, to discuss H.R. 13015. I appear as an individual citizen, not as a spokesman for the Ford Foundation and my friend Fred Friendly is also speaking for himself. Both of us have learned a lot in our work at the Foundation but as an institution it takes no stand on this legislation.

A new Communications Act is greatly needed and your Committee deserves the thanks of all concerned Americans for the initiative it has taken and the hard work it has done. I have reservations about the bill, but at the very least it is a helpful starting point for a badly needed national discussion. As a contribution to that discussion let me offer three general propositions.

First: The most important and constructive provision in the bill is the establishment of a license fee based on the scarcity value of the spectrum. This provision is the fulcrum on which everything else turns. The assessment of this fee is the only justification for the treatment of profitmaking broadcasters as if they were

in a competitive market—because only with this fee can they claim to have repaid the debt they owe the public for the enormous benefits they get from licensed access to limited spectrum space. Similarly, the dedication of a major share of these fees to Public Telecommunications programming offers public broadcasting the protected long-term financial resources that have been its most fundamental need throughout its history.

If Congress is ready to adopt this basic principle then all the rest of this bill is worth fighting over, to give it the best possible chance of achieving purposes that I think we all share. But without the spectrum use fee this package of carrots and sticks will fall apart. Anyone who opposes the fee, therefore, is really telling you to start all over again.

Second: The bill as it stands is badly unbalanced in its effort to ensure both freedom and accountability in public broadcasting. Mr. Friendly will tell you of a number of particular provisions which, as a professional, he finds unwise and even dangerous. Let me address a more general point, speaking from my experience both in making grants and in maintaining our own accountability at the Ford Foundation. From the grant-making experience I have learned that it is almost always a mistake to attempt to assure good performance by detailed regulation. Especially where creative energy is fundamental, as it is in all forms of broadcasting, the regulatory process is dangerous; specific rules are seldom effective. We have made it a practice, in our dealings with public broadcasting, not only to stay out of programming, but also to stay out of management. For example, like your Committee, we believe in energetic affirmative action, and we urge the advantages of this policy on all our grantees in every field. But, unlike this bill, we do not try to regulate our grantees on this issue or others like it.

Conversely, as head of an institution regulated by statute—the Tax Reform Act of 1969—I can tell you with conviction that this Committee in particular, and the Congress in general, have no need of detailed statutory requirements to ensure that public broadcasters will pay attention to your general concerns. Your latent power to legislate against continuing abuse, and your patent power to publicize your concerns, are much more effective, and also less damaging, than the delegation of detailed regulatory authority to an executive agency.

Third: I have serious doubts about the wisdom and effectiveness of the proposed reorganization of public broadcasting. I am well aware of the difficulties existing arrangements have presented, but I believe the proposed cure is worse than the past disease. To put it bluntly, the worst troubles of the Corporation for Public Broadcasting arose from interference from the Nixon White House or from weakness in specific appointments (often influenced from the same place). Moreover, if at the same time a National Telecommunications Agency had been exercising the authority proposed in H.R. 13015, destructive political interference could only have been increased. The Corporation has been strengthened by recent appointments to its Board; and it has just made the truly distinguished choice of Robben Fleming as its next President. I shall be surprised and disappointed if the work of the Corporation in the coming year does not lead your Committee to a thorough reconsideration of the organizational proposals in the current bill.

I believe that a close examination of the record of the Public Broadcasting Service will have a similar effect. In my judgment, PBS has done nothing that remotely justifies the notion that something bad called a “network” is threatening the real interests of individual stations. Chronic undernourishment has made some public broadcasters a little touchy about other necessary players in the game, but before we take this understandable touchiness as a guide to action we should test the healing effect of the solid and regular diet that protected, long-range funding can provide.

The reconsideration I am urging is made doubly desirable by the fact that we have yet to hear from the Second Carnegie Commission. Those nineteen citizens have been at work for over a year, and their Report is now due next January. We don't know what it will say, and obviously we reserve the right to differ with it. But we urge your Committee to consider its recommendations with care before formulating the next draft of this far-reaching bill.

STATEMENT OF FRED W. FRIENDLY

Mr. FRIENDLY. You have seen a tour de force of editing many pages of copy into 2 minutes of testimony. I will not do as well, although I am directed to do as well.

I brought with me an heirloom. At the time of the signing of the public broadcasting bill, President Johnson sent me, as he did others, one of the pens he used to sign the bill. At that time, he said, "We come by our miracles easier than we seem able to manage them." That is still true.

I wrote the first three drafts of my testimony with this pen. This morning when I tried to do some editing with it, it was out of ink. That may be an omen, perhaps LBJ talking to you through me. I will try to do some editing in the middle. I will not do as well as my distinguished senior colleague.

I am honored to be here. I am very proud of public television and I am very proud that a committee of the House of Representatives is trying to rewrite a bill which should have been rewritten long ago. If it is not patronizing, I congratulate members of the committee and its staff.

I am so old that I can remember when there was no such thing as radio and television. I was privileged to participate in the promising growth of commercial television, so I say with sadness and guilt that I consider it a promise broken.

Many of my commercial broadcasting colleagues share those sentiments. While they will rationalize the banality that accompanies the search for ratings, they will rarely express pride in the medium except in the accomplishments of the often under-utilized broadcast journalism staffs.

One television newsman said to me recently, "We are a legitimate side show in a three-ring circus." On "Sixty Minutes" last week, a television executive commented that there are "those who watch [commercial] television and those who live off it."

I begin with commercial television because any evaluation of public broadcasting—the subject of your agenda today—must be made in its garish light.

I also participated in the birth of public broadcasting. The promise of public television, although as yet unfulfilled, is not broken. Underfunded, understaffed, sometimes amateurish and late off the mark in its response to urgent opportunities, buffeted by politicization within and without, its progress since 1967 has been remarkable in spite of all that.

Ten years ago, people asked "What is public broadcasting, anyhow?" That question is no longer asked, for the answer is visible every day in tens of millions of homes in the only place it counts—on the tube. Some examples: "The MacNeil/Lehrer Report," "Sesame Street," "Theatre in America," "Masterpiece Theatre," "Visions," "Live from Lincoln Center," the Watergate hearings, and the impeachment proceedings available in their entirety only on public television and radio.

The historic debate on the Panama Canal Treaty was carried live, gavel-to-gavel, on National Public Radio, which also read and analyzed the landmark *Bakke* opinion minutes after the Supreme Court handed it down. "All Things Considered" on National Public Radio is the only regularly scheduled radio news program where the promise of such pioneer journalists as Edward R. Murrow, Raymond Gram Swing, and Quincy Howe is being fulfilled anew.

There is not time to mention all of the remarkable programs that individual stations have produced. Some of these efforts include newsroom-type, nightly comprehensive reports in Dallas, Chicago, Boston, and San Francisco, the innovative use of miniturized electronic news gathering equipment in Jacksonville, and "Say, Brother," a weekly broadcast about the cultural life of the black community in Boston.

Public broadcasting has become an integral part of the cultural and educational life of the country. It is fair to say that it has played a major catalytic role in enabling other institutions such as ballet and opera companies to establish more secure financial footings.

All this brings me to the central point of my testimony. I, like my colleague, Mr. Bundy, applaud the general intent of the first draft of the Communications Act of 1978—the thrust toward deregulating broadcasting. But why does the bill single out public broadcasting for increased regulation?

Of the bill's 217 pages, 45 pages, or 21 percent, contain rules and regulations governing public broadcasting. Why would the committee seek to impose heavy restraints on a healthy but still fragile institution that more than 2 million families support with voluntary annual contributions?

Indeed, a citizen who died when the Public Broadcasting Act of 1967 was adopted and returned in 1978 would have to conclude, on reading the bill before us, that public broadcasting was the villain and commercial television was the knight in shining armor.

The miracle is that public broadcasting is as good as it is and the shame is that commercial television is the embarrassment it has become. For those who may wish to correct for my conceivably jaundiced vision, I suggest you spend 3 hours tonight viewing the two systems as an appendix to this testimony.

Why, then, are such demanding and specific provisions imposed on public broadcasting? Accountability yes, Mr. Chairman, but if the interpretation of that word permits Government intervention in day-to-day operations, then "accountability" and the independence mandated by the Carnegie Commission and the Public Broadcasting Act of 1967 will be on a collision course. Some will argue that increased Government regulation of public television is justified when annual Federal subsidies approach \$200 million.

But I would suggest that commercial television and radio receive annual subsidies amounting to \$6 or \$7 billion each year in the form of their exclusive access to the electromagnetic spectrum. It is ironic that the commendable effort to enlarge commercial broadcasters' first amendment rights should fetter the freedom of noncommercial broadcasters.

Let me hasten to assure the committee that I share many of its concerns about such essential goals as minority employment, local, and independent programming, orderly fiscal operations, assuring the inputs of representative citizen advisory groups, and preserving each station's independence from a centrally controlled network monolith, which I do not believe exists.

My position is that the Congress, which is but one source of public broadcasting's funding, can enunciate goals and principles but cannot prescribe or proscribe day-to-day operating practices without

seriously eroding the independence essential to public broadcasting's health.

I am aware that this bill ostensibly imposes nothing more than basic conditions of eligibility for Federal funds and periodic Government review designed not to interfere with daily station operations. Experience tells me, however, that these requirements will directly affect daily station operations.

Moreover, you know as well as I that Government review is never simple. Efforts to enforce even the most admirable goals in literal and exhaustive detail often degenerate into burdensome and expensive regulation.

Most disturbing is the notion that the Federal Government would both establish policy criteria for public broadcasting and enforce them by withholding Federal funding from those deemed noncompliant.

It is inconceivable that Congress would have allowed this to happen during the difficult years of 1971-74. Yet, it appears that, with the best of intentions, this bill may inadvertently achieve what public broadcasting's most ardent antagonists in that period could not accomplish. It is not so much that each individual provision is onerous unto itself; it is the sum of the provisions that is alarming. They tend to treat public broadcasting stations more as Government agencies than independent editorial enterprises.

The bill thus moves away from the direction of the original concept of the Carnegie report and the Public Broadcasting Act of 1967; namely, that public broadcasting should be structured in a way to promote independence and prevent Government intervention.

Permit me to offer a specific example that may reveal a personal bias. Unlike most of my colleagues, including the person who sits next to me, I am concerned about the practice of commercial underwriting. It seems to me that public broadcasting, if it is to accept grants, must make absolutely certain that corporations and other contributors, including foundations, do not intrude into program selection or the creative process.

However much I am concerned about this danger, I am more concerned about the language of the bill. As I read the proposed legislation, it seems to exclude any underwriting of specific programs—corporate, foundation, or Government. I submit that this medicine may have debilitating side effects on an already undernourished patient.

My dedication to equal employment opportunity for minorities is, if I may so, equal to yours. The answer to this problem is to create a reservoir of talented, trained people. Dedicate a separate fund for an academy for minority journalists, producers, playwrights, technicians, and executives, but don't bind public television to massive regulations. My colleagues and I at Columbia University have had some practical experience providing professional training and I'd be pleased to discuss this with the committee on another occasion.

Though this bill sets salary levels only for certain programming endowment officials and not for employees of public broadcasting itself, criticism of public broadcasting salaries has been expressed. This is another area, in my judgment, in which Government intervention won't work. If public broadcasting is to reach its full potential it must be able to attract the best. Let's take the television career of Bill

Moyers. I don't know what his salary was when he inaugurated the "Moyer's Journal" or when he was subsequently recruited by CBS News. I do know what when he returned recently to public television, he took a substantial reduction in pay. I do not presume to speak for him, or for Robert MacNeil, or for Joan Ganz Cooney, or for the dedicated producers and performers of theatrical productions. However, for Government to move into hiring, firing, and the establishment of pay scales would be to relegate public broadcasting to third-class status.

I hasten to come to what all committeemen and women must love to hear, that magic line of all witnesses, "To conclude." My position is that public broadcasting, though created by Congress, is not a Federal agency and should not be required to conduct its creative and fiscal business as if it were.

If, in your wisdom, you believe that only Federal agencies or quasi-governmental bodies should receive congressionally appropriated funds, cut public broadcasting off. For if history teaches us anything, it is that Government-influenced news and entertainment is subservient and sterile. In that regard, I believe that the recommendation for a National Telecommunications Agency within the executive branch is particularly dangerous, as it affects public broadcasting.

I shudder to think what would have happened had such a mechanism existed in the early 1970's. To my certain knowledge, Bill Buckley's "Firing Line" and Bill Moyers' "Journal," among other programs, were denied CPB funds during that period. In the last analysis one has to reluctantly conclude that if public broadcasting cannot receive Federal funds without a guarantee of insulation, then it probably should not receive them at all.

In 1967, Congress insisted on insulating public broadcasting from the executive branch, thus preventing it from becoming the propaganda instrument it is in too many nations.

Now, in creating a permanent act to meet the needs of a transformed telecommunications industry, you must protect public broadcasting even from yourselves. That's blunt language, but from one who is neither a lawyer nor a craftsman at the delicate art of drafting legislation, it is the most honest contribution I can make to this committee.

Eleven years ago you placed a modest wager on something called public broadcasting. At a time when many new institutions are in disrepute, this one is beginning to flourish.

Tell public broadcasting's leadership what you think about it. Criticize it. Scold it when it needs a scolding. But give public broadcasting another mandate for another decade of growth, then evaluate whether or not it is a promise kept or a promise broken.

Thank you very much.

Mr. WIRTH. Thank you very much Mr. Friendly for your helpful and blunt testimony. I wish that kind of honesty and willingness to admit a different kind of role for public broadcasting had been reflected in all the witnesses that we have heard from the area of public broadcasting.

I am sure we will have a chance to come back and discuss that.

Mr. FRIENDLY. I cannot wait. Thank you.

Mr. WIRTH Our next witness is Dr. William Fore from the National Council of Churches.

Thank you for being here, Dr. Fore.

STATEMENT OF WILLIAM F. FORE, ASSISTANT GENERAL SECRETARY FOR COMMUNICATION, COMMUNICATION COMMISSION, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.

Mr. FORE. Thank you, Mr. Chairman.

I am the chief executive of the Communication Commission of the National Council of Churches. I am testifying on their behalf this morning.

I appreciate the opportunity to appear before you today.

We applaud the subcommittee for proposing major revisions of the Communications Act. This is long overdue. H.R. 13015 contains many provisions which we wish to support.

In responding to the bill we think it would be most helpful first to state our basic assumptions or principles about the formulation of communication policy. It appears that the framers of H.R. 13015 share some of these assumptions, but not others. By stating them at the outset, it becomes evident at what points we agree and disagree with the bill, and what alternatives commend themselves to us and ultimately, we hope, to you.

1. The role of communication in society should be determined by public policy considerations, not by the economic marketplace. We believe that the working of the marketplace inherently tends to constrict rather than enhance the free flow of ideas. Just as antitrust laws were found necessary to keep the economic marketplace open, so governmental regulation is necessary to keep the marketplace of ideas open.

2. Communication policy should be based not on technological possibility, but on technological reality. To be sure, policy should encourage innovation, competition and development, but not at the price of ignoring the realities of the current situation.

3. Spectrum scarcity still exists for radio and television and should be taken into account in regulating spectrum use. There are essentially no available frequencies for new radio or television stations in the top 50 markets today, and in even small markets both radio and television stations continue to sell at prices which reflect the high economic value of the license itself.

4. Opportunity for local community expression is necessary to maintaining the national welfare. The social fabric needs both a national commonality of ideas and information among all its citizens and also an opportunity for citizens to be heard and to speak to and to hear about matters affecting their own community.

These principles are debatable, but we believe them to be valid and basic. From them flows most of our response to H.R. 13015.

The public interest standard should not be removed. A body of law has evolved around it which still renders the standard useful. On the other hand, we agree that it is too vague to constitute an adequate guide for regulation. We believe Congress should both include the public interest standard and also lay out clear guidelines as to what it means and how it affects regulation.

We oppose the idea that there should be regulation only when the marketplace forces are deficient. The function of communication is far too important to the national welfare, perhaps even to national survival, for it to be used primarily to satisfy economic goals. A case

can be made that the economic marketplace inherently tends to constrict the free flow of ideas as groups attempt to dominate and control as much as possible the power and wealth that communication represents.

Communication regulation should serve first the needs of the society for a free flow of ideas, information, and entertainment, and only second serve the needs for economic gain.

We support a strong regulatory agency and therefore oppose provisions which would remove much of the power of the Federal Communications Commission. The present regulatory structure is basically sound. The proposal to have only five Commissioners represents far too great a risk, and limits the amount of diversity needed among the Commission. We favor the present seven. We also favor a 7-year term. We support the detailed set of conflict of interest regulations in sections 231-238, but we also urge prohibition of conflicting investments by spouses, or at least that disclosure be required.

The consumer movement is less than 15 years old. I can remember when I first testified before the FCC, in 1964, that the then Chairman, E. William Henry, called me to his office at the conclusion of the hearings for a talk, since I had been the only public interest representative in 3 days of hearings on a matter of importance to the general public. By contrast, the hearings on this bill have attracted so many public interest groups that special regional hearings were necessary and still many could not be accommodated.

My point is that the present regulatory structure is beginning to work, and it ought to be given a chance to work better, rather than be abandoned to the invisible hand of economics.

The Commission has a huge task and it needs more budget and staff, not less. At the same time, procedures need to be simplified. Congress can best serve the public if it will give the Commission a clear mandate and the funds to make it equal to the increasing demands of the information explosion.

The sections of H.R. 13015 having to do with public broadcasting contain some of the most creative and workable elements of the bill.

Our detailed response to this section is contained in a statement entitled, "Public Broadcasting: The Next Ten Years" prepared for the Carnegie Commission on the Future of Public Broadcasting. I request that a copy of that statement be made a part of this record.

We support the provisions of H.R. 13015 that encourage competition. However, the bill would also diminish the power of the FCC to regulate rates and would remove restrictions on the extensions of monopolistic powers by mergers, acquisitions and interlocking directorates—all of which we believe is a move in the wrong direction. In general we support an analysis of title III made by Earle K. Moore, for the Office of Communication, United Church of Christ, which previously has been placed in the record of this hearing.

We oppose the deregulation of both radio and television, on the basis that the scarcity principle is still operative. While it is true that radio and television present very different situations, we do not believe deregulation for radio, even in small markets, will achieve the goal of local community expression. Radio stations in thousands of small communities are moving to full automation, with programing being supplied from Hollywood or New York. And since it is far cheaper to load cartridge banks than it is to produce programing

dealing with local events and issues, the tendency without the public service requirements will be for stations to completely abandon the interests of their community of license.

Deregulation effectively gives away the spectrum in perpetuity. Licensees will retain licenses for as long as they wish, and in effect will choose their successors. Minority access will be wiped out.

But deregulation gives away more than a public resource. It gives away the right of the public to hear diverse sources of news and information. The Supreme Court ruled in *Red Lion* that ". . . It is the right of the public to receive suitable access to social, political esthetic, moral and other ideas which is crucial. . . . That right may not constitutionally be abridged by Congress or by the FCC." Deregulation runs counter to that right by placing in the hands of individuals the power to supply access but without any accountability to do so. Deregulation would provide a serious and perhaps irrevocable threat to the whole concept of the free flow of ideas upon which our democracy is based.

We support a simplified procedure for license renewal, so that stations are not dealing with the paperwork every year. We commend section 419(A) of the bill as a good example of the kind of simplification in filing procedures that would be helpful to stations.

There are a number of changes which we believe should be made in the broadcasting section of the law and which are embodied in H.R. 15168, the Ottinger bill. These include performance standards for stations; detailed requirement of ascertainment; retention of the Fairness Doctrine; reimbursement of public interest groups in licensing and rulemaking matters; enforcement of equal employment opportunity; provision for comparative hearings; requirements and criteria for selection of licensees; and the insurance of a maximum diversity of information sources. The Ottinger bill contains most of the elements required for the sound regulation of television and radio.

We believe that ultimately cable should be treated as a common carrier, and that legislation should be drafted to gradually change the existing status to common carrier status. Even as common carrier, the local franchising authorities could require certain community services such as local access channels, facilities for the organization of local programs and reduced rates for nonprofit organizations.

The law also needs to prohibit the sale or use of the information being derived from two-way interactive cable. H.R. 13015 should specifically forbid this kind of invasion of privacy.

The FCC could undoubtedly change the status of cable to common carrier, but we believe that such a basic public policy should be determined by law, and then allow the FCC to work out details of gradual implementation. We are perturbed at the thought that A.T. & T. under this bill, can enter into and ultimately control all of cable. The provisions of title III make it all the more imperative that cable be common carrier (sec. 332).

The following summarizes that statement as it pertains to H.R. 13015.

A major solution to the problem of communication monopolies—through not only one—is the creation of a noncommercial, public supported communications system. This means the Government should be expected to perform a new social role of subsidizing alterna-

tives to the commercial communication media, in order to help create and maintain a free flow of information for the public.

The objective in public broadcasting is a national system but not a national network in the sense of ABC, CBS, or NBC. We need the economies of national distribution and promotion, but also need to protect the individuality and flexibility of local stations.

The present distribution process functions reasonably well. The central planning and development functions are another matter. Congress rightly wanted to avoid setting up a "fourth network." But in its care to protect commercial broadcasters, it made CPB so weak that CPB has been unable to generate quality production and the necessary planning and coordination to go along with an effective distribution facility.

The PBS-NPR counterbalance of power, maintained to protect "localism" has in fact weakened the entire system.

The need is for a structure which balances local, regional, and national interests within a single, unified system. The solution is not to hedge in the CPB with all kinds of countervailing forces. The solution is to make certain that the CPB has a strong nonpolitical board and sufficient insulated Federal funding. The Federal funds should constitute not more than one-half the funding of the total system. Given a strong board and adequate funds, the CPB should be allowed to go about its job of developing and administering a total system in cooperation with local stations.

We, therefore, believe that the basic CPB structure should remain, though with modifications. First, it should be named the Corporation for Public Communication, since its role is broader than broadcasting and "telecommunications" is too technical a term for popular use.

PBS should become the Public Television Service and NPR the Public Radio Service, since both are services and both are national and local.

Second, the function of CPB should be broadened to include all telecommunications delivery media, and for this reason, we commend section 612(14) of the bill.

Third, the functions spelled out in section 6 should better be incorporated into the present functions of the CPB, rather than creating a Programming Endowment.

With regard to the board, section 622, we believe that 15 members is preferable to 9 in order better to reflect the wide diversity of constituency of a nation of this size and complexity. Also, we do not believe that the Presidential appointment process has worked well enough. Instead, the Presidential appointments ought to be restricted to nominations made from outside the political process.

Of all the alternatives, the one proposed by Henry Loomis makes the most sense to us. A nominating committee would be established by Congress, consisting of five members, all ex officio; three the most recent past chairmen or vice chairmen of CPB; the remaining two the most recent past chairmen of PBS and NPR. This committee would provide a list of five names for each position open on the board, from which the President would select one for confirmation by the Senate.

This would remove board appointments from traditional political pressures. The nominating committee would always be in place, so

the President could make appointments expeditiously and we could avoid the embarrassment of unfilled board positions.

The disadvantage of this plan is the possibility of an "old boy network" dynamic. However, we believe it is preferable to alternatives such as a Blue Ribbon Panel, or part of the board chosen by regions, by station representatives, or by other members of the board.

We support the need for Congress to mandate a percentage of Federal funds to pass-through directly to the stations. Fifty percent is appropriate for the next 10 to 15 years, and we support section 616 of the bill. There are dangers in mandatory pass-through. A case can be made that the Congress should not dictate how its appropriation should be spent. On the other hand, no other nation has a dual system of independent local stations and a national production-distribution operation. To maintain this system, funding—and thus power—must be guaranteed to both parts of it, and a 50-percent pass-through most nearly meets this requirement at this time.

Ideally, the CPB should create PBS and NPR as divisions to run the interconnection. PBS and NPR each should have its own board of directors drawn from the stations. These boards would determine distribution policy subject only to the CPB board. Stations would have to establish their own official representative trade associations if they desired to have them.

This solution would greatly simplify the public system. It would eliminate the need for an intricate balancing of national power groups and would reduce the burgeoning bureaucracy and duplication. It would focus final responsibility and authority for the national functioning of the system at a single point—the CPB board. And it would leave local stations responsible for their program acquisitions and service obligations to their community of license.

We support the establishment of a license fee, but not the way it is presented in the bill. We believe that instead of a single spectrum use fee to be used for regulation, rural and minority assistance and public communication, there should be two different fees.

The first would be the spectrum use fee, though much more modest than is proposed in H.R. 13015. This fee would be levied against all users of the spectrum—broadcasters, common carriers, citizens' band and so on—and would be scaled to meet only the cost of regulation.

The second would be a tax against commercial broadcast revenue, which would be used for the telecommunications fund to support the rural loan program, the minority ownership loan program, and the public communication system.

Congress resists any dedicated tax on the basis that it erodes congressional responsibility for oversight of Federal expenditures. The dedicated highway tax had merit as an exception, on the theory that it lodged funding responsibility with those who used the highways, and in many cases with those who profited directly from that use. But insulation of funds for public communication—the electronic highway of the Nation—is far more significant. The free flow of ideas and information can be free only to the extent it remains unfettered by governmental pressures. And since the commercial broadcasting industry benefits directly from the use of spectrum which otherwise could be used by the public broadcasting system, a tax on commercial broadcast revenues is both fair and manageable.

We propose a tax at the rate of 4 percent a year on all commercial broadcasting revenues, to be put into effect in 1984. At normal growth rates, this would yield at least \$425 million for the telecommunications fund in 1984. That same year, congressional appropriations amounting to approximately \$200 million would cease.

Congress would be mandated to review the entire public communication operation every 7 years, which would retain final congressional control but insure minimum political interference.

Income for the use fee would be available to the system on a 1-to-1 matching basis, relative to all non-Federal moneys. Under the present plan, the total for the system in 1984 would be approximately \$650 million as compared with \$412 million in 1976. Under the proposed plan the total for the system in 1984 would be approximately \$875 million. In constant 1976 dollars this would be about \$550 million, or a one-third increase in income over an 8-year period.

Finally, we applaud the subcommittee for including in H. R. 13015 a number of elements which will improve the present situation in public broadcasting: Removal of the ban on editorializing; removal of the requirement of balance within individual programs; encouragement of the establishment of community advisory boards; affirmative action to insure compliance with EEO requirements; and the discouragement of underwriting associated with specific programs or series.

Mr. Chairman, this presents only a sketchy outline in the time available; however, the proposal in detail is contained in the recommendations which are being placed in the record.

Thank you for allowing me an opportunity to testify on these issues.
[Testimony resumes on p. 130.]

[The documents referred to follow:]

A POLICY STATEMENT of the National Council of the Churches of Christ in the United States of America

THE CHURCH AND TELEVISION, RADIO AND CABLE COMMUNICATION

Adopted by the General Board
June 10, 1972

(Updating of the POLICY STATEMENT ON THE CHURCH, TELEVISION AND RADIO BROADCASTING, originally adopted by the General Board June 8, 1963)

FOREWORD

Since television, radio and cable communication exert powerful influences on the opinions, tastes, and values held among the people of the world, the functioning and effect of the mass media are of inescapable concern to all Christians. Therefore, the General Assembly of the National Council of the Churches of Christ in the U. S. A. created in 1957 a Study Commission on the Role of Radio, Television and Films. The report of this Commission, titled "The Church and the Mass Media" was received by the General Board of the National Council of Churches in June 1960 and commended to the member churches and appropriate church agencies.

In the light of the reports, which urge the churches to deal constructively with mass communication, the General Board now addresses itself to the substance of the report, particularly as it relates to television, radio and cable communication.

I

The General Board recognizes much in mass communication to expand man's horizons, deepen his sympathies, and foster his dignity. Exploration of vital issues, dramatization of human predicament, documentary treatment of matters of public concern, news reporting, a variety of good entertainment are all available to the public through television, radio, and cable communication. The General Board commends the men and women, operators and producers in television, radio and cable communication who make such programs possible. But the mass communication that deserves this commendation is forced to compete with programming and advertising that seems often designed to sell products without regard for what is happening to the people who buy or to the culture which in part is thus being formed. These programs some-

times depend for their success on a scale of values clearly false.

Under the American system of broadcasting, the frequencies occupied by television and radio stations belong to the people. Each station licensee is privileged to operate his station only by sanction of Congress. Therefore the whole public is responsible for the functioning of mass communication, and the individual Christian, as citizen is impelled to exert what influence he can to have television, radio, and cable communication operate for the public good.

The General Board realizes that religious organizations and individual religious broadcasters have been guilty of not using these media solely for the public good. There have been occasions when religious groups have put their institutional interests above the public interest. They frequently have failed to give serious attention to their broadcasting opportunities or to allocate sufficient resources to their programs to maintain the standards that, as critics, they demand of secular broadcasters.

The churches should look upon participation in mass communication in much broader terms than they do now. They should take cognizance of the influence the mass media of communication exert upon current issues whose resolution will determine the future of mankind. While the Christian churches of the world have largely remained committed to face-to-face or printed communication, whole nations, including our own, have made radio and television the dominant means for disseminating information, opinion, and standards of taste. Now the influence of these mass media is being extended to international affairs through rapidly growing interchanges of television and radio programs between nations and by the imminence of world-wide broadcasting by means of satellites.

The mass media are already influencing Christian education and evangelism. Because secular mass media are so all-pervading, so insistent, and so ever-present, they tend to over-ride the less persistent means of communication employed by the Church. We are all enmeshed in world revolution. If Christianity is to be a determining factor in shaping the future of mankind Christians will not only have to practice their gospel of love, they will have to proclaim it using those means of communication to which the eyes and ears of mankind are attuned. Therefore steps should be taken locally, nationally, and internationally to inaugurate a vigorous Christian witness through television and radio to bring the ideals and precepts embodied in Christianity to all men.

Religious organizations and individual Christians have certain responsibilities in relation to mass communication:

1. To put the public good above considerations of expediency or of institutional or individual advantage, and to function only in accordance with the highest standards of ethical sensitivity and Christian concern.
2. To work with persons employed in mass communication in order to discern our mutual responsibilities to serve the public good.
3. To help develop public understanding of the ethical issues related (a) to the granting and renewal of broadcast licenses and cable franchises, and (b) to the various controls exercised over program content, and (c) to the necessity for fair employment practices in mass communication.
4. To help develop understanding of the effect upon the general public - especially children and youth - of what is seen and heard on television, radio and cable communication.
5. To help develop public opinion in support of greater diversity of programming and services, including programs and services of social significance and artistic merit.
6. To encourage the establishment of an independent, widely representative council to conduct research on the effect of programs and services and to make recommendations for programming and services in the public interest.

II

The churches and individual Christians should keep in mind the fact that while by law the television and radio frequencies belong to the people, in practice the operation of these facilities is controlled by a powerful complex of network and station owners, advertising agencies, talent agencies, and the commercial sponsors of programs. By law, station licensees are subject to public judgment upon their performance in behalf of the public interest.

In practice, they are left largely to their own devices. The public must, of necessity, accede to the choices of broadcasters and advertisers or turn off their receivers.

Since programmers wield such great power over public thought and taste, they should maintain standards of excellence and performance comparable to those expected of educators, public officials, and the professions.

It is difficult for the public to discover how control is exercised in broadcasting and cable communication and to identify the persons and interests that decide policy and program content. Furthermore, there is a disturbing lack of candor on the part of communication officials and commercial sponsors in treating the issue of decision-making and control.

The churches, as responsible institutions in society, should speak out against any lack of accountability in the communications power structure. Among actions required to further the public welfare are:

1. Holding by the Federal Communications Commission of regional hearings for periodic review and reappraisal of performance by broadcast licensees.
2. Enforcement by the Federal Communications Commission of the provisions of the Communications Act of 1934 requiring that station licensees shall operate "in the public interest, convenience, and necessity." The Commission should continue to require of each licensee periodic statements detailing the measures taken and the effort made to "determine the tastes, needs, and desires of his community or service area, and the manner in which he proposes to meet those needs and desires."
3. Enforcement by the Federal Communications Act of 1934 to place networks under the oversight of the Federal Communications Commission. The practicalities of operation, especially in television, give the networks substantial control over much that is broadcast by individual stations; therefore they should also be held accountable for broadcasting in the public interest.
4. Action by the Federal Communications Commission and other appropriate governmental agencies to ensure integrity of advertising in broadcasting and cable communication.
5. Action by the Congress to eliminate conflicts of interest among its own members in the enactment of laws relating to control of mass communication.
6. Action by the Congress to prevent members who participate in ownership of stations, networks, cable systems, or common carriers from sitting on Congressional committees charged with oversight of communication policies.

III

Freedom of expression and selection in television, radio and cable communication is essential for the dissemination of information, for the preservation of civil and religious liberty, and for cultural initiative, that is, government censorship, is a denial of the dignity, resourcefulness, and intelligence of the broadcasters, cable operators and the public, and their right to make choices.

The freedom and dignity of the public also demand that communicators shall not exercise a private form of censorship that denies the public a diversification of program selection by arbitrarily limiting the free expression of all forms of artistry and information.

The freedom of speech that broadcasters now enjoy and should continue to enjoy affords them the opportunity and the responsibility to enlighten large numbers of people. They already employ great ingenuity in entertaining and diverting multitudes. Their creative genius should be employed more than it now is to identify and clarify for the general public such concerns as world peace, racial and economic justice, social welfare, and progress in the arts and religion, so that individuals may have valid resources upon which to base their own decisions and actions.

To this end the General Board commends the development of public broadcasting and the Corporation for Public Broadcasting and urges the development of adequate long-range financing for public broadcasting.

World-wide broadcasting via communication satellites adds a new dimension to this educational function of television and radio. Both broadcasters and the public have a new responsibility to insure freedom of speech and the widest possible exchange of ideas and information in satellite broadcasting. The General Board believes that these objectives require the creation of an international instrumentality to negotiate agreements governing international program exchange and the role of commercial sponsorship in satellite communication.

IV

The cable communications industry will continue to grow and provide multiple channels of private and public communication. The technology makes available to individuals, institutions and the whole society, the potential of wider services. Minority audiences (cultural, ethnic and technical) may now hope to receive services and programming which were neither practical nor forthcoming via radio and television. With channel capacity now virtually unlimited, programs can now be designed for specialized audiences, whose numbers need not be large.

The General Board's concern for cable communication is not different from its ongoing concerns for radio and television, but in fact is an outgrowth of them.

Cable communication should be so regulated that the system is at all times responsive and accessible - to individuals who wish to receive the services and to individuals, groups and institutions who wish to communicate via the system. Such access should, over the long range, constitute a right, not a privilege, in a nation where the free flow of ideas and information is pivotal.

Further, control of a system with such massive potential influence upon the processes of a free society must be free from prejudice and open to the most thorough scrutiny and oversight by the public.

Profits should at all times be subservient to needed services and subscriber costs should at no time prohibit any segment of society from access to use of the system, either as receiver or sender, in the communication process.

V

When church organizations use broadcasting and cable communication, the public welfare and their own integrity require:

1. That the communions in the National Council of Churches conduct their programming under the same standards of excellence and integrity they demand of secular communicators.
2. That the communions in the National Council of Churches cooperate closely in mass communication endeavors, seeking to demonstrate the wholeness of the gospel and our oneness in Jesus Christ.
3. That the churches recognize the diversity of audiences, and that they endeavor to speak to each audience in terms of its need for interpretation of values and reinforcement of Christian principles.
4. That the religious presentation shall never be merely inoffensive or innocuous but, rather, shall deal candidly with contemporary and controversial issues and concerns, bringing to bear on them the illumination, judgment, and healing of the gospel.
5. That the mass communication by the churches shall make clear to the general public that the Church is concerned with all aspects of life.
6. That the churches develop skilled communicators, theologically educated, to represent Christianity in mass communication.
7. That the churches learn to utilize what is offered by the mass media. This objective requires that the churches study mass communication and its influence. Instruction in communication should be provided in seminaries; research should be conducted by national denominational and interdenominational agencies; appropriate studies should be carried out by regional

church agencies and by local congregations - all with the objective of comprehending what mass communication is saying and of evaluating its effects.

An ecumenical strategy for mass communication de-

mands the employment of the best minds and talents in the Church and the wholehearted participation of the communions and the councils in the Christian witness through television and radio.

PUBLIC BROADCASTING: THE NEXT TEN YEARS

By William F. Fore

I. Basic Principles

The past ten years have proved the wisdom of the original Carnegie Commission Report. All the basic principles are there. But Carnegie I made three major miscalculations: it dealt only with television; it assumed a Presidentially appointed Board would be of high caliber and politically strong; and it misjudged the feasibility of a dedicated tax.

Congress made similar errors in the Public Broadcasting Act of 1967. It waffled between the concepts of "public" and "educational" broadcasting, and the public communications idea was so remote that even radio was treated as an afterthought. Most seriously, it rejected the dedicated tax which left the new Corporation for Public Broadcasting vulnerable both to the charges and, to a lesser extent, the reality of political pressure.

One administration after the other then made matters worse by making political appointments to the Board of CPB which tended both to compromise the quality of some Board selections and to politicize some of the Board's actions.

For these reasons, the CPB, designed to act as a buffer and to run the system, was unable to perform either role satisfactorily. Public stations and their national leadership groups pressed for mechanisms to protect themselves, and so a strong Public Broadcasting Service and a protective Partnership Agreement were created. The resulting political stalemate and operational inefficiency has frustrated the operators, the Congress and the public.

The goal of public broadcasting was succinctly stated by John Macy: to provide all citizens with programs which will educate, enlighten and entertain. And its scope was well described by the first Carnegie Commission Report: "All that is of human interest and importance, which is not at the moment appropriate or available for support by advertising and which is not arranged for formal instruction."

But most statements of goals for public broadcasting are deficient because they stop at the goals of public broadcasting instead of pushing back to the goals of the society itself. Every society has different communication requirements, depending on its nature. A very large, pluralistic democracy such as ours requires for its existence an electorate that has enough commonly shared information, beliefs and assumptions, that they can function together as a society and as a nation. As the nation becomes bigger and as the rate of change accelerates, participatory democracy requires more and more advanced and democratic feedback mechanisms. A national communication system, dedicated to the needs of the entire society, rather than merely to the needs of commerce, becomes essential.

Thomas Jefferson said essentially the same thing two hundred years ago: "The way to prevent error is to give the people full information of their affairs." Massive, continuous, responsive information flow is necessary to make our democracy work. The development of serious national debate is not a luxury; it is essential to our continued existence.

The fundamental purpose behind our First Amendment guarantee is the affirmation that participation in a free flow of ideas and information is a basic right of each citizen, because only such participation makes our society possible. Our pluralism means that there is no single norm or authority which binds our common life together. Decisions as to what is right and wrong, what the society should or should not do, even what the society should or should not be - all are taken within the context of public discussion. Increasingly this discussion takes place through the mass media of communication.

For the past forty years the commercial broadcasting industry has performed an important function in meeting our need for information. Stations and networks have provided informational linkage without which the nation simply could not have dealt with its political, social and, especially, its economic demands. This is not to say that it has been all or even predominantly beneficial. Commercial radio and television became a unifying force in American life, not because the entrepreneurs decided this would be good for the country, but because it was good for business. Public service programming developed not out of the impulse of corporate concern for the public good, but because it was required as a quid pro quo for use of public frequencies, and because it took some of the sting out of the spectacle of private enterprise making huge profits from the use of public airwaves.

In fact, commercial broadcasting began to constrict the free flow of ideas and information. In our highly technological society the power bases of communication tended to become so centralized and so powerful that genuine competition of ideas became problematic. Communication monopolies tended to restrict the communication of those ideas that challenged or questioned their own values and assumptions. As the mass communication process became more self-serving, it has begun to threaten the health of the entire society. Like the great trusts of the 1890's, as efficiency went up, competition went down, and the commercial operators tended to operate more in their private than in the public interest.

One major solution to this problem - though not the only one - is the creation of a non-commercial, public-supported communication system. This means that the government is expected to perform a new social role of subsidizing alternatives to the commercial communication media, in order to help create and maintain an open marketplace of ideas and information. The laws that establish these alternatives will have to make certain that they are free from both economic and political dominance, and that the system functions as much as humanly possible in response

to the need of the society for an effective free-flow of information and ideas for the total public.

The 1967 Carnegie Commission recognized this societal need for something other than commercial broadcasting. "... what we recommend is freedom. Freedom from the constraints, however necessary in their context, of commercial television....We seek for the citizen freedom to view, to see programs that the present system, by its incompleteness, denies him."

If it is fundamental that all citizens should be a part of the decision-making process, and if we reject the view that a few persons should be able to play God with our future, then the nation must set about the task of making participatory democracy work far better than it has in the past. In the kind of society in which we live, this can only be done through more intelligent use of the communications media. We all have a stake in the development of an effective nation-wide public communication system, since it will have a fundamental impact on what people are, and what they can become.

With these principles in mind, the requirements for change in the present system become clearer. In summary they are:

- I. A name and charter which embraces the broad communication needs of the society
- II. Diverse funding which is insulated as much as possible from both economic and political control, and which distributes the cost fairly throughout the society.
- III. A structure which balances local, regional and national interests within a single, unified system and which involves the public in meaningful ways at every level.
- IV. Programming and delivery systems which provide a diversity of services:
 - a. for the general public
 - b. for education
 - c. for local, regional and national interests
 - d. for specialized groups such as the hearing and sight-impaired, children, minorities, language and special interest groups, etc.

The following describes these requirements in more detail.

II. Name and Scope

If the above principles are valid then we are in the business of communication, not just broadcasting. There are two reasons for this.

First, the technology simply will not allow us to remain restricted to broadcasting as we have known it. The uniqueness of broadcasting is its economy of delivery, and new technologies already can outperform and outdeliver the customary station which radiates a signal to its near-by community. Second, the public interest transcends how education, enlightenment and entertainment get to them; the important thing is the communication process itself, and other technologies are beginning to provide better means for communication than one-way indiscriminate broadcast into homes and schools.

The counter argument, that we should use well what we have before we dash off to embrace the new, certainly has merit. We need to put primary emphasis on radio and television in the near-term, five to fifteen years. But this argument must not be allowed to impair our ability to make use of newer technologies, or to restrict the nature of the basic task in the future.

The CPB should be changed to the Corporation for Public Communication (CPC). PBS should become the Public Television Service (PTS). National Public Radio should become the Public Radio Service (PRS). All of these changes should be made now, while it is still relatively easy. To the charge that names and logos become indelibly imprinted in the public mind, one needs only to recall that during the past ten years RCA's "His Master's Voice," NBC's Peacock and even the ubiquitous Esso have disappeared from public view with scarcely a ripple.

"Public Television Service" and "Public Radio Service" are preferable to "National Public Radio" and "National Public Television" because a) both are a service, and b) they are both national and local. "Public Broadcasting Service" for the TV service is, of course, a misnomer.

At the same time, the scope of the Corporation should be spelled out in the law to embrace potentially the full range of media of communication: radio, TV, cable, satellite, cassettes, film, print, and so on. For the present, the main concern of the CPC should be to fulfill the promise of radio and TV, but it should have the charter to explore other media and to move into them as public communication service requires. Public communication should provide a "total service" to the local and national community.

To fail to broaden the scope of the Corporation now will mean that some day new public organizations concerned with satellite or cable or some newer technology will be created and become competitive with public broadcasting, resulting in waste of public funds and a failure to put the basic needs of the public ahead of organizational turf.

(To avoid confusion here, I shall continue to use the old terms - CPB, PBS, NPR and public broadcasting - in this paper, up to the point where the structural proposals are made.)

III. Funding

In general, two solutions have been put forth to insulate the system from economic and political intrusion. The first allows the CPB to receive Congressional appropriations, but counterbalances the CPB with two politically strong organizations - PBS and NPR - which represent state and local power and individual station interests. This solution, of course, severely hampers the ability of the CPB to plan and to administer a total system, and it pits two membership organizations - PBS and NPR - against CPB in a never-ending battle for dominance.

The second, and better, solution is to sufficiently diversify and insulate the funding which goes to CPB in the first place so that CPB can do its job without undue governmental interference, and at the same time vest in local stations sufficient power and responsibility so they can exercise final authority over how they serve their community of license.

For this to be achieved, Congress should mandate a percentage of the total Federal funds to pass through directly to the stations. Fifty percent is appropriate in the near-term of five to fifteen years. There are dangers in a mandatory pass-through: a case can be made that Congress should not be allowed to dictate how any portion of its appropriation should be spent. On the other hand, the provision is necessary to maintain our unique system of public broadcasting. No other nation has a dual system - independent local stations at one end and a national production-distribution operation at the other. To maintain the system, funding (and thus power) must be guaranteed to both parts of the system, and the 50% pass-through most nearly meets this requirement at present.

On principle, any mandatory pass-through compromises the authority of the CPB. But the CPB's authority is already compromised by the fact that every public station has its own license and exists independently from the CPB. The pass-through takes into account this unique feature of the American system, while at the same time it retains the responsibility and authority for planning and development of the over-all system with the CPB.

In addition, PBS and NPR would remain the operators of the inter-connect, but as divisions of the CPB. PBS and NPR would each have a Board of Directors consisting of station representatives which would develop distribution policy subject only to the CPB Board. Stations would purchase programs according to a system similar to the Station Program Cooperative. However, the stations would have to establish their own official representative trade associations, if they desired to have them.

This solution would greatly simplify the public system. It would eliminate the need for an intricate balancing of large national power groups and would reduce burgeoning bureaucratic growth and overlap. It would focus final responsibility and authority for national functioning of the system at a single point - the CPB Board - so that it would be more visible and

more accountable. And it would make local stations finally responsible for their program acquisition and service to their community.

As several others have proposed, the most likely way to achieve long-term insulated funding at the present time is through a frequency use fee, for several reasons. It is more desirable than dedicated taxes such as a set tax (regressive), TV and radio license fees (too much consumer resistance), or an advertising tax (unfair). The Congress, of course, strongly resists any dedicated tax, on the basis that it erodes Congressional responsibility for oversight of Federal expenditures. On the other hand, there is a solid precedent for a Federal fee for the use of public property: in mining claims, timber-cutting rights in national forests, domestic and off-shore oil leases, and permits to graze cattle on public lands.

The single most important exception to the generally valid Congressional mandate to provide oversight of Federal expenditures lies in the area of public communication. It may be the only valid exception. The dedicated tax for highway funds had some merit as an exception, on the basis that it lodged funding responsibility with the users. But the insulation of funds for public communication - the electronic highway of public discourse - is far more significant. It is essential to an effective public communication system.

The free flow of ideas and information can be free only as it remains unfettered by governmental pressure - the annual appropriations, the annual oversight hearings, the attempts to treat it as an arm of government. A frequency use fee which constitutes approximately one-half of the total funding of the public communication system is the most acceptable solution.

The fee would be levied at the rate of 4% per year on all commercial broadcast revenues. In 1976 these revenues totaled \$7,217,900,000; 4% would be \$288,800,000. (Profits before federal income taxes totaled \$1,428,800,000, so the frequency use tax would reduce profits by approximately 20%). By 1984, when this fee should be put into effect, industry revenues will total

on the order of \$10,660,000,000 (at a rate of growth in profits of 6% - less than the industry has averaged over the past twenty years), which would yield at least \$425,000,000 for public communication. That same year the Congressional appropriations amounting to \$200 million (the current proposal before Congress) would cease. Instead, Congress would be mandated to review the entire public communication operation every seven years. This would retain final Congressional control but would insure minimum political interference.

Income from the frequency use fee would be available to the system on a one-to-one matching basis relative to all non-Federal monies. In 1984 there would be approximately \$216 million from businesses, foundations and individuals (based on a growth rate of 9% per year 1976-1980 and 5% 1981-84), and there would be approximately \$234 million from local and state governments and state colleges (based on a 5% increase per year 1976-80, and 3% 1981-84), for a total of \$450 million.

Under the old plan of \$200 million from Congressional appropriations, the grand totals for the system in 1984 would be \$650 million, as compared with a total of \$412 million in 1976. But figuring inflation at 6% per year, the 1984 amount would be only \$408 million in constant 1976 dollars - less than the \$412 million it received in 1976.

Under the proposed frequency use fee plan, the total yield to the system in 1984 would be \$875 million, which in constant 1976 dollars would be \$550 million, or about a one-third increase in income over an eight-year period.

By keeping the match requirement, the pressure would remain on state and local governments, state colleges and local stations to fund public communication. However, with the increase in dollars coming from the fee, there would be slightly less pressure on state and local funding - which is realistic in the light of the problems state legislatures are having with educational funds and the fact that stations will begin to top out their public, business and foundation support within the

next eight years. The demand for auctions and other fund-raising projects at the station level would level off, which would be a sign of the system's growing maturity.

The argument for keeping the "listener-supported" concept is certainly valid, but only up to a point. Public communication should be a service for everyone in the community, not just those willing or able to pay for it through membership or some other station support plan. To place too much reliance on membership plans tends to skew the station's schedule toward either trying to secure ever-larger audiences (and thus more widely popular programs), or of catering to the demands of the "payint" audience. Either way the station falls prey to economic rather than social need. We need both listener support and public service, and the frequency use/1:1 match plan makes a place for both.

FUNDING PUBLIC BROADCASTING

	FY 76		est. FY 79		Current est. FY 84		Proposal est. FY 84	
	\$	%	\$	%	\$	%	\$	%
Frequency use fee	0	0	0	0	0	0	425 ⁴⁾	48.
Cong. appropriation (matching non-Fed)	114	27.7	120	25.	200 ³⁾	31.	0	0
Bus., found., individ.	126	30.7	162 ¹⁾	34.	216 ¹⁾	33.	216	25.
Lcl. state gov'ts and state colleges	171	41.6	196 ²⁾	41.	234 ²⁾	36.	234	27.
Total	412	100.	478	100.	650	100.	875	100.
In 1976 dollars (6% inflation per yr.)	412		401		408		550	

- 1) Based on 9% incr. per year 76-80; 5% 81-84
- 2) " " 5% " " " 76-80; 3% 81-84
- 3) " " current proposed bill, and a 2.25:1 match
- 4) Est. on 4% fee on all commercial broadcast revenues
(1976 = \$7,217,900,000), and growth rate 6% per year 76-8;
4% per year 81-84 and 1:1 match.

IV. Structure

Public broadcasting thus far has spent most of its energies reacting to competing pressures rather than acting on the basis of firmly established goals and policies. The primary goal ought to be one of excellence in bringing "all that is of human interest and importance, which is not at the moment appropriate or available for support by (commercial broadcasting)."

To reach this goal, public broadcasting in the future cannot simply "return to localism." It must strike a balance, meeting the legitimate needs of people who are part of their local community and region; meeting the needs of people who belong to a nation; and, above all, meeting needs of individuals with minds that are capable of responding affirmatively to far more than the communication media have thus far provided.

Lloyd Morrisett has pointed out that viewer preferences are almost inevitably for national programming, and the nature of electronic communication makes it much more efficient to produce high quality national programming than to produce high quality local programming.

Thus, with regard to the "fourth network" controversy, I believe that we need a national system but not a national network in the sense of ABC, CBS and NBC. We need the economies of national distribution and promotion, but we also need to protect the individuality and flexibility of local stations. A system such as the new satellite interconnect can distribute national programs efficiently, it can maintain a national schedule for those stations willing to plug in, and it can allow for alternative programming and tape-replay to tailor to local needs and interests. Thus the present distribution process functions reasonably well in terms of the system's over-all needs and ought not be changed.

The central planning and development functions are another matter. Congress rightly wanted to avoid setting up a "fourth network" (though probably for the wrong reasons). But in its care to protect commercial broadcasting it made CPB so weak that

CPB has been unable to generate quality production and the necessary planning and coordination functions to go along with an effective national distribution facility. The PBS-NPR counterbalance of power, maintained to protect "localism," weakened the entire system at this point.

The need is for a structure which balances local, regional and national interests within a single, unified system. The solution is not to hedge the CPB with all kinds of countervailing forces. The solution is to make certain that the CPB has a strong non-political Board and insulated Federal funding constituting no more than one-half the funding of the total system, and then allow the CPB to go about its job of developing and administering a total system in cooperation with the local stations.

A. Board Membership

To achieve a strong CPB, two major steps are needed. The first is to insulate funding, discussed above. The second is to improve the process by which persons are placed on the Board of the Corporation. The public has a right to expect the appointment of Board members to be above politics. Experience of the past ten years has demonstrated that Presidential appointments are not going to be made apart from political considerations. Therefore, the Presidential appointments should be restricted to nominations made outside the political process.

Of all the alternatives, the one proposed by Henry Loomis makes the most sense. A nominating committee would be established by Congress, consisting of five members, all ex officio: three would be the most recent past chairmen or vice-chairmen of the CPB; the remaining two the most recent past chairmen of PBS and NPR. These five would provide a list of five names for each position open on the Board, from which the President would select for confirmation by the Senate.

This process would remove the appointments from traditional political pressures. The nominating committee would always be in place; the President would be able to make appoint-

ments expeditiously, and thus avoid the problem of unified Board positions which has plagued public broadcasting. All members of the nominating committee would have extensive knowledge of public broadcasting; the majority would be lay persons; each would have been elected by their peers to positions of leadership. The greatest drawback of this plan is the possibility of an in-grown "old-boy network" dynamic. However, the plan has distinct advantages over such alternatives as setting up a Blue Ribbon Panel (which itself can quickly become politicized), having the Board partly appointed by the President and partly chosen by Regions (which would set up a whole new political layer), by the station representatives (which would allow two classes of membership) or by the other members of the Board itself (which would tend toward self-perpetuation).

Board membership must not become a full-time job. The Board's role is to provide broad over-view and policy determination, insulated from Congress. Board members should continue to serve as an avocation, giving no more than one to two days a month, and they should expect from the CPB President and his officers proper administration of their policies. Board members should be allowed to serve no more than two terms, to avoid individuals using Board membership as a power base.

The size of the Board probably should remain at fifteen, since it needs to be representative of such a large and diverse nation. However, a case can be made for a smaller Board of nine, which would make it more cohesive and individually responsive.

Given a strong and independent Board and insulated funding, the Corporation would finally have the ability to begin to meet the responsibilities which are properly given to it under the law.

B. Divisions

The Corporation would have the following Divisions:
Planning and Policy. Includes training, evaluation, research. The rating system proposed by Lloyd Morrisett would be employed to determine program success, in contrast to Neilsen audience share criteria.

Public Television Service (PTS). Provides the basic network services as required by the public television stations, including maintaining the distribution system, scheduling, library, purchasing process (keeping the present Station Program Cooperative with minor improvements), purchase and commissioning of supplementary programs, program promotion and utilization and liaison with local stations.

Educational Television Service (ETS). Provides the same services for the educational television service.

Public Radio Service (PRS). Provides the basic network services as required by the stations in the public radio service, including maintaining the distribution system, scheduling, library, purchasing process, including commissioning of supplementary programs, program promotion and utilization and liaison with local stations.

Educational Radio Service (ERS). Provides the same services for the educational radio service.

Specialized Services. Would provide special attention to the development of new media, their interrelation with present media, and to the needs of special audiences, in cooperation with the other divisions. This would be the place for the generation of wholly new units as needed to meet emerging needs.

News and Public Affairs. Provides the development and coordination of a national news feed to both radio and television stations, and develops public affairs programming, in cooperation with PTS and PRS.

C. Programming: PTS and PRS

For the Public Television Service the Station Program Cooperative would be retained. As funds to the stations are increased this would become a much more effective marketplace. But even with more funds, the SPC must be supplemented by program development and pump-priming to ensure innovation in the system.

CPC would establish basic policy regarding such matters as the balance of various program types in the national schedule, the amount of funding for national level program innovation and for pump-priming into the system. However, the actual commissioning of program series would be turned over by CPC to PTS and PRS. If the CPC commissions or funds programs directly, even in block-grants, it cannot function effectively as the buffer between government and other outside influences and the two operational units. The CPC would allocate each year part of its funds to PTS and PRS for programming in accordance with budget proposals submitted by each division. This funding would be in addition to the 50% pass-through directly to stations.

Strong national programming will not develop if it is done only by local stations, or by stations through a cooperative. Some sense has to be made of the over-all programming, and this is one of the functions of PTS and PRS. It should be noted that the operational decisions about this national programming will be made by the stations themselves, through the Board of PTS and PRS which they themselves elect. In effect this is now done at NPR, and should be done in the new PTS as well.

The Public Television Service and Public Radio Service would each have established within them a Policy Board consisting of station representatives (at least one-half lay). These boards would be given authority to establish policy regarding the distribution system, the scheduling of programs, the purchasing process, program promotion and utilization, subject

only to the CPC Board itself. Since the programming depends completely upon local stations to be heard and seen, and since the stations in turn depend on the quality and scheduling of programming to meet the needs of their communities, this semi-autonomy ought to be the right of the PTS and PRS, and the radio and TV boards can be expected to regulate in the best interest of the over-all system. However, should difficulties emerge, final responsibility has to be lodged with the CPC which is the only entity at the national level accountable finally to Congress and the people.

D. News and Public Affairs

A News and Public Affairs Division should be established by the CPC. The Division would feed both PTS and PRS, and it would have its own budget and news-gathering staff. The Division would provide public stations with the capability of integrating national news and information segments into their daily programming schedule. It would commission special public affairs projects. It would coordinate news-gathering from both radio and television stations nationally, for use by all stations on a daily basis.

Commercial news is dominated by advertising and ratings, which leads inevitably to a show business and "star" approach. But starting with the need of American society for a diverse and high quality news and information flow, the news and public affairs offering on public radio and television should be by its very nature different in its approach from commercial news.

To date, because of political pressure and because stations can raise money more easily through cultural programming, news and public affairs in public television has been given short shrift. No program based on news reporting, including investigation and interpretation, is now on the air nationally on public television. The MACNEIL/LEHRER REPORT and THE ADVOCATES bring valuable information about public issues, but they do almost no original reporting in the sense that such reporting is done by the New York Times. They are primarily "balanced" dis-

cussion programs. If the system continues to shy away from national news reporting, out of fear or for fund-raising motives, it will continue to fail to achieve one of the most important reasons for its existence.

The Station Program Cooperative works fairly well for cultural programs, but it is a palpable failure in areas of news and public affairs. Stations vote for only the blandest of the bland in public affairs programming, and have no way to vote for investigative news at all.

A CPC News Division with a separate budget and staff would meet this need. It would provide a continuing national presence for public television and public radio in news and public affairs, in place of the usual short-term commitments to such programming that has guaranteed that almost no reporting and inquiry of substance is presented regularly on American public television.

With a separate News Division, CPC funding to this area would be clear and unmistakable. News and public affairs would not be subject to the priority considerations of other programming by PTS and PRS. And a single News Division would enable considerable savings by unifying both radio and TV reporters into a single staff - as now done by the commercial network news divisions.

V. Services

The system should be divided into two major systems: public radio and TV (PRS and PTS); and educational radio and TV (ERS and ETS). (Here the term "educational" is being used to embrace primarily what is technically called "instructional.") In major markets there would be separate stations for each service; in small markets there still would be shared use of stations. But the inter-connects would be separately operated and governed.

In many cases 2,500 MGZ and other point-to-point facilities should be used instead of broadcast frequencies; in some situations cable or even audio and video cassette delivery would take care of the distribution.

The separation of the two services will be a slow and difficult process. At present about 41.5% of TV and 52.6% of radio income is from state and local governments and state colleges. Ultimately most of these funds will be needed for the educational service (about \$200 million), since in most cases they are intended to support education.

The educational system should include the following:

- a national college course;
- a national high school equivalency program;
- specialized education for the home-bound of all ages; the elderly, ill, handicapped and so on;
- basic adult education
- teacher and other professional training, etc.

Such an enormous educational venture cannot be accomplished through the present public radio and television facilities of the average public stations. There would need to be created a special Advisory Council for Educational Services which would have responsibility for this area, subject to the Corporation Board. And there would need to be a much closer correlation with the educational community at the national, state and local levels.

The public service also will need to diversify its efforts to provide total service. Special channels and other means of distribution need to be developed in each market, to make possible specialized services including the following:

- hearing impaired
- sight impaired
- minority groups
- language groups
- travellers' information
- community information: weather, news, data
- science
- public affairs
- cultural affairs
- children

Public communication should have funds for experimentation in areas such as:

- local interactive cable
- library services: audio and video cassettes.

One implication of the development of a "total service" concept is that both public and educational stations ought to be exempt from cross-ownership restrictions in a given market. If the stations are truly community controlled (like school boards), then economy of scale makes them akin to a public utility, and they should be allowed to operate multiple stations to provide multiple services. However, if diversity and service are threatened by competing public and educational stations, then the FCC should be able to intervene on petition.

VI. Public Participation

Of all the differences between public and commercial broadcasting, the most important is that public broadcasting is amenable to consideration of the public welfare rather than the profit and loss sheet. The needs and interests of people are paramount: needs and interests that are expressed by individuals in aggregates which sometimes are defined by education, racial and ethnic background, social and economic status, or simply by a grouping of expertise or curiosity in a particular subject matter.

The public, of course, can be differentiated into an almost endless series of ever smaller groupings, until we once again reach the individual. Public broadcasting has the task of judging which of these groupings represent sufficient size and saliency to justify including them in policy considerations, through advisory groups and other mechanisms, and ultimately, in development and airing of programming to meet their particular needs and interests.

Thus public participation is essential at every level of public communication. The system must be designed to provide meaningful input from the people for whom the service is intended - that is, every potential listener and viewer. At the same time, public participation must not become a process so captured by the noisiest, the best organized, and the exhibitionist that the significant but less vociferous elements in the community are given less than proper weight.

The key is balance. Since social policy tends to recognize the needs of the groups characterized by wealth, organization and power, a conscious effort must be made in public broadcasting to also include the needs and interests of the poor, the unorganized, and the powerless.

A. CPB's role

The CPB should take the lead in identifying the needs and interests of various publics, and also in assisting local stations to be more responsive to their community of license.

- CPB should finance a national training program to help local station leadership develop an appreciation of the benefits and values of increased public involvement.

- CPB should develop a national clearinghouse about local board structures and information about methods of board selection to help local management in techniques of relating to boards and advisory groups.

- CPB should develop more sophisticated research methodology aimed at discovering in depth the needs and interests of various publics, with the objective being to help people develop to their full potential rather than simply to get the attention of people in order to deliver them to the point of sale.

- CPB should develop models and provide technical advice to local stations on how to translate the FCC's ascertainment requirements into responsive programming.

- CPB should develop program evaluation of the "success" of individual programs and series in terms of potential identified audience, rather than a percentage of the total available audience. This is the proposal developed by Lloyd Morrisett several years ago in an article entitled "RX for Public Television."

- CPB should place a much higher priority on securing adequate audience for programs. It should devote a greater percentage of funds for the promotion of programs, and launch a major attack on the problems which inhibit the reception of the broadcast signal: frequency allocations, and receiver requirements.

- CPB should encourage local stations to broadcast the annual meetings of their boards, and to develop broadcast mechanisms for developing consensus about the major program problems facing the community.

In all this process, the CPB must itself be exemplary, with open Board meetings, dispersed geographically around the nation and with financial information available to the public.

B. National Advisory Council

The CPB should establish a National Advisory Council (NAC), the purpose of which would be to help the CPB identify potential difficulties in the system, to advise the Board and staff on any matter they might desire, and to aid in the nationwide interpretation and support of public broadcasting.

The NAC would be broadly representative of the geographical and occupational diversity of the nation. It would give special emphasis to ethnic minority representation. Its membership would consist of individuals who can express the concerns of broadly diverse needs and interests in the nation, but who do not officially represent organizations or special interest groups. These individuals would be selected by the CPB Board. They would serve a term sufficiently long to provide continuity for the group and to allow for the development of a reasonable amount of background, but would be rotated to insure a constant supply of fresh ideas and to avoid individuals using the Council as a power base. For example, members might serve three-year terms, with two concurrent terms maximum.

The size of the Council would be about forty persons - the largest a group can be and retain internal communication and a sense of identity. Travel and expenses to the two or three meetings a year would be paid by CPB. At those meetings the Council would hold one-day joint meetings with the CPB Board and the senior staff.

C. Public and Educational Stations

Another area which requires balance is the development of two separate but equally important services - the public (or community) and the educational services. The two services have different requirements for public involvement. One of the most difficult jobs facing the CPB is to generate the planning and incentives necessary to bring about two well-developed and complementary services.

At present most stations try to serve the needs of both education and the general community. Some state-wide systems are officially under State Boards of Education, or quasi-educational boards, while the educational programming constitutes only a fraction of the service. State and local funds support "educational broadcasting" which is in reality only partly educational. On the other hand, some "community" stations also offer educational programming in cooperation with local schools and colleges.

CPB should review the categories of stations and the compositions of their boards, throughout the nation, and develop a policy aimed at enabling two separate services to emerge, one education-based, and the other community-based. Some stations will resist this development because it threatens either the education or the public side of their service. They may oppose CPB involvement on the grounds that it violates local autonomy. However, there is a clear need for two national systems to meet two different social requirements, neither of which can be met with the present number of station-hours per day available to the local community.

The transition would be made by encouraging new developments, not by threatening the existence of the present stations. If a local community has no desire to develop two complementary services, there should be no coercion for them to do so. However, through major matching grants and incentives, the dual service should become attractive to most communities - just as the national highway system became attractive to municipalities and states through the infusion of major Federal funds to match local funds.

Public participation requirements would differ for the two services. Ideally, Boards of Community stations would be comprised of persons chosen through community elections similar to school board elections, though political realities undoubtedly would require considerable variation. Educational stations would be under the jurisdiction of the educational institutions in the community - the public and parochial schools, the colleges and universities, the adult education institutions, and so on.

Advisory groups also would differ. Community stations would be encouraged to have advisory groups similar to the National Advisory Council described above, but on a local scale. Educational stations would depend much more on experts in particular educational fields for guidance.

VII. Long-term Development

In the long-term, fifteen to twenty-five years, there probably should be no use of the present broadcast frequencies for anything other than mobile: cars, boats, airplanes, etc. The spectrum is becoming far too crowded to allow wasteful use of the spectrum by TV stations when the same signals could be fed to home service directly by satellite or through broadband cable. Public communications needs to move toward this objective and help to force the commercial broadcasting system in this direction, since the public interest would be served efficiently this way in the long run.

As present television and radio networks begin to lose their monopoly in the face of satellite distribution, the present commercial networks will become program suppliers. This is the same thing that happened to the motion picture companies thirty years ago when they had to give up their monopoly on film distribution - and they have survived handsomely. Public communication should see itself as a program supplier rather than a broadcast network, beginning immediately. As the means of distribution become more and more diverse, the important thing is for the public system to generate quality programs and a

diversity of services - regardless of whether it is delivered over the air, through wires, or in a box.

In the mid-term, of course, there need to be improvements in the present use of spectrum: parity between UHF/VHF, better tuners, and revision of the spectrum allocation, especially radio.

One important implication of the slow erosion of the present commercial broadcasting system is that income from the frequency use fee to the public system would also erode. However, a case can be made that similar spectrum-use fees ought to be charged users of satellite distribution, and for broadband cable service (if cable were treated as a public utility as it should be); thus the use-fee concept could be shifted over to the emerging media as the land-based broadcasting began to atrophy.

VIII. Strategy and Timing

The basic hindrance to getting a frequency-use fee for public broadcasting is the fact that in 1934 Congress established a broadcasting system that was susceptible to over-commercialization. From the beginning the concept of serving the public was secondary to the concept of using the public, or in reality selling the public to the highest bidder. At the same time people were systematically being taught that they were getting "free" radio and television, while in reality they were paying billions of dollars annually to sustain the commercial system. Meanwhile, the broadcasting industry developed political power second to none in the nation, since stations became the basic communication link between Congress and constituency.

The result is a broadcasting structure in the U.S.A. which is highly resistant to change, and especially resistant to drawing off significant amounts of money from commercial broadcasting to support broadcasting in the public interest.

However, there is greater potential for change today than ever before, because of two phenomena: new technology and

the growing consumer movement. Public communication already is benefiting from both, but it can use both much more effectively. The public satellite interconnection undoubtedly represents the most revolutionary development in public broadcasting history, not so much for its economies as for the fact that it will bring about the slow disintegration of the commercial networks as we now know them, which in turn will diminish the commercial broadcast industry's political and economic ability to stifle public broadcasting and which will prepare the marketplace for a much more diversified menu for home listening and viewing.

Also, the consumer movement is a natural ally. An increasing openness on the part of public stations and a steady increase in audience participation through memberships and other ways - all contribute to increasing grass-roots political support for the cause of public communication.

The question is whether we have yet reached the point of critical mass, the point at which public communication can get sufficient political support for a major insulated funding proposal. The answer is probably that we have not - at least not quite yet. However, we may reach it in the next two to five years, and the present climate in the FCC, the Administration, and the Congress have scarcely been as propitious. Therefore, I suggest the following scenario:

1. 1978: get five-year authorization (but only as a back-up)

FY '81 - \$210 million	FY '84 - \$275 million
FY '82 - 230 "	FY '85 - 300 "
FY '83 - 250 "	- all at 2:1 match

Include in the bill such elements as:

- 50% pass-through floor
- sunshine and openness requirements for local stations
- require President to select Board members from a list provided by a public broadcasting panel

- CPB take over facilities grants
- eliminate "objectivity and balance" requirements and restriction on editorializing for public stations.

2. 1978 and 1979: use this period to help CPB establish a strong Board and its political independence; at the same time help develop public's perception of the value of public broadcasting locally; expand radio and introduce new services to hearing and sight-impaired; generate new interconnections and production processes - all aimed at generating greater local public support.

3. 1980: secure passage of a new Public Communication Act:

- new names and structure
- frequency use fee, with 1:1 match
- seven-year review by Congress

4. Corporation for Public Communication then move toward becoming a program and services operation, with flexibility to use any new delivery technology without injury to the basic structure and purposes, as old commercial pattern atrophies in the face of direct satellite-to-home feed and greatly expanded cable service.

Mr. WIRTH. Thank you very much, Dr. Fore. Thank you again to all of the membership of the National Council of Churches whose people are very productive and progressive in their recommendations and thoughts about this very complicated arena.

All of your testimony will, of course, be included in full in the record. You will be able to stay around for the panel discussion?

Mr. FORE. I will be very glad to.

Mr. WIRTH. Our next witness is Mr. Howard Hupe, Director of the Telecommunications Demonstration Program at the Department of Health, Education, and Welfare.

STATEMENT OF HOWARD HUPE, DIRECTOR, TELECOMMUNICATIONS DEMONSTRATION PROGRAM, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. HUPE. Thank you, Mr. Chairman.

First, I would like to note I have been asked to testify as an individual and indeed I am. My observations and, in particular, opinions do not necessarily represent those of the Department of Health, Education, and Welfare.

All parts of this new Communications Act are certainly of profound concern to the constituents that I represent in my job but I believe I can be most helpful in reporting on the first 2 years of the operation of the Telecommunications Demonstration Program, a program which this subcommittee helped to conceive and design, and which it saw fit to include in the new Communications Act rewrite.

We have had well over 2,000 inquiries on this program, mailed out some 3,000 applications in the first 2 years of operation.

The first year we received 95 proposals requesting some \$13 million in grants. We granted eight projects for the approximately \$1 million of which was appropriated.

In the second year, we received 74 proposals requesting some \$12 million in funding—this in spite of a solicitation which was written to be somewhat discouraging, at least in presenting the facts that the probabilities of receiving a grant under this program, considering its popularity in the first year, were somewhat small. No final decision on the second year grantees has been made yet, but that should be forthcoming in a few weeks.

Clearly there is a great deal of interest in this particular program but in my personal opinion the ratio of grants to applications is far too small. I say that in the sense that it seems to me unfair to the applicants who put so much work, effort, and in many cases, money into preparing applications when indeed they have only a small chance of winning a grant.

I see only one of two solutions to this particular problem. The first would be a somewhat restricted solicitation. We could restrict the technologies we deal with, or we could restrict the applications. We could make it only urban or only rural in any given year. We could deal with only education, health, or public information services. My own personal preferences would be to keep the technology open, but to aim the solicitations at a multiservice type of project which indeed I regard as the main strength of this program in that it can deal with the variety of services which otherwise would not be fundable under any existing authorization.

The second solution, of course, would be more funding than the current \$1 million—which the rewrite does provide.

However, I would like to point out that more funds alone are not an adequate answer because in fact many of the applications we have received in this program were not really considered fundable due to the fact that the application itself was inadequate and not fully developed, or needed improvement and more work. This leads me to believe that we may need a technical assistance aspect to this program which could help to make a good project out of a good idea which was housed in a not very good proposal.

This could be done in a variety of ways by making small development grants in the program to applications which had promise but were not entirely well developed, to hiring some contract technical assistance to help potential applicants to put together better proposals than they could with their own resources or providing increased Federal technical assistance with Federal personnel.

All of these approaches would require elaboration of a fairly simple and straightforward grant program which we have right now.

It would also require expenditure of funds either from the program itself or from HEW overhead for other than direct demonstration grants.

Another common reason for not funding many of the applications is that they were considered not highly innovative—and innovation is an important aspect of this program—at least not highly innovative from a national perspective. Frequently, the project suggested had been done once or twice before. We had found that indeed there is relatively little completely new under the sun in this area. However, we should note that even though certain projects are not nationally innovative they may be very innovative locally and would provide valuable additional research data and dissemination of experience.

While I feel that a strict interpretation of this innovation criteria is the best approach to effective use of a very limited budget, it would be appropriate to relax this somewhat, given increased funding. However, we should stop short of ongoing support of proven operational systems.

While some such operational support may well be appropriate, this support does not belong in this particular demonstration program.

I would like to say a word for continuity in the program. Continuity for demonstrations is in many ways more important than the absolute amount in any given year. These demonstrations deal with complex, slow-moving, organizational, institutional, perceptual, and attitudinal changes. Thus, they take time to get started and to reach a steady state. They take time to evaluate, and evaluation is very vital to a program of this sort.

For these reasons a 1-year authorization is too short to obtain the maximum benefit from a program of this type. We would like to be able to assure successful first-year projects continued funding where it is merited.

I am concerned that a 1-year short-term authorization will discourage some of the most responsible and businesslike potential applicants who will not accept program funding uncertainty which adds substantially to the already existing risk of performing demonstration projects.

We have noted that the demonstration program and the applications which have been very broad tend to cross over borders not only within HEW, but within other agencies.

This program has been mentioned in the context of an overall rural telecommunications program. Certainly, it has applications to such programs. We have had informal discussions with the Department of Energy who have indicated some exploratory interest in using the program or certain of the applications where specific energy saving potential might be apparent. We have worked with NASA to put certain proposals dealing with satellite communications applications in the context of an overall exploration of such applications with a variety of agencies. The FCC has been stimulated to study certain regulatory questions which arose as the result of various applicant concepts.

The National Science Foundation has worked with us to mutually channel potential projects to the most appropriate agency and program. All of these agencies have joined with us in reviewing proposals and advising us on the appropriate administration of the program. I see this program as providing a proving ground for innovative ideas which could then be considered for more operational development by any of a variety of agencies. I believe the program, while it has its most appropriate home in HEW, should retain this broader interagency participation in its administration.

Within HEW an explicit goal of the program is to increase the awareness of managers of the large programs which we have within the Department for the potential of telecommunications applications to their specific substantive concerns, to make them aware of the important cost-effective alternatives for service delivery and information dissemination.

As an example of this, I would ask your permission to read an unsolicited note left with us by an HEW manager who participated in our draft review process recently.

This was his first exposure to the telecommunications application concept. It is not too long. I was impressed by it. I hope you will be.

I have a far better understanding of what is meant by telecommunications and hope to be able to promote this concept in my present position. I see a very great need to utilize telecommunications approaches to increase our outreach potential vis-a-vis service delivery practitioners as well as various populations such as handicapped persons and the aged.

I see telecommunications in some cases as being a cost-effective and cost-beneficial method for providing needed information on a rapid response basis to social workers and rehabilitation counselors, rehabilitation engineers, physicians, and many other practitioners serving people.

The training potential that telecommunications approaches is hardly tapped. Similarly, the usage of such systems to enhance cooperative research activities between centers and various parts of the country has not been fully explored.

In my opinion, telecommunications is truly a cross-cutting mechanism which could be invaluable to the full range of our programs and beyond. It should be exploited in a conscious and systematic way during the next several years. The results will be that more people will receive quality service in a more economical and rapid manner.

I believe that this comment illustrates that what is supposed to happen with this program, at least within the Department, certainly is happening.

In summary then, it seems to me that the program is working and working well. We are still learning. We are throwing a wide net for applicants' ideas and for advice and ideas from the agencies. We certainly seek the guidance of Congress in its further development.

Thank you for the opportunity to speak this morning. I will be happy to answer questions later.

Mr. WIRTH. Thank you very much, Mr. Hupe.

Our next witness is very familiar to all of the members of the subcommittee and I am sure to everybody in this room, Henry Loomis, the former president of the Corporation for Public Broadcasting.

Thank you very much for being with us in your private capacity and as a resident of Trough Hill Farm in Middleburg, Va.

STATEMENT OF HENRY LOOMIS, FORMER PRESIDENT, CORPORATION FOR PUBLIC BROADCASTING

Mr. LOOMIS. Mr. Chairman, as you have stated I am now a private citizen for the first time in 25 years in congressional testimony. I come to you unencumbered by an official position. I am responsible only to this committee and I hope that what I shall say reflects the objective that I seek and the freedom that I feel.

I shall devote my testimony to title VI of the bill because of its direct relevance to public broadcasting. But first, I should like to make some brief comments on H.R. 13015 as a whole.

I congratulate this committee for its bold, imaginative, and politically risky attack on the status quo of the communications industry. Above all, you have shaken us up enough to make us reappraise our priorities in this field for the first time in 44 years. This alone is a major service to the country.

The fundamental thesis of the bill is that Government regulation has been excessive, and that the forces of the marketplace should be given more weight. I strongly endorse this position. Overregulation has clearly slowed down the development and use of new technology in many areas of communications. The original reason for such pervasive regulation was that the electromagnetic spectrum was a limited resource, and therefore its use had to be apportioned by the Government.

There are now many alternative means of distribution, and soon scarcity will no longer be a dominant factor. The old forms of regulation in which different types of electronic communication were divided into strict categories will become increasingly obsolete as the old definitions of spectrum use will melt away as almost everything becomes digital. The Government, of course, will always have a vital role in establishing fair ground rules, not changing them precipitously, and being an honest, trustworthy, and effective umpire.

I strongly endorse the concept of a Federal fee to encourage the most efficient use of the entire electromagnetic spectrum. I am no expert on how this should be done. The goal should be to develop an incentive rate structure that will stimulate maximum efficiency and innovation. The technology is within reach to multiply many times both the volume and diversity of the messages that can be carried within a specific bandwidth. When inefficiency becomes expensive, this new technology will become a bargain.

I differ with the bill, however, in that I believe strongly that the proceeds of the spectrum fee should go into the general fund of the Treasury. The system for setting the fees should be designed solely to reward efficient use of the spectrum. It should not be diverted by the needs of possible worthy recipients, including public broadcasting.

Let me turn now, Mr. Chairman, to public telecommunications, which will continue to have the unique and important role to meet the special needs for high quality and diverse programs—at least for a long time to come. The marketplace could eventually become so efficient and multifaceted that Federal support would no longer be needed. But that possibility is at least a decade or more away.

As long as Federal support is needed for public telecommunications it must be provided in such a way so as not to control or influence the content of programs. The first amendment to the Constitution makes this insulation of paramount importance. I believe the concept of an independent private corporation, acting as an insulator and buffer between the Federal Government and the recipients of Federal funds, has more than proven itself over the past decade.

Unfortunately, in my judgment, H.R. 13015 seriously weakens this concept. It does not just permit the government camel to stick its nose under the tent, it tempts the camel to take over the whole tent.

Despite this decade of success, H.R. 13015 proposed to abolish the Corporation for Public Broadcasting and split its functions between two new entities. The proposed Public Telecommunications Programming Endowment—also an independent, nonprofit corporation—would be confined to funding programs and dispensing funds to local stations solely for program use.

Operating funds for both the local stations and the interconnection between stations would be provided by the new National Telecommunications Agency. NTA would be a Government bureau subject to Presidential directives and to annual budget and appropriations review and control by the White House and the Congress.

I assume the major reasons for this splitting off of programing from operations are roughly the same as those that motivated the original Carnegie Commission over a decade ago to make a similar recommendation. The commission, as you know, Mr. Chairman, proposed that the corporation be funded by a dedicated excise tax in order to avoid the annual budgetary and appropriations process, and the temptations of Government influence over programs which are inherent in the power of the purse.

While some member of the committee may not remember—which I did not until I looked into the legislative history of the Public Broadcasting Act of 1967 in preparation for this testimony—is that the Carnegie Commission recommended that the corporation be responsible only for funding for local and national programing, and establishing and maintaining the interconnection between stations. The commission allotted the task of helping the local stations with their operating expenses to a Government agency, HEW.

When the widely acclaimed "Father of Public Broadcasting," Dr. James R. Killian, Jr., chairman of the Carnegie Commission and later chairman of CPB, testified about these recommendations in 1967 before both this committee and Senator Pastore's Subcommittee on Communications, he ran into a storm over splitting operations and programing. In a polite but forceful way, Senators and Representatives from both parties jumped him. With your permission, I would like to quote Senator Pastore's comments.

"Aren't you meeting yourself a little bit coming down the hill?" [asked the Senator of Dr. Killian.] I think that you start out with a very, very serious premise, that you want freedom of interference on the part of the Government

with reference to programing. A very essential part of the life of the station is its operation. Yet, you would take this authority away from the Corporation, which is independent of the Government, and you would put it in the HEW, which is a Government agency. There, couldn't you exercise control or some influence over programing? How are you going to show any kind of a program unless you have money to operate it, if you shut off that source?

Dr. Killian gave several reasons for the split. The first reason was practical. "We were troubled, quite frankly, by any plan that would increase the excise tax unduly. We wanted to keep that down."

After I read this testimony about 4 weeks ago, I talked with Dr. Killian at his MIT office. I reminded him of what he had recommended almost 12 years ago, and I asked him whether he felt the same way.

No; [he replied] I think we were mistaken. Experience since then has convinced me that Senator Pastore was correct in saying that we would risk interference with the freedom and independence of programing activities if funds for either programs or station operations were subjected to the annual budget and appropriations process.

The Carnegie Commission also had a basic philosophical reason for splitting operations support off from the corporation. The commission feared that public broadcasting would become too centralized and CPB too powerful. Centralization, itself, could not only lead to the uniformity of a fourth network, but it would make the whole new institution easier for a future Government to control.

This committee, as you know, had the same reaction as its counterpart in the Senate and rewrote the bill to put the funding of both programs and stations operations under CPB. But it did not protect CPB from the appropriations process. As the result, 4 years after the corporation was formed, President Nixon vetoed a CPB authorization bill that had been passed by the Senate by a vote of 82 to 1, and by the House by a vote of 256 to 69.

Almost as much damage, but not quite, could be done to the freedom and independence of public broadcasting under the provisions of title VI of H.R. 13015. These provisions would put support of local operations and the interconnection under a Government agency. I urge this committee to reconsider this record in the light of its own instinctively wise judgment of 1967 and revise title VI.

CPB from the beginning has been acutely aware of the dangers of excessive centralism and set about the task of decentralizing the power and mechanisms of the system.

First, CPB, working with and through public television stations helped establish PBS, at first to manage operation of the interconnection, and then to become a membership organization representing the licensees. CPB then aided in the creation of NPR to perform similar services for the radio licensees. From the very first year, when its appropriation was only \$5 million, the corporation distributed relatively significant amounts directly to the stations. These were unrestricted funds for the support of both station operations and local choice in program selection.

Sometimes it is referred to as local programing. That is only one choice. What we are talking about is allowing the local stations to have the money to acquire or produce the programs which they feel particularly useful in their area.

Beginning in 1973, both the percentage and absolute amount of what came to be called community service grants grew rapidly. In

fiscal 1979 they will total over \$70 million and be over 60 percent of the total congressional appropriation.

The corporation, working with PBS and the Ford Foundation also supported the creation of the station program cooperative in order to completely decentralize the decisions as to which programs should continue to be funded, putting these decisions directly into the hands of the licensees.

The corporation has spearheaded the design, construction, installation, and financing of the satellite interconnection for both television and radio for the principal purpose of providing public radio and TV with multiple channels of interconnection and thereby vastly increasing local program choice and reducing the possibility of a single gate-keeper exercising central control. Incidentally, during the 1967 hearings, Mr. Van Deerlin asked the Ford Foundation witnesses: "I wonder if sufficient exploration has been directed thus far to the creation of an independent (satellite) system that public television might obtain and operate for itself?" I am glad to report, Mr. Chairman, that 11 years later we have such a system—and it works!

The record I think is clear. The corporation has been consistently sensitive to the concerns of both the Carnegie Commission and the Congress about the dangers of centralism. Over the years, it has constructed an effective nongovernmental system of strong and independent entities. It would be a major mistake, I strongly believe, to ignore the wisdom and effectiveness of the developments of the last 10 years by destroying the leadership and insulation of the corporation and bringing the Government into public broadcasting in a major way through NTA.

As for the public broadcasting facilities program, which H.R. 13015 proposes to transfer from NTIA to NTA, I think this is a much closer call. The present system has worked surprisingly well over the years, largely because CPB, PBS, NPR, the licensees and HEW have established a cooperative relationship. Presumably, equally good relations could be worked out with NTA, which would be much more knowledgeable about all forms of communications technology. But, though NTA would also be far less parochial than a broadcast-based operation, I come down on the side of transferring this program to CPB. This could remove the last Government agency from control over public broadcasting. It would also stimulate the organization charged with leadership of public broadcasting to incorporate as soon as possible such new technologies as new frequencies bands, cable, cassettes, fibers, and so forth. In any case, whichever way the Congress goes on this issue, it is clear that the closest cooperation and coordination between NTA and CPB will be essential.

I feel much stronger about another proposal in H.R. 13015. CPB must not be turned into an endowment, if by endowment the bill means a passive, remote organization. Public broadcasting is a relatively new, remarkably successful, and uniquely American institution, bursting with energy. No broadcasting system in the world is based on such diversity. Its dynamism springs from the autonomy of its local stations, which are as independent as General McAuliffe at Bastogne. I know because they have all said "Nuts" to me at one time or another.

No passive endowment, peopled by philanthropoids and far removed from the hurly-burly can either protect that autonomy against

the powerful forces of centralism, or guide that diversity into satisfying national as well as local needs. Both these require the wisdom, striking power, and leadership of an organization headed by a board of widely respected and courageous men and women. If you change CPB, change it into just such an organization.

To do so would require insulation from Government, and predictability and dependability in two significant areas: The funding mechanisms for public telecommunications; and the process of selecting board members for the Corporation.

When I testified before you last spring, on H.R. 11100, I discussed the problem of the CPB board in detail. Mr. Fore referred to it.

I am very pleased to see that the committee agrees with one recommendation: that the number of board members should be cut from 15 to 9. One-fifteenth is too little responsibility and the group is too large for cohesion. I regret, however, that the committee did not see fit to address the far more important problem—the Presidential procedure for selecting and nominating new board members.

I pointed out last spring that the record of every President of the United States since Lyndon Johnson had been a disgrace. It is now approaching the point of scandal. At the present moment, six members of the board are serving expired terms, one of which expired 30 months ago. There is also one vacancy. For 25 percent of the time during the Ford and Carter administration, the average board position has been filled by a member whose term had expired, or the position was vacant.

Since there is little to choose between the records of the last three Presidents in this area, we have to be frank enough to recognize that the problem of nominations for the corporation is no more than one of the worst examples of a problem endemic to the modern Presidency. Over the years the White House and the Congress have been piling up new bureaus, commissions and boards all of which require the President to make a multiplying number of appointments. As the number has risen, the White House level at which these appointments get decided has been sinking. The Presidential attention span can cover only major appointments; the rest get short shrift at the policy level and are delegated to those who are primarily concerned with patronage appointments.

This is a growing problem of Government. It should be faced forthrightly by the President and the Congress. There are two choices as I see it. Either the bureaus, commissions and boards should not be created or a new way of selecting their leaders will have to be devised. I can think of no better place to start experimenting with new ways than the board of the Corporation for Public Broadcasting. In the first place, the record of neglect is atrocious. In the second place, CPB is a private, independent, nonprofit corporation—not a Government agency—and the political patronage system as practiced by the White House staff is both more inappropriate for a private nongovernment organization and clearly the least effective way of finding superior board members who can lead public broadcasting into the kind of future that the Congress has mapped out for it. If a solution could be found to this CPB problem that would be acceptable to the current and future Presidents, to the Congress, and to the country, it might be the beginning of a solution of the wider problem.

The proposal that I discussed with the committee last April is the creation of a panel of disinterested, widely respected and knowledge-

able persons to help the President by screening potential candidates and proposing to him five able persons for each vacancy. The panel's membership and its recommendations should be known to the press and the public. If the panel does a poor job, the President should ignore its recommendations. This puts a heavy burden on the process used for selecting the panel itself.

The successful ways of choosing such panels for most boards and commissions will take a great deal of experimentation over the years. However, there is one obvious way to do this for the board of CPB. I again recommend that the CPB nominating panel be composed of five members: the two most recent past chairmen of the corporation for Public Broadcasting, the most recent past vice chairman of the corporation, and the most recent past chairmen of PBS and NPR. These men and women are from diverse backgrounds but all have been elected by their peers to significant and responsible positions governing the major national organizations in public broadcasting. They are all acutely aware of the long-range as well as the immediate needs of the system and of the concerns of the Congress and various segments of the population.

While one President might voluntarily agree to some such procedure, succeeding Presidents might not. I therefore, strongly recommend that the Congress explore the problem with the Executive. Both branches must honestly recognize the grave weaknesses in the present system and jointly seek solutions, hopefully embodied in the legislation. I believe the corporation is both an opportune and a wise place to begin.

I think the corporation being a private entity is one of the least appropriate institutions for the normal patronage of appointments.

The problem of how to provide insulated funding, adequate to support public telecommunications at an effective level, accountable to the Congress, and sensitive to the public's needs and desires, has received much attention and debate over the last 10 years. I am convinced by 6 years of experience that public broadcasting should give up the mirage of a dedicated tax, either the one proposed by the original Carnegie Commission or the one proposed in H.R. 13015.

If public broadcasting should ever get a dedicated tax, it would be stuck with the status quo, since its growth requirements far exceed the growth potential of any special tax that the Congress would be willing to impose or any single sector of the society would be willing to pay for this one purpose.

No one has devised a practical method of insulated financing by the Federal Government better than the Financing Act of 1975 recommended by this committee and adopted by the Congress 3 years ago. Nor do I believe anyone is likely to. That bill, your bill, provided 5-year advanced authorization, 2-year advanced appropriation, based on a match that required the system to raise $2\frac{1}{2}$ of non-Federal money for every \$1 of Federal funds.

In 1974, CPB, with the aid of PBS and NPR, estimated the amounts of non-Federal money that would be earned by the system for the next 5 years. We added to that sum, \$25 million per year as an incentive for the system to raise additional non-Federal money. The Congress in its authorizing legislation gave us the precise amounts we requested as ceilings.

Our predictions were remarkably accurate, an error of less than 1 percent for fiscal years 1978 and 1979. Unfortunately, the Appropriations Committee has consistently appropriated funds significantly below the authorized figure, thus, preventing the match from running its full course and thereby seriously reducing both the insulation and the incentives provided by this technique.

You authorized \$120 million for fiscal year 1978 but the Appropriations Committee only appropriated \$107 million. At the beginning of fiscal year 1978, we already knew our match would require an appropriation of at least \$119 million, because the Federal part of the match was based on the amount of non-Federal funds raised by the system in fiscal year 1976.

We therefore requested a supplemental appropriation of \$12 million, the amount we could guarantee to match. I am happy to say that the Congress has passed the supplemental bill containing the \$12 million, but it has just become law a few weeks before the end of the fiscal year. Clearly we could not plan on obtaining the money so we lost not only the advantage of insulation but also the advantage of predictability.

The appropriated figure for fiscal year 1979 is \$120 million. We already know that the match will earn approximately \$139 million. So we will be requesting a supplemental of \$19 million. We are, of course, cheered by the action of the Congress this year, but we cannot be certain that the Congress will appropriate the supplemental \$19 million for fiscal year 1979. In any case, it will not be soon.

I believe that the concept of a match is fundamentally sound for several basic reasons. The total amount of the non-federal part of the match is the sum of money given to public telecommunications from a variety of sources for a variety of reasons. No one individual institution or group can significantly affect it. It is tamper-proof! It cannot be manipulated by the Federal Government, any one State government, any one school district, any one corporation, any one foundation, any group of individuals.

I believe it is as insulated as anything could possibly be. It is also directly related to the amount and quality of services performed. Public telecommunications received support from many groups in return for what it does for those groups or individuals. School systems and State governments either get their money's worth or reduce their support. Individuals contribute in relation to their satisfaction with what they hear or see on public radio or television.

Corporations and foundations must feel that their support of the system is promoting the general welfare. These composite judgments provide the most realistic, effective, and diverse evaluation that is conceivable for public telecommunications. It is also self-limiting. The total Federal appropriation will level off when public satisfaction with the system ceases to grow. This system approximates the discipline of the "bottom line" in the commercial world.

However, three conditions must exist for the system of the match to function properly. First, the Congress should commit itself to provide to public telecommunications those funds which it has earned by the match up to the authorized figure.

Second, the Congress should continue to authorize amounts based on realistic projections on the total of non-Federal funds.

The Congress can and should determine the general level of Federal support by changing the ratio of the match from time to time—no more frequently, I would hope, than every 5 years when new authorizing legislation should be considered. As you know, I have testified that I believe it is appropriate for the ratio to be 2 to 1 for the next 5 years as I believe that one-third is an appropriate share for the Federal Government. I have also testified that I did not believe the Federal share should exceed one-third since the Federal share might then become too dominant.

Last April, I testified that I thought it might be appropriate to supplement the Federal funds derived from the match by funds derived from some other source such as a spectrum use fee. Upon further reflection, I now believe that such additional Federal support would probably be too dangerous since it would substantially increase the danger of Federal interference and is probably impractical anyway.

I do believe, however, that if the facilities program were to be consolidated with other funds appropriated to the corporation, it would be appropriate to make the ratio of the match somewhat more favorable. It would be easy to calculate the change in the ratio required to meet the order of magnitude of funds for facility support which the Congress deems appropriate.

The appropriation should not be earmarked. Rather the corporation should determine the most effective distribution of the entire appropriation for which it is responsible. In no case, for no reason whatsoever, should the match ever exceed 1.5 to 1. The Federal share must never come close to being controlling.

The third requirement for the matching principle to operate is that public telecommunications be permitted to employ all reasonable and appropriate methods to obtain non-Federal funds. I believe it is entirely proper and clearly necessary for public broadcasting to be able to receive support for the production of individual programs from private individuals, corporations, foundations, or Government entities such as the Endowments for the Arts and Humanities. Our experience clearly indicates that public broadcasting has been strong enough to withstand the occasional attempts by individual funders to influence program content or scheduling.

There has been concern about the amount of direct over-the-air fundraising in recent years. Some of the audience clearly objects. The overwhelming majority recognize it for what it is—the necessary price to pay for the freedom and independence of the system. In any case, the forces of the marketplace will quickly put a limit on the amount of direct fundraising that is effective. In fact, many of the stations are reducing the amount of air time devoted to this purpose and discovering that they are raising as much or more money.

In short, I think the system which this committee and the Congress devised in the 1975 act has proved reasonably effective, sensitive, and appropriate. I strongly urge the committee not to tamper with it.

The last major area that has been of concern to the Congress has been how best to assure that public telecommunications achieves or aids the social goals established by the Congress, how to enforce Federal laws in respect to public broadcasting entities, and how the system can best be accountable for the expenditure of Federal funds.

I believe the record of the last few years demonstrates that the corporation has been effective in providing leadership and that the public broadcasting entities have been receptive to the broad social goals of this country. For example, the corporation, working in harmony with the radio licensees, has developed an incentive system for the community service grants. Each radio licensee gets a basic community service grant, but then bonuses are given to those licensees that have instituted projects for effective public participation, or projects for promotion of programs. These incentives can be changed from time to time to include other social goals as the priorities of the system and the society change.

For a number of years, the corporation has put significant money into training minorities and women for responsible positions in public broadcasting. I may say I strongly endorse Mr. Friendly's statement that training is the principal way of improving opportunities for minorities and women. Every cent the corporation puts in is matched by money put in by the individual licensees. This assures effective training and greatly improves the probability of permanent employment.

The corporation has provided matching funds for many experiments in the area of audience research, the evaluation of programs, the use of satellites for instruction, experiments in improving multiple distribution from the licensees to the audience—the "last mile" problem. I believe that the corporation is in the best position to devise effective and flexible incentives for the system to improve its performance.

As the committee is well aware, we have all struggled for some years with the problem of how to enforce Federal legislation within public broadcasting. We have always felt that this must be a Government function and therefore was totally inappropriate for the corporation.

I am glad to see that the 1978 legislation passed by this committee puts the responsibility for enforcing the civil rights laws in HEW. I think this is entirely appropriate and serves as a model for the enforcement of all Federal laws. I believe the corporation's policy of suspending its support to any entity that has been judged not to be in compliance by the proper Government organization is the wise course for the corporation and effectively separates the functions of a private entity from those of Government.

The corporation, working with the national organizations and each individual licensee has worked hard to improve the accuracy and comparability of fiscal and other management data. We have developed new procedures and significantly increased our audit staff. More improvement is required but I am confident that the Congress will soon have confidence in the financial data and fiscal management of the system.

In conclusion, Mr. Chairman, I believe public broadcasting is an exciting, stimulating, and rapidly improving activity. This is due in large measure to the support from the Congress but I believe that the leadership of the corporation has also had significant and positive influence. I think we are getting better. If we can obtain board members of character and ability on time, from diverse backgrounds, and some with significant experience in the many areas affecting public broadcasting, I am sure that the corporation, but more specifically public telecommunications, has even more exciting and fruitful future ahead.

Mr. WIRTH. Thank you very much, Mr. Loomis.

Our final witness this morning is Mary Ann Tighe, deputy director for programing, and Brian O'Doherty, program director, media arts program, both with the National Endowment for the Arts.

STATEMENT OF MARY ANN TIGHE, DEPUTY CHAIRMAN FOR PROGRAMS, NATIONAL ENDOWMENT FOR THE ARTS

Ms. TIGHE. Thank you, Mr. Chairman. Mr. O'Doherty will be joining us for the panel. I will give you only selected excerpts from the testimony which I will submit for the record in order to move us on faster to the panel.

Mr. WIRTH. You can see the looks of gratitude of all the people in the hearing room.

Ms. TIGHE. I will try to read in my best New York voice as fast as I can.

The administration has taken no final action on H.R. 13015 but we are glad to be here to discuss some of the ways in which the draft bill would affect us.

There is something special for us about my appearance here today and that is the first time I believe that our agency has appeared before this committee and we are hoping this is the beginning of a dialog that we will have about how your work affects the arts and the Arts Endowment. I will try to be brief. I am confining my remarks to those parts of the bill which most directly affect the Arts Endowment and its work.

I do want to say how nice it was to hear a number of people refer to the two endowments and to the science foundation and its work in the area of media as the morning progressed. Therefore, three topics.

First of all, the structure of the Arts Endowment and its relevance as a model for the new Public Telecommunications Program Endowment and, second, the structural implications and impact of the underwriting prohibition, and finally the role of independent producers in public broadcasting.

The National Endowment for the Arts was created more than 12 years ago to support the broadest diversity and highest quality of the arts in America, and to make them as accessible as possible to the people of this country.

The Endowment is headed by a chairman, appointed by the President with consent from the Senate, for a set term of 4 years. The Endowment is guided by a national council composed of 26 distinguished citizens who are artists or those vitally concerned with the arts, also appointed by the President and confirmed by the Senate.

Our Endowment is broken down into different program areas, which rely upon the expertise of outside experts in those fields to review applications. This panel review system grew out of concern that, in this most sensitive area of Government support of the arts, decisions be made by those closest to the field and drawn from its ranks.

Recommendations by panelists are forwarded to the National Council, which, in turn, recommends to the chairman, who has final authority.

Within this system is a series of checks and balances, points at which judgment is tested, then tested again. Decisionmaking at the Endowment requires a consensus and discourages the dominance of any single point of view. Rather, the intent and practice is to respond to the needs of the field.

By law, National Council members serve 6-year terms, and by policy, new panel members are periodically brought in to replace outgoing peers. This insures that the decisionmaking process will always be refreshed through the incorporation of differing points of view.

Broad policy issues are determined by the Council. The panels assure that these general policies, as well as the specific needs of the field, are properly addressed in the grant-giving process. To insure cohesion between the broad policies and specific needs, there is a continual dialogue between Council and panel members.

By and large, this system had insured that decisions at the Endowment will be made without untoward influence from any source and that decisions will reflect the very real needs of the artistic disciplines the Endowment is pledged to nourish. We have tried, through these checks and balances, to insure that we can never be so isolated as to be unresponsive to need.

In reading the draft bill we are flattered that the Arts Endowment System seems to be replicated and the fact that you have incorporated our panel review system and we think that the panel review will be very beneficial for public television and radio. It has appeared to us at the Arts Endowment that the various constituencies of public television do not have adequate processes or structures within which to conduct their discourse and to help inform in the decisions made by the board of the new Endowment.

As we understand it, final authority, not only for programing decisions, but for hiring of personnel, and the terms and conditions of their employ, is left to the discretion of the board. This high degree of authority might tend to discourage vigorous debate of policy issues among competent staff and expert panelists, and to discourage them from putting forward contrary points of view. The result could be to consolidate operational responsibility in the hands of the board.

As to the Arts Endowment, panel chairman and program directors are encouraged to bring their points of view directly to the table of the National Council. This seems a good way to insure as we have said, that policy decisions are not made in a vacuum. Perhaps, more to the point, the draft of policy decisions is subject to the scrutiny of those who will be daily affected by it.

We realize that analogies between the operation of the Arts Endowment and the operation of the envisioned Programing Endowment are not exact. Nonetheless, it seems that the give and take of the Arts Endowment might well profit public television.

While the use of outside experts and consultants is encouraged "as appropriate," the role of these experts, the context and frequency of their use, and, ultimately, the weight of their recommendations, is unclear. The bill, or report language, might be more specific in this regard.

We also note that the administrator of the new Programing Endowment, a position analogous to that of the Arts Endowment chair-

man, serves at the pleasure of the board. It would seem to us more consistent with the thrust of the bill—to keep the Endowment beyond political influence and to encourage open debate—to consider the appointment of the administrator for a set term.

In this same vein, it seems to us crucial that the Programing Endowment should continually make some assessment of the needs of its ultimate constituencies, the local stations and the public at large. Planning, audience research, and evaluation would all play a role in this assessment process.

Diversity, accountability, and independence—you are now faced with the task of creating a structure that will be independent and yet accountable to the public in some manner—a task familiar to those in Congress who fashioned the Arts Endowment.

In turn, that structure will also face the questions of creative freedom, responsiveness to need, and how to insure the highest quality while maintaining the broadest diversity.

A fundamental premise of our operations is that a pluralism of funding sources will help to insure a pluralism of ideas. This is why we require at least a 1 to 1 match for our grants and why we work with numerous organizations, both private and public, in each step of the process. We are not the only source of support for the arts, nor do we seek to be.

In section 611(2) you state “that the expansion and development of public telecommunications and the diversity of its programs required substantial and continuing financial support from a variety of sources, and freedom from extraneous interference and control.”

We could not agree more strongly with the soundness of that principle. We do wonder, however, if the centralized structure you are creating will achieve those objectives.

Centralization in a highly insulated body may be a questionable practice because it increases the opportunity for excessive control and might reduce the availability of willing funding sources and thus weaken the pluralism which is basic to the freedom of communication.

We question the soundness of creating in the new Public Telecommunications Programing Endowment a single monopolistic fount of program funding, and, thus, a singular body responsible for deciding what ideas to fund.

The Endowment believes that public television and public radio should provide a forum for a broad range of viewpoints, interpretations, and reflections of the cultural diversity that exist in this country today. It should be a marketplace for the creative reflection of ideas without determining those ideas.

If I may, I would like to dwell upon the experiences of the Endowment with respect to public broadcasting. We are directed by law to support productions that will encourage and assist artists to achieve wider distribution of their works, in to fostering the highest standards in the arts of motion pictures, television, radio, tape and sound recording. Our charge is also to make the arts widely available.

Our efforts to carry out these mandates would be seriously hampered by the underwriting prohibition. Through the peer review system, we provide for the development of specific programs of the highest quality without interfering in program content. Those programs are available to the public broadcasters and others for use at their discretion.

The programs we support are noncommercial, educational, and cultural, and it seems to us that the successful arts programing now appearing on public television would not have emerged without the advocacy of the Arts Endowment. Without our involvement and our advocacy, it seems to us much less likely that "Visions," "Dance in America," or "Live from Lincoln Center"—and comparable high quality programing—would be produced.

Underlying the underwriting provision in the draft bill is an assumption of bad faith or questionable motive. The legislation seems to assume that funding of particular programs or series is a threat to the integrity of the public broadcasting system. We do not. It seems to us that you increase the diversity of choice with a diversity of funding sources.

The issue, of course, takes added nuance with regard to the specific area of corporate underwriting. The question arises: Does corporate funding influence the kind of programs the public sees? Undoubtedly. The record of the NEA's collaboration with corporate sponsors shows that the corporations have been highly responsive to the idea of quality programing.

For the determination of that quality, corporations depend heavily on the advice of the NEA's panels—the advice from the field itself.

In the area of content, the Endowment's experience does not show one single instance where any corporation attempted to influence a program's content.

Concern might be expressed that corporate support emphasizes established arts organizations and neglects the newer organizations or more experimental manifestations of contemporary art. It seems to us, however, that the draft bill's elimination of one of the key incentives to corporate giving—citing a corporate name at the beginning or end of a program—may be too drastic a remedy.

Perhaps corporations might be encouraged to put a small percentage of the amount of funds they vote toward the arts into a common corporate fund, from which more risky projects might be supported. We would, perhaps, match this fund and work with them on how to administer it.

We agree with the draft bill that programing must be noncommercial, educational, and free from extraneous influence. If those considerations are met, why deny organizations, the Arts Endowment, a foundation, or corporation, the opportunity to provide support as they see fit to the proposed Public Telecommunications Programing Endowment.

In summary, then, I am simply questioning the wisdom of replacing the traditional marketplace mechanisms with a single programing authority.

The last area I would like to address is the role of independent producers in public broadcasting. One of the greatest problems confronting the media at the present time, both commercial and non-commercial, is the development of a neglected resource—the independent producer whose work is based entirely on the single rather than the group point of view. Stations are increasingly responsive to them and are to be commended for their concern.

Independent producers are the majority of the constituency in the Endowment's media arts program and we are always thinking of

ways in which this community can gain a wider audience for their thoughts.

I am happy to see here the association of independent video and film makers. I understand they are submitting testimony. I think their voices are very key here.

On the one hand the committee has acknowledged in legislation, and quite properly, the need for support of independent producers.

On the other hand however the richness of programing already available may be cut back if indeed the names of the underwriters for a particular program cannot appear at the beginning or the end of the series.

I know that we have found, for example, two programs that we supported that had been Academy Award winners, "In the Region of Ice" and "Harlan County, U.S.A." which under present legislation would not be available on public television.

We hope this situation will be clarified as the committee progresses in its deliberations.

We thank you for the opportunity for the Arts Endowment to appear before this subcommittee.

Mr. WIRTH. Thank you very much for your testimony. We thank everybody for their patience in this process.

Now I think we come to the moment when the subcommittee would very much like all the witnesses to join us at the table. I hope that there is enough room. I know that there is a great variety of issues we would like to talk to you about.

With the agreement of the other members of the subcommittee let me see if I might start with a little bit of discussion about some of the disagreements that have existed over the House legislation as those very same disagreements it seems to me go right to the question of the rewrite and some of the themes that are there.

As I have listened and talked to I think almost everybody here on the panel in some detail about the future of public broadcasting, a couple of things I think are very clear.

First, I don't think that there are any members of the subcommittee who do not share the goals that have been expressed by almost everybody on this panel and every witness we have heard related to public broadcasting. We want to encourage and defend independent public broadcasting. We share the fears that everybody here has reflected about governmental interference which we all remember so clearly from the early 1970's.

Two issues, it seems to me, remain unresolved and I want to get into one of those and hopefully we can get into the other. These are the issues of what kind of entity are we creating here and second how are we going to finance one, a problem that you are familiar with, Mr. Friendly, from the early days.

Mr. Cardwell with his usual care spoke of Solomon-like choices in his testimony. It seems to me that that first issue of what kind of entity we are creating presents another of those Solomon-like choices.

How much central leadership do we want and how much localism do we want? In achieving whatever that goal is, how much is public broadcasting going to ask the Federal Government to come in and help and how much does it want total independence, another one of those choice? They are Solomon-like. There is probably no clear resolution but at least we ought to get those out and understand them.

Most of us on this subcommittee share with all of you the goals of encouragement of creative programming, minority involvement, responsiveness to the public, fiscal responsibility, access for independent producers.

The question is how are we going to achieve those goals? I suspect that in part many of the perceived problems between the subcommittee and the public broadcasting community, which disagreements were reflected in the furor which continued over the House-passed public broadcasting bill and undertones of that disagreement appeared in much of the testimony we have heard this morning, much of this grows from our inability to solve this centralization-decentralization issue, what kind of beast are we setting up here.

Mr. Geller, for example, in his testimony called for strong central leadership. I wonder if the local stations would agree with that or would say what he is suggesting, that we set up a fourth network.

Specifically let me go back in history for the record and for our discussion here. Let me remind you of the course of events over the last year. Public broadcasting, particularly PBS, came in and pushed very hard for legislative earmarking of 50 percent of the funds, asking us to move in and earmark 50 percent of the fund in the law for community service grants.

We were going to come in and earmark 50 percent. Why were they asking us to do that? It seems to me they were asking us to do that because Public Broadcasting could not get its house in order, could not resolve the disagreement between PBS and CPB. So, they were asking us to wash the laundry, which they were incapable of doing themselves, by coming in and saying "You earmark that 50 percent. Don't interfere with us but earmark that 50 percent."

Mr. Washburn, I think the record will show that we offered an amendment to strike that 50 percent earmark on the justification that that was precisely the kind of Federal interference that you all were arguing against in other forms or many in the community were arguing against. We were told, however: "Oh, no, don't strike that. Bail us out of the problem that we can't resolve ourselves but don't interfere with us."

That remained in the law, that 50 percent. Mr. Waxman's amendment was defeated. I think that is an accurate reflection of the history of the record. Mr. Waxman's amendment was defeated and the 50 percent remained in the law, at which point we said, OK, if we are going to be consistent and we are going to use the earmarking process for solving the problem between central thrust and the decentral thrust of public broadcasting, let us also use then the legislative process for achieving those other goals which we agree with. Consequently we then got into the furor of earmarking through legislative language the achievement of other goals that I think everybody shares, of equal opportunity and community responsibility and innovative programming and so on, at which point the undertones and the feedback and the backbiting and, it seems to me, a great deal of the lobbying started, accusing many of us on the subcommittee of attempting to interfere with public broadcasting, of attempting to be the new Clay Whiteheads of the Congress. I think that appeared on a number of occasions.

We are at this point now and we are about to go to conference with the Senate over the public broadcasting bill as passed by the

House and passed by the Senate. This, it seems to me, is a good opportunity to go into those issues, not just that the conference is coming up but because those are also issues that are key to the question of where we go with the institution of public broadcasting down the line.

Now there is a real dilemma there. I wanted to take this opportunity for the record to attempt to clarify my intent and I think the intent of many of the other members of the subcommittee who again, for the record, are not, as we have been accused by many members in the public broadcasting community, attempting to interfere or trample on first amendment rights but rather to achieve the direction, to achieve the goals I think all of us share. I think it is unfortunate in that process we have managed to reach such kinds of disagreements that the best friends of public broadcasting on the committee are being thoroughly torpedoed in their own communities and around the country by that very community that we are trying to help.

Now can we have it both ways? How are we going to resolve the dilemma in which we find ourselves at this point?

Mr. Friendly, maybe as an individual who probably has as much history and knowledge and awareness of all this, I could ask for you to kick it off.

Does everybody understand what I am talking about? I think it is very clear where we are at this point.

Mr. FRIENDLY. It is a marvelous piece of news analysis you did. It sounds just like the Ford Foundation 11 years ago. There was a day when all the things you said are being said about this committee were being said about the Ford Foundation.

Mr. WIRTH. That makes me feel so much better.

Mr. FRIENDLY. That is a temporary respite.

Mr. BUNDY. Not for long.

Mr. FRIENDLY. Not for long. We discovered that we could enunciate goals but we couldn't make them happen. I think we learned our lesson well. We knew certainly at the beginning, "more about what public broadcasting could become than the people in it who emerged from poverty," but we learned very quickly that we had to stay out of the newsroom, we had to stay out of the control room, we even had to stay out of things like minority employment. There is nothing that the Ford Foundation and others feel more strongly about than that.

Public television, and I hope the people in it who are here today will understand the spirit in which this is said, has operated as a beggar from its very beginning.

If you understand the poverty, there have been times when Mr. Bundy and Mr. Davis who is here, had phone calls at 5 o'clock in the afternoon from Cincinnati and Detroit saying "If we don't get some money we can't be on the air tomorrow."

Now whether you are dealing with beggars in India, where I have just been, I mean real beggars, or beggars in public broadcasting who have to fight and scramble to keep the tube light, to keep people employed, to keep news programs and drama on the air, you drive them into a situation where they fight amongst themselves for a small bit of funding or nutrition. That is what happened in the first 7 or 8 years of public broadcasting. There is no way to beat that other than to provide sufficient nutrients, sufficient money.

Now you have every right to say how do we do that and still have accountability? That is the dilemma that you have and that you pose. My feeling, and it is only one person's, is that you enunciate those very clearly, that the legislative intent shows it.

If one goes back and reads the legislative history of the fairness doctrine, equal time, public interest, convenience and necessity, the grey blurred area is all the legislative intent. I have nothing wrong with the bill that I wrote about to you and Mr. Van Deerlin or this as long as the legislative intent is there. But I don't think you can do it on a day-to-day basis any more than a foundation can.

Mr. WIRTH. And I think that most of us on the subcommittee who are the ones who are most deeply involved in the hearings and writing would agree with you.

We would then ask the question: What is the difference between legislating or identifying accountability, equal opportunity, innovative programing, which raised an incredible furor, as you remember, and identifying 50 percent goes to community service grants and 50 percent goes someplace else.

Mr. FRIENDLY. I agree with you.

Mr. WIRTH. One is Federal interference and the other is not. Why is that?

Mr. FRIENDLY. You are right. That is another one of those self-inflicted wounds. They can't have it both ways and you can't have it both ways.

Mr. WIRTH. I agree with you. We tried to wipe the slate clean under the Waxman Amendment and say that we don't think that that is an appropriate function for us to be carrying out after which the howls and the screams started in the other direction, let us have our cake and eat it too. I don't think that is appropriate.

Mr. FRIENDLY. I agree with you.

Mr. WIRTH. Maybe we can get some other reactions.

Mr. Loomis, you have been very involved in this as well. You can speak from the rural Virginia community.

Mr. LOOMIS. Since they can't receive public television very well, I am biased. I think your logic is impeccable. It is exactly the position that the Corporation has taken right along. We disagreed with the 50 percent when it was put into law in 1975. We wished your and Mr. Waxman's amendment had passed. We thought it was particularly unwise for PBS to push against it. They already had it.

In 1973 we and PBS signed a "partnership agreement." The main part of the partnership agreement was the percentage that would go into CSG's for television over a period of time depending on the appropriation. I reached 50 percent when the appropriation reached \$80 million.

That was done between PBS, the stations and ourselves. That is entirely appropriate. The corporations welcomed the CSG pass through because we foresaw the concept of the station program cooperative and to have that work the stations needed the money with which to buy their choice of programs. So we agreed with that. We did not oppose it. It was just a matter of judgment on how much and how fast. We are doing exactly the same thing with radio with no problem. We are in very close agreement. In fact there is probably more disagreement between individuals in radio and individuals on our staff as to what is best than there is between the two organizations.

I think EEO is another example of what should be done, and I agree completely with Mr. Friendly, that it is the legislative intent that we get in the report or we get in the dialog that is the right guidance.

For several years we have been objecting, and so far successfully, to having specific EEO language or quotas or procedures in the law. We have recommended and urged that as strong language as you wish be in the report. This is what the committee has done. If you look at our history, our public broadcasting history, and the corporation specifically, over the last 3 or 4 years, you see a major effort in the EEO area. I think probably a more effective effort than if there had been specific language in the law.

Another example, which is a more recent one, was the debate during the hearings on the 1978 act, how much was appropriate for radio as compared to television. That is a Solomon-like decision if there ever was one.

The only way is to cut the baby in some proportion. For several years we had had a percentage of 16.5 percent of our appropriation being for radio. It had been changed a few percentage points but not much.

The corporation was mindful of your guidance and mindful of the Senate's endorsement of your guidance. The corporation interpreted your guidance as urging a significant increase in the radio percentage.

So, the corporation, having devised a system which permitted the amount the change gradually, made a significant decision and made a major increase in the amount going to radio. I think the system worked exactly as it should in that case. I think it is far better than if the committee specified 25 percent for radio or any exact percent. The committee clearly indicated you thought there should be more for radio.

The corporation reacted. It reacted in the way it thought was the most feasible and the most appropriate for this year. They will review the decision next year and undoubtedly get additional guidance during oversight hearings, which is fine.

Mr. WIRTH. To be consistent with that, it seems to me that it is consistent to say that we should not be identifying what goes to radio and what goes to television any more than we should be identifying specific rules or legislative language elsewhere. Is that not the case?

Mr. LOOMIS. I agree.

Mr. WIRTH. That should be done by the system if in fact we are concerned about the insulation and first amendment issues. Is that correct?

Mr. FRIENDLY. That is correct.

Mr. LOOMIS. I think the corporation's appropriation should be unencumbered in any way, just a straight sum for which the corporation is accountable to you for how it is spent. We can get your views if you think we did too much in one area and not enough in another area. The corporation will thus be guided in future years.

Mr. FRIENDLY. Oversight but not overseer.

Mr. WIRTH. Mr. Cardwell, we certainly had a lot of discussion last year about the financial mechanisms within the corporation and the accounting procedure within the corporation.

I would assume that now you have been there for a period of time operating with your usual care and analytic approach to the issue and

with your great experience, that that message and discussion has been rooted within public broadcasting and is being implemented loud and clear.

Mr. CARDWELL. The congressional message has certainly been received by CPB and we commented on it in our remarks here this morning. I think again you touched the same basic issue that we were trying to talk about. It is really a matter of degree. There has to be a referee. The original concept was that the referee should be something other than a direct Federal entity. Financial management is an area where we will attempt to act as a referee. I think there are two things that need to be done and that can be done. They are underway. I don't want to say that they are nearing completion or anything of that sort but they are at least underway.

The first thing to do is to make the entities—the stations—understand their own problem. As we said in the statement, accountability is a necessary commitment on the part of all who conduct business, whether the business is the delivery of public radio and television services or whether it is some other kind of business.

We have to account both to ourselves and to those who have supported us. Public broadcasting and its people are not against accountability. As a practical matter, many of the parts and pieces that make up public broadcasting do not yet know how to do it. It is not a matter of not wanting to do it. This is not unusual for a developing enterprise that is highly dependent on public money. You will see it any time you see that form of public dependence.

I think the first thing is to make everybody understand why there is a problem.

Next, we need to develop information about the dimensions of the problem and reflect those down through the system.

Finally, I would not like to see CPB take a mandatory posture. Nor would I want to see the Congress take such a posture, telling every individual station that "thou must have an accounting system that looks exactly like the one that we prescribe."

I would rather develop models that we could hold up for them to look at and examine alternative choices that would take us all in a fairly common and constructive direction.

The third thing that we need—I think this is certainly a problem at CPB—we need to speed up our own processes. We need people to understand why a certain amount of process is necessary in order to move toward a common goal. We need to make the rules of the road known to the drivers and players. I think that is something that we can do and it can be done fairly easily in my judgment. It is something that needs to be institutionalized. Those are my comments in answer to your question.

Mr. WIRTH. I will ask my colleague, Mr. Gore, or Mr. Staggers to please jump into this discussion directed at the point not only of what is coming out of the conference but the implications that that has for the kind of entity we are trying to set up down the line. There is a direct line between the two I think.

Mr. Cardwell summed it up in another way by talking about the referee, who is going to be the referee, and what kind of rules do we give that referee? How strong, Mr. Geller, should that referee be?

That is one of the themes that runs through this. I am not sure we yet know how strong that referee should be. But in defining what is going to come out of that conference committee I think we are beginning to see some of the foundation for what that future referee looks like.

Mr. GORE. I would defer to the chairman of the full committee, Mr. Chairman.

Chairman STAGGERS. Thank you. I just have a statement that I would like to make.

It sounds a little bit like old times to come back and listen to this public broadcasting panel. We heard this debate in 1967, and in the years since then. It has been continuous. Ned, you were here then, I know.

Mr. FRIENDLY. I would hope you would be very proud of what has emerged.

The CHAIRMAN. I am very proud. I think public broadcasting has done a good job. I hope that it continues to do that kind of job. I was the author of that first bill on our side.

Mr. FRIENDLY. That is why I said what I said.

The CHAIRMAN. Thank you.

I would like to compliment whoever appointed the members of the board here today. I will say they are not only charming but they are very intellectual. I think they have been improving the board with their presence. So, there should be a corresponding improvement in the public broadcasting.

It has been the problem since the very first as to how much interference the Government should have. We determined then, if you will remember, that they should not have any, that we should create it and have an oversight on it and hope that it would run by itself. We have had to make some changes as the years have gone by. I am sure there will be changes as we continue.

I want to congratulate every one who has had a part in the system for the work that they have done in making it successful. I think it is probably the best thing that we have had in getting information out and getting entertainment out to the people in an unbiased way without someone saying how it shall be done and so forth.

I am very proud of the part that I have had in it through the years and all of you who are taking part in it now.

With that, Mr. Chairman, I want to congratulate the subcommittee for having these extensive hearings, because I think this is important that we do review and see what is going on.

Mr. WIRTH. Thank you, Mr. Chairman.

Mr. GORE. While Chairman Staggers was sponsoring the legislation that set up public broadcasting I was a student in college.

Mr. FRIENDLY. In West Virginia?

Mr. GORE. No; I was a student of Robert Saudek at the time, who was a member of the Carnegie Commission panel.

Mr. FRIENDLY. That is a nice way of saying you went to Harvard.

Mr. GORE. All of us submitted papers throughout the semester on what this institution ought to look like. I have been very interested in the structure of public broadcasting since that time. I share the enthusiasm that you express, Mr. Friendly, about the success that it has had.

It is something that we can really take great pride in in this country. It needs to be improved but clearly the most obvious prescription is in increased funding. I share your view on that completely. For that reason I supported virtually every effort and sponsored some to increase funding for public television.

It was also for that reason that I supported the 50-percent guarantee because I felt it would reduce some of the infighting. I am not sure that I completely share the intensity of your concern, Mr. Friendly, about some of the accountability requirements.

Let us take the requirement of opening the financial books to GAO inspection. I was contacted by some of my friends in public broadcasting who were concerned that this meant that reporters' note books would be looked at. Well, I think that is a red herring and I think most thoughtful observers in the industry see it as such.

Assuming that it is limited to the expenditure of money, what is wrong with the GAO oversight of those expenditures?

Mr. FRIENDLY. May I be anecdotal in answering that?

Mr. GORE. Only if you are as eloquent as you were in your prepared statement.

Mr. FRIENDLY. There were some remarks that I cut because I could see the stopwatch in your face, Mr. Wirth.

Let us take the case of getting people to work in public broadcasting. It has been a very difficult job to document. I would hate to tell you how many people have turned down the opportunity to work in public broadcasting because they don't want the negotiations of why they are coming and what they do to be proclaimed everywhere. Public television has to be competitive.

Bill Moyers, I would like to say, was recruited by me for public broadcasting. When he had an offer from public broadcasting I urged him when he came to me to do it. I don't know what he was paid.

Later he went to "CBS Reports," which I had started, for much more money.

Now for reasons clear to him, which I applaud, he has decided to come back to public broadcasting and will be on the air in December and January for less money than he made at CBS but far more money than many people think anybody in public broadcasting should be paid. At least that was the case when Robert MacNeil and Sander Vanocur were working for public broadcasting during the 1970's.

Now if you are going to get good people like Mr. Moyers—and I am using him, I could use Robert MacNeil, I could use all kinds of people that the Endowment for the Arts will attract—there is a limit to what they will do and there is a limit to the embarrassment that they will tolerate in the form of somebody saying, "How come you paid Mr. X so much money or Miss X so much money?"

There is also the problem of accounting for documentaries and other kinds of dramas. The failure rate is enormous. It has to be. You will come up in public meetings with a budget number so and so and so and so for a program intended to do such and such a subject which never got on the air; \$140,000 down the drain. If episodes like that are reported at public meetings and in the public print, and I am all for the public print getting anything they can get, but if all those things are reported people will be afraid to fail. They will be afraid to come

into the system because of the accounting. They will be afraid to fail because somebody will say "They wasted \$130,000 or a million dollars in a program which never got on the air."

I have taken too long to answer your question. I am all for accountability. If public television wastes too much money then it ought to be out of business. But I think it is unrealistic to expect excellent and good people to come into the system if each editorial expenditure is going to be scorched by the public spotlight. Bottom line figures should be public, of course, but in all this decisionmaking you have to have the license to fail. That is the way you succeed in television.

Mr. GORE. So to summarize it—if you would agree with this summary—your concern about that specific provision is that it might be intimidating to the people in public broadcasting if the public knew on an item-by-item basis how the money was being spent?

Mr. FRIENDLY. On a day-to-day, item-by-item basis. I like everything but the word "embarrassing." It is difficult to achieve.

Mr. GORE. I thought I used the word "intimidating," but it is the same.

Mr. FRIENDLY. You said embarrassed. I am not going to quarrel with you on words because I think we are communicating.

Mr. GORE. I don't know which makes sense. I am trying to disagree with you. I guess it just comes down to how serious a concern that is.

Mr. Loomis?

Mr. LOOMIS. As you know, the corporation has had a considerable history with this particular problem, of what is appropriate and what is inappropriate for the GAO. When the law was first drafted in 1967 there was no provision for the GAO to have access to us or any public broadcasting entity. We are all non-Federal. But in the process of the debate there was one concern expressed, as there is now: Accountability; what happened to the money? So, a very carefully worded section was put in the 1967 law which gave the GAO the right to examine our books only for financial purposes, not for management.

As you know, when GAO goes into Government entities it has the duty of overlooking their management procedures. We have had over the years a very good working relationship with GAO and I think it was in 1973, if I remember right, that we negotiated, Elmer Staats and myself—luckily I have known Elmer for many years—a detailed definition of appropriate subjects.

Now, we could do this because we were located in Washington and we knew them, they knew us, and it could be done. I think it is a very difficult thing to do for the several hundred licensees who aren't familiar with GAO and aren't familiar with the accounting process. I think this is exactly the kind of problem for which you should hold the corporation responsible.

I think the GAO can and should review our procedures for making sure that the recipients of our money are accountable rather than going themselves into the entities. Although the law gives them the authority, in the past until this committee and the Congress specifically asked them to, they had not. They had reviewed procedures with us, which I think is the appropriate way of doing it.

This dividing line of what is purely financial and what is operational is a very, very gray area. It is extremely difficult because the GAO

auditors are auditors. One minute they are auditing construction of a destroyer or something else that is entirely different. They are not and cannot be knowledgeable in the details of public television or public radio.

I think that is one of the areas for which the corporations should be held responsible. I think we can and should do that.

Mr. GORE. I think one of the reasons that the subcommittee feels the way it does is one of the prerequisites in serving in elected public office these days is the willingness to accept that kind of scrutiny of the way public money is being spent. I don't know, I guess you could find disagreement on how much damage that has or has not done, or how much good it has done.

In general, I think that free and open information is a good thing. I am a former journalist. That is one of the reasons I believe that. If the public has the information I don't think that is something to be feared. There is the concern on the other side, but I balance it the other way.

Mr. Geller, if I could turn to a different subject, editorializing restriction removal. You and I had a brief colloquy on this some months ago. I notice your testimony today is silent on this point. Can you tell us what is the administration's view of the H.R. 13015 provisions?

Mr. GELLER. We are where we were when we testified this year on the Public Financing Act of 1978. We support the removal of the ban on editorializing. We did before. We continue to support that.

Mr. GORE. You supported the removal for community licensed public broadcasters?

Mr. GELLER. You remember I said I was willing to go much further and support the entire removal of the ban.

Mr. GORE. Is that the administration's position also?

Mr. GELLER. It was just stated orally. I will be glad to check it with OMB. It never has been cleared because it has never risen in the course of the clearance process. It certainly is my view. I will be glad to go back and get you a more definitive answer.

Mr. GORE. The questions in this area are so unique, the problem of insulation is so difficult, I personally do not agree with the chairman and the ranking minority member on governmental units having the editorial capacity because of my concern that funding would surely be threatened, not surely, but might in the future conceivably be threatened, by some incumbent whose opponent was endorsed by a governmental unit broadcasting in that area.

Isn't that a concern? Doesn't that have the seeds of a threat to the insulation?

Mr. GELLER. The point I made to you, and I tried to make it very strongly, is that, keeping in mind the first amendment, the Government should put no restriction on robust, wide open debate of any sort, whether that debate be carried on by a State institution or by a community station.

From a practical point of view I think it is a nonissue. We would all agree, I think, that it is very unlikely that a station licensed to a State institution will editorialize. That should be their own decision, though. I am arguing against the Government upholding that ban.

Mr. GORE. I am just worried about the consequences there. Would anybody else care to comment on that?

Mr. WASHBURN. I don't think that you were here when I mentioned this point. I think if you are going to eliminate the ban on editorializing and on endorsing opposing candidates you must retain the fairness doctrine and equal time.

Mr. GORE. I read your testimony that both of those should be retained if you eliminate the restriction.

Mr. FRIENDLY. I agree with Mr. Geller that it is a nonissue. I never thought very much about editorials on television, commercial, or otherwise. I think that to impose these bans will have a chilling effect on public broadcasting. Forty pages on public broadcasting out of 250, and leaving so much to commercial television, which also gets its subsidies, has to be read by these people as chilling, as different, as second-class citizens. I don't think editorials matter. I don't think they ever elected people on television or ever beat anybody. I doubt if any public television station is going to do it.

Mr. GORE. I am trying to make a distinction between Government units who are licensees and nongovernment units who are licensees.

Mr. FRIENDLY. You mean like a state broadcasting station?

Mr. GORE. Yes, or school board.

Mr. FRIENDLY. Isn't that up to the State of Tennessee or Alabama, to worry about that? Isn't that what the original writing of the first amendment was, that Congress shall make no laws that the State can do? If the State funds a public system, Alabama or Oregon, and they want or don't want to have editorials, that is their problem. I think the Congress, with all due respect, which is dealing with communications, whether it is WHDH in Boston or KUDO in San Francisco, or university stations or State stations, to try to have an umbrella thing on all of that can't help, but be chilling, can't help but make them different from the commercial broadcasters who are encouraged to do those things.

Mr. GELLER. There was a case in Maine that involved a Maine statute providing that the Maine educational stations, which, I believe, are part of the Statewide network, could not take positions on legislation. That was struck down by the Supreme Court of Maine. The court considered two arguments: One was the first amendment; the other was Federal preemption. The Federal Government had made clear its desire for wide open discussion in accordance with the fairness doctrine. That second argument carried the day. The thinking was that if the Maine station wished to contribute to this debate on legislative issues, it should be able to do it consistent with the fairness doctrine.

Mr. GORE. Would you agree with Mr. Washburn that if you remove the restrictions against editorializing, you should retain the fairness doctrine and equal time?

Mr. GELLER. The doctrine undoubtedly will be retained with respect to television—the bill has the "equity principle," which in earlier testimony I have suggested needs to be restated. I agree with the deregulation of radio, for reasons I have already stated. I believe that if you deregulate radio, you would not wish to preserve the fairness doctrine. The doctrine is integral to the public trustee scheme; but the bill would scrap that scheme as regards radio.

Mr. GORE. In television you say you think they should be retained?

Mr. GELLER. We have testified in favor of maintaining the public trustee scheme in television until we can observe how deregulation

has worked in radio. If you maintain the public trustee concept, you would certainly maintain the fairness doctrine as part of it. We did urge that there be differences in how the doctrine is implemented. But we urge a retention of the public trustee scheme and with it the fairness doctrine, as to television.

Mr. GORE. Let me ask you, Mr. Geller, about using the proceeds of the spectrum use fee. Last summer you were a strong proponent of using the proceeds of the spectrum use fee for public broadcasting. Last spring you again stated that such a mechanism or earmarking was well worthy of consideration. Today you said that that should not be done.

Mr. GELLER. Let me emphasize that I do think public broadcasting needs some funding mechanism insulated from politics. When I testified on this before, I was not looking at the problem from the viewpoint of the spectrum efficiency. When the problem is viewed from that perspective, and in my new capacity I must so view it, then we are in agreement that the spectrum is being passed out in a very inefficient way. At the moment, no reason at all exists for users to conserve it because it is a free good. It is therefore overused. It makes sense that there be some economic value placed on spectrum use.

While we have not finished our study of this issue, we do favor the idea of some kind of usage charge. The charge, however, ought to be levied solely for the reason of spectrum management. Whatever funds are derived from the spectrum charges should be considered to be much the same as monies collected generally; that is, they should go into the treasury. How those funds are used should be a matter for congressional judgment.

I think the crux of the matter, and here I am emphasizing my new role, is that there be more efficient use of the spectrum; in our opinion, you ought to be focusing on that. What you need for public broadcasting or rural telecommunications or minority ownership is a different issue.

However, I agree that we need some insulating mechanism in the public broadcast area and we hope to come up with one after the first of the year.

Mr. GORE. You supported the linkage earlier, didn't you?

Mr. GELLER. Last August I said it would be a good idea to eliminate entirely the public trustee scheme in both radio and television and to use the proceeds from a charge on broadcasters to fund all kinds of social purposes you might want—including public broadcasting.

I never got into the issue whether the funds from the fee should be dedicated.

Please keep in mind that my testimony of last August was given when I was not in Government. Now that I am a Government official, I am looking at the spectrum fee issue from a different and broader viewpoint—that of spectrum efficiency.

Mr. GORE. Inside Government rather than outside Government?

Mr. GELLER. When speaking of spectrum efficiency inside Government, I have to take into account that we at NTIA do manage the Federal spectrum. It is a very important obligation. We think that there are things that should be done to improve spectrum use, but they should be done independently of the other considerations such

as to fund public broadcasting, rural telecommunications, or minority ownership.

Mr. GORE. Mr. Cardwell, you talk about designing safeguards to minimize the risk of commercial exploitation by corporate contributors. What kind of safeguards do you have in mind?

Mr. CARDWELL. At this stage I don't have anything definitive that I could put before you. I would remind you that the FCC itself is examining the question of whether there is a need for rules on the amount of time devoted to fundraising. Perhaps that offers one potential. What I was really trying to say is that I would rather stop and look for some safeguards, although I am not sure we can find them, than make a precipitous decision to outlaw that sort of funding, when we must recognize that it is such a vital source of funding. Furthermore, I think if we make that choice we may find the problem coming back at us from another direction. When you examine the facts of the matter you come to appreciate that some of the larger stations, the producing stations generally, now depend heavily on this source of funding. For them, it is a larger share of their budget than the share financed from CPB or any other direct or indirect Federal funding. In fact, the differences are significant.

You might find that you have driven them out of the system and created a third entity: Large producing stations that have affiliations with private financiers. That does not seem to be an objective of this bill and I don't think it would be a useful objective for public broadcasting.

Mr. GORE. Mr. Loomis, you indicated knowledge of some attempt by corporate funders to influence program decisions and priorities. Could you tell us what examples you had in mind?

Mr. LOOMIS. Well, the one that come to mind quickly have been mostly on scheduling. "We would like to fund this and we assume it will be at 8 o'clock on Tuesday." First of all, public broadcasting does not have a set schedule. No one can guarantee that any program will be broadcast at any one time. It never is. Usually people who suggest that are new funders or new possible funders to public broadcasting. It takes them a while to get used to the idea of decentralization.

There have been no strong pressures and certainly none on content. I think the influence of commercial underwriting and to some extent foundations has been that more money is available for the kind of program that they deem will give their image luster.

Now, I don't think that is bad. What it does is free up the corporations' money and other public broadcasting money to do the less popular subjects. If you didn't have the corporations supporting cultural shows, and we need the cultural shows, public broadcasters would therefore have less money to go around. I think also that in most cases corporations are not the sole funders of any particular program. They participate with the corporation or with the Ford Foundation or with the Endowment for the Arts. A consortium of funders, while it is a nuisance for any particular producer to try to get a consortium together, does, in itself, mitigate against any one source having a dominant role in either a single program or series.

Mr. GORE. Dr. Fore, you supported the attempt to discourage underwriting associated with specific programs. Why do you believe that restrictions of that kind are necessary?

Mr. GORE. Our feeling is that the system has matured sufficiently to the point where we can begin to cut loose from the necessity—and it was a necessity in the beginning, as Mr. Friendly rightly said, public broadcasting has acted basically as a group of beggars—we think we can begin to cut away from that kind of dependence.

From my perspective of many years serving on the Advisory Council of CPB, we were convinced there and we certainly are convinced in the National Council of Churches, that there is a very subtle but real control, dynamism, mechanism, that exerts itself when corporations, foundations, insist on or want certain kinds of programing. They don't intrude program by program. They may not even ask to look at the scripts. But it is particularly clear that when a certain oil company wants a kind of programing this is heard not only in the public broadcasting community but in the creative community, and the writers, the creators begin to get that concept, and then they provide 10 kinds of programs that will meet that need instead of a program, a biting documentary, that might not be so acceptable to this oil company, for example.

So, the supply is there, the quality is there, the programs are there, and therefore we feel that this kind of corporate underwriting tends to turn public broadcasting into much too bland a service. That is the thing that we are concerned about, the blandness.

Now, I recognize the financial need but we think it is time to begin to trade that off against blandness and to try to diminish the dependence on the kinds of corporate underwriting that needs to attract and indeed demands blandness.

Mr. CARDWELL. It would take a significant increase in program funding for the large producing community stations, the top eight stations, and they are the ones that produce the most significant share of public broadcasting programing.

The direct portion of Federal operational support accounts for something less than 8 percent of their total budget. Corporate underwriting, if you include the share that goes to advertising the individual series or programs, accounts for something in the neighborhood of 27 percent. It is almost 22 percent if you knock out the advertising.

So a very significant share of the budget of those stations is now underwritten. Were this source of funding to be offset, it would take a significant increase against the whole.

Mr. GORE. You indicated support in your testimony for a dedicated source of funding. You did not specifically comment on the spectrum use fee. Could you comment on that?

Mr. CARDWELL. We would have to say that our board has not yet examined that particular choice among other choices. We would hope to do so as a part of the process that Chairman Herndon suggested. The one point that we were trying to get across in our message was that a dedicated source of revenue taken by itself offers no guaranteed assurance of insulation. If you look at the way the Government has gone about creating insulated funding mechanisms, you find that it is the mechanism itself that provides the insulation. It is not the source.

The one example I know the most about, I suppose, is the social security system. That is the largest, most significant dedicated tax in our Federal tax structure, and it goes into a specified fund. But

that is not what determines the individual's right to draw out of that fund. It is the authority that is in the substantive legislation that says if an individual meets certain conditions, he may draw against the fund. The dedicated tax just happens to be the source of the money to be drawn.

I would point out that the surest form of dedicated money in our system of financing Federal public policy is the general fund. We treat it as if it is unlimited. In other words, if we don't have enough there we will put some more in. As a practical matter, it actually functions without limitation, often more so than dedicated funds. Public welfare happens to be an open-ended, prescribed activity and it is funded entirely from general revenues.

Mr. GORE. Mr. Bundy?

Mr. BUNDY. I have two comments, Mr. Gore. One on this and one on underwriting.

It appears to me that the social security example really bears in the opposite direction. In fact, there is a substantial connection between dedication of those payments and what is paid out, and that connection, while not always honored, is very much in the minds of those who write the legislation.

I think the same thing would be true of the license fee. I don't think it necessarily exhausts what the Congress might wish to do about some specific need of public telecommunication, but as one protected source of funding it seems to be a highly promising idea.

On underwriting, let me offer you an example from private higher education. Broadly speaking, the influence of particular donors is inversely related to the wealth of the institution. It is much harder to push Harvard around that it is some small, struggling college. For that reason, once you get the basic underpinning to finance public broadcasting, I think you will find that corporate underwriting can be a constructive supplementary element.

I quite agree there are particular companies now which market their own ideas and press for their own kinds of programming, but not all those companies are alike, as I think your witness will show you in coming testimony. I think it would be a mistake to knock this out altogether because of abuses which I am sure can exist, but are made more dangerous by the overall poverty of the system.

Mr. GELLER. Could I add one thing about spectrum usage?

There are two different concepts present here. One involves relieving commercial broadcasters of public trustee duty and in return taking sums from them. It has been proposed that those moneys go to public broadcasting; in fact, before I entered government, I was among those who advocated this.

The other proposal is the one in the bill: A spectrum usage fee not tied to broadcasters but applicable to all users of the spectrum. We commend you for this. We think it is a step in the right direction. But we would prefer that this proposed system not be tied to dedicated funding for all those purposes, a situation the might heap upon it a burden that it can't meet. It ought to be looked at strictly from the viewpoint of what is necessary to make spectrum usage more efficient. We think, therefore, that a spectrum use charge ought to be thought of as just a mechanism for that and should not be used to fund all kinds of proposals. That is a different matter.

When you say there is a difference in my attitude on this issue between the time before I entered government and now—well there is. Before, I had never focused on the spectrum usage aspect of the fee. I have now and I think it is a commendable idea. I think it is different from the other proposals that Dr. Fore raised and the others which focus on broadcasting alone and in effect taxing broadcasting.

Mr. GORE. If your primary purpose for imposing the spectrum use fee is to treat the deficiencies of the allocation, then you are going to have to set the level high enough that it takes a painful bite so that some marginal operations are going to go under. What the chairman and the ranking minority member have proposed is not in that order of magnitude.

Mr. GELLER. We were hoping to introduce some marketplace factors into the use of the spectrum so that people, instead of considering it as a free good, would, for example change their equipment in order to conserve spectrum. Right now, there is no motivation to do that. There is every motivation to waste the spectrum. That is why the introduction of marketplace considerations is worth doing, wholly apart from any thought of how to fund rural telecommunications or public broadcasting. A spectrum use fee for spectrum efficiency is a concept that I think deserves consideration on its own merits.

Mr. GORE. That discussion really carries us beyond the focus of today's hearing. There are a lot of comments that I would want to make on that general subject involving the trusteeship, abandonment, et cetera. But I will refrain and try to keep my focus on today's hearing.

Mr. LOOMIS. I am going to finish up quickly, Mr. Chairman—your description of an endowment as a passive remote organization peopled by philanthropoids—

Mr. FRIENDLY. How do you spell that?

Mr. GORE. I want to ask Ms. Tighe to tell us whether your structure is indeed so removed from the hurdy-burly that it would be unable to furnish any autonomy against powerful forces of centralism.

Ms. TIGHE. In terms of being removed sometimes I wish that were the case that we were able to have the time to reflect more. We are a Federal agency. We were never created with the intention of being a private agency. There is a considerable difference there. Interestingly enough, in your legislation when I read what your endowment was intended to be it seemed more like a Federal agency than a private agency. That is another agency. I feel we are not removed from the hurly-burly.

I do feel, however, one thing that people were discussing that our grantees and the people that we give block grants to as well are to a certain extent isolated from the political process because we stand before them. The GAO would not visit one of our individual grantees. Rather, we would send an auditor. We would send an auditor and the GAO would come and look at us. We would be responsible for our grantees.

In a sense, all the controversy happens to be in the endowment itself. There is no need for individual grantees to report to the Congress.

Mr. GORE. So, you would actually agree with some of the concerns expressed by Mr. Loomis?

Ms. TIGHE. Yes; I would. I can see so much in what Mr. Friendly has to say. We are aware of areas where our individual grantees perhaps were not successful in a particular project but our auditors, our staff, are sensitive to the efforts being made; they understand. They are not the same people who look at nuclear submarines. They are people who are closely attuned to whether this was a valid failure or whether it was a squandering of Federal money.

As a consequence of that, I do think that there is a difference between the kinds of things where the GAO can go into any particular group that has been given money and the agency being held accountable itself.

Mr. LOOMIS. Mr. Gore, the paragraph in my testimony to which you referred started with "If the committee is proposing an endowment with such a passive entity in mind," I would be opposed to it. I didn't know why the committee was proposing to change from a "corporation" to an "endowment."

What was meant to be the difference? Was it purely semantic, in which case it was unimportant, or was there something more than that that the committee had in mind. I think the Corporation is a very active operation and I think it should be. I would hope the suggestion of whether or not the nonprofit entity be called an "endowment" would be viewed by the committee in that way.

Mr. GORE. You are saying CPB must not be turned into an endowment if by endowment one means a passive thing?

Mr. LOOMIS. That is correct. If I may make a comment on the dedicated tax that you were just discussing. For years Americans have assumed that the BBC had it made; that the dedicated tax that they have had for 20- or 30-odd years was Nirvana, and if we could get that we also would have it made. If you look closely at that system, however, you find that it has some very serious drawbacks. Now that the number of color television sets has plateaued out, the amount of money raised stays the same unless the Parliament increases the tax.

That of course means an individual tax, which is overt and obvious to every citizen of Great Britain, on the television set or the radio set. Obviously, the Parliament is very reluctant to do that. The Parliament has increasingly shortened the amount of time for which they will raise the tax. So they are now redoing the tax each year which means that the BBC is to all intents and purposes on an annual appropriation. That is one reason why so many of the leaders of BBC are leaving the BBC and going to commercial broadcasting in Great Britain. Some of them are coming to this country, because that system is not providing them the opportunity for growth and flexibility that there used to be in the "old days."

Mr. CARDWELL. What we were trying to say about the concept of dedicated tax is that we should not become preoccupied with the idea that just by itself it will provide the commodities of predictability, stability, and insulation. In the social security example that I gave, if one examines the substance of that law, series of laws, really, he will find that in the law there is a permanent appropriation against the trust fund and the dedicated tax that takes the payments to individuals beyond the pale of the appropriation process.

In other words, annual appropriations are not made through the appropriations process for those purposes. If you go back into the statute you will find there is a permanent appropriation that puts in the hands of the Secretary of the Treasury and Social Security Board of Trustees the trust of making the payment according to a formula prescribed by the law. So it takes a connection between the dedicated tax and the process of dispensing the funds to provide predictability, stability, and insulation.

Mr. GORE. Mr. Friendly.

Mr. FRIENDLY. I think the debate about underwriting is healthy, not because underwriting is that important but because it puts into perspective the way many of us feel about the excellent intent of the bill. For example, underwriting we all know is abused. It has become, and my colleagues are not going to like my saying this, it has become a form of semicommercials. If not why do they insist on logos?

If not, why do they buy full page ads that fool many a viewer in thinking that the program is really being sponsored?

I think what Congress ought to say is that this is public television, it has no commercials and semicommercials have no place in it. It is true, Mr. Gore, that some big industrial firms send scouts all over Europe looking for programs, bringing them into this country and then getting them semicommercial sponsors.

I view that with great alarm and my colleagues know that. I think they need to put their house in order. I would think that your job is not to proscribe such activities but to say the intent of the legislation is not to create a semicommercial system. Underwriting, yes. Simple language, voice over, same type, but no semicommercials.

I think you can achieve that not by proscribing it, forbidding it, which comes with all the problems you have heard here from all of us, but saying it is the intent of the legislation that we are not creating a semicommercial system, and we are not.

Mr. GORE. It makes sense to me. On that note I would like to end my questioning, Mr. Chairman. I have gone on much too long and it is getting late in the day.

Thanks to all the witnesses for a most enlightening session.

Mr. WIRTH. Mr. Shooshan?

Mr. SHOOSHAN. Thank you, Mr. Chairman.

I would like to pursue a question raised with you, Mr. Geller, by Congressman Gore on your position on the use of spectrum usage fees to fund public broadcasting.

First to clarify things, you stated at the outset of your statement these are NTIA's preliminary observations. Does that include the statement on page 11 where you say that the money from the fees should not be dedicated to specific purposes?

Mr. GELLER. Yes.

Mr. SHOOSHAN. That is not the administration's position?

Mr. GELLER. No. These views have not been fully coordinated throughout the administration. But we have no indication that there is any opposition to it.

Mr. SHOOSHAN. You are speaking only on behalf of NTIA?

Mr. GELLER. Yes.

Mr. SHOOSHAN. Your statement was fairly clear and then your explanation to Mr. Gore left me confused. Let's back up a minute to

see if we can clarify this. You are essentially saying that there should be a system of spectrum use fees which would apply to all users of the spectrum but should be maintained separately from any linkage to funding public broadcasting or minority ownership?

Is that what you said?

Mr. GELLER. That is correct. We have not concluded our studies of how you might go about doing it, but the concept is very worthwhile and, we believe, ought to be explored.

Mr. SHOOSHAN. I want to try to be clear here. When you appeared before the subcommittee in August of 1977 you were talking about at that time a linkage of a tax against gross revenues of the broadcaster, not all of the users of the spectrum, to fund public broadcasting.

Mr. GELLER. That is correct.

Mr. SHOOSHAN. In April when you appeared last before the subcommittee you talked about the linkage of spectrum fees to funding public broadcasting. I see you have the transcript in front of you. I think you said the idea was worthy of consideration.

If you don't now support the linkage of the use fee for funding public broadcasting, which you said was well worthy of consideration in April, what has changed your mind on that, and if your position is that some other levy ought to be made to support public broadcasting where is that position in the statement here today?

Mr. GELLER. I am convinced that if we look into the spectrum use charge as a means of improving the efficiency of spectrum use, we will find it to be a worthwhile concept. I am convinced we are wasting this resource the way we are using it today. We ought to devise a scheme that encourages more efficient spectrum use. And once you do devise such a scheme, your spectrum fee should be set independent of any consideration other than spectrum management. If you try to make the fee carry all kinds of funding burdens, you will weight it—perhaps unconsciously—and try to extract revenues for dedicated purposes out of it. Such a weighted fee might well go beyond that which is necessary to accomplish the goal of spectrum management, which is worthwhile in and of itself.

Mr. SHOOSHAN. Again, this was the linkage you said was well worthy of consideration.

Mr. GELLER. We have considered it further because of your proposal in H.R. 13015. Before that time—and I suppose this is a compliment to Mr. Jackson and others on your staff—I never explored the spectrum fee question from the perspective of preserving and making more efficient use of the spectrum. I spoke of it only in terms of public broadcasting. It was only relatively recently that I began focusing on it as a spectrum management tool.

I think now the fee and public broadcasting should not be linked together, that the spectrum usage purpose should stand alone.

Mr. SHOOSHAN. Because you feel the linkage to any program will automatically require whoever is administering the program to factor in elements of the need to support that program into the fee?

Mr. GELLER. I think it is inevitable. If the fee is supposed to raise money for rural telecommunications, for public broadcasting, for minority ownership, then it is not being asked to do what it should do, that is, be an efficient spectrum tool, a sufficient goal in and of itself.

I agree there should be some way to insulate the support for public broadcasting. A dedicated fee will not do it if the fee does not raise enough money and I don't think this one, as it stands now, would, as it would have to be shared with a number of other recipients. You would then, still end up appropriating.

What has to be done, then, is figure out some way to bring about the insulation. We are going to focus on this problem and come back to you after Carnegie.

Mr. SHOOSHAN. What I want to understand is if you have now come to the conclusion after looking at it that the spectrum use fee should not be linked to funding public broadcasting, do you continue to support some levy against commercial broadcasters to fund public broadcasting? What is the NTIA's position today?

Mr. GELLER. As regards the spectrum usage fee, we believe it should stand alone. As regards policy towards commercial broadcasting, NTIA's position is that radio broadcasters should be relieved of all public trustee responsibility. Moreover, whatever money you get—out of substituting a charge for the public trustee obligation, and that won't be very much—should go into the treasury. With regard to television, while I as a civilian—if you want to use that term—I proposed relieving television of that public trustee responsibility. But that is not the NTIA position. The NTIA position is that you ought to await the result of radio deregulation and then move on.

Mr. GORE. Wait a minute.

Mr. GELLER. You ought to await the result of the radio experience in deregulation and then, based upon that, make a judgment about television deregulation.

Mr. SHOOSHAN. I am asking you what the position is of NTIA on a source of insulated funding for public broadcasting.

Mr. GELLER. I have responded to that several times. I said we would not come up with a final position on that until after Carnegie.

Mr. SHOOSHAN. Why?

Mr. GELLER. Because we think that the Carnegie Commission's report should be a very responsible focal point for that discussion. The President endorsed the Commission. He said in his message to Congress in 1977 that he wanted to await the report before he came out with further policy proposals. Since it will not delay legislation, we think it is sensible to wait for the report. To jump the gun now would be a matter of sentence first, judgment later.

What was the Carnegie Commission all about if we don't wait for its report?

Mr. SHOOSHAN. I hope we are all going to be taking an objective look at Carnegie, not deferring inordinately to what they recommend.

Mr. GELLER. Absolutely. As we point out, we are performing our own studies. We will take into account what proposals are made here, at these hearings. But, at the same time, we don't want to say we now have a solution and it does not matter what the Commission says.

Mr. SHOOSHAN. Two points to summarize it * * * It is only NTIA's position not the administration's position, that the linkage between the spectrum use fee and funding of public broadcasting is inappropriate, is that correct?

Mr. GELLER. That is correct.

Mr. SHOOSHAN. NTIA currently has no position on the advisability of another type of levy through a direct tax or other mechanism against commercial broadcasting to support public broadcasting?

Mr. GELLER. Or any other means of doing it. We have not taken a position on how public broadcasting should be funded. We recognize the importance of this issue of political insulation. We have not taken any position because we want, in addition to our studies and these hearings, to take into account the Carnegie report. The short answer to your question is: yes, that is correct, we have not taken any final position.

Mr. SHOOSHAN. Thank you.

Thank you, Mr. Chairman.

Mr. WIRTH. Let me close by asking if any other members of the panel would like to comment on where we started in this discussion, which was the accountability provision, the requirement in the legislation.

Mr. Friendly, Mr. Loomis and Mr. Cardwell commented.

Mr. GELLER. I just want to say that you have raised a very vital question about the kind of entity, what kind of animal, you have. Besides this 50-percent passthrough issue, there is the issue of whether the role of Federal Government should be to fund station operations and facilities on an ongoing basis or whether the Government should just give the stations an initial start and then get out entirely.

That is a fundamental policy issue that ought to be addressed. Beyond even the 50-percent question, it goes to the basic question of what kind of animal do you have here.

Mr. WIRTH. Any of the others have any reaction?

Mr. LOOMIS. I think that sometimes people feel that the 50-percent is for operations in the sense of gold plating and facilities, bloated staffs and things like that. In fact, most of the money is for either acquisition of programs or production of programs, and that the 50-percent passthrough is a form of programing. The real purpose of it is to decentralize program decisionmaking. In this kind of discussion frequently it gets confused, with the assertion that the 50-percent is lost, it is gone, it is frittered away.

Mr. WIRTH. I don't think that is the issue that I remember talking about, that we are primarily concerned about. I think they were really concerned about the first amount, the "chilling hand," if that is an appropriate expression, Mr. Friendly.

Mr. FRIENDLY. It has certainly been used.

Mr. WIRTH. Let me close with one final question on this whole creative issue while you are here from NEA. Maybe this has been adequately touched upon.

Mr. Friendly, in your remarks you also made reference to the incompatibility of Government in the creative process. I was wondering if all the members of the panel would agree with the fact that there is an incompatibility between Government funding and the creative process.

Ms. TIGHE. I think it was Mr. Bundy who referred to the fact we should keep things open. I don't think it is ultimately incompatible. I just think the larger the dominance of Government the less the opportunity for the creative process to develop. In the Endowment we are working more and more to make our own guidelines broader and

broad, to judge each application on an individual basis rather than by some general formula. I think as long as you keep looking at the artists and the artistry individually, and I think that is possible on a national scale, then I think the creative process can flourish.

Mr. BUNDY. I did not mean to say it was Government as such. I think the Government's grant making agencies cover the spectrum from good to bad. It is a matter of the way they do it. That is what we are talking about, protecting the independence and autonomy of people who have the artistic or entrepreneurial job.

Mr. FRIENDLY. We have given a fund to the Endowment, a half million dollars altogether, a fund for independent production of documentaries. That is so that the Ford Foundation and the Endowment won't have people coming to us and having us say do this and do that. That would be improper. We have given that money. It has a special committee, a board, insulated from us, insulated from them, and therefore insulated from Government, that does that job.

Sometimes I suppose we will cry when we see what they do. Other times we will celebrate. But it is removed from the heavy hand even of the Endowment and even of the Ford Foundation, and certainly the Government, because we believe that is the only way it will work.

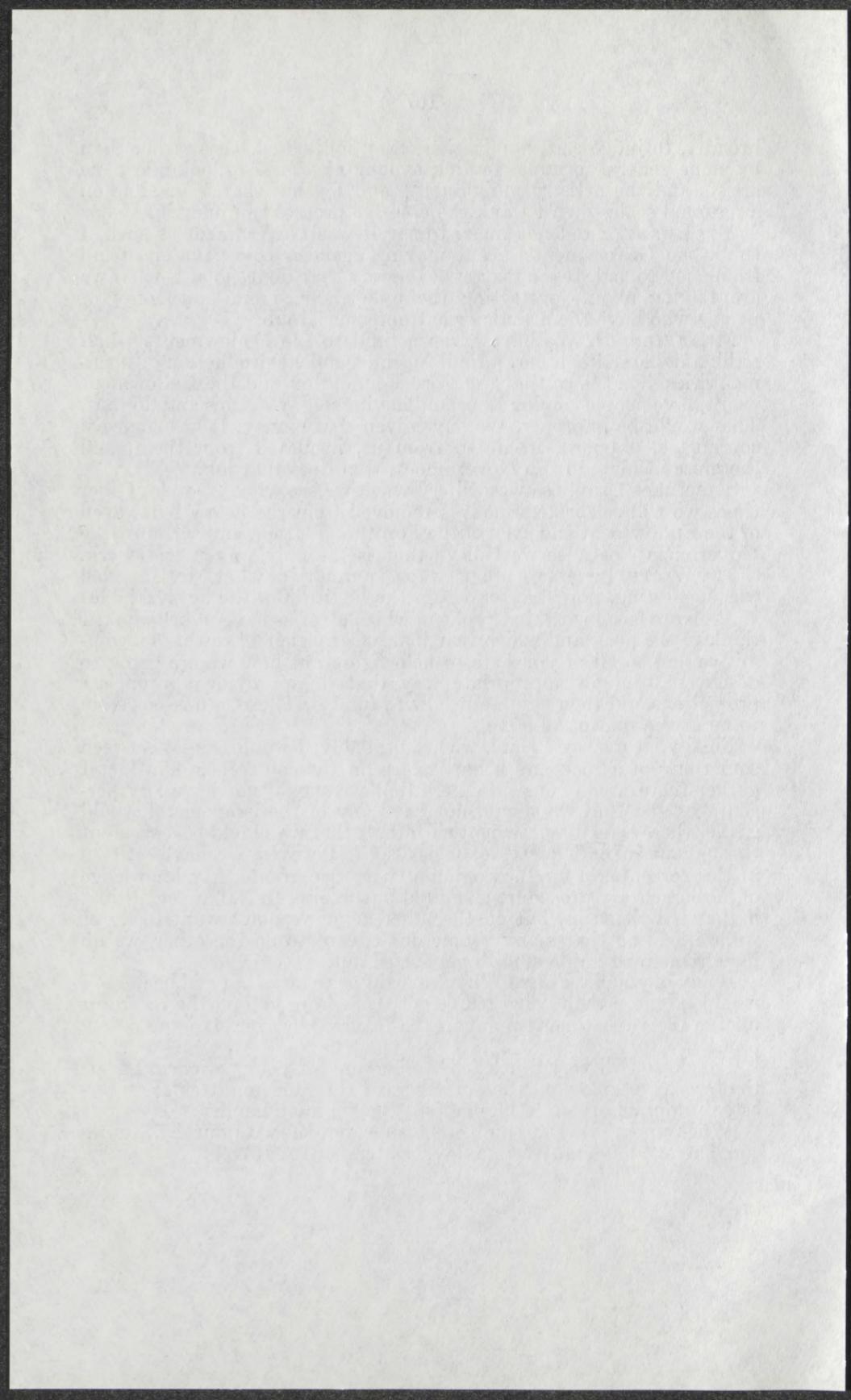
Mr. WIRTH. I guess we are back to a summary of what Mr. Cardwell was suggesting, how do you design the institution, the key variable? We still are faced with that problem which all of us have talked about I think in the past, and which remains to Carnegie and to this subcommittee and to all of you here to help figure out how we are going to design that in an appropriate way that does provide appropriate protections and then figure out how to fund it. Those two issues seem to be at the root of all of this.

Finally let me say I think we are probably, I would guess, between something of a rock and a hard place on the conference if in fact I gather there was a consensus here that we should not have any percentages and that we should not have any of the language. I would gather there is no disagreement with that, that we should be consistent throughout in both pieces of legislation. However, we have written in the percentages for the community service grants. My knowledge of parliamentary procedure is limited but I think that that suggestion, if that is written in, but on the other hand we don't want to do or we are hearing that many people don't want to do the other, we do have remaining a dilemma to get sorted out.

If any of you have any brilliant insight as to how that can be done, I would be more than delighted to get them from you on the record or off the record—at some point in the future, however. It is now 1:40 p.m.

Thank you all very much for coming and for your patience. I hope that we have indicated that members of the subcommittee are interested in public broadcasting and not the "chilling hand."

[Whereupon, at 1:40 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Wednesday, September 27, 1978.]



THE COMMUNICATIONS ACT OF 1978

WEDNESDAY, SEPTEMBER 27, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2203, Rayburn House Office Building, Hon. Lionel Van Deerlin, chairman, presiding.

Mr. VAN DEERLIN. The hearing will come to order, the second day on public broadcasting.

We are privileged to have as leadoff witnesses today the chairman and president of the Public Broadcasting Service, Newton Minow and Larry Grossman, respectively, accompanied by three PBS board members. I know that one of them is Dallin Oaks, president of Brigham Young University. Are all three not going to be here?

Mr. GROSSMAN. Dr. Evans is here.

Mr. VAN DEERLIN. Dr. Stanley Evans from the University of Maine, and John Caldwell, general manager of WGBY in Springfield, Mass.

Good morning. You have planes to catch shortly past noon. I am assured by staff that the program is so reckoned that this will be possible even though we ask everyone to linger for questioning at the end. Staff has frequently erred slightly in its calculations during the hearings, but never in the public broadcasting sector, I am sure.

Good morning, Mr. Minow. Are you the leadoff?

STATEMENTS OF NEWTON MINOW, CHAIRMAN, AND LAWRENCE GROSSMAN, PRESIDENT, PUBLIC BROADCASTING SERVICE, ACCOMPANIED BY DALLIN OAKS, PRESIDENT, BRIGHAM YOUNG UNIVERSITY; STANLEY EVANS, M.D., VICE CHAIRMAN, BOARD OF TRUSTEES, UNIVERSITY OF MAINE; AND JOHN T. CALDWELL, JR., GENERAL MANAGER, WGBY-TV, SPRINGFIELD, MASS.

Mr. MINOW. Mr. Chairman, we are very grateful to you and your colleagues for the opportunity to be here; and particularly to you because we know how difficult it has been for you to get here today from your home district. Thank you.

Mr. Chairman, I would like to ask to have our formal statement put in the record and not take the time to read it, if that is agreeable.

Mr. VAN DEERLIN. Without objection.

Mr. MINOW. As part of that, Mr. Chairman, I would like to ask you also add into the record a recent study which we have done of long-range planning for public broadcasting, prepared under the

leadership of our vice chairman, Hartford Gunn. I think many of you have seen it, but it would be very valuable to have it in the record as well.

Mr. VAN DEERLIN. All right.

Mr. MINOW. Mr. Chairman, as you know, the Public Broadcasting Service is owned and governed by 155 public television licensees throughout the country. I have asked today to have several of our board members from various parts of the country representing various stations to come with us in order to give you and the committee a perspective of what our concerns are, what our feelings are about the proposed legislation and how we see they might affect public broadcasting.

Dr. Dallin Oaks, as you mentioned, is the president of Brigham Young University. It is the licensee of KBYU Television, Provo, Utah. He is a chairman pro tem of the PBS board. He will talk about the key issue as we see it before us, which is the preservation of the independence of the stations and at the same time their public accountability.

Dr. Stanley Evans, who is on my right, is, you would be interested in knowing, a practicing physician in Maine, but manages to find time to be vice chairman of the University of Maine, and therefore has the responsibility as licensee of four public broadcasting stations in Maine, of the Maine Public Broadcasting Network.

Dr. Evans has the tough assignment of being chairman of the programming committee of PBS as well.

Larry Grossman, whom you know, is the president of PBS, and is a member of our board and executive committee, and he will be speaking briefly after Dr. Evans.

John T. Caldwell, Jr., Jack Caldwell, is one of the original pioneers in public broadcasting, and he runs a station in Springfield, Mass., a community station. He is the vice chairman of our finance committee, and I think he can bring you a manager's point of view on the day-to-day perspective of how public broadcasters see the issues.

In addition to that, you have scheduled later today Jack McBride from Nebraska and Jay Iselin from New York, who are testifying on behalf of their own stations. But both are active in PBS as well, and I am sure they speak for PBS as well as themselves.

I would like to use this time to ask each of our people to speak for about 5 minutes and try to stay within the 30-minute period allocated to us. Dallin?

STATEMENT OF DALLIN OAKS

Mr. OAKS. Thank you.

Mr. Chairman, in addition to the affiliation that our chairman has referred to, my presidency of Brigham Young University also brings me in contact with a lot of private university presidents. I am president of the American Association of Presidents of Independent Colleges and Universities. This is a significant affiliation from my perspective on these problems because approximately half of the licensees of public television are educational institutions.

KBYU TV is one of two privately licensed broadcasting systems in the State of Utah. PBS, as you are aware, is an organization of

independent public television stations, a confederation of local licensees performing cooperatively those functions that require cooperative action. Each station is jealous of its independence, its local control, its local autonomy, and its predominant local financing. Systemwide, over 70 percent of the costs of operation come from local sources. That approximate figure is also true of KBYU. Approximately 30 percent of the cost of operation comes from government sources.

It is proper that stations receiving this assistance be accountable for the use of public funds. That accountability includes auditing, fair employment laws, and the like. It is also appropriate that stations, whatever their sponsorship, be accountable for the use of licensed frequencies, as they are through the FCC and its regulations. They also need to be accountable to local communities which provide, as I said, over 70 percent of their financing through local governments and local boards.

Aside from accountability, it is also true that our potential for service to the public lies in our diversity and independence. We must not become a governmentally controlled and financed network. Our objective, then, is to preserve our independence, including our predominant local financing, while at the same time being accountable to the public for the use of the airwaves and for the minor fraction of public funds received in our operations.

To balance the competing ideas of independence and accountability, we need an appropriate legal framework. For this purpose, Congress gave us the existing legal structure in the Corporation for Public Broadcasting. While this structure is not perfect, the arrangement, we believe, is basically sound. We also submit that it is distinctly preferable to the arrangement suggested in the proposed rewrite of the Communications Act.

In short, we prefer to work at perfecting the present legal arrangement rather than risking the uncertainties of the proposed new one, especially since it has several glaring defects. No. 1, its philosophy is uncertain. It upsets the delicate balance of independence and accountability in ways which are made more explicit in our written statement. No. 2, its structure is unworkable. The separation of funding and regulation of programming and station operations as proposed in the rewrite is unsound, because it cannot work. It cannot work as intended. No. 3, the manner in which public broadcasting is tied to government is wrong, because it interferes with public broadcasting's exercise of vital first amendment freedoms. Public television must be insulated from political pressures and day-to-day government operations. It should be tied to government through an independent agency like the Corporation for Public Broadcasting or through the Congress in the appropriations and funding process.

The proposed tie through the National Telecommunications Agency as part of the executive branch is just about the worst possible arrangement.

We recognize that the proposed rewrite attempts to be helpful and acknowledge that it has many salutary features. At the same time we think its present text would have a deadly effect on the vital independence of public television.

The overall situation, Mr. Chairman, is appropriately represented by the story of a faithful worker who took sick and was sent to Florida

to recuperate. After a few months of steady progress with sun and rest, he suddenly died. His body was shipped back to his original home for the wake. Shocked at his sudden and unexpected death, his friends stood around the coffin, embarrassed and self-conscious, scarcely knowing what to say.

Finally, gesturing at the healthy tan on the corpse, one of them broke the silence to say, don't you think Mac looks good? I think that trip to Florida really helped him.

Mr. MINOW. Ladies and gentlemen of the Congress, public broadcasting is not just interested in looking good.

Mr. VAN DEERLIN. I am sorry Lou Frey is not here at the moment.

Mr. OAKS. We are not interested in just looking good under the standards of accountability. We want to stay alive as independent local television stations serving the public with the diversity made possible by that local control and independence. Thank you.

Mr. VAN DEERLIN. Thank you.

Mr. MINOW. Mr. Chairman, next, Dr. Stanley Evans, who, as I have indicated, is here with us from Maine. Stanley?

STATEMENT OF STANLEY EVANS, M.D.

Dr. EVANS. Thank you.

Mr. Chairman, despite what Mr. Minow has said about my being a practicing physician, there are some in Maine today who would take issue with that, because I spend a great deal of my time in activities in public broadcasting. That is something that I have become very comfortable with. I come from a small and rural State, as you well know. I have been really encouraged by what I have seen happen there with this whole phenomenon of public broadcasting.

Over the past several years, I have watched people become extremely enthusiastic, to the extent that many not so affluent people have become very willing to put forward their hard-earned dollars and cents to support this entity. It is a very important industry for Maine. It is a very important activity for the citizens of Maine.

I think that one of the things that has made this so, not only in Maine but across this Nation, has been what has happened in terms of programs. Of course, that is what this is all about. The final product that people see are programs. I think that programing became something of real quality when the Congress in its wisdom saw fit to put together the possibility for multiyear funding, so that long-range planning could be undertaken and the appropriate commitments could be made that would allow us to obtain some of the creative talent that we have been able to achieve.

Prior to 1975, in our State, in Maine, we did not see public broadcasting in the same light we see it today. What has happened over the past few years is, there has been a diversification in programing so that more and more people are affected by this medium.

Now, I think one of the things that is very confusing to people is, how does this business of programing come about. I know as I approached public broadcasting it was very confusing to me, and even at this point in time there are areas which are very complex, and I thought what I would do for a few minutes here this morning is to try to explain to you how the programing process takes place. I think

there are some misconceptions that somehow a select group of people sit some place sequestered away and make decisions about programs, and I have found and I think others have found that this is not so.

There are, really, six steps that take place as programs are put together, and I am talking about programing now for the National Program Service. What stations across this country recognized was that it would be to their advantage to come together and to pool their efforts towards putting together programs of quality, and that by coming together they could achieve results they could not achieve by themselves. That is really what a lot of the Public Broadcasting Service is all about.

The six steps that take place in order for us to get programs together is that, one, there is a setting of priorities and needs, and this is an activity that falls upon the programing committee of the board of PBS. These priorities and needs as perceived by the program committee are concurred with by the board and by the membership. The programing staff takes these perceived priorities and needs out to the system, and they are scrutinized and modified by the system.

After these priorities and needs are identified, the program staff, with this kind of mandate from the board, then goes out and solicits program ideas and proposals, and these ideas and proposals can come from a number of places. They can come from our stations. They can come from independent producers. They also approach different funding entities about what thoughts they have about ideas for programs that ought to be put on through the national service, and the programs that would fall within those priorities and needs as identified by the board.

The third element is the development of a program service planning document, based on a collection of these ideas as they come in. These ideas are put into a planning document which is then again circulated throughout the industry for people's perusal.

The fourth area is that, after the planning book is put together, the projects are prioritized and then sent out to potential funding sources. It is in this area again that the system has an opportunity to look at potential programs. One mechanism that has developed is an entity called the station program cooperative, in which the different members of PBS have an opportunity to look at programs and to purchase those programs they choose. It is through their purchasing of these programs that one gets an idea about what the stations feel are important and what they feel are not important.

Those programs which are not purchased obviously do not go onto the national program service by the SPC mechanism. It is encouraging to know that last year and stations saw fit to spend approximately \$20 million through this mechanism in purchasing these kinds of programs. Once the programs are funded, it is then the program staff's job to put together the schedule for the national service, and finally, to arrange for the broadcasting and evaluation of this service, and that is a very important function which is really just coming onto line.

We are concerned about who is looking at the national service, what are their thoughts about the programs that are on, and why are they watching those programs. With this kind of information, the program committee of the board can begin to gain some idea about the appropriateness of the priorities and needs that they identified, which initiated this whole process.

I think in the proposed legislation the Programing Endowment concept is certainly a positive one and certainly, I think, would be very supportive of this whole process that we have in place, in regard to its adequate funding, in regard to its multiyear funding, and in regard to its insulation from governmental intervention.

Where I am concerned, however, is that the bill also sets in motion through some of its provisions ways to make it most difficult to continue to get the diversity of funding now supporting public broadcasting, especially the funding which comes from corporations. I think this represents a very significant obstacle and one which ought not go forward.

What I would like to close with is that if there is any perception which I think is accurate, as I travel around the country, whatever has been happening in public broadcasting has been enthusiastically received by the American public. I think this is an important evaluation. One would have to be very foolish not to understand or realize there are problems with this system, but I am concerned that in our zeal and haste to remedy these problems, we do not undo the system that has been put in place and enthusiastically received by the public.

Thank you.

Mr. VAN DEERLIN. Thank you.

Mr. MINOW. Mr. Chairman, I would now like to ask Larry Grossman, our president, to speak for a few minutes. Larry?

STATEMENT OF LAWRENCE GROSSMAN

Mr. GROSSMAN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you again, and I will be very brief. I would just like to put some closure on the remarks of Dr. Evans, who in our board we say has turned from making house calls to making committee calls these days. I think in turning to section 644 of the bill, it has been our experience as the manager of the interconnection on behalf of the stations, that the interconnection service is one of the lifelines that the station has, and it is totally entwined with the programing process that Dr. Evans described.

It involves us at PBS in trying to develop program priorities, in trying to provide a programing choice of diversity and balance, alternative choices of programing, so we do have a great concern when the interconnection is tied so closely, as Dr. Oaks has suggested, to the National Telecommunications Agency. Its funding, its oversight, in effect, is directly tied to a branch of the executive department of the government, and I would suggest that that is a problem we should revisit and take a close look at, because of the concern we have for the insulation for public broadcasting. In order to put into perspective the Solomon-like task you have gone through in attempting this, I would like to quote very briefly two excerpts from two articles I saw on my desk last night, one from the Valley Times in Nevada, which said that:

Most of the time public television just can't win. When it runs opera, ballet, or Shakespeare, it is accused of snobbishness. When it runs yoga lessons and high school volleyball, it is charged with philistinism. Public TV has what appears to be a most unrealistic ambition, to provide something of interest to everyone without duplicating the usual mediocre fodder offered on the commercial channels, yet every year it comes closer to accomplishing its Homeric work.

Finally, from the London Times just to give you some perspective on the problems worldwide, in testimony quoted in the issue of September 21 by the director general of the BBC before Parliament, Mr. Trethowan said:

We need more money to make better programs. We need to replace repeats and American purchases by work made in our own studios.

We need to step up the modernization of our plant. We are vehemently opposed to new bureaucratic service managing boards with outsiders appointed by the government, and in asking for a three-year license fee we need to know what our revenue will be over several years so we can plan and make independent judgments.

Mr. VAN DEERLIN. You guys all have the same writers, don't you?

Mr. GROSSMAN. It is a better line than my close, which is, it is the same the whole world over. Thank you.

Mr. MINOW. Mr. Chairman, our president, Mr. Grossman, once said to me that if the BBC did not talk English, PBS would be in a lot of trouble.

Mr. Chairman, our final representative is Jack Caldwell. Jack and I met with our group last night, and I asked Jack a question myself, which is how he got into public broadcasting, and I suggested he begin by telling you how that happened. Jack?

STATEMENT OF JOHN T. CALDWELL, JR.

Mr. CALDWELL. Thank you, Newt.

I began in 1953 as a volunteer in what later became WQED in Pittsburgh. There were no educational stations on the air then, and we had to begin by whitewashing the basement to get the building ready for a television station. From Pittsburgh I went on to Michigan State Television, and wrote, produced, and directed, got into production, management, and so on, and left there in the early sixties to join National Educational Television at the distribution center in Ann Arbor.

I was thinking back last night to the years 1962 to 1966. Then, our national distribution was in a mailbag and airplanes and air express and airfreight and so on. It was a very archaic system when the rest of the commercial world was using network lines. Here we are 12 years later leading the Nation with satellite interconnection, and this all happened in 12 years. We really are moving in a lightning speed in this industry.

I want to applaud your willingness to look at an act written in 1934 and say, maybe it is time to address these issues again and go as far as writing a whole new bill, if necessary, because communications are changing. I think when we look at something new, it gives us a chance to look at something that we have, and think what it is we might gain and lose. I think that is good, and I think the rewrite is a good first draft. I think it puts the issues on the table and gets all of us here talking about them.

You have all heard a lot at the regional hearings and from my predecessors here, and I will not go over much of what they have said. I think they outlined very well the problems that we have with the proposed rewrite. I share those concerns, and I really am not going to repeat them again today, but I do want to stress that it is terribly important that we have large amounts of unrestricted income.

Like the businessman, we have got to have the dollars in our home plants where we can make decisions on what we are going to do to serve our markets. To give you just a brief example, in just the past 2 or 3 months at our station, which I might say is about average or in the middle—about half the stations have larger budgets and half have smaller budgets—we have no direct State income.

I had the privilege of moving to Springfield 7 years ago to start WGBY. We then had a staff of zero. I was the first staff member. We had no guaranteed income, no State income. It was sort of an interesting challenge to move into a market that was not affluent and say, well, here we are, how do we build a public television station? It became very clear to me very quickly that we needed a good, strong local board and strong viewer support, and we have built our whole station on that viewer support. We are now 6-years old and debt-free, and we have an excellent audience.

In the last 3 months we have made a decision to commence in 2 weeks a nightly 10 o'clock news service, which we will produce with WGBH in Boston so we can provide a statewide 10 o'clock news service, the only one in the State. We just produced a special at the Music Center in Tanglewood, which we hope will go on PBS. We have an excellent facility there. We are very proud of it in our region, and we think the nation might also enjoy meeting with Dr. Schuler, Seiji Ozawa, and the students and so on. We just did the Berkshire Ballet's premier performance at Jacob's Pillow as a local production. Again, we hope that may go on PBS.

We just finished producing five programs on five important political races in our area. We decided that a lot of people were interested in world chess, and we are now originating from a studio we set up in Smith College, coverage from Baguio City on Saturday mornings, where we are doing chess coast to coast over PBS.

We have just finished a pilot program for a cabaret series that will premiere on PBS this fall. We hope it will be the pilot for more programs to come. We have a natural series about dying in production, and incidentally, that program is being produced exclusively by independent producers. It is our major national production.

On the issue of independents, I may be naive. I don't really understand the problem, but I know at our station we don't want to grow big with a lot of overhead and staff. I think there is a tremendous opportunity for independents, and I want those independents to come to us, because I want to hire them for 2 weeks, or 5 months, or whatever it takes, to get the benefit of their skills, and they are many, on a contract basis. I want to keep our overhead low at our station so that people can come in with quality equipment, produce their wares, and get them into the national system.

I think there are other stations which would share that philosophy. I do not want to burden the system and burden them with having to cover a large overhead staff that we are carrying. We don't want to carry that kind of staff. We also have, through independents, a series of seven programs in production on the native Americans of southern New England.

The point I am making is, this is all coming out of a small station. We can do this. We can make these kinds of decisions with the independent dollars we receive from our viewers and businesses and foundations. I think the public is counting on us and I know they are

counting on you to give us the kind of support and accountability and challenge and criticism that they want of us and you.

I want to say that we really take that FCC license to heart. It says "to serve the public interest," and we believe that. I read in some earlier testimony that Mr. Thurston of NAB was commenting that he had seen Mary Hartman, Mary Hartman on public television. Well, he happens to be in Berkshire County in our district, so I am sure he saw it on our station. Mr. Shooshan replied, well, maybe that was in the public interest. I think it is a good point. We did run it in the public interest, after all three commercial stations in our district turned it down. The public said, we want that program, and I think we are there to say, what does the public want that can't be commercially supported? If we can provide that service, we should jump in and do it, and we did, and had tremendous ratings as it turned out on the program.

I think we really believe in the earlier decision reached by Congress that there are media services like broadcasting that cannot be supported commercially, that must be supported by some Federal support and local support. I am led to believe there are people in the commercial broadcasting business who think we might be getting a little too healthy, and I really don't understand that, because if you step back, I think the commercial people who feel that might say, if public television gets out there and hustles and builds an audience large enough to be supportable on commercial television, then we will let them produce our pilots for us and we will jump in with a sponsor and take it over. All we can do is get good enough to be commercially viable, and I know it will move over to commercial television, and that is what we should do.

In fact, a good case in point is tennis. That really started with WGBH, along with Cricket Club. No one was running it on television. WGBH put it on, and you know how much tennis there is on television today.

I don't think there is one single program on our station or on public television that is competing with commercial television to the extent that it is taking commercial dollars away, because if it was it wouldn't be there. Incidentally, I might add, if we look at the total number of people we are reaching in our market, which is now a quarter of a million people a week, and measure the Federal dollars we are getting, we are serving our market with about 8 cents per viewer per week, and I don't know how many better Federal investments there are.

I am going to bang through some of this. To just give you a sense, a feel, in our little station we have 12,000 households now supporting us, independent households, and they gave us this year, the fiscal year just ended, \$210,000. That was gifts of under \$100 apiece. We got another \$33,000 in gifts over \$100. We got \$75,000 from the business community. We raised \$198,000 with our auction. We just had a tremendously successful August pledge drive. Last year we did \$18,000. This year we did \$27,000, and what made it happen was programing, and I think one of the privileges that I have is to get on that tube on a pledge night while the public is in part bored silly with the whole thing. I can get on there and say, folks, we have been on the air for 4 months now, and we haven't had a pledge drive. How are we doing? Let's have your vote. If we are doing a good job, pick up the

telephone and phone in a pledge. If we are doing a lousy job, don't call us, because if we don't serve you and you don't send the money in, and if we don't get your money, we don't get the Corporation for Public Broadcasting's matching money, and we go out of business, and I think that is the way it should be.

The monkey is on our back to serve the public, and when we do that, they will support us. If we don't do it, we will go out of business, and I think that is perfectly fine. In Berkshire County right now, we are climbing trees trying to find out how to serve people who live in the mountains and can't get television. We don't know whether to go in there with repeaters or transmitters or translators or cable, but we are really dealing with the problem. I think we, out in the stations, are trying to figure out how to serve the public with new technology. It is coming on strong. We are going to have to adapt to it.

I am going to push this aside. I know I am running too long.

We are going to adapt to that technology, and I think what we need is, if I can use the expression, walking around money—good support—where we can say, this is how we can serve that market. We will change the mousetrap. We will put in a new translator or something, and bank on our ability to serve those local people, and if we do that, I am convinced that you in the Congress will match our ability to get the local support.

In summary, I just want to say public television is working. Our audience ratings are growing. Our support is growing. Our programing is getting better.

One last point I do want to get in. You in the Congress see us in the media arguing and fighting. I actually think that is healthy, because we—the stations—own PBS. They don't own us. And we are a very diverse group, and what is good for Springfield in not necessarily good for Chicago. We know that in Springfield. Just like your district. You don't want the executive branch of Government telling you what is right for your district. You know what is right for your district, and you will come here to the Congress, you, the Senators, and other Congressmen, and argue, and we love it. That is healthy. That is what this democratic system is all about.

When we shake it all down, what comes out? A good Government, the best in the world, and the best broadcasting in the world we are shaking out of this, and we call it public television. I am very proud to be a part of that industry.

May I offer this, what I wrote here, for the record?

Mr. VAN DEERLIN. Yes.

Mr. MINOW. Mr. Chairman, I am very conscious of our time. I will close simply by saying, this is a privilege for me. It is the first time I have been here as the chairman of the Public Broadcasting Service, and I felt it important. I could have brought 155 people like Dr. Evans and Dallin Oaks and Jack Caldwell, but I simply asked them as representatives, because we want the Congress to understand what PBS is. We are all over the country. As Jack says, we are very diverse, and I would add one last point, Mr. Chairman.

You have done us a very, very big favor, because by introducing the rewrite bill, you have forced us to rethink our own purposes, missions, and goals. We have undertaken at our initiative a very intensive self-examination. We realize that Congress is looking at us. We

realize the Carnegie Commission is looking at us. We realize the Corporation for Public Broadcasting is looking at us. We decided it was time for us to take a look at ourselves, and we will be coming to you next year, I hope, with some initiatives of our own, having worked it through the democratic process of all of these stations. It is not unlike the Congress of the United States. You have indicated an open mind yourself, stated that the rewrite is a first effort. We want to work with you on our suggestions, coming back to you next year. We want to try to work together to make this the best public television system in the world.

Thank you, Mr. Chairman.

[The prepared statements of PBS and Mr. Caldwell follow:]

STATEMENT OF THE PUBLIC BROADCASTING SERVICE, NEWTON N. MINOW,
CHAIRMAN, LAWRENCE K. GROSSMAN, PRESIDENT

The Public Broadcasting Service (PBS) is owned and governed by 155 public television licensees throughout the United States, as well as in Puerto Rico, the Virgin Islands, American Samoa, and Guam. Each licensee is independent and autonomous. Collectively, we operate 279 local public television stations which provide our communities with locally-designed, locally-responsive program services.

The strength of American public television is based on independent local stations with diversified sources of funding. Our distinctive features, along with localism and diversity, are public participation in our governing processes, reliance on public support—and a total commitment, expressed in 279 different ways, to one overriding objective: to produce, acquire, and distribute programs of high quality, educational content, and appeal to both general and specialized audiences, in order to make a wider range of program choices available to the American people and to establish new standards of excellence for all of broadcasting.

All that we are and do, and our case for public support, should be measured against that great objective.

We are currently engaged at every station in a process of intensive self-examination and reassessment. The top item on our agenda is to develop our own initiatives for the future. In June, the Vice-Chairman of the PBS Board, Hartford N. Gunn, Jr., presented some preliminary recommendations to the stations in a first report in a continuing long-range planning effort. (We request that a copy of this report, "Long-Range Planning for Public Television", be made part of the record of these hearings.) Among the key questions we are asking are these: To what degree is the commitment to excellence being achieved? Insofar as public television may be falling short, what are the reasons—and what should be done about it? We are working closely with our colleagues in National Public Radio (NPR) and the Corporation for Public Broadcasting (CPB) in the search for answers.

In this process, moreover, the contributions of the Carnegie Commission on the Future of Public Broadcasting will be of great importance. This panel of eminent citizens is giving public broadcasting searching scrutiny from the outside, just as our public television licensees are doing from the inside. Both perspectives are essential. The report of Carnegie II is due early next year.

It is in this overall context of analysis and study that we approach H.R. 13015, the proposed new Communications Act of 1978. This is a welcome initiative, bold and timely. It sets forth a new direction for the government's role in communications—a philosophy of "hands off" to the maximum possible extent. Whether this new philosophy of "natural social forces" has been applied to the public broadcasting provisions of the bill is a matter of particular concern to public television. Some of these provisions seem, in our view, to be moving in exactly the opposite direction—toward a deeper government involvement in the processes of public broadcasting.

We are especially pleased to note, however, that the cosponsors of H.R. 13015—this Subcommittee's chairman and its ranking minority member—have indicated that they are prepared to make changes in it as they receive testimony in the course of these hearings and, ultimately, when they receive the recommendations of the Carnegie Commission.

Our basic approach to H.R. 13015 takes the form of a major question, a restatement of the one posed above: Will this bill strengthen the ability of local public television stations to serve more Americans with diverse programs of excellence?

The rationale for a Public Television System

To answer that question, it is necessary first to recall public television's origins, our accomplishments, and the underlying justification for a federal support role.

When in April 1952 the Federal Communications Commission decided to set aside a number of noncommercial television channels in its Table of Allocations, Commissioner Frieda Hennock took the lead. The hopes and expectations she expressed a quarter-century ago for a noncommercial educational television service in this country were amazingly prescient:

Providing for a greater diversity in television programing, they (the non-commercial stations) will be particularly attractive to the many specialized and minority interests in the community, cultural as well as educational, which tend to be by-passed by commercial broadcasters thinking in terms of mass audiences. They will permit the entire viewing public an unaccustomed freedom of choice in programing. * * * (T)hey will be a leavening agent raising the aim and operations of our entire broadcasting system."

Commissioner Hennock believed that the distinguishing qualities of noncommercial television would be a pervasive educational program content, willingness to serve audiences both large and small, expanded freedom of viewer choice in programing, and a commitment to excellence that would by example raise the sights of all of broadcasting in America.

To an astonishing extent, her hopes and expectations for noncommercial television are now beginning to be realized.

Public television's record of performance

Program leadership.—In a recent national survey, public television was perceived by most viewers as the "pace-setter" of the entire medium. "The MacNeil/Lehrer Report" has been described as "the one real innovation in television vews". "Live From Lincoln Center" is seen as "one of the best cultural bargains in the country". "Dance in America" continues to break new ground with ballet and dance created expressly for television. "Visions" is the only showcase for original television drama by new American creative talent. "Nova" is television's only series devoted to science. "World" is the only series exploring the international scene, and it is supplemented by television's only regularly-scheduled documentary showcase for producers from the U.S. and around the world. Referring specifically to "Sesame Street" (the flagship program of a children's schedule which includes "Zoom," "Mister Rogers", and "Studio See", among many more), a major national magazine has observed that "it took public television to prove that a child can be entertained and informed at the same time."

Increasingly, live programing is becoming public television's hallmark—with everything from The Met to Grand Ole Opry, six nights from Washington's Wolf Trap and Buffalo's Art Park during a single week in August, Rostropovich from the White House (to be followed by Price, Baryshnikov, and Segovia), and gavel-to-gavel coverage of major Congressional hearings. In the season ahead, public television has already scheduled 40 hours of live performance programing. And it is only public television that offers regularly scheduled series of special interest to women ("Turnabout"), older Americans ("Over Easy"), and the Black community ("Black Perspective on the News", this season with a new format and a new host, Chuck Stone). An astonishing record it is, and at a cost of less than 5 percent of the amount spent by the commercial networks!

Audience composition.—The American people are responding in growing numbers to what public television has to offer. In an average month, more than 63 percent of all U.S. television homes tune in to their local public television stations, a 28-percent increase in the last three years. The fastest growing part of the audience in non-white homes—at double the rate of increase in total viewing in two years time. Non-white homes now comprise 12.4 percent of the total public television audience, compared to their 11.6 percent nationally. The same pattern holds for homes with an annual income of \$10,000 to \$15,000 (19.6 percent vs. 19.3 percent) and for homes headed by an individual with a high-school education only (34.1 percent vs. 33.2 percent).

Showcase for creative talent.—In fiscal year 1977, 29.9 percent of all nationally-distributed original broadcast hours on public television was the work of independent producers—in the "Visions" series alone, more than one-third of the

programs. The cost of these independently-produced hours was 35 percent of the total cost of the national program service. And it is significant that 92 percent of the cost of all nationally-distributed programs was spent at home, on American producers, directors, writers, actors, and technicians.

Educational/instructional services.—Public television stems from educational roots. Of all the local stations, half are licensed to educational institutions. Instructional programs represent almost 30 percent of the total broadcast hours of all the stations combined. Eight-of-ten stations provide in-school services, and nine-of-ten offer post-secondary services, including courses for college credit, professional in-service training, and informal audit education. When energy shortages closed down some schools last winter, many public television stations came to the rescue—for several weeks in one case. When California faced summer-school cutbacks this summer, several of that state's public television stations filled the gap in summertime classes.

Equal career opportunities.—From 1977-to-1978, the growth rate in the public television workforce was 5.6 percent. For minorities, however, it was 12.8 percent—more than double—and for women, 10.2 percent. Minorities now comprise 13.9 percent of the public television workforce, compared to their 10.9 percent in the national workforce. Women comprise 35.2 percent, which exactly matches their representation in the national workforce. Indeed, in every job category in public television, minorities exceed their representation in the national workforce, and the growth-rate is highest in the top job categories.

Leadership in technology.—Public television has developed the nation's first and the world's most extensive domestic satellite interconnection system dedicated to television broadcasting. This multi-channel system will be fully operational by January 1979 and will greatly enhance the program options available to the local stations. Public television has also been the prime-mover in the effort to achieve UHF parity; the innovator in multi-channel audio, which should lead ultimately to high-quality stereo sound on home television receivers; and the developer, with HEW funding, of closed captioning which will make most prime-time programming—on PBS and one commercial network at least—available to millions of Americans with severe hearing impairments beginning in the Fall of 1979.

This record of performance has been achieved in the face of great difficulties. Two-thirds of all public television stations transmit on UHF channels. This has been a barrier to the extension of effective service in many of the nation's major metropolitan centers. Moreover, public television has never been adequately funded. Total operating revenues of all the stations combined amount to just over one-quarter of the profits of commercial television. The stations have to spend an inordinate amount of their time and energy in raising money, simply to stay on the air. Only in the last year or two, with your help, have they been able to make long-range program plans and commitments to creative talent with the assurance that they can follow through.

As this Subcommittee is well aware, we are still in the process of searching for an appropriate role for the federal government in support of public broadcasting—namely, how to draw and how to maintain that sharp and indelible line that must be drawn, to distinguish between a Federal broadcasting system and a free and journalistically-independent public broadcasting system. It is the crucial distinction between a wholly-owned subsidiary of the federal government and an independent system which receives a measure of its support—and always a minority measure—from the federal government. While we fully recognize the need to be accountable to the Congress and the people for the use of public funds, we must at the same time maintain our independence.

In the final analysis, this is the basic issue we are considering in connection with H.R. 13015.

Federal support for Public Broadcasting

It began in 1962 with the Educational Broadcasting Facilities Program, which provides matching grants to strengthen the local stations' ability to serve the American people. The EBFP supplies some of the capital for up-to-date studio equipment and transmission facilities. This program has been from the start, and continues to be, a mainstay of an effective, growing broadcasting service.

The great milestone, however, was reached in 1967 with the passage of the Public Broadcasting Act. The 1967 Act, the direct outgrowth of the recommendations of the first Carnegie Commission, marked the beginning of general support by the federal government—beyond "hardware," support for programming and station operations—for an independent public broadcasting system.

In its "Plan For Action," the Carnegie Commission echoed almost exactly Commissioner Henneck's hopes and expectations fifteen years earlier:

"Television should serve more fully both the mass audience and the many separate audiences that constitute in their aggregate our American society. There are those who are concerned with matters of local interest. There are those who would wish to look to television for *** new plays, new science, sports not now televised commercially, music, the making of a public servant, and so on almost without limit. *** To all audiences should be brought the best energies, the best resources, the best talents—to the audience of fifty million *** ten million *** a few hundred thousand. Until excellence and diversity have been joined, we do not make the best use of our miraculous instrument."

And then this conclusion:

"Public television is capable of becoming the clearest expression of American diversity, and of excellence within diversity. *** It will be a civilized voice in a civilized community."

How then was this "capability" to be realized. Both the Carnegie Commission report (which focused only on television) and the 1967 Act (which broadened the focus to include radio as well) were grounded in certain major findings:

That public broadcasting alone could provide the American people with unique, innovative, and diverse program services not otherwise available to them.

That as a consequence public broadcasting deserved and should receive public support in the public interest.

That public broadcasting would be able to achieve its full potential only with an assured and substantial contribution by the federal government.

That the essential services of public broadcasting could only be provided by an independent system, free of government control—both in fact and in public perception—and effectively insulated from political pressure or any other external influence.

And that such freedom could best be guaranteed and such insulation best be provided by a private, nongovernmental entity created expressly as a "heat shield" between government and the independent local stations.

The Corporation for Public Broadcasting was established to serve these purposes. PBS and the public television licensees make no claim that the public broadcasting system designed by Carnegie and the 1967 Act has worked perfectly. There have been strains and recurrent disputes about overlapping jurisdictions and resource allocations.

But public television has grown steadily in its capabilities in the last decade. It has maintained its independence. Its performance has been notable. Audiences have never been bigger. And public support—which is now running at a level of almost \$55 million a year, from more than two million voluntary contributors—and public expectations have never been higher.

The system is not perfect, which is why our own initiatives are under way. But it is still young, and still fragile. The record of what public broadcasting has been able to accomplish in just ten years' time counsels caution about dismantling the very institutions that have made those accomplishments possible. We see in the promise of a Communications Act rewrite an opportunity to build upon, and to improve, the original public broadcasting framework.

H.R. 13015: Continuity in the Federal support role

To enlarge upon the questions already posed—will the proposed bill enhance the public television stations' ability to serve the American people with programs of excellence? Will it provide for continuity of federal support for public broadcasting? Will it provide adequate support? Are the bill's major features consistent with the fundamental principles of independence and insulation from government control?

These will be the benchmarks of our analysis.

(A) The Public Telecommunications Programming Endowment

The concept of a private, nongovernmental Endowment to disburse funds for direct program costs only has a number of positive aspects. They involve the amount of funding, insulation, and a simplification of the structure of public broadcasting.

It seems likely that more funds would be available to the stations for program production and acquisition than is now the case—although how much more it is hard to estimate, and such funds could be used only for direct costs and not for essential indirect support activities. Half of the Endowment's funds, or \$100

million a year for the four years covered in the bill, would go to public broadcasting stations by statutory mandate. On the other hand, the universe of eligible applicants for the other or "discretionary" half of the Endowment's funds is so all-inclusive that public broadcasting stations might receive only a very small share. Moreover, the effect of the limitations on program funding which are built into other provisions of H.R. 13015 might conceivably mean less total program funding in the end. We will come back to this very important point later on.

The structure of the Programming Endowment is similar to that of CPB under the present Act. Both are private, nongovernmental entities. It is probable, therefore, that the two organizations would provide similar degrees of insulation from external influence. The Endowment's nine Board members would be Presidential appointees, like CPB's fifteen. There is thus the potential for inappropriate political influence in either case. It may be that the one-term limitation on members of the Endowment's Board would reduce this potential. We question why the Endowment's officers and employees would be subject to a specific cap on salaries. We do not know of any genuinely private and nongovernmental entity in this country where such a rule applies.

H.R. 13015 would to a commendable extent simplify the existing structure of public broadcasting. Because the Endowment's mandate would be so clearly limited to program funding, there would be less opportunity than at present for "operational" overlap with the stations and their national organizations—in such areas as research, development, public affairs, and engineering. Then, too, the Endowment is required to use "consultants and outside experts" as much as possible, and this suggests that it is meant to be a small organization with low administrative overhead.

Along with the positive aspects of the concept of a narrowly-focused Programming Endowment, there are some other features—more omissions than anything specific—that are causes for concern.

The most serious in our view is the absence of any provision in this part of the bill for regular, collegial consultation between the Endowment and the stations. There is no provision for station input in the program funding process. Nor, in the absence of consultation, is there any clear indication of the criteria by which the Endowment would allocate the stations' mandated \$100 million between television and radio or within television. There is nothing in H.R. 13015 that would preclude the evolution of an effective relationship between the Endowment and public broadcasting. In all likelihood, one would in fact develop over time. But the continuity of valuable experience built up over the last decade would be lost—and, whatever the rough spots, the CPB/PBS/NPR relationship is now working reasonably well.

Another cause for concern in this part of H.R. 13015 is the absence of any focus for leadership or oversight of the public broadcasting system, such as CPB was originally intended to provide and should provide. Nor is there any provision in the bill for coordinated system planning. Because of its narrow focus, the Programming Endowment could not possibly assume these functions. Again, it is probable that some new institutional arrangements would develop within public broadcasting itself to take up the task—but, still, the silence of H.R. 13015 on these important points concerns us.

We must pose once more a key question which goes to the basic rationale underlying the proposed bill: Even as we may acknowledge that the program funding process has often been marked by disputes over priorities, allocations, and jurisdictions, is it the wiser course to abolish the Corporation for Public Broadcasting and start over again, or to improve and build on what we now have.

The public television licensees are themselves examining this question. We believe that this committee should give it most careful consideration, after the Carnegie Commission reports and we have completed our own reexamination and reported back to you.

(B) The National Telecommunications Agency

One of the most fundamental changes proposed in H.R. 13015 is the separation of program funding from general federal support for station operations—in effect, the elimination of the multipurpose Community Service Grant (CSG). We can appreciate that the motivation for this separation may be to provide a special measure of insulation for sensitive program decisions. Nonetheless, we question whether it solves the problem. Programming is intrinsic to and inseparable from every other aspect of a station's operations. Every dollar a station spends is reflected, in the final analysis, in the strength of its program service. Which is, of

course, the major reason for helping to build a strong public broadcasting system in this country in the first place.

The particular genius of a federal funding mechanism based in great part on CSGs is that it has provided the stations with a predictable, assured, and unrestricted annual grant. Especially for the smaller public television stations, those with the least diversified sources of funding, the CSG is their lifeblood. It represents those crucial discretionary dollars that a station can allocate according to its own local priorities.

Another fundamental change—indeed, the fundamental change from the system of the last decade—is that for the first time since general federal support began, the local public broadcasting stations would be directly subject to the control of an agency of the federal government for operational grants and for the program interconnection. Even more, this agency would be the one designated focal point for the formulation and implementation of national telecommunications policy.

The provisions of H.R. 13015 which create a National Telecommunications Agency in the executive branch of the federal government, and specify far-reaching powers over any station accepting its funds, are in the most literal sense frightening. The public television licensees find these provisions, and the entire role of an NTA, unacceptable.

It would lead to a classic Catch-22 situation. In order to provide a strong program service to their communities, almost all public television stations would have a desperate need for NTA funding. Yet, if they were to accept such funds, the local stations would be giving up precisely that freedom and journalistic independence which renders them strong and credible voices within their communities.

Do the NTA provisions in the proposed bill carry with them such grave risks. We believe that they do.

At virtually the sole discretion of the Director of NTA, appointed by and responsible to any incumbent President, operating grants would be allocated among the local stations on the basis of imprecise criteria.

Other grant criteria are wholly subjective and some of them would almost inevitably involve the NTA Director in judgments about programming.

Because recipients of NTA funding would not be able to accept grants from any source for specific programs or broadcast such programs with appropriate funding credits (which is now an FCC requirement, might well be required by the new Communications Regulatory Commission, and gives the viewing public needed information about sources of program funding), the stations' programming decisions would be controlled in a most fundamental way.

The manager of an NTA-funded interconnection could not represent the stations and would be directly responsible to the Director of NTA.

Stations accepting NTA funds would be subject to a variety of special requirements, not generally applicable to other federally-licensed broadcasting stations, commercial or noncommercial.

To repeat, the public television licensees regard these provisions of H.R. 13015 as unacceptable. They see in them a re-creation of lamentable recent history, still very fresh in their minds. And they feel they must pose this question: With the experience of the Nixon takeover attempt of public broadcasting which was spearheaded by the Office of Telecommunications Policy, what is the justification for creating a new OTP—and this time a super-OTP with \$100 million at its disposal—and giving that federal agency powers of life-or-death over station operations and program distribution?

For all these reasons, we repeat our conviction that the provisions of H.R. 13015 which create and empower the NTA are unacceptable to public broadcasters.

(C) Funding provisions

Several questions have to be raised about the various funding provisions contained in H.R. 13015. One of them has to do with adequacy of funding in the critically-important area of broadcast facilities. The others, however, go more to the philosophy of the bill and the premises on which it is based.

The facilities program.—Section 643 of the bill continues the Educational Broadcasting Facilities Program but in a much diluted form. It provides the NTA with \$25 million a year for (a) grants for public broadcasting and other public telecommunications facilities, (b) operating grants for nonbroadcast entities, and (c) the costs of systems of interconnection. Even if these funds were dedicated entirely to matching grants for broadcast facilities, for radio and television, they would fall far short of present and predictable needs. Projections for public television alone—including basic studio equipment, improved transmission facilities, and station expansion into unserved areas of the country—total more than \$300

million over the next several years (which under the matching formula would mean a federal share of \$225 million or thereabouts).

H.R. 13015 seems to assume that a variety of emerging new nonbroadcast technologies will rapidly supplant over-the-air broadcasting as the primary means for delivering diverse program services to the American people. It is our view, however, that these new technologies will be important *supplements* to broadcasting and will, in effect, extend its reach—in a process of integrated communications services which a number of public broadcasting licensees are already intensively exploring. For a decade or more, the need for strong *core* broadcasting stations will in no way diminish. And neither will the need for a well-funded broadcast facilities program.

Incentives for diversified funding.—A mainstay of public television's independence has always been its reliance on a diversity of funding sources in which no one source is predominant. (At the present time, the federal share is just under 28 percent for the public television system as a whole. For many of the stations, and particularly for those which produce most of the nationally-distributed programs for the system, the federal contribution is much less—in the range of 15 percent or below.) Both the existing Act and the proposed three-year extension require the stations to raise substantial amounts of nonfederal funds in order to earn the federal match.

We believe that this requirement is a very healthy one and is, indeed, essential. It provides a strong incentive to maintain a diversified financial base—and this has, in fact, been the case. With the federal contribution to public television leveling off in the last few years, and with actual declines in some sources of state and local funding, the two fastest growing income sources have been membership contributions and grants from American business.

H.R. 13015, in contrast, would require nonfederal matching only for facilities grants and for a part of the Endowment's program funds. The incentive to seek diversified funding would be greatly weakened, and this could lead to a dangerous over-reliance on the federal government. The tendencies in H.R. 13015 toward a "federal broadcasting system" might well become self-fulfilling prophecies.

Underwriting of specific programs.—As noted above, the proposed bill provides that any public broadcasting station which accepts NTA funding would be precluded from receiving grants for specific programs—grants from businesses or foundations, state or local institutions, or even from such federal agencies as HEW's Office of Education, the National Endowments, or the National Science Foundation. Moreover, such stations could not broadcast funding credits for these programs nor could the programs be carried on an NTA-funded interconnection system.

These provisions of H.R. 13015 would quite simply wipe out most of the public television program schedule, both national and local. Virtually every major program would be affected—from "Sesame Street", "Zoom", "Once Upon a Classic", and "Mister Rogers", to "MacNeil/Lehrer", "Great Performances", "Live From Lincoln Center", "Nova", "Masterpiece Theater", and "The National Geographic Specials". Of the 42 programs which have received top national awards in the last year or so—Emmys, Oscars, Peabody and Ohio State Awards, and DuPont/Columbia Awards for Broadcast Journalism—38 were specifically underwritten. Under the provisions of H.R. 13015, not a one of them could have been broadcast by a public television station which accepted funds from the NTA.

The question that has to be posed is "why"? Why this severe limitation on public television's journalistic freedom, and its ability to fund major programs—which, by a growing public consensus, are among the best programs in all of broadcasting? How would this governmental intrusion in the program process serve the public interest in quality television?

We in public television are well aware, of course, of the wholly unsupported, undocumented allegations that program underwriters somehow "control" us and insist on "blandness". Such allegations are utterly false. Underwriters provide an important share of total program funding, about half, but far from all. Specific program grants make it possible for the local licensees to use their own unrestricted funds—from CSGs, for example, and from voluntary public contributions—to maintain balance program services. Moreover, among the "bland" programs which underwriters help make possible are the following: "MacNeil/Lehrer", "World", "The Advocates", "Nova", and "In Search of the Real America". And local program underwriting makes possible the local broadcast in many television markets of "Washington Week in Review," "Black Perspective on the News," "Wall Street Week," "Firing Line," and many other hard-hitting public affairs programs.

We believe that specific program funding credits provide valuable information to the viewing public. The American people ought to know what funding sources make what programs possible—both to give credit where it's due, and to make absolutely sure that there is no hidden bias in the program content. We think it is highly ironic that a bill which is completely silent about the commercial practices of commercial broadcasting should see fit to cripple public broadcasting in its ability to provide the American people with programs of excellence—and for no reason which is apparent on the record.

The spectrum use fee.—One of the most notable features of H.R. 13015, and one of the most controversial, is the proposal that a scarcity-based "use fee" be imposed on all commercial entities making use of the electromagnetic spectrum. The returns from this fee would be deposited in a Treasury Fund dedicated to four quite distinct purposes: the costs of operating the Communications Regulatory Commission (successor to the FCC), a loan fund to assist minority broadcasters, a loan fund for rural telecommunications entities, and the Public Telecommunications Programing Endowment. After a ten-year phase-in period, all the costs of all these activities would presumably be covered by spectrum use fees.

We in public television appreciate that this proposal represents a laudable effort to identify a "dedicated" source of public broadcasting program funding, much as the first Carnegie Commission recommended an excise tax on the sale of all television receivers. This approach would remove program funding—but not operational funding—from the regular Congressional appropriations process and thus provide genuine insulation. Such an approach is certainly worth most careful consideration.

This particular proposal, however, raises some very real concerns. It would make public broadcasters dependent on commercial broadcasting (among other commercial users of the spectrum) and would be perceived a "tax" on the latter for the benefit of the former. (It could even have the side-effect of imposing on public broadcasting the burden of providing all the public interest benefits and services that commercial broadcasting fails to provide, with the latter arguing that "after all, we're paying for it".) It would also put public broadcasting into competition with the other deserving beneficiaries of the fund for "fair shares"—thus tending to trade-off the needs and benefits of minority interests, rural interests, and public broadcasting, rather than funding each of them on its own merits. There is even a question whether spectrum scarcity would continue to be a reliable basis for a fee: as nonbroadcast technologies emerge and conceivably supplant broadcasting, the value of the spectrum might diminish.

All these are serious concerns. They were forcefully expressed by Chairman Charles D. Ferris of the FCC when he testified before this Subcommittee earlier in the month:

"But I do not think * * * that the funds collected through spectrum charges will be equal to those properly allocated to all the purposes the bill envisions. * * * These programs—public telecommunications, rural telecommunications, and minority ownership of broadcast stations—have separate needs that will bear no definite relationship to the amounts of fees collected. * * *

"I would prefer to see the fees the Commission collects go into the general fund of the Treasury and to provide for separate Congressional funding of each of these important activities *in amounts related to their needs.*"

We believe that these italic words—"in amounts related to their needs"—are particularly important. We would add, "and also related to the public benefits and services they can provide to the American people" and would rely confidently on the outcome. Chairman Ferris then went on to make one final point:

"Under the bill's plan, a number of these activities might * * * be underfunded. They would * * * not be able to plan adequately because of the uncertainties from year to year as to the amounts of funding available. This, of course, is a problem Congress has tried to overcome in the public broadcasting area through the use of a combination of long-term authorizations and advance appropriations. *Reliance on an uncertain portion of spectrum fees, particularly if intended as a total rather than supplemental source for public broadcasting funds, would be a significant step backward for this program.*"

Again, the italic words seem to us to make a very important argument—not necessarily against any "dedicated" funding source, but with regard to the specific proposal before us. We believe that much further consideration is called for.

SUMMARY AND CONCLUSION

In our judgment, H.R. 13015 represents one major step in a long and complex process. We in public television await the recommendations of the Carnegie

Commission early next year and, indeed, this Committee's redraft—even as we engage in our own self-examination and prepare our own initiatives along with our colleagues in public broadcasting.

Our major concerns with the proposed bill can be summed up in the following questions:

Would the provisions of this bill help us to serve the American people with diverse programs of excellence and rich educational content?

Would this bill involve the federal government too deeply, and inappropriately, in the journalistic decisions of an independent public broadcasting system?

Would this bill provide adequate, assured, and insulated funding for such a strong and independent public broadcasting system, along with full public accountability for the use of public funds?

We know that you as well as we are dedicated to finding the right answers to these vitally important questions.

STATEMENT BY JOHN T. CALDWELL, GENERAL MANAGER, WGBY-TV,
SPRINGFIELD, MASS.

Thank you for the opportunity to speak to you who are now pondering new rules that will regulate, through broadcasting, the public's ability to be informed, to be entertained, to be stimulated and educated—as we all seek to cope with the world around us.

I am Jack Caldwell, general manager of the community-owned public television station in Springfield, Massachusetts. I report to a broadly representative 57-member board that cares a lot about what you and I do. Half of the 155 licensees have budgets larger than ours, and half smaller. And we are one of the few stations that receives no direct annual state support. Our principal strength is in viewer support.

Like others before me, I want to applaud your willingness to look at existing rules and missions and understandings we all have about broadcasting, and to consider going even so far as writing a whole new Communications Act.

Your proposed rewrite is a good first draft. It gets many of the key issues out on the table and forces us to evaluate what we have and what we might have. Ultimately, of course, it will be the final draft that really counts.

I have read all of the testimony given by my colleagues at your regional hearings. With only minor exceptions, I agree with all they have said—and won't repeat it all here again.

But I do want to stress that we must have significant amounts of unrestricted funds so that we can locally make the important decisions that will determine the destiny of our local stations. With unrestricted viewer, business, foundation, and CPB funds, our station—for example—in just the past three months has made the decision to begin a weeknight ten o'clock news service, produce a special on the Berkshire Music Center at Tanglewood, cover the premier performance of the Berkshire Ballet at Jacob's Pillow, produce coverage of the candidates in five important local political contests, inaugurate national coverage of the world chess championship each Saturday with local live production, and develop a pilot program for a cabaret series over PBS for the next season. This is about half of what we're doing. We're also in the midst of producing a national series about dying, and a regional series about the native Americans of our region. And we have a weekly public access series, too.

I want to concentrate the balance of these remarks on some observations from one station manager that will be living under whatever rules are finally written.

Our public, yours and mine, is counting on you, the Congress, to give and/or require of public broadcasting—encouragement, freedom, independence, challenge, support, accountability, and well-directed criticism.

At WGBY we take to heart our FCC license that requires us to ascertain and serve the public's needs and interests.

At WGBY we believe in your earlier-arrived-at decision that some information services (namely broadcasting) simply cannot be supported through profit-motivated funding sources—and should not be federally controlled.

It has come to my attention that there are some persons in the television-for-profit business who feel that public broadcasting is getting too healthy—getting too many viewers and too many corporate dollars for programming and operating support.

In fact, with closer observation, they would discover that no one single program presently on public television is supportable by profit-based funding. When public television audience demographics do reach a commercially viable magnitude, sponsors will be quick to take over the material and move to commercial broadcasting. (Professional tennis coverage is a case in point.)

While the audience for our station only on a rare occasion attracts viewership large enough for commercial interest, we still have about a quarter-million persons who each week depend on and turn to our program service. And I might footnote that we use less than 10¢ per week of federal revenue to serve that audience. And we offer 100 hours of programming each week. How's that for a return on investment?

Indeed, everyone in the commercial television industry should be actively supporting our efforts—to conduct the ascertainment, do the research, and produce piloting to develop program services and audience support. The process every day is serving local and limited audience needs. And in the rare instance where audience development reaches commercial proportions—the piloting for commercial broadcasting is, in effect, completed—with an audience already developed.

As I read the numbers, we are not adversely impacting on commercial TV profits. We all know that last year commercial television's profits alone were four times greater than public television's total income.

We must maintain those diverse funding sources—as I noted earlier, and as others have stressed. The public does not want a noncommercial television system controlled by the Federal government. We believe the Congress agrees, and you know *we* agree! All too well, we know the results of government-controlled media in other nations. And we all readily recognize that the business community controls commercial broadcasting.

We also know that few individuals can afford the very high cost of operating a non-profit television station. But through community organizations, colleges, state institutions, and school boards, communities can and do control a locally responsive broadcast service. We simply must preserve that local initiative and freedom of choice. No one in Washington—or some other place—knows better than you what is right for the people of your district. So it is for locally operated public broadcasting. We absolutely cannot have a National Telecommunications Agency, reporting directly to the executive branch, determining our destiny. (Our recent close call with a similar situation is *too* recent, and too frightening to forget.)

The most important funding source we have is direct viewer support. If we don't achieve and hold their support, we shouldn't be in business—and we won't be. At WGBY, 12,000 households last year contributed in amounts of under \$100 each, amounting to a total of \$210,000. Gifts of over-\$100 amounted to \$33,000. Our auction brought in \$198,000. And the business community provided \$75,000 of underwriting support for local and national programing. Business, foundation, and tax-supported funding sources, in my judgment, should require us to demonstrate that we have viewer support.

At WGBY, every time we go on the air and ask for financial support, the audience casts its vote. It's a very sobering test. It's also a very small inconvenience to the public for the power they have to encourage us to be responsive to our local needs and interests.

Something else we need to preserve is not just the freedom for a good philosophical fight, but often even a little encouragement for it. You know, we 155 licensees own PBS. They don't own us. We are not nationally controlled. We represent greatly varying kinds of stations, but with certain common goals and needs. And we argue a lot, often in public and even before the Congress, about how to serve the public and how to carve up our very limited resources. Nobody knows better than you that democracy is not efficient. But also, as you know, there really is a healthy aspect to the debate.

You know what it is like to stand before your constituents back home. In a very similar way, I think we do too. You have chosen to serve the American people through politics—and we have chosen noncommercial broadcasting. You don't want the executive branch of government running your political destiny and your every move in trying to service your constituency. Neither do we, and neither do those important people back home want that to happen.

What you in politics and we in the media decide upon does have an impact on the development of our society. We are all leaders in our communities. A lot of people are counting on us. And we all do the best work and make the most creative decisions in an atmosphere free of unnecessary bureaucratic impediments.

There is going to be phenomenal technological change in the next 20 years in the communications industry. I think we'll need a lot of amendments to whatever

legislation we have to work with. But I think we might proceed more clearly and effectively—all of broadcasting and cable—by carefully bending and shaping existing rules and institutions. That task will be difficult enough!

Only when we reach an impasse with old legislation should we phase it out and write new legislation. We can't yet really grasp, much less fully comprehend, the magnitude of possible change that lies before us. And we still have to get "from here to there."

I have some ideas about how we might change and improve this system, which are more appropriately presented at another time. For now I'll just ask, how can we help *you* and the Committee help *us*?

Mr. VAN DEERLIN. Are you volunteering to participate in the rewrite of the rewrite?

Mr. MINOW. Yes, sir.

Mr. VAN DEERLIN. Fine, we will take you up on that. Thanks to all five of you. I cannot believe that such excellent witnesses were really picked at random, but I will accept it.

Mr. MINOW. We will bring 152 more tomorrow.

Mr. VAN DEERLIN. Our next witness is Mr. Jack Golodner, executive secretary for the Council of Professional Employees, AFL-CIO. Good morning.

STATEMENT OF JACK GOLODNER, DIRECTOR, DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

Mr. GOLODNER. Thank you, Mr. Chairman.

It is a pleasure to be before you again. I thank you for the invitation. I would like to correct one thing. I am here before you now as director of the Department for Professional Employees of the AFL-CIO. It seems that a sufficient number of professional people in this country have been organizing in recent years, so that the AFL-CIO has now seen fit to create a department to serve their interests.

Mr. Chairman, we believe there are no greater issues facing a democratic society than those pertaining to the control of the communications media. Therefore, Mr. Chairman, we commend you, your staff, and the members of this committee for venturing to face these difficult issues head-on. The responsibility you have accepted is indeed awesome. For any democracy, the flow of ideas and information and the transmission of cultural values is as necessary to the body politic as is the flow of blood to the living brain.

Through H.R. 13015, you have also issued a challenge to all of us in the public, a challenge to disenthral ourselves with the past and think anew about how we must keep the life-giving essence of our democracy flowing undiluted and unrestricted. In the process, we will disagree among ourselves, with this committee, and with individual members of the committee, but insofar as the AFL-CIO and the department I represent are concerned, there is no question that the issues raised by H.R. 13015 had to be raised and must be resolved soon, before a changing technology resolves them for us in its own capricious, immutable way.

As the print culture of the past gives way to the electronic culture of the future, we along with many others, are apprehensive that the old order will no longer serve. We cannot any longer permit the electronic media to be the servant of one interest—the commercial interest. We may have believed at one time that other media devoted to other concerns would provide effective competition. We believe this no

more. There is no effective media of communication to rival the electronic.

Yet with few exceptions we continue to permit this media, this vast and valuable resource, to transmit only such programs and information to the general public that will eventually sell the products and services of commercial enterprises.

Though H.R. 13015 aims to encourage competition among various modes of electronic communication, it does little to assure us that a substantial number of those who communicate with us through these new modes will have a reason, other than a commercial reason, for communicating. In short, we are disappointed that more is not being done to put an end to the real monopoly of the American media, which is a monopoly of purpose.

The people and organizations that will administer and control the new broadcast channels, microwave transmissions, satellites, cable systems, and other instrumentalities which this bill seeks to encourage will be as influential in shaping our lives as our schools, our politicians, our national and local governments. Anyone or any organization that affects the entire public on such a scale is or ought to be compelled to serve the public and not just commercial interests.

We are troubled, therefore, by provisions of H.R. 13015 that would have us abandon practices which, while insuring the right to communicate what is in the self-interest of the communicator, also make clear the duty to communicate what is in the interest of the public.

At a future time we will convey to you in detail our views regarding legislation in its entirety. I have dwelt on this abundant commercialization of the electronic media at this time because I believe that this issue must serve as the background for an examination of the provisions pertaining to the public telecommunications system. I have noted that the devotion of our electronic media to commercial interests has few exceptions. The major exception is public broadcasting.

More than 1 year ago, in a statement outlining its position on various suggestions for strengthening and improving public broadcasting, the AFL-CIO executive council labeled it, and I quote, "America's best hope for an alternative communications medium."

We are pleased that on balance H.R. 13015 recognizes this valuable role for public telecommunications as an alternative to the commercial media and has included some commendable measures to guard against commercial encroachments which have already begun and must be stopped if the integrity of the system is to be preserved.

In previous appearances before this subcommittee, representatives of the department and the AFL-CIO, including myself, have cited three critical problem areas for the public telecommunications system—funding, programing, and citizen participation. We are pleased, therefore, that H.R. 13015 addresses each of these concerns.

Because the financing of public broadcasting determines who influences and who controls, we believe it is at the heart of the problems confronting public broadcasting today. Regarding the cost of programing, which is, after all, the service being provided, corporate underwriters were paying 23 percent of the budget for national television programs in 1977, and foundations 10 percent, while the Federal Government was providing about 35 percent. Local stations paid for nearly all of the balance.

When one considers that 89 percent of all programing in public television is national programing, the growing role and influence of corporate spending in this key area becomes clear. Indeed, funding by corporations increased 340 percent from fiscal year 1973 to fiscal year 1977. In 1974, 29 percent of the funds for national cultural programs came from three oil companies: Mobil, Exxon, and Atlantic Richfield. More than two-thirds of all funds for cultural programing came from commercially oriented underwriters. Such programs, as you know, consume the bulk of the prime time public broadcasting system schedule, and funding for them still comes predominantly from commercial underwriters or sponsors.

In its 1967 report, the first Carnegie Commission stated the problem which public broadcasting was expected to resolve, and I quote:

We have come to see, that since the technology of television lends itself readily to uses that increase the pressure toward uniformity, there must be created means of resisting that pressure and of enlisting television in the service of diversity.

We recognize that commercial television is obliged for the most part to search for uniformities within the general public and to apply its skills to uniformities it has found. Somehow we must seek out the diversities as well and meet them, too, with the full body of skills necessary to their satisfaction.

In short, the function of public noncommercial broadcasting is to break the monopoly commercial interest established over the broadcasting medium at its birth, so that different viewpoints can be heard.

Today's public broadcasting system is only the most recent advance in 45 years of effort to break this monopoly. It began with an abortive attempt in 1934 to pass the Wagner-Hatfield bill. That measure would have granted one-fourth of all radio licenses to educational and other nonprofit organizations. Soon after this legislative setback, the FCC conducted hearings on the question of reserving frequencies for noncommercial users and concluded that educational and other public service needs could be adequately met by commercial licensees. From that time on, commercial broadcasters and the FCC have only begrudgingly, and after many battles in which the efforts of organized labor played a part, granted noncommercial broadcasters a place on the FM spectrum, and later, on the difficult-to-receive UHF frequencies. The AFL-CIO is proud to have been able to play a role in winning enactment of the All-Channel Receiver Act in 1962 which helped make UHF and noncommercial broadcasting more accessible to the American public.

It is ironic, then, that at the very time when noncommercial broadcasting has solidified its claim to frequency allocations and established its identity with the public, it has permitted, for whatever reasons, a gradual takeover of its programing by the very same interests its pioneers hoped to counter. In this regard, I wish to note an article in the *Columbia Journalism Review* of May-June 1977, in which it was reported that, and I quote,

At a recent informal gathering of veteran TV executives now working in both public and commercial broadcasting, it was agreed that companies engaged in underwriting public television programs, are tending to do more reviewing of scripts and tapes and to attempt more influence than do most advertisers on commercial programs. The quite understandable reason is that a company that "makes possible" a public television program is likely to feel more responsible for content than does one whose advertisement is simply sandwiched into a commercial show. In any event, it is an odd development in a medium heralded as "free from commercial interests."

I brought with me, Mr. Chairman, a sampling of newspaper comments relating to this question, which, though not definitive, I think, can be helpful in giving the committee an insight into what the press is saying about this question, and it is a serious one which has been addressed in this bill.

Would you like, Mr. Chairman, for me to place this in the record? These are the various articles.

Mr. VAN DEERLIN. We will accept them for possible placement in the record. I do not want to jam up the Government Printing Office too badly at the end of Congress.

Mr. GOLODNER. I will leave it to your discretion, Mr. Chairman.

Mr. VAN DEERLIN. Thank you.

Mr. GOLODNER. We contend, then, that so long as corporate underwriters are permitted to have a direct interest in programing transmitted by the public system, the reason for that system's existence is subverted.

The great hope for public broadcasting is that it would provide a competitive system in electronic communications, a system whose purpose is not related to selling products of corporate images. Therefore, our Department and the AFL-CIO contends that a chief goal of any reform of the public broadcasting system must be to insulate it from all commercial influence.

Your bill would do much to restrict corporate spending in public broadcasting to general purpose grants not earmarked for any specific program or type of program. This approach was suggested in Carnegie I, and we now enthusiastically comment it.

We recognize that this proposal curtails the ability of public broadcasting to raise needed funds, and the fact that more funds are needed, I think, is obvious. Equally obvious is the need for funds that carry no political or commercial strings with them. The establishment of a public telecommunications programing endowment funded with both appropriated money and funds realized from a spectrum fee, envisions a mechanism for financing public programing that we heartily applaud.

It is important that this fee be applied to broadcast and nonbroadcast users of the spectrum alike. It is important, too, that Congress not look upon the dedication of a portion of these funds to public broadcasting as a reason for pulling out appropriated funds.

Given the expanded responsibilities of the public telecommunications system envisioned in the bill and the requirement that public broadcasting share the endowment's income with other programs, one must wonder if the return from the spectrum fees will be sufficient to the need. If it is not, appropriated funds must be available for program as well as operational purposes. Providing a dedicated content neutral source for funding public broadcast programing would be meaningless if the level of that funding is so inadequate as to cause further impoverishment in this area.

Strengthening public involvement in the administration of public broadcasting is another method for combatting inappropriate influences over the system, but as the AFL-CIO statement of last year notes, it is difficult to justify use of the term "public broadcasting" for a system that so successfully excludes the public.

The Corporation for Public Broadcasting is governed, as you know, by a Presidentially appointed board which, according to the 1967 Act, is to be composed of people who are eminent in such fields as education, cultural and civic affairs, or the arts, and provide a broad representation of various regions of the country, various professions and occupations, and various kinds of talent and experience. Yet two studies of the CPB board conducted in 1971 indicated that the membership of the 1971 board and previous ones were dominated by representatives of industry.

Writing in 1975, one critic of public broadcasting noted, and I quote:

There has been some studied concern that at least so far the CPB's board's membership has come to be so predominantly reflective of closely circumscribed elite political and economic interests that it violates certainly the spirit, if not the letter of the 1967 law.

Matters have not changed much since then. More recently, the option papers prepared by the staff of this subcommittee observed that with regard to the CPB board:

Persons with radio and television experience, with labor background, with educational expertise, or with public interest backgrounds have been conspicuously few.

The situation on the local level does not appear to be much different. Board members are drawn from the same narrow circles of those high in the ranks of business or philanthropy. The practice of including the wealthy and commercial interests while excluding labor, minority, and less affluent members of the community continues.

We suggested last spring that reform of the Public Broadcasting System include a requirement that all public broadcasting stations be governed by autonomous boards. We deplore the fact that over half of the present local stations are governed by universities, school boards, or State commissions remote both spiritually and physically from the community.

Though we endorse the bill's requirement that stations receiving NTA assistance establish advisory boards, we repeat our suggestion that these boards be more than just advisory.

The bill before you provides for many needed reforms that insure public participation and for this reason we commend it. However, we think some backward steps have been taken as well. Organizations engaged in public telecommunications by definition are dedicated to serving the public. When they do not, when they fall short, they must be held accountable.

It seems inconsistent, therefore, for this legislation on the one hand to encourage public participation by requiring advisory groups at the local level and on the other to strip the public of effective remedies against those stations failing in their missions. But the bill does this by:

One, eliminating periodic licensing or relicensing procedures which afford the public an opportunity to seek an accounting.

Two, curtailing the application of the equal time rule.

Three, substituting the fairness doctrine with an undefined equity principle.

Four, ending ascertainment requirements.

On balance, it appears to us that the new provisions to aid public participation do not outweigh the loss of existing approaches which should be strengthened rather than curtailed if greater public participation is truly to be furthered by this legislation.

Public telecommunications, if it is to succeed and serve our democracy, must be free of influences emanating from political as well as commercial concerns.

If I have tended to emphasize the danger from the latter, it is only because I felt comfortable in the belief that the threat stemming from the former is more obvious and the defenses far stronger.

I am concerned, though, that the authority over telecommunications which has been given the new NTA and placement of this agency directly within the executive branch may reduce these defenses significantly. As I understand it, the NTA, empowered to distribute appropriated funds for planning, construction, and operation of broadcast and nonbroadcast facilities will be headed by a director and deputy director appointed by the President and confirmed by the Senate, but serving at the President's pleasure.

I recall some unpleasant experiences in the recent past with Presidentially appointed agents seeking to bend public telecommunications to the requirements of partisan political policy. The episode was a warning. It should be heeded. I suggest that steps be taken in this legislation that would place some distance between the White House and any agency possessing the potential to directly influence telecommunications policy.

Before concluding, I would like to remind the committee of an issue we had raised before. Frankly, we are disappointed to find that nowhere in this voluminous, comprehensive bill is recognition given to the need to foster American creativity and talent in the media, yet there can be no quality American telecommunications system without the writers, directors, performers, camera people, and others who make it possible. They must be assured their place in the public spectrum. I might add that no progress can be made in involving more women and members of minority groups in public media if time on the air and program money is diverted to overseas productions.

With regard to the publicly supported media it seems that our Government alone in the world takes these human resources for granted, and it is a major mistake. To rectify it, we suggest that the legislation before you insure that program funds expended by the new public telecommunications endowment be used only to support the production of programs within the United States or the acquisition of such programs.

Given the relatively limited amount of programing funds that would be provided the public system even under the endowment scheme, we insist that they be used in such a way that domestic creativity will be encouraged. Since such funds will no doubt amount to a minor part of all funds available to the public system, we believe this restriction to be reasonable and appropriate. We do not believe this procedure to be chauvinistic, but hold that it reflects a legitimate attempt to encourage and develop new creative resources within our society.

We believe that the encouragement of human creativity is as necessary as protecting our Nation's natural, cultural, and economic resources.

Mr. Chairman, I would like to conclude as I began. We commend Chairman Van Deerlin, Representative Frey, and the staff of this committee for undertaking a most necessary, but also most difficult task, and we look forward as the debate continues to participating. Thank you.

Mr. WIRTH [presiding]. Thank you very much, Mr. Golodner. I hope you will be able to stay around for the following question session.

Mr. GOLODNER. Thank you.

Mr. WIRTH. Our next witness is Mr. Jack McBride, general manager of the Nebraska Educational Television Network, from Lincoln, Nebr.

STATEMENT OF JACK G. McBRIDE, SECRETARY AND GENERAL MANAGER, NEBRASKA EDUCATIONAL TELEVISION NETWORK

Mr. McBRIDE. Thank you, Mr. Wirth.

I am Jack G. McBride, general manager of the Nebraska Educational Television Network. I am also director of television at the University of Nebraska, and general manager of the university's public television station, KUON-TV, in Lincoln, which is the flagship station of the Nebraska network. The other 8 television stations in the network and 14 television translator stations are licensed to and operated by the Nebraska Educational Television Commission. They form a statewide network providing public and instructional television to virtually the entire population of the State of Nebraska.

Station KUON-TV began broadcasting in 1954, and the network was created in 1963. Since then, we have continually improved coverage and technical quality and program service for the people of Nebraska.

I also currently serve as chairman of the board of the Central Educational Network, a regional organization comprised of 29 public television stations in 11 Midwestern States. I therefore appear before you today as a representative of both a university licensee and a State agency licensee.

The stations of the Nebraska network are all members of the PBS. From the Nebraska Educational Telecommunications Center headquarters in Lincoln, we operate one of five satellite uplinks in cooperation with CEN and PBS. Two other important communications agencies are headquartered at our center, the Great Plains National Instructional Television Library, and the Native American Public Broadcasting Consortium, an organization which promotes the development and distribution of public television programming of special interest to native Americans.

The Nebraska network provides approximately 112 hours of programming per week year round. In essence, we provide two services, instructional programming, produced in cooperation with the Nebraska State Department of Education and postsecondary institutions throughout Nebraska, and public broadcast programming, including a daily schedule of cultural, public affairs, informational, and children's programming.

The Nebraska network operates on an annual budget of \$5.5 million from a diverse funding base that includes four principal sources: State appropriations; CBP community service grants; membership and auction income through a statewide citizens' support organization; and production service grants and contracts from various sources.

We are pleased, Mr. Chairman, that your subcommittee is devoting attention to the national structure of public broadcasting. I think most of us in public television recognize that the present system, which derives from the 1967 Public Broadcasting Act, has debilitating inadequacies. The role of the Corporation for Public Broadcasting in major areas such as program development has never been properly defined. Public radio and television stations have created national and regional organizations to perform certain vital functions, and yet certain duplication and frictions continue among these organizations and with CPB, and the PBS-CPB partnership has had a troubled history.

Local stations have not been sufficiently stimulated to produce programs for national distribution. Any station, except for major producers, that seeks to enter the national production business faces major obstacles in the funding process. We have also learned that CPB is not an effective insulator against political pressure.

During 1972 and 1973, when political pressure was really applied against public broadcasting, CPB seemed more a conduit than an insulator. So, we welcome your efforts and we will cooperate to improve the existing structure, or if that proves impossible, to replace it.

The Nebraska Educational Television Network believes that several overriding criteria must be met by any new legislation. The present and proposed Federal structures are too complex. We need a relatively simple functional framework for public broadcasting at the national level. Next, we must recognize that the national organizations exist to serve the stations and not the other way around. The local stations are the only entities in a position to discern local programming needs. Their numbers and diversity and strength are the greatest protection the system has against political influence, and any legislation you enact must stimulate domestic program production throughout public television by local stations and independent producers.

Unfortunately, we feel that H.R. 13015 does not fulfill these criteria. At the same time, we are encouraged by your stated willingness to redraft title VI following the present hearings.

One dilemma continues to haunt your efforts. What is Congress' proper role in overseeing public broadcasting? Where does oversight become Federal encroachment? The apparent increase in Federal encroachment both in H.R. 13015 and in the pending versions of the Public Telecommunications Financing Act of 1978 is of serious concern to the Nebraska Educational Television Commission.

We think there is a clear guideline. It is the distinction between financial oversight and programing oversight. Without question, Congress is entitled to know how Federal money is being spent. We think it basic that every public broadcast station and every regional and national organization receiving Federal funds account fully for their usage according to generally accepted accounting standards that can be meaningfully interpreted in some uniform way.

In point of fact, Nebraska's ETV network currently maintains two distinct accounting systems. The University of Nebraska, licensee of station KUON, has a well-established universitywide accounting system conforming to the generally accepted accounting principles for colleges and universities. Similarly, the Nebraska Educational Television Commission follows the State of Nebraska's system for accounting of State funds. As public entities both make their financial records routinely available to the public.

In addition, the Nebraska network must account for Federal funds according to CPB's own system of reportage, and we must annually mesh the CPB's accounting categories with those of the university and the State.

Financial oversight must, however, be distinguished from programing oversight. Congress should not expect to have any role in programing. I emphasize here that our legislature in Nebraska has consistently taken the necessary steps to remove itself from any programmatic decisions affecting the Nebraska network.

This prohibition is one of law and logic. The first amendment unequivocally forbids any congressional oversight of program decisions. Any doubt on this point has been removed by the U.S. Court of Appeals' recent decision in the *Community Service Broadcasting* case, holding section 399(b) of the Communications Act unconstitutional. Congress cannot infringe editorial decisions through the back door of funding. Financial oversight can and must be kept distinct from programing.

The Nebraska Educational Television Commission believes that H.R. 13015 as presently drafted oversteps the line separating financial oversight from Federal encroachment into programing. We recognize that the National Telecommunications Agency is proposed as a source of funds to be insulated from the program process, but this approaches the problem from the wrong direction.

In section 642(b), NTA is given broad power to establish criteria for NTA funds. Nothing would prevent the director of NTA from setting standards directly related to the administration's programing preferences. This is so, even though the money would be used for overhead rather than direct program costs. The funds would still be vital to any station's operations. We wholeheartedly support the Public Broadcasting Service's analysis of this and related provisions of H.R. 13015.

Similarly, PBS's testimony demonstrates that the proposed endowment creates an array of unanswered questions. What formula will be used to divide funds between radio and television and among television stations? How can stations plan their operations under such a regime? We in Nebraska firmly believe that any Federal funding system must provide an unambiguous, relatively simple formula for passing the bulk of Federal money directly to the stations, again with the appropriate accountability provisions.

The present system achieves this through community service grants. This part of the present system works most effectively. The formula, though somewhat arcane, is predictable and equitable, and just as important, the money provided in community service grants is unrestricted as to its use.

The nine stations I represent rely heavily on community service grant funds for a variety of purposes. Some are directly related to programing, others are not. If we were forced to exist under the financing system in H.R. 13015, we would face an almost impossible accounting task.

Money from the endowment would have to be traced to be sure it was spent only on programing. Money from NTA would have to be traced to assure that none of it was spent directly on programing. Borderline areas exist in almost every program production project, and we would spend considerable time and money trying to keep the accounts separate. This wastes the precious resources you are giving

us, and obviously it is not a workable way of insulating public broadcasting from politics.

We are also gravely distressed by the prohibition against program underwriting for any station receiving NTA funds. In Nebraska, this would prevent us from making a broad spectrum of PBS programing available, programing that our audience regards as a vital service. We also question the logic of preventing Federal agencies such as the National Endowment for the Humanities from fulfilling one of their basic purposes, making program grants for public television.

For example, we are presently working with a New York independent producer to develop a new television series featuring the works of Mark Twain. The project is funded by NEH. This is precisely the sort of enterprise the Federal Government should be funding. We view this series as a successor to Nebraska's acclaimed series, "Anyone for Tennyson?". This PBS series, also produced in cooperation with an independent producer, included major talent from both the New York and Hollywood creative communities, and has popularized poetry for the American people.

We are obviously familiar with the charge that major underwriters dominate public television, but we know of no instance where any public radio or television station, or national or regional organization, has had its editorial judgments secondguessed by an underwriter. We do not expect that to change. We see a greater likelihood of interference, particularly in the form of subtle political pressure from the Federal Government.

Underwriting offsets the Federal Government's potential influence in programs.

We fully support PBS's position that the absence of underwriting would ease the Federal Government's transition into public television's programing decisions. Underwriting is therefore more than an essential source of funds for very important programing. It is an integral part of our insulation.

Let me suggest a model for simplified Federal funding of public broadcasting. It recognizes that long-range funding is unlikely to be the mainstay of insulation. Among other things, the congressional budgetary process is not attuned to the kind of long-range financing that would be necessary for true insulation. Under our proposal, NTA or some similar agency would be responsible for administering the educational broadcasting facility's program. This program, incidentally, has been and continues to be most important to the Nebraska network. We do not believe NTA should have any other funding functions. Since it is an executive department, its funding of station operations or of the national interconnection presents too great a risk of political abuse.

Federal funding of public broadcasting, aside from the facilities programing, would be accomplished by the endowment. This includes the interconnection for public radio and television. We see the endowment as a restructured and improved Corporation for Public Broadcasting. At least 50 percent of the endowment's funds should be distributed directly to television and radio stations as community service grants. This requires a relatively simple, easily administered, equitable arithmetical formula like the present one.

It is predictable, so that we and our regional and national organizations can plan effectively. The funds would, as presently, be unrestricted as to purpose. We would not bear the onerous burden of tracing one stream of funds that must be used only for programing and another that cannot be used for programing at all.

Parenthetically, I note that community service grants have not been criticized as a source of political influence. It is CPB's funding of these particular projects, sometimes within the framework of its partnership with PBS, that is a complex and time-consuming process. Here is where the insulating mechanism must come into play. Someone must decide which programs get money. It is important to get the money to the producer efficiently, and it is also important to prevent the staff of the granting agency from becoming involved in the specifics of production and content decisions. A system of grant applications or project reports which allows the agency staff to insinuate itself into programing, as is now the case, is unacceptable.

We therefore suggest that the endowment be mandated to operate through grants, not contracts. The distinction is crucial. A grantee is not subject to stage-by-stage control; a contractor is.

The endowment should have no authority to approve scripts or rough cuts of programs. Grants would be awarded on the basis of concepts explained and negotiated in initial applications. Thereafter, the endowment would receive progress reports and have full financial audit authority, but it would not be able to recover money from its grantees unless they substantially deviated from the terms of the grant. This is the proper standard of accountability for programing matters. It recognizes that insulation requires a measure of freedom for any program producer.

Mr. Chairman, we intend seriously to pursue this kind of simplified plan for Federal assistance to public broadcasting. I know I speak for the vast majority of public television licensees when I say we are ready to work with you in drafting new public broadcasting legislation.

Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Thank you, Mr. McBride. I apologize for the fact that a vote on the floor required me to miss most of it, but can you stick around for questions?

Mr. McBRIDE. Yes.

Mr. VAN DEERLIN. Thank you.

The next witness is DeeDee Halleck, the president of the Association of Independent Video and Filmmakers, from New York, N.Y. Good morning.

STATEMENT OF DEEDEE HALLECK, PRESIDENT, ASSOCIATION OF INDEPENDENT VIDEO & FILMMAKERS, INC.

Ms. HALLECK. Mr. Chairman, our written testimony has the initial statement that we have over 800 members of video and film producers. I would like to correct that. I have just been informed by our office that this number is closer to 1,000. However, they are so overworked they have not had a chance to count lately.

I don't want to give you the impression that we have increased by 200 members since we Xeroxed this testimony—but I do feel it

is true we are a rising force, and I think that the increased mention of independents in today's testimony and yesterday's testimony gives evidence to that fact. However, we would like to think we are only the tip of the iceberg, and we know there are many thousands of other independent American producers working in the 16 millimeter and small video format, whose work is shown regularly in museums and colleges here and around the world.

Only a small proportion of this work, however, has found its way to broadcast and cable television in this country. Naturally, AIVF has an interest in increasing that proportion and in expanding that marketplace, which is one of the expressed goals of the proposed act. We feel we could be instrumental in implementing more diverse, responsible, and creative media, but we share the concern of Jack Golodner that the focus of the bill is on communications as a marketplace. The image of the marketplace connotes a choice between products, things presented, and the best and most useful being chosen. I think it is a sincere desire of the committee to increase the choices available to the American public.

The question is, what is the product? In television, as Les Brown has pointed out, the product is not the programs. It is not even the products being advertised. The product is the audience. The market is the selling of the audience. The new bill even makes reference to this. In contrast to the 1934 act, there is no longer a reference to the interest, convenience, and necessity of the public. The current bill, in fact, refers to the public as a market.

Are we giving up entirely on the public as a part of communications? Of course, there is public television, but whatever happened to the public airways? To trade the rest of the spectrum for a few channels is a bad bargain indeed. In spectrum allocation, use of the interstate cableline and in microwave transmission using satellites, the public must retain regulatory authority as well as active participation through access. We need more public involvement, not less, and we believe that independent media workers with varying talents and concerns are the natural facilitators of public involvement.

The following are specific areas within the new bill which we would like to address. By focusing on these, we do not mean to imply that we endorse the rest of the bill. It is clear that no rewrite should be undertaken at this time, but there should be a gradual and sober reassessment of the needs so that the public does not get lost in the stampede of the more powerful interests.

The deregulation of cable will inevitably result in the denial of cable access to independent producers and public interest groups. Despite the lack of substantial funds, equipment, and real cooperation from most cable owners, the cable access networks have been a vital showplace for independent talent and initiative. Access centers have served as valuable training grounds for novice producers. This kind of on-the-job-training is really impossible in the commercial broadcast operations.

Small format video producers on access cable have played crucial roles in many communities bringing visual evidence of local problems and issues. Many performing artists, writers, and choreographers have worked with independent producers on access stations to try new works. Where access has been offered, it has been used, where it has been given both moral and financial support, it has flourished.

Minimal, mandatory requirements on a Federal level are needed to insure public participation and local origination. Let us not fool ourselves. The over 300 communities now using access are doing so because of Federal regulations, not because of the free market.

SATELLITES AND OTHER TECHNOLOGIES

Technology must implement public involvement, not negate it. A more efficient use of broadcast bands is one way of augmenting diversity. Multiplicity of channels must not be restricted to cable users. The satellite system presents the opportunity to develop a real multiway communications structure linking geographical areas and cultural and special interest groups. The public funds used to develop these carriers must be repaid in real and constructive public use. Satellites can enable independents to get their work to outlying areas which might not otherwise have the opportunity to view such work. This could encourage a dialog between station policymakers and independents. Pilot projects could be showcased to foundations, television stations, exhibitors, and international festivals.

We applaud the inclusion in the bill of requirements that corporate contributions to public television be pooled in a fund. Corporate funding for specific programing has eroded the noncommercial nature of public television. The funds which have come from the corporations have by and large not supported our kind of work, because it is often risk-taking and controversial. The fact that it is hard to pinpoint any specific instances of program influence is not the issue.

The main problem is that in general these underwriters have become entrenched in many of the large stations and have had inordinate influence in the overall tone of programing. Maintaining the proper slick public relations image these guys demand has lessened program moneys and inflated both overhead and production budgets. We support increased and independent funding for public television, but we question the imposition of a spectrum use fee based solely on audience size and power.

Fees which are determined by the size of the market would hamper struggling alternative commercial stations in large metropolitan areas. This type of broadcast tax would discourage diversity and force stations into mass market appeal. We suggest a tax on the profit from commercials and on satellite use by commercial entities. The satellites were designed and implemented with public funds, and a return is due.

The imposition of a license fee and the almost complete deregulation of the commercial spectrum would create a dangerous tendency toward polarization, commercial on one hand and public on the other. It would force all alternative communications to the shelter of public broadcasting and raise the specter of governmental domination of all non-mass-appeal media. It would be like two big brothers: Kojak and Uncle Sam.

The formation of the public telecommunications programing endowment is a healthy step, if the agency's job can be limited to what the title indicates, programing. We have seen too much confusion in CPB over dual and contradictory functions. If the endowment is given oversight and fiscal control plus programing, there can be no risk taking. Innovation and controversy go out the window. The

endowment must concentrate on programing. There must be a healthy commitment to long-range development. Many of our members have had positive, productive relationships with the National Endowment for the Arts. There is very little hard feeling even when our pet projects do not get funded. It has been our experience that the equitable and progressive use of panels of peers has made the NEA decision processes more open, more understandable, more fair, and more productive than what we have seen at CPB, PBS, and most of the public stations.

Peer panels with real clout in decisionmaking on all levels in public television, in endowment allocations, PBS decisions, and local station broadcast decisions are a necessary step to a creative public telecommunications endowment. The dependence on British programing that we have seen in the past few years is an insult to the growing numbers of Americans now engaged in some aspect of the arts.

American talent must be identified, supported, and broadcast. Many independent media workers and other artists now work in formats that differ from commercial broadcast formats in time, length, esthetic qualities, and subject matter. An imaginative endowment could begin to break the stranglehold the current formats have on air time.

In many urban centers and at universities all across the country there is a growing audience for the new explorations in the media. The number of centers showcasing this work is growing each year. The acceptance and availability of new art forms is considerably greater in the major urban centers than in rural America. Public television could really close this gap by courageously presenting new work in an effort to broaden formats instead of conforming to them.

The focus must be programing. If this endowment has any regulatory role, that relationship will be at best wary and at worst embattled. The constant need to differentiate roles at CPB has resulted in an almost stagnant level of programing. Surely, we can provide more variety than Dick Cavett reruns three times a day on WNET, the largest public television station in the country in one of the most vital, creative art centers in the world.

The endowment must serve not the stations, nor the Congress, but the public. It must have the freedom to see that good programs are made, broadcast, and defended. It must insure that substantial funds are earmarked for local programing and for programs directed to special and minority audiences.

Independent media producers are in a unique position to implement this kind of programing. We have proved that we are a bargain, too. Operating outside of the station structures, we are able to work more energetically and efficiently. A substantial portion of total programing funds in both the national and station level must be allocated directly to large and small independent producers. The endowment must be funded with an ample budget.

We question whether the license fee method described in the bill can be an effective source. Support will be chipped away in negotiations between the powerful broadcasting interests and the Commission. The funds will become leftovers to be fought over by public television and minorities and women interested in station ownership. It pits the least powerful constituents against each other. Dispersal of operating

funds to stations must be made by a separate nonprogramming agency, either the NTA or a new entity created entirely for this purpose. CSG funding should be set up to reward programing in addition to fundraising.

At the present, many stations have become enmeshed in a fundraising spiral. The more funds they get, the more CSG's they get to raise more funds. A lot of stations are better at fundraising than they are at programing. There are stations in the system like Jack Caldwell's who are responsive to independents and to the public. There are others who are not. We would like to see some way of rewarding the ones that are.

We applaud the inclusion of sunshine laws and public accountability in the new act, but public television will not be public until there are solid mechanisms for open board elections. A new communications act, truly in the interest, convenience, and necessity of the public would begin by making the public a real part of public television. Right now, the audiences of public television should be involved in helping to shape that future.

The discussions of the 1978 funding bill and this rewrite should be aired to the American people. That public television has chosen not to broadcast these hearings is a classic example of their irresponsible attempt to maintain the status quo. The community of American independent media workers welcome these discussions. We are grateful for the opportunity to bring some of these suggestions to the committee. We are excited about the prospects for growth and change.

A public television system working together with the many thousands of independent producers in the stewardship of a responsible and informed public might be able to begin to generate a new kind of communications, one that fosters autonomy over domination and enlightenment over mass deception.

I would like to say in postscript, to answer Congressman Wirth's question as to whether it is the right and duty of Congress to intervene in the use of public television's funds, it seems to me that when there are chronic problems within a federally supported system that are not resolved, it is the responsibility of Congress to get involved.

The abusive neglect by public television of women, blacks, and the Hispanic population, the working class, and independent American artists must be addressed, and I would like to say that the written testimony has been endorsed by the following organizations: The Boston Film and Video Foundation; Chicago Editing Center; Film in the Cities, St. Paul, Minn.; the Film Arts Association in San Francisco; the Global Village in New York; Independent Media Artists of Georgia; Millennium Film Workshop in New York; the Northwest Film Study Center in Portland, Oreg.; Pittsburgh Filmmakers; and the Rocky Mountain Film Center in Boulder, Colo., and I am sure there are many more. We just didn't have time to call the rest of them.

[Ms. Halleck's prepared statement follows:]

STATEMENT OF THE ASSOCIATION OF INDEPENDENT VIDEO &
FILMMAKERS, INC., NEW YORK, N.Y.

The Association of Independent Video & Filmmakers is a national membership organization of over eight hundred video and film producers. The work of our members and the many thousand other independent American producers in

the sixteen millimeter and small video format is shown regularly in museums and colleges both here and around the world. Only a small proportion of this has found its way to broadcast and cable television in this country. Naturally, AIVF has an interest in increasing that proportion and in expanding that "marketplace" which is one of the expressed goals of the proposed act. We feel we could be instrumental in implementing more diverse, responsible and creative media. The rhetoric is easy. Or is it? Take the concept of the "marketplace" for example. Even if one can accept the notion of marketplace in this age of multi-national corporations, there is a question of how to interpret such a notion in the context of broadcasting, and, in particular, American broadcasting as it has evolved in the last forty years. The image of the marketplace connotes a choice between products—things presented and the best or more useful being chosen. The question is, what's the product? Many television critics have pointed out that in television the product is not the programs, it is not even the products being advertised. The product is the audience. The market is the selling of the audience. To quote Les Brown: "In day to day commerce, television is not so much interested in the business of communications, as in the business of delivering people to advertisers. People are the merchandise, not the shows. The shows are merely the bait. The consumer, whom the custodians of the medium are pledged to serve is, in fact, served up."¹

The new communications bill attempts to make the realities of American broadcasting explicit. In contrast to the 1934 Act, there is no longer a reference to "the interest, convenience and necessity of the public". The current bill in fact, refers to the public as a market.² This may have the virtue of honesty. Communication in this country has unhappily become the province of a small number of corporate interests. We strongly question whether the Congress should unrestrainedly support this development. Are we giving up entirely on "the public?" Is our only role in mass communications as a market to be bought and sold? Of course, there is public television. But what ever happened to the public airwaves? To trade the rest of the spectrum for a few channels is a bad bargain, indeed. In spectrum allocation, use of the interstate cable lines and microwave transmission using the satellites, the public must retain regulatory authority as well as active participation through access. We need more public involvement, not less, and we believe that independent media workers with varied talents and concerns are the natural facilitators of public involvement.

Ensuring that diversity flourishes takes foresight and protection. History has shown that meaningful regulation is more dependable than the free market. How many blacks and women got their jobs in broadcasting through *laissez faire*?

(The following are specific areas within the new bill which we would like to address. By focusing on these we do not mean to imply that we endorse the rest of the bill.)

TITLE TWO

DEREGULATION OF CABLE

The deregulation of cable will inevitably result in the denial of cable access to independent producers and public interest groups. Despite the lack of substantial funds, equipment and real co-operation from most cable owners, the cable access networks have been a vital showplace for independent talent and initiative. Access centers have served as valuable training grounds for novice producers. This kind of on-the-job apprenticeship is virtually impossible in commercial broadcast operations. Small-format video producers on access cable have played crucial roles in many communities, bringing visual evidence of local problems and issues. Many performing writers and choreographers have worked with independent producers on access stations to try new works. Where access has been offered it has been used. Where it has been given both moral and financial support it has flourished. Minimal mandatory requirements on a federal level are needed to insure public participation and local origination. Let's not fool ourselves: the over 300 local communities now using access are doing so because of federal regulation, not because of the free market.

¹ Les Brown, "Television, The Business Behind the Box," Harcourt Brace Janovich, N.Y., 1971, p. 15, 16.

² H.R. 13015, Sec. 413; b,2,B, calculate fees for television which vary with the number of frequencies assigned to a market and the number of prime time television households in such market. . . ."

COMMISSION MEMBERS

The bill reduces the number of national regulatory commissioners from seven to five. We would like to see more, not less, in an effort to increase diversity and to insure places for women and minorities.

TITLE THREE

COMMON CARRIER CONTROLS

As consumers and as producers dependent on common carrier services for much of our work, we view with alarm the tendency in the bill to deregulate rate controls and hearing requirements.

SATELLITES AND OTHER NEW TECHNOLOGIES

Technology must implement public involvement, not negate it. A more efficient use of broadcast bands, through devices easily included in new TV sets, is one way of augmenting diversity. The FCC has funded the research on these devices and their use should be developed if economically feasible. Multiplicity of channels must not be restricted to cable users.

The satellite system presents the opportunity to develop a real multi-way communications structure linking geographic areas and cultural and special interest groups. The public funds used to develop these carriers must be repaid in real and constructive public use. Satellites can enable independents to get their work to outlying areas which might not otherwise have an opportunity to view such work. This could also encourage a dialogue between station policy makers and independents. Pilot projects could be showcased to foundations, television stations, exhibitors and international festivals.

TITLE FOUR

NEW STATION ALLOCATION

Choosing stations by lottery would create a corporate roulette that the public would inevitably lose. A procedure must be established which will foster the birth of small, energetic stations that are locally owned and community oriented.

PERPETUAL LICENSES

The current requirements for license renewal have created a minimal amount of public affairs programming often designed specifically to demonstrate public accountability to the FCC. Independents have frequently worked with stations on local cultural and public affairs as part of this process. Where will the public affairs departments of most stations be if they don't have to be touted at renewal time?

LICENSE FEES

We applaud the inclusion in the bill of requirements that corporate contributions to public television be pooled in a fund. Corporate funding for specific programming has eroded the non-commercial nature of public television. We support increased and independent funding for public television, but we question the imposition of a spectrum use fee based solely on audience size and station power. Fees which are determined by the size of the "market" would hamper struggling, alternative commercial stations in large metropolitan areas. This type of broadcast tax would discourage diversity and force stations into mass market appeal. We suggest a tax on the profits from commercials and on satellite use by commercial entities. The satellites were designed and implemented with public funds and a return is due.

POLARIZATION TREND

The imposition of a license fee and the almost complete deregulation of the commercial spectrum would create a dangerous tendency toward polarization—commercial on one hand, and public on the other. It would force all alternative communications to the shelter of public broadcasting and raise the spectre of governmental domination of all non-mass appeal media. It would be like two big brothers: Kojak and Uncle Sam.

TITLE SIX

NATIONAL PUBLIC TELECOMMUNICATIONS ENDOWMENT

The formation of a public telecommunications programming endowment is a healthy step—if the agency's job can be limited to what the title indicates: PROGRAMMING. We have seen too much confusion at CPB over dual and contradictory functions. If the endowment is given oversight and fiscal control, plus programming, there can be no risktaking; innovation and controversy go out the window. The endowment must concentrate on programming. There must be a healthy commitment to long-range development. Recently Columbia Pictures formed a writers' workshop to stimulate the creation of a new generation of screen writers. This is the sort of thing the endowment should be. The encouragement and imaginative use of American artists, journalists and documentarians should have top priority. The dependence on British programming we have seen in the past few years is an insult to the growing numbers of Americans now engaged in some aspect of the arts. American talent must be identified, supported and broadcast.

Many independent media workers and other artists now work in formats that differ from conventional broadcast formats in time length, aesthetic qualities and subject matter. An imaginative endowment could begin to break the stranglehold the current formats have on air-time. In many urban centers and at universities all across the country, there is a growing audience for new explorations in the media. The number of centers show-casing this work is growing each year.³ The acceptance and availability of new art forms is considerably greater in the major urban centers than in rural America. Public broadcasting could close this gap, by courageously presenting new work, in an effort to broaden the formats, instead of conforming to them.

The focus must be programming. If this endowment has any regulatory role with the stations, that relationship will be at best wary, and at worst embattled. The constant need to differentiate roles at CPB has resulted in an almost stagnant level of programming. Surely we can provide more variety than Dick Cavett reruns three times a day on WNET, the largest public television station in the country, in one of the most vital creative arts centers in the world.

The endowment must serve not the stations, nor the Congress, but the public. It must have the freedom to see that good programs are made, broadcast and defended. It must ensure that substantial funds are ear-marked for local programming and for programs directed to special and minority audiences. Independent media producers are in a unique position to implement this kind of programming. We have proved that we are a bargain, too. Operating outside of the station structures, we are able to work more energetically and efficiently. A substantial proportion of total programming funds on both a national and a station level must be allocated directly to large and small independent producers.

The board of the endowment should be made up of people actively engaged in creative arts, education, and journalism. Endowment allocation decisions must be made by panels of peers similar to those of the arts endowment. In addition, we feel that provision must be made at PBS, both on the national and state levels, for inclusion of peer review in allocation of funds for broadcast.

FUNDING

The endowment must be funded with an ample budget. We question whether the license-fee method described in the bill can be an effective source. Support will be chipped away in negotiations between the powerful broadcasting interests and the commission. The funds will become the left-overs, to be fought over by public television and minorities and women interested in station ownership. It pits the least powerful constituents against each other. Dispersal of operating funds to stations must be made by a separate non-programming agency: either a new entity created entirely for this purpose or through the commission. CSG funding should be set up to reward programming, in addition to fundraising. At present many stations have become enmeshed in a fund-raising spiral: the more funds they raise, the more they get from CSGs to raise more funds. A lot of stations are better at fundraising than they are at producing programs.

³ The Center for New Art Activities in New York recently conducted a survey of places in New York currently presenting American independent work. These include the Museum of Modern Art, the Whitney Museum, Film Forum, Anthology Film Archives, Kitchen Center for Video and Music, Global Village, and Millenium Film Workshop. In the years 1974-1978 these showcases presented over 1,200 separate new works in 16mm and small format video.

PUBLIC INVOLVEMENT

We applaud the inclusion of sunshine laws and public accountability. But public television will not be public, until there are solid mechanisms for open board elections. A new communications act, truly in the interest, convenience and necessity of the public, should begin by making the public a real part of public television.

Right now, the audiences of public television should be involved in helping to shape that future. The discussions of the 1978 funding bill and this rewrite should be aired to the American people. That public television has chosen not to broadcast these hearings is a classic example of their short-sightedness and the current system's inadequate funding of public affairs.

The community of American independent media workers welcome these discussions. We are grateful for the opportunity to bring some of these suggestions to the committee. We are excited about the prospects for change and growth. A public television system, working together with the many thousand independent producers, in the stewardship of a responsible and informed public, might be able to begin to generate a new kind of communication—one that fosters autonomy over domination, and enlightenment over mass deception.

Mr. VAN DEERLIN. You got Boulder, Colo., which was important. Thanks very much.

[The following letter and attachment were received for the record:]

MADE IN U.S.A.,
NEW YORK, N.Y., October 11, 1978.

Mr. LIONEL VAN DEERLIN,
Chairman, Subcommittee on Communications, U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Room 2125, Rayburn House Office Building, Washington, D.C.

DEAR MR. VAN DEERLIN: I am heading up a project funded by the National Endowment for the Humanities which was mentioned in the September 27, 1978, testimony before the Committee. In reading the testimony, I find that factual misstatements were made, which, I believe, might be damaging to the project if they were left uncorrected in the record. I therefore request that the following information be included in the official record which is made publicly available. Ms. DeeDee Halleck, president of the Association of Independent Video and Filmmakers (A.I.V.F.) has informed me that these corrections may be included under testimony of the A.I.V.F., if necessary.

Thank you very much for your consideration.

Sincerely,

ELSA RASSBACH,
Project Director.

In 1977, American Labor History Series, Inc. (ALHS), an independent, non-profit production company, received a grant of \$149,994 from the National Endowment for the Humanities. The grant was for the development of MADE IN U.S.A., a ten-part dramatic prime time television series exploring the history of American workers from 1840 to 1940. At the conclusion of the grant period ALHS was to submit three scripts, two researched story outlines and five subject papers.

In August, 1978 ALHS submitted to NEH more than what was required, i.e., three scripts, two researched story outlines, seven subject papers, production plans, and budgets. A proposal for production of the Series by ALHS is currently under consideration by NEH.¹

As to the quality of the Series, the concept and scripts have been widely praised. For example, Professor Warren Susman of Rutgers University writes, "As you know I have read dozens of scripts for other projects and there is no doubt in my mind that these are the best of any I have ever seen." Professor Eric Foner of the City College of New York states, "I have been involved in a number of such projects during the past few years—projects proposing to dramatize various episodes of American history for television—and I can honestly say that yours are the best scripts I have yet encountered." The eminent filmmaker and former head of the Museum of Modern Art Film Department Willard Van Dyke comments, "Rarely have I seen such a dramatic version of actual events." Professor Herbert Gutman refers to the scripts as "splendid!" Professor Arthur Schlesinger states, "(MADE

¹ Previously the Boston public television station WGBH had received \$80,000 from NEH for development of the project and had expended \$57,000. WGBH was unable to complete scripts due to the lack of an agreement with the Writers Guild of America.

IN U.S.A.) would help fill a shameful gap in popular knowledge of American history. . . It should make a compelling and significant TV series. . . . It would certainly be of great benefit for the general public."

The project, which The American Association of Community and Junior Colleges enthusiastically supports, promises to find wide educational use. Some of the most talented and experienced American producers and directors are ready and willing to begin work on the production.

Unfortunately, Made In U.S.A. has not been actively supported by the Public Broadcasting Service or the Corporation for Public Broadcasting, either in the form of funds or of fund raising assistance. High-level officials of those organizations and of public television stations have told me privately that a project covering this subject matter, no matter of what quality and what degree of public interest, has a poor chance of being funded. The reason is as follows: (1) NEH will probably require that the project identify matching funds; (2) for high-budget prime time projects in public broadcasting, corporate funds are essential; (3) corporations may not wish to support this project because of the subject matter. In the past, PBS has stated that the Series may not accept development or production funds from unions, from foundations specifically interested in labor history, from the Labor Department, or from those corporations which have been involved in labor-related controversies (i.e. most of those with union contracts.).

Thus the "Catch-22" does exist for certain projects, including this one. Self-censorship and censorship by neglect is, I believe, becoming a serious matter in public broadcasting. This should be of concern to all public officials. I fully support the position of A.I.V.F. in this matter.

Mr. VAN DEERLIN. Our next witness will be Mr. Laurence Hall of the Committee To Save KQED, Oakland, Calif.

STATEMENT OF LAURENCE S. HALL, COORDINATOR, THE NATIONAL TASK FORCE ON PUBLIC BROADCASTING, OAKLAND, CALIF.

Mr. HALL. My name is Laurence Hall. I am here today on behalf of the National Task Force on Public Broadcasting, an association of organizations and individuals from throughout the country who are prominent in the expression of a broad range of citizen concerns in telecommunications.

The task force is the only broadly based national organization dedicated to the protection of public rights in public telecommunications. We have recently issued an official position paper on H.R. 13015 which, with your permission, I am submitting as an appendix to my remarks today. This paper also lists those task force members in whose names the statement was made.

Mr. Chairman, before making my prepared comments, I would like to offer a personal observation on a point that was very strongly made yesterday by Mr. Wirth. H.R. 12605, the Public Telecommunications Funding bill, is an important element in these hearings, too. Also, the new Carnegie report is in the wings, although I confess I am not holding my breath all that much about it. Maybe Carnegie will hold some pleasant surprises, but it is going to be hard pressed to outdo the leadership of this subcommittee as expressed in H.R. 12605 and, for that matter, some of the elements that have been incorporated in H.R. 13015 as a result of H.R. 12605.

H.R. 12605, as a first step to improved public telecommunications, is an enlightened document. It was a balanced compromise, a fair product of a fair process. In H.R. 12605, you have led the way toward meaningful sunshine and financial accountability. You have led the way in your efforts to reinstitute local programing, and to bring in-

dependent producers into the system. You have created the emphasis that new technologies must be developed for the benefit of the people. And you, Mr. Chairman, and Mr. Frey, in H.R. 13015, have affirmed the need to purge public telecommunication of its commercial taints.

As an advocate of reform, I think that H.R. 12605 could have been further improved, even as a first step. But as one concerned with process, I like the process, which was wide open. I like the fact that the full subcommittee knows that you have something to be proud of, so much so that each of you wanted to be on the conference committee and were granted that unusually broad participation.

I hope you maintain that pride. I think you have something to be proud of, and that you will fight for what you started. It is of the greatest importance to us all.

The point, once again, lies in Mr. Wirth's question yesterday, "What are we creating? This question cuts to H.R. 12605 which is a fine piece of work, and it cuts to H.R. 13015, which is not good law. The answers lie at the very foundation of freedom in our society.

Two hundred years ago, at our country's birth, the press was the fledgling agency of a new mass communications. There was a proliferation of presses, and there was 1,000 years or more of Western oral tradition. Communications for our Founding Fathers was speech and the press.

The first amendment became a part of the U.S. Constitution within this context, viewing speech and the press as the totality of communications. On December 15, 1791, the American people acquired the most important communications policy that we or any people would ever possess. The first amendment permits no authority to exist whose function would restrict the free flow of communications among the American people. The authority to initiate communication and the authority to receive communication are both the property of the people. The people themselves shall have control of all exchange of thought, opinion, and information. If at any point it is necessary to select or order the information flow among the channels available to the people, then the people themselves, with appropriate checks and balances, diverse checks and balances, must have charge of that facilitating authority.

Now, nevertheless, 187 years of finagling and a bit of 20th century gadgeteering have produced a semantic distinction that did not exist in 1791: a distinction between freedom of communication and the sum of freedoms of speech and of the press. Yet the forces for social stability that were put in place by the first amendment depend upon the rock-hard absolutism that its words originally had. These forces must be the complete freedom of communication. The most encompassing interpretation is necessary for the first amendment to work. A modest encroachment is like a little bite by a rabid squirrel.

Historically, significant encroachments upon our freedom of communication began to infest the printed press as we entered the 20th century. Our inability to solve the increasing problem of monopoly became the focus of warnings by such observers as A. J. Liebling,¹ Harold Adams Innis,² and the Hutchins Commission on Freedom of

¹ A. J. Liebling, "The Press" (Ballantine Books, N.Y., 2d rev. ed., 1975).

² Harold Adams Innis, "The Press, A Neglected Factor in the Economic History of the 20th Century" (Oxford University Press, London, 1949); "Empire and Communications" (Oxford University Press, London, 1950); "The Bias of Communication" (University of Toronto Press, Toronto, 1951).

the Press.¹ The print press problem is still with us. It is not solved.

More recently, in the era of the electronic press, our failure to understand the political necessity for exercise of a public claim to developing communications technology has significantly enlarged the problem. This inattention and lack of understanding may yet permit the entire abolishment of the real first amendment.

As we intend to be a free people, we must intend to restore and preserve our freedom of communication. As we intend upon freedom of communication, we must once again place control of communications with the people themselves. This is a political, not a technological problem. It has a political, not a technological solution.²

Now, within the telecommunications arena, we committed a serious first amendment error when Congress passed the Communications Act of 1934. The legislation handed most of the control of developing mass communications to a few inaccessible agents—a handful of corporate communicators and the Federal Communications Commission. The argument then and since was that each would act in the public interest, convenience, and necessity. Too often it didn't work that way. If we had listened to our Founders, we would have known that it could not work that way. Now the principal authority for telecommunications rests in a new patriarchy, the corporate grandfathers.³

If I might digress to enlarge on that elipse: In the days when grandfathers were people, the grandfather clause was a harmless concession to the regulators' passion for tranquillity. It exempted an established practitioner from new regulations, although typically it was grandfather's behavior that pointed up the need for the new rules in the first place.

But grandfather would soon die, and we would have the new rules without ever having angered the old curmudgeon. Conversely, in the hands of an immortal corporation, grandfather status, conferred by the FCC, or by the courts, or by Congress, becomes a nearly unbeatable competitive tool.

Now, even if we forgot in 1934 to think through the problems of how to maintain popular control of communications in a period of intense technological innovation, the basic rights to popular control, even though unexercised, are ours. We must not allow the final foreclosure of our public rights to fall to these corporate grandfathers. Yet such foreclosure is the whole fabric of H.R. 13015. It is the burial clothing for first amendment freedom in telecommunications.⁴

No valid foundation exists in American political theory to justify the kidnaping of the eyes and ears of the American people, those

¹ "A Free and Responsible Press: Report of the Commission on Freedom of the Press," Robert M. Hutchins, Chairman (University of Chicago Press, Chicago, 1947).

² An illuminating commentary upon the myth of technological-innovation-as-savior is given in Richard Bunce, "Television in the Corporate Interest" (Praeger Special Studies, New York, 1976).

³ In the days when grandfathers were people, the "grandfather clause" was a harmless concession to the regulators' passion for tranquillity. It exempted an established practitioner from new regulation—although, typically, it was grandfather's behavior that pointed up the need for the new rules in the first place. But grandfather would soon die, and we'd have the new rules without ever having angered the old curmudgeon. On the other hand, in the hands of an immortal corporation, "grandfather" status conferred by the FCC, or the courts, or the Congress, becomes a nearly unbeatable competitive tool.

⁴ Many able advocates with a long history of citizen concern have already appeared before you to give considerable detail to the losses that would occur with H.R. 13015. The testimony before this subcommittee of Prof. Charles Firestone in Los Angeles on August 25, 1978, and of Dr. Everett Parker on September 13, 1978, in Washington, deserve particular reemphasis.

eyes and ears then to be put up for sale—the right to refuse service being retained—by the oligarchs of international mass communications.

In fairness, it should be made clear that although H.R. 13015 is very bad law, its authors, together with the other members of this subcommittee and its staff, have an abundant and affirmative concern for the public interest. I want to emphasize this point. It has been the direct experience of the National Task Force on Public Broadcasting, in our recent work on the public telecommunications funding bill and indeed in the spillover of that effort into title VI of H.R. 13015, that you do respond positively and creatively to genuine concern for public rights. The problems today lie in the process.

The chief error of H.R. 13015 is not in any one particular detail of the law. There are lots and lots of problems in particular details. The chief error lies in the idea that the law should be changed in one fell swoop. You don't swoop down on IBM, ITT, RCA, Western Union International, "Ma" Bell, and, of course, the networks. In order to convince them to play by new rules, you have to give them the game. So there is only one possible one-act play: Total deregulation, with the added twist of permanently licensed monopolies for broadcasting. If it is not sufficiently attractive to do otherwise, winners are not going to change their winning ways.

So, total rewrite, today, simply cannot work for the public interest. There is just too much at stake for the powerful, and H.R. 13015 is testimony to the point. Next year, H.R. 1, H.R. 1980, or whatever the number of the rewrite, it will be another example. Perhaps we will get some words that reintroduce a little public interest into regulatory standards. Perhaps we will get some movement on EEO, or upon one or another additional public concerns, but not enough certainly to anger grandfather. We will most surely get most of what H.R. 13015 is now, a giant step back into monopoly control of telecommunications. We will almost surely get new strictures—or their equivalent, vague new legal criteria—that will wipe out most past public service gains and make new incremental reform all but impossible.

All of this follows from a decision to go for omnibus rewrite. Total rewrite should be abandoned as a process meant to correct the mistakes of the Communications Act of 1934. There is another way, a proper way, and a politically viable way.

Throughout this century as technological innovation has revolutionized communications, we have had no national policy within the United States for the preservation of public rights in communications. As a result of this laissez-faire attitude, we have backslid on our Founders' principle of direct popular control of communications. Now it is necessary to energetically work to return significant control of the public agenda to the people of the United States. The most forward step in the public interest today is the establishment of a substantial, diverse, service-oriented public telecommunications preserve, replete with checks and balances, and free to operate with excellence and integrity under primarily local democratic control.

Public funding is important, but in this building process it is the second step. Our existing public telecommunications must first be made consciously responsive to the needs of each local community. To be responsive, it must be accountable to the local community.

Money, as we can see in our present situation, can be counterproductive when given without requiring accountability.

Public telecommunications needs Sunshine, accountability, and public control. Full Federal Sunshine regulations must apply to public telecommunications. Records as well as meetings must be opened to the public view. Governing boards of local community public television stations must be publicly elected, and public telecommunications facilities in general should be placed in diverse public control.

There should be dedicated public facilities. The public right to a full share of present and future communications technology must be guaranteed. Adequate portions of the electromagnetic frequency spectrum, of cable capacity, of satellite parking space and transponder capacity, of library or information storage and other computer communications elements, and a share of similar entitlements now in existence or yet to be invented, must be reserved and dedicated to public use. A diverse public telecommunications environment must guarantee a near continuum of opportunity to communicate with wider and wider audiences, depending upon the quality and interest of the material.

Public telecommunications facilities must meet the special needs of the blind and hearing-impaired or of other disabled, for whom conventional communications is inadequate.

In civil rights, fairness to blacks, Hispanics, Asians, and native Americans, and to women, requires no less than that the full impact of U.S. civil rights legislation for hiring and promotion be applied to every facet of public telecommunications.

There should be access for independent producers and public opinion. Diversified programming must be encouraged by providing access to funding and distribution by independent production professionals—artists, writers, directors, performers, journalists, filmmakers, and videographers—as well as the public telecommunications entities themselves. Quality local programming is necessary. Public access cable should be funded and in community control, a part of public telecommunications.

In all, a heterogeneous funding network out in the open, substantially publicly endowed, and purged of commercial involvement must be established, with checks and balances designed to encourage excellence and to prevent censorship of ideas. Each public telecommunications facility should be required to openly establish procedures for itself which are supportive of free advocacy analysis, information, and debate upon issues of public importance.

In summary, public telecommunications must be purged of commercialism. Community public television stations must have governing boards elected by and from the community. Public access cable should be funded, and in community control. Independent professionals—artists, writers, journalists, filmmakers, and videographers—should have access to funding and to distribution of their work. Satellite parking space and transponder capacity should be dedicated to public service. Civil rights must be guaranteed to all.

Present and future communications technology must be put to use to enhance free speech as the right of the people, not as the sole right of selected corporate communicators. A diverse, heterogeneous, locally based authority, rooted in local democratic control is the only

competent foundation upon which to build a communications structure for a free people. Commercial communications can exist alongside such a structure, but it won't do as a substitute.

Mr. VAN DEERLIN. Do you think, Mr. Hall, we could get into some of this in the question period?

Mr. HALL. Sure. May I just summarize, then, by saying that deregulation of commercial communications should not be considered until a dedicated and effective public communications preserve is in place and at work. The National Task Force on Public Broadcasting opposes H.R. 13015, and supports new public telecommunications legislation with emphasis on public rights to Sunshine, accountability, public control, dedicated public facilities, civil rights in public telecommunications, access for independent producers, and to access for the public.

I thank you, Mr. Chairman, for the opportunity to bring these arguments to you today.

[The appendix to Mr. Hall's statement follows:]

APPENDIX

N.T.F.P.B.

NATIONAL TASK FORCE ON PUBLIC BROADCASTING
7685 CREST AVENUE, OAKLAND, CA 94605
LARRY HALL 415 535-5398
ROBBN WEBER 212 966-0900

DEAR FRIENDS OF MEDIA REFORM,

Last year the National Task Force on Public Broadcasting formed to promote a number of reforms in the public telecommunications system. Our successful lobbying efforts (detailed in the Progress Report on page three) have had important influence on public telecommunications legislation in 1978, and has also led to the only decent section (Title VI) in what is otherwise a disastrous new threat to public control of the airways: the Van Deerlin-Frey rewrite (HR 13015) of the Communications Act of 1934. It is imperative now that we maintain and increase the momentum we have already established for communications reform.

The proposed Van Deerlin-Frey legislation is a complete reversal of the 1934 Communications Act. Its wholesale alteration of the rules would restructure the communications industry to follow the shifts of power among the industry giants. At the same time, it would take away forever the concept that the airwaves belong to the people.

The proposed Van Deerlin-Frey legislation is a complete reversal of the 1934 Communications Act. Its wholesale alteration of the rules would restructure the communications industry to follow the shifts of power among the industry giants. At the same time, it would take away forever the concept that the airwaves belong to the people.

The bill is the result of widespread dissatisfaction with the way the FCC regulates (or doesn't regulate) the very big and very private telecommunications industry. While new technological innovations need recognition by the law, HR 13015, or for that matter, any omnibus legislation, is not the answer to present out-dated and unwieldy regulatory procedures. Relying solely on "marketplace forces," this bill does not, and can not, put modern communications technology into the service of the American people. It can only put that technology further out of reach.

The chief error in the Van Deerlin-Frey approach is the notion that the law should be changed in one fell swoop. For the authors of this bill, it is politically impossible to propose legislation that would be opposed by AT&T, RCA, CBS, ABC, Western Union, International and the other giants in the industry. So, to get these corporations to play by new rules, Van Deerlin-Frey gives them complete control of the game. Their offer: Total Deregulation; with an added twist for broadcasters—permanently licensed monopolies.

The rewrite is a giant step back into monopoly control of telecommunications. It erases most of the public

TASK FORCE MEMBERS:			
Association of Independent Video and Filmmakers		Hon. Ronald V. Dellums Member of Congress	Los Angeles Women's Coalition for Better Broadcasting
Robin Weber	New York	Fernando Del Rio*	Los Angeles
Kathy Bank*	Washington, DC	President, California Association of Letter in Broadcasting, Commissioner, California Public Broadcasting Commission	Ellen Kestel
National Media Committee		Senator John F. Dunlap	Los Angeles
National Organization for Women		California State Senate	National Association for the Advancement of Colored People (Nine Western States)
California Public Broadcasting Forum		Film Arts Foundation	San Francisco
Michele Grumet	Los Angeles	Julene Barr	San Francisco
Church of the Brethren, General Board	Elgin, IL	Charles M. Firestone*	Los Angeles
Sawert M. Hoover	Elgin, IL	Director, UCLA Communications Law Program	
Citizens Committee on the Media	Chicago	Timothy Haight*	Madison, WI
Ron Grossman	Chicago	Department of Communications Arts, University of Wisconsin	
Committee for Open Media	San Jose, CA	Ellen Stern Harris	Los Angeles
Phil Jacklin	San Jose, CA	Consumer Advocate	Davis, CA
Committee to Save KOED (Not affiliated with KOED, Inc.)		Michael Hermann*	Davis, CA
Larry Hall	San Francisco	D. Q. University (American Indian)	
Community Access Channel 25	San Francisco	Independent Media Artists of Georgia, Inc. (IMAGE)	Atlanta, GA
Geoffrey Leighton	San Francisco	Gayla Jamison	Atlanta, GA
Community Coalition for Media Change	Berkeley, CA	Institute for Communication Policy Development	
Marcus Garvey Wilcher	Berkeley, CA	Robert Jacobson	Los Angeles
		Henry Kroll*	San Francisco
		Board of Directors, KOED, Inc.	
			Los Angeles Women's Coalition for Better Broadcasting
			Ellen Kestel
			National Association for the Advancement of Colored People (Nine Western States)
			San Francisco
			National Association of Broadcast Employees and Technicians (NABET)
			Los Angeles
			National Black Media Coalition
			Plurist Marshall
			Washington, DC
			National Citizens Communications Lobby
			Townes L. Osborn
			Washington, DC
			Northeast COMBAT, Inc.
			Bangor, ME
			John Suprunovich
			Northeast Media Project
			Portland, OR
			Melissa Marland
			Portland, OR
			Northwest Region, National Federation of Local Cable Programmers
			Seattle, WA
			Sky Kahl
			Seattle, WA
			Optic Nerve
			Mya Shone
			San Francisco
			Karen Paulsell*
			San Francisco
			Broadcast Communications Arts Department, San Francisco State University
			Gerald Westman*
			Commissioner, California Public Broadcasting Commission
			Public Media Center
			Betty Cohen, Michael Singaen,
			Herb Gunther
			San Francisco
			Public Media News Service
			Sarah Ordover
			Washington, DC
			St. Louis Broadcast Coalition
			Sharon Burton Smith
			St. Louis, MO
			Southern Independent Filmmakers Coalition
			Foss Spears
			Johnson City, TN
			Southwestern Alternate Media Project
			Tom Sims
			Houston, TX
			TeleVisions
			Larry Kirkman
			Washington, DC
			The Washington Ear
			Dr. Margaret Rockwell
			Silver Spring, MD
			West Coast Critical Communications Conference
			Larry Shone
			Stanford, CA
			Burt Wilson*
			Los Angeles
			CAUSE (Campaign Against Utility Service Exploitation)
			*Affiliation is shown for identification only.

interest victories of the past ten years and makes the hard work of new incremental reform all but impossible. We must stop the Total Rewrite approach if we mean to preserve what we've won so far.

The National Task Force has shown in the past year that major reform is possible in public telecommunications. We believe public telecommunications ought to be considered on its own merits and not lumped together with other legislation affecting the whole communication industry. Deregulation should not even be considered until a dedicated and effective public telecommunications preserve is in place and at work.

Hard work lies ahead. The nature of a working PUBLIC telecommunications system must be hammered home. Public funding is important, but as an issue it is really the second step. First, public telecommunications must be made affirmatively responsive to the needs of each local community. To be responsive, it must be accountable. Funding, without accountability, is counterproductive.

WHAT WE NEED IN PUBLIC TELECOMMUNICATIONS:

SUNSHINE ACCOUNTABILITY AND PUBLIC CONTROL

Full federal sunshine regulations must apply to public telecommunications. Records as well as meetings must be opened to public view. Governing boards of local community public television stations must be publically elected, and public telecommunications facilities, in general, should be placed in diverse public control.

DEDICATED PUBLIC FACILITIES

The public's right to a full share of present and future communications technology must be guaranteed. Adequate portions of the electromagnetic spectrum, of cable capacity, of satellite parking space and transponder capacity, of information storage (library) and other computer communications elements, and a share of similar entitlements now in existence or yet to be invented, must be reserved and dedicated to public use. A diverse public communications environment must guarantee a near continuum of opportunity to communicate with wider and wider audiences depending upon the quality and interest of the material. Public telecommunications facilities must meet the special needs of the blind and hearing-impaired, or of other disabled, for whom conventional communications is inadequate.

**National Task Force on
Public Broadcasting
7695 Crest Avenue
Oakland, CA 94605**

CIVIL RIGHTS

Fairness to blacks, Hispanics, Asians and native Americans, and to women, requires that the full impact of U.S. Civil Rights legislation for hiring and promotion be applied to every facet of public telecommunications.

ACCESS FOR INDEPENDENT PRODUCERS AND PUBLIC OPINION

Diversified programming must be encouraged by providing access to funding and distribution by independent production workers as well as the public telecommunications entitles themselves. Quality local programming is a necessary goal. A heterogenous funding network, substantially endowed and purged of commercial involvement, must be established with checks and balances designed to encourage excellence and to prevent the censorship of ideas. Each public telecommunications facility should be required to openly establish procedures supportive of free advocacy, analysis, information and debate on issues of public importance.

To summarize, public telecommunications must be free from commercialism. Community public television stations must have governing boards elected by and from the community. Public access cable should be funded and in community control. Independent professionals—artists, writers, journalists, filmmakers, and video-graphers—must have access to funding and efficient distribution networks. Civil rights must be guaranteed to all. A portion of satellite parking space, transponder capacity, and of all developing technologies, must be dedicated to public service.

Mr. VAN DEERLIN. Thank you, Mr. Hall.

Our next witness is Mr. John Jay Iselin, president of WNET in New York. Welcome once again to the subcommittee, Mr. Iselin.

STATEMENT OF JOHN JAY ISELIN, PRESIDENT AND GENERAL MANAGER, WNET CHANNEL 13, NEW YORK, N.Y.

Mr. ISELIN. Thank you, Mr. Chairman.

I am greatly honored to have a chance to appear before this subcommittee. I want to second the words of many of my colleagues in expressing my admiration for the intelligent and often ingenious efforts of the subcommittee to grapple with some extraordinarily difficult, interrelated problems in the field of communications.

Quite honestly, we admire the first step that has been taken. It is for this reason that I would like to divide my remarks into two categories. Out of admiration, I would like to concentrate on those elements of the proposed legislation that we heartily applaud. For the same reasons, I would like to underscore some reasons for concern that are represented in the other parts of the legislation.

Basically, we at channel 13, together with many of my colleagues, believe that the philosophic thrust in the direction of deregulation is a highly commendable move. All of us who are concerned about administrative costs are again and again confronted with overlapping rules and regulations. They consume time and attention. We heartily applaud efforts to remove those regulations that may not be strictly necessary.

The thrust and the direction of deregulation, therefore, concerns us all the more when one comes to title VI. Because there are parts of that provision which seem to contradict the larger dynamics of the bill, I would like to come back to them after focusing on those parts of the bill which we think are tremendously commendable.

The part of title VI we heartily endorse is the constructive creation of an entity, the endowment, which concentrates on developing a streamlined, nongovernmental agency to promote the development of outstanding programs. We have been through a testing period that, as my colleague, Jack Caldwell said, is in its own way highly creative. It has been a time of public debate about the direction and purposes of noncommercial public broadcasting.

Very often, during that debate, we tended to ignore the fact that our central function is to bring to the American public, outstanding, distinctive programming. There is no question about the entire, exclusive, and central thrust of the endowment. It is to enable public broadcasting and other entities to provide great programming. In that mission, we are in total accord with the subcommittee.

The Endowment does more than that. I think we should also underscore some of the other important constructive elements that go into its design. By its very nature, it encourages another important concept that many of my colleagues have underscored here today. It preserves and underscores the importance of the matching concept; that is, it creates an incentive for people who are seeking funds from all parts of the community. These will be matched by programming funds from the Endowment.

In this way, the Endowment further encourages one of those great and important developments that has been taking place. It is the sort

of development that Jack Caldwell, for example, underscored today. Individuals, foundations, corporations, State, local, and Federal governments have all combined to help build our system. That support in turn further encourages us in our efforts to serve each of our communities.

So, in that sense, we think the Endowment is very valid, exciting, and farsighted. By challenging all parts of our communities to participate in creating great programing, it also produces a diversification of funding sources. In this way, it provides the essential insulation that broadcasters require. It makes sure that we are indebted to all parts of society, not to any one single source.

This is a point I think we all appreciate. It is one of those fundamental tenets, I believe, of American society. Ventures such as our own should indeed attract support, which should provide us with an operational base that is not exclusively funded from any single source. If the subcommittee had stopped at that point, I think I would have happily concluded my testimony at that point. More than that, I think we would have the makings of long overdue and very essential creative legislation.

Mr. VAN DEERLIN. The rest of your testimony should be proceeded by "However."

Mr. ISELIN. However, Mr. Chairman, it confirms everything that you said. There is no denying that the structural power of the newly created National Telecommunications Agency must be viewed with alarm. It is also antithetical, as we interpret it, to the rest of the proposed Communications Act.

We understand, I think, many of the concerns that are expressed by the staff and subcommittee in the bill. But we also would remind anyone who has forgotten that we have lived through a testing time in the development of public broadcasting. The provisions of the existing Public Broadcasting Act were nearly manipulated by individuals in power to achieve ends that were not necessarily contemplated in the act.

So, we approach the provisions of the NTA with some sense of history. Our caution and concern has been reinforced not only by the warnings of the initial Carnegie Commission report, but has been implanted in the very provisions of the 1967 Public Broadcasting Act. As many people here are reminded, these concerns are essentially a part of the tradition and ethic of our free society.

Quite honestly, we must beware of efforts by any one sector to manipulate anything as important to our society as the communications industry.

I would briefly refer to testimony yesterday when there was a good deal of discussion with Mr. Wirth and the Chair about the 50 percent CSG formula. It would be my observation that the 50-percent requirement was written into the act in 1975 to make sure half of the funds would flow through to the stations. It was really a ratification of an agreement worked out within the public broadcasting community. The aim was to make sure that at least half of the funds were protected against intrusion. The motive was not in any way to provide for Federal guidance, but to make sure that those funds were directly turned over to individual licensees for work within their communities.

Mr. WIRTH. Intrusion by whom, may I ask?

Mr. ISELIN. In this case, intrusion by the Federal Government.

Mr. WIRTH. How could the Federal Government intrude over those funds?

Mr. ISELIN. At that time, as you recall, Mr. Wirth, there was a substantial debate over whether or not Federal funds should be used in any way to underwrite public affairs programming. The argument was that Congress did not believe, and therefore the Federal Government should not allow, any funds to be used for public affairs programming. Culture, yes; public affairs, no. The debate was intense, and ultimately through a series of circumstances the argument was resolved in favor of across-the-board funding for both informational as well as cultural and educational programming.

Mr. WIRTH. The rationale now for that 50 percent, is that we write the 50 percent into the legislation, which some people interpret as intrusion into first amendment rights, in order to protect stations from intrusions into first amendment rights. Is that what we are doing now?

Mr. ISELIN. I think it was a tough judgment call.

Mr. WIRTH. I am trying to get to the rationale for this. I have never, as you know from yesterday's questioning, never really understood that. Who is intruding on whom at this point?

Mr. ISELIN. At the time, it meant that at least half of the funds would be allocated according to the best judgment of the licensees. It made sure that some funds got through to the stations without any strings attached. As it turned out, of course, public affairs programming continued to be an important part of the funding of the Corporation for Public Broadcast. But it was a close call at the time.

I think, in fairness to your point, it was a close judgment call on the part of the Congress whether to write it into the bill or not. I am only pointing out that I think it was written in more to protect against intrusion than as a precedent for these other criteria. They set up the possibility they might be used as a technique for intrusion.

Mr. WIRTH. At this point, if I might, Mr. Chairman—I know this is a little bit out of the rules, but we are on the issue discussed yesterday. Given the fact at this point, Mr. Iselin, that about 60 percent, as I understand it, of CPB's money goes to local stations—

Mr. ISELIN. Right.

Mr. WIRTH [continuing]. More than 60 percent—

Mr. ISELIN. Radio and television combined.

Mr. WIRTH [continuing]. And given the fact that there has been a good deal of discussion about the precedent-setting nature of that 50 percent in terms of earmarking money, and you and I have talked at length about the precedent set by noting 50 percent should go to CSG's in the legislation, is that still, do you think, a valid construct? Should we be pursuing that any more, or should we wipe from the slate all of that kind of discussion?

Mr. ISELIN. I think quite honestly, and I speak for myself and not my colleagues—

Mr. WIRTH. I appreciate that.

Mr. ISELIN [continuing]. We should be able to work out among ourselves through cooperative discussions a technique for achieving that end. So, I personally do not believe that at this point it is essential that it be legislatively mandated.

I am just saying, quite honestly, it has turned out to be an important part of the history of how we have gotten to this point. It came about,

not because of a desire to make sure that everyone got the money, but to make sure that the money was unencumbered by any sort of policy judgments.

Mr. WIRTH. That is helpful history, and I wanted to again point out for the record that a number of us on the subcommittee agree with the position that you have just reflected as your personal position, that there should not be that kind of a set-aside, but that when we attempted to eliminate that kind of, what I would interpret as being Federal intrusion in how CPB and PBS decide to spend their money, that was adamantly opposed by PBS.

I think that we should just point that out again for the record, because there has been a lot of misunderstanding, and as you know significant accusations coming to a number of us from the PBS community.

Thank you, Mr. Chairman. I anticipate having the opportunity to get into that a little bit later as well, when we get into the questions session, but I appreciate the history, Mr. Iselin. Thank you very much.

Mr. ISELIN. I appreciate the chance to review the history. Again, this is my own personal interpretation.

Mr. WIRTH. The record will say it is your personal position, and I appreciate that.

Mr. ISELIN. I think our colleagues at PBS, who seek to represent the views of the stations were reflecting this recent history. They recognized that this device had established the continued independence of our system. Therefore, it was worth preserving. It was better to err on the side of caution than to be premature in indicating indifference to this matter of independence.

Mr. Chairman, this recent experience may explain why we seem to be so sensitive to the issue of independence, particularly before a subcommittee which totally embraces the importance of a telecommunications industry unencumbered by obligation to any one source.

That is why, I think, the way the NTA is now structured should be examined most closely. It is set up to be directly and specifically an arm of the Presidency. If one looks at the lessons of history, it inevitably is susceptible to the particular pleasures of any person who may be in that important post. It is that concern, I think, one has heard expressed again and again. It is our own recent history that reinforces the reason for that concern.

It is my own feeling, and again I may not be in any way speaking for any of my colleagues, that if the intent of the NTA is to regulate the operations of public broadcasting in a specific way, and therefore indirectly, but nevertheless effectively, to intrude into the control room, it would be far better to scrap those recommendations for operating funds and even for facilities funds rather than to risk the operating integrity and the program credibility of this important service we have been mutually building.

I think we owe that form of sacrifice to the public we all serve.

Mr. FREY. You know you have committed heresy in public. I think that is a super remark. I just really agree 100 percent with you. It is interesting to hear it voiced. Usually the hand is out one way and then the other way. Everybody wants all—they want all the money, but they do not want any interference. I think that is a good base to start from.

Mr. ISELIN. Well, Mr. Frey, I appreciate being categorized as a heretic, but I think you would find that on this point there are an extraordinary number of our fellow citizens who would concur that we have an obligation to the public we serve to protect the integrity of the institutions we represent. That comes first under any set of circumstances.

There is one aspect of the NTA, one particular point as well, that I think deserves particular attention. It goes to the provision that there can be no acknowledged form of underwriting. The implication is that the corporate community is somehow or other pulling the strings in public broadcasting. I just want to say categorically, that that has not been the experience of those of us at Channel 13. My colleague, Ward Chamberlin, from WETA here in Washington is in the room today. His station and our station jointly coproduce what we immodestly think is one of the significant news analysis programs, the MacNeil/Lehrer Report, which many, many of your colleagues have appeared on from time to time.

I know of no instance in the history of that series where either of the corporate underwriters, Allied Chemical or Exxon, who provided \$1 million in total revenues, have ever approached either one of us with any suggestion for a program or any criticism of a program. It is our belief that that kind of grant-making is the sort that should be encouraged rather than discouraged.

Mr. FREY. What if they increased it to \$10 million each? Would you get a little nervous?

Mr. ISELIN. I think if they were willing to increase it to \$10 million each, we would encourage them to think about spreading it over a number of television programs rather than a single one. But so far I think we should judge corporations on their record. They are one of the important publics in our society. They are quite properly participating in the healthy growth of this new noncommercial form of communications. They are not a majority by any stretch of the imagination. As a matter of fact, I think something less than 20 percent of the funds actually come from the corporate sector.

So, I think it would be an interesting test to see if we got up to the \$10 million mark. I would be willing, quite honestly, based on their past record, to encourage them to keep trying, and just to say that we are ever vigilant about the independence of our industry.

There is another point of confusion on the underwriting point I would just underscore. Under current FCC rules and regulations, we are obligated to identify the sources of funding for any program. I think we all believe that this is a very useful device in encouraging a form of open disclosure. That in turn has led to some of the finest programs that we have seen. Sesame Street, Visions, Masterpiece Theatre, the MacNeil/Lehrer Report, Bill Moyers' Journal, Great Performances, Live from Lincoln Center, have all come about through a process of identifying and encouraging multiple funding. We think it would be a shame to deny, as the NTA provision would deny, that kind of support for public broadcasting.

In the absence of the \$10 million that you mentioned, Mr. Frey, we do not quite see where else the funds would come from. That dilemma, is really the final point that one wants to make. So I would direct these concluding remarks specifically to the ingenious and, I think, challenging surfacing of the spectrum use fee.

I do not feel in a position yet to take a position specifically on that concept one way or another. I do not have enough sense of how the fee would be administered and how it would be allocated, but I think we all believe it is an extremely interesting concept.

Mr. FREY. It has been called other things than interesting.

Mr. ISELIN. I understand. But I think in this case you will find many of us applauding this attempt to reach an objective. That objective, as we interpret it, is to provide a base of insulated and dependable programing funds. They would enable our new communications sector to plan ahead. Those funds would provide programs which are the whole purpose of our venture. They would provide a schedule that serves individual communities in a rich and diversified way. That idea of looking toward a base of insulated and predictable funding is, we think, something to be applauded. The details obviously would have to be worked out. It is just not possible at this point to be conclusive about that point without getting into the details.

That, I think, is an appropriate note to conclude on, because those of us in public broadcasting, and we at channel 13 in particular, would welcome the opportunity to work with this subcommittee as you go through further revisions to the bill. We would like to do so in the spirit of admiration for the efforts that have been made here, as well as applause for this fundamental concept of the endowment which has been put forth. It really could revolutionize, I think, the use of Federal funds in the achievement of important social ends in our society.

If there is any way that we can constructively work with the subcommittee, we would be happy, delighted, and honored, to do so.

Thank you, sir.

[Mr. Iselin's prepared statement follows:]

PREPARED STATEMENT OF JOHN JAY ISELIN, PRESIDENT AND GENERAL MANAGER, WNET/13, NEW YORK, N.Y.

Mr. Chairman, members of the Subcommittee, members of the Staff and guests. My name is John Jay Iselin and I am the President and General Manager of WNET/13, a non-commercial television station licensed in Newark, New Jersey and serving the tri-state New York/New Jersey/Connecticut area.

I am grateful for the chance to appear before you today on behalf of WNET/13 and to comment on H.R. 13015 and, in particular, on Title VI of the Bill.

I wish to commend the Subcommittee for its efforts in trying to resolve basic and fundamental questions that have developed since the passage of the Communications Act of 1934. While I might disagree with certain approaches taken by the proposed legislation, I deeply respect the intelligent, often ingenious, approaches that have been devised in the Bill to tackle complex, difficult and interrelated issues.

It is this sense of respect and admiration that causes me, upon reading the Bill, to react in two fashions: with applause and with concern.

For example, if there is a philosophic thrust in H.R. 13015, it comes under the rubric of deregulation, disentangling the Government from the communications arena to the degree possible, and creating an environment where marketplace forces could shape the present and, hopefully, the future.

As a manager of a licensee that has to deal with often overlapping and ambiguous regulation, I can only applaud that direction and urge the Subcommittee to continue this philosophic thrust. And yet, when one reaches Title VI, the Bill suddenly veers off in a totally different direction and seems to contradict its own dynamics. The confusing part of Title VI is that it continues part of the deregulatory ethic in some of its provisions but not in others.

There is much in Title VI that we heartily endorse. A streamlined, non-governmental agency whose sole mandate is the development of programming for public broadcasting is an outstanding and important concept.

Too often, in the course of debates about public broadcasting we lose sight of the central issue. The whole rationale for public broadcasting is what it presents on the screen for the American public. In our own debates, we frequently forget that viewers do not really care about CPB or PBS or NPR or NAEB and, in fact, that the public would, in all probability, fail any test that sought to unscramble our alphabet soup. The public's identification with public broadcasting is with the idea of programming of quality and diversity. In the last analysis, that is what we are graded on by the public. Too often, critics raise issues that are tangential to the reality of our programming service to the public. The fact that this Committee had made programming the central thrust of its recommendations is healthy, constructive and far-sighted.

In setting up the Endowment, the Bill seems to recognize a number of important concepts for which public broadcasting has been striving since its inception.

In its retention of the matching concept, the Endowment preserves the basic and motivating idea of the incentive. Since its very birth, public broadcasting has sought support from the community it serves. Each segment of that community has come forward to play a vital role. Individuals, foundations, corporations, State, local and Federal governments have all worked in a partnership of support for public television. In turn, by way of reciprocity, public broadcasters have worked to serve that community in ever more rich and diverse ways.

While the incentive system of a Federal match is not perfect, it has served all of us well. In its approaches, it encourages a wide base of support. Diversified funding is the keystone of financial health and security, while it helps insulate public broadcasters from particular debts to any one person, group or institution. Instead, public broadcasting is indebted to—belongs to—a wide cross section of the public.

We are also heartened by an almost pristine approach that is taken by the Bill in its approach to programming and its relation to Federal dollars. Just as the funding incentives operate to insulate public broadcasting from too great reliance on (and, by implication, allegiance to) any single funder, so the Endowment, by the absence of any conditions and strings, appears to reinforce the insulation between the Federal government and the programming it supports.

Had the Committee ended its task at that commendable point, it seems to me it would have reinforced the deregulation philosophy it set forth in the rest of the Bill. However, there is no denying that the structure, role and power of the newly-created National Telecommunications Agency must be viewed not only with alarm but as antithetical to the rest of the proposed Communications Act of 1978.

I would be the first to admit that we in public broadcasting are very sensitive on the subject of insulation from governmental control. It is not that we believe there are evil motives at work in setting down Federal rules and regulations. On the contrary, we have only understanding and respect for the concerns of your Subcommittee and its staff. But we have recently lived through a testing period during which people in power did not share your concern for the welfare and independence of public broadcasting. They sought to manipulate to their own purposes the provisions of the Public Broadcasting Act of 1967. The fact that these efforts failed may have less to do with our strength and the rightness of our cause than with fate or historical accident.

More important, public broadcasters are not alone in this concern. If you review the genesis of Federal funding for public broadcasting you will find similar fears expressed. The first Carnegie Commission felt strongly about the basic issue of insulation. It stated that if Federal financing could not be structured through a totally independent non-governmental agency, free from political abuse, it would have serious reservations about any form of Federal financing.

It seems to me that the proposed structure, nature and power of the recommended NTA violate all the warnings of the Carnegie Commission, the objectives of the Public Broadcasting Act of 1967, and most important of all, the lessons of history itself.

First of all, NTA, unlike CPB or even the Endowment, is an agency of the Executive Branch. It is to be administered entirely at the pleasure of the President. The proposed agency is involved not only with a wide-ranging, policy-making role in telecommunications, but also with grant-making authority to execute that policy. No President, no matter how well intentioned, could be guaranteed to resist the temptation to impose his Administration's view of what public broadcasting should, or should not, be doing.

In addition, the enforcement provisions relating to acceptance of NTA funds are startling comprehensive in their scope. They leave the Executive Branch

with enormous latitude to direct the operations of those public broadcasters who, it is felt, are not doing the right thing.

There is not a public broadcaster that I know who does not believe in accountability to the public. We believe we should have some form of open financial records, board meetings, and close relationships with our communities. Public broadcasting is yet a young institution, woefully underfunded, and has been struggling to fulfill these goals over the past ten years. Some of my colleagues have perhaps succeeded better than others, but all of us are trying.

By authorizing a government agency reporting directly to the President of the United States to withhold funds unless compliance is assured, the legislation creates a situation of such dangerous potential that it must be considered not only wrong but unwise. By any standard, this hands-on approach to the management of public broadcasting stations is not good government.

There is much in the Bill that goes unstated, for example, I detect in the NTA/Endowment split that the legislation is saying programming funds are good and can be received free and clear, but that operating funds are bad and must come burdened by severe restrictions and the watchful eye of the Federal bureaucracy. If that is indeed the intent, then with the danger of offending some of my colleagues, I would recommend that you scrap all operating and all facilities funds and provide only the Endowment fund for programming. While this limitation may be a severe hardship for all of public broadcasting, I believe that in the last analysis we shall be better off for having retained our operational integrity and editorial credibility. We owe as much to the public we serve.

There are a number of other concepts in the NTA design on which I would also like to comment.

In the Bill, NTA funds cannot be distributed to licensees who make announcements of underwriting associated with any particular program or any particular series of programs. To be honest, I am confused about the intent of this provision. Since FCC Rules and Regulations compel public broadcasters to announce the source of funds for a program, this section would seem to eliminate any funding for a specific program or series including funding from corporations, foundations and the government itself. By the nature of this provision, Sesame Street, Visions, Masterpiece Theatre, the MacNeil/Lehrer Report, Great Performances, Bill Moyers' Journal, Julia Childs, and Live from Lincoln Center, or practically every program that has distinguished public broadcasting from our commercial colleagues, would be prevented from reaching the air.

In addition, this provision seems to be at odds with that part of the Endowment funding which calls for a 50 percent funding match. If we read this provision literally, it would virtually be impossible to meet the proposed match.

Public Broadcasters have diligently worked at building a broad base of support. Program underwriting has come to be a critical part of that financial mix. It is important to understand that public broadcasting has worked very hard at this mission, not only in trying to raise programming funds but in making sure that there is no undue influence or even the perception of undue influence.

Public broadcasting jealously guards its programming independence. By and large its track record in this editorial area has been remarkably good. The image of the Corporate Giant pulling the strings and calling the tune is simply not true. For example, WNET and WETA co-produce what we immodestly consider to be one of the best news analysis programs on television, the MacNeil/Lehrer Report. Two major corporations, Allied Chemical and Exxon, contribute \$1,000,000 to its budget every year. I can categorically state to you today that neither Ward Chamberlin of WETA nor myself have ever heard from either corporate underwriter about any program, any issue, or any guest on the series. I think that kind of grant-making should be encouraged not discouraged. The truth is that whatever richness, diversity and quality we now have on the air would not be possible without the partnership of the corporate community.

H.R. 13015 also contains a provision that prohibits the manager of the interconnection from scheduling programs or services for dissemination to the public at specific times. We consider the provision not only to be too restrictive, but entirely unnecessary.

The debate about a so-called "fourth network" has been endless and monotonous. Not only is the concept of diversity of programming and the warning against a dominant single program source written in concrete in the Carnegie Report, the Public Telecommunications Act of 1967 and almost every guideline emanating from public broadcasting in the last ten years, it is the basic operating philosophy of the entire system. I know of no non-commercial station manager or

national leader of public broadcasting, who has made any serious argument to the contrary in my tenure in this industry. Public broadcasting does not aspire to be and does not need to be another network. The truth of the matter is that no individual, no matter where located, could ever establish a fourth network for public broadcasting at this time. There is no, I repeat no, sentiment for it in the system. The idea of a fourth network contradicts our fundamental operating principle, namely that every licensee is obligated to serve its community as it best discerns its community's needs. This community commitment was true in 1967 and it is an even stronger belief in 1978. I submit it is unnecessary for the Congress to write in a provision that is unneeded and which could restrict operational flexibility.

One last word on the Spectrum Use Fee. I do not know whether the Spectrum Use Fee is a good idea, simply because I do not know all the facts. I do not know how much the Fee will generate, at what rate and how the funds will be apportioned. I do know that, like the Programming Endowment, the concept of a regular source of insulated funding is quite essential. I applaud your attempt to achieve this admirable objective.

We all realize that the idea of advance Federal appropriations is not a substitute for permanent, insulated funding. It is just better than yearly authorizations. Until we solve that key financing problem, public broadcasting must fall short of its tremendous potential for programming service. It must necessarily dissipate to much energy and attention simply struggling to survive.

Your notion to solve this problem is a thoughtful and ambitious step. I would hope in the succeeding months, as you refine the Rewrite, that we can be helpful in further defining not only the concept of the Spectrum Use Fee but all the other processes and problems raised here today.

Again, I thank you for this chance to appear before the Committee. We in public broadcasting are grateful for your attention and for your continued support. We look forward to repaying it with continued and improved programming services to our communities.

Thank you.

Mr. FREY [presiding]. Thank you, and thank you for your attitude. We think it is a healthy one. It is a start, but we still have a way to go and have a lot of input.

The next witness is Julie Motz. Welcome.

STATEMENT OF JULIE MOTZ, PRODUCER AND PRESIDENT, HUDSON RIVER FILM CO.

Ms. MOTZ. Thank you, Mr. Chairman.

I have written testimony which I would like to have entered into the record.

Mr. FREY. Without objection, so ordered.

Ms. MOTZ. As fast as I talk, I may not be able to talk fast enough, and I have a few extra things that I want to say.

I would like to begin the way Mr. Bundy's friend, Fred Friendly, began yesterday, with a consideration of commercial broadcasting.

Mr. FREY. You don't have a pen with you or anything, do you?

Ms. MOTZ. A pen? Yes, as a matter of fact, I do, but—

Mr. FREY. Was that used to sign anything?

Ms. MOTZ. No. It was used to make certain notes on Mr. Friendly's testimony, as a matter of fact.

Mr. FREY. All right. It may even be more historic.

Ms. MOTZ. I do not think I am going to end up in quite the same place that he did.

I think it is absolutely manifest that commercial broadcasting has failed in its mandate, and I think that it has not recognized its potential as entertainment, as information, or as communication. There is something much more pernicious operating than price fixing in terms of the commercial networks. It is something that I call taste-fixing.

Three gigantic bureaucracies have decided that the American public absolutely cannot tolerate anything that is too exciting, anything that is too intellectual, anything that is too moving. Any time there is an exception to this, for instance, when the entire country was tuned in to the events following President Kennedy's death, or a program like the "Autobiography of Miss Jane Pittman," they just conclude that that was an exception, you know, and totally ignore the fact that people indeed are capable of watching profound and moving things.

Mr. FREY. I am voting and the chairman is back, so we are not walking out on you. Excuse us.

Ms. MOTZ. OK.

Mr. FREY. No, I was very interested in what you were saying, as a matter of fact.

Ms. MOTZ. I have dealt with the networks over a few years, and I have some notions about why this monumental contempt exists, but just to give an analogy to sort of establish the fact that it is contempt, the best parallel I could find would possibly be the three automobile manufacturers in this country. You would never find the president of General Motors boasting that he wouldn't be caught dead driving a Cadillac, the way we have all seen network executives talk about the fact that they would never, never, never, watch the stuff that they put on the air.

I think we should examine the purposes of this contempt, how it allows these people to operate. Contempt is a marvelous substitute for fear. If you despise those people, those slobs out there that you are putting the programing on for, you do not have to feel any fear about what you are doing to them whatsoever. It also establishes your separation from them and your right to be doing the programing. It becomes something you do to them, and much as I mentioned before, every time there is a counterexample, you just disregard it.

We then get to the question of the American public, who is on the receiving end of this. I think the reason that people do not complain about bad broadcasting, although they certainly appreciate good broadcasting, is that there is a sense in this country that you get what you pay for, and that broadcasting appears to be free. I mean, who are we to complain when these people are going to all this trouble, producing these marvelous entertainments for us? So people watch the good programing, but they do not throw rocks at their television sets when the programing is bad.

I think, quite simply, if there were a system in this country where you paid for television the way you pay for your telephone, in other words, as much as you watch you are paying for, people would instantly become much more demanding in terms of what is actually on the screen. I mean, you do not just open the telephone directory and put your finger down on someone's number and proceed to dial. You make a choice to spend your time in a certain way, when you are paying for it, and I think if the same thing applied to television we would have very different results, even on the commercial side.

I think if you could accept an analogy, imagine a system of journalism and magazines in this country where they were totally paid for by the advertisers. What kind of press you would have, especially if the advertisers were taking the word of the publishers for how many people were buying the copies, where they would just be stacked up on news corners for people to select at random? I do not think we would

have anything like the kind of dynamism and variety in the press that we have now.

Anyway, I am rather sorry to see that the bill does not address any major opening up of the commercial broadcasting system, because I feel that there is a power there that is being tremendously abused, but I have some faith in history, and I would like to draw the example of the motion picture trusts who originally controlled the motion picture business in this country, and who firmly believed that people could not tolerate more than 10 minutes of involvement in a motion picture, which was exactly the length of one reel at the time.

It took a man named Adolph Zukor, who started listening in on audiences, and eventually ended up producing feature-length films, to prove that people could indeed stay involved for 1½ hours, and eventually he was able to penetrate the distribution system, and motion picture trusts were destroyed.

I think that eventually the same thing will happen with the commercial networks. I hope to see it happen in my lifetime. I think if it doesn't happen in yours, it probably will not happen in mine.

Well, this brings me to public television, which I think can at least help the process along. The way the bill is structured, it is the only alternative at this point, and I think it is absolutely essential that it not be allowed to go the bureaucratic way of the networks, which it is substantially doing. I think the one most observable fact about the networks is that there is no room for independent creative talent whatsoever. It is impossible either to work within them as a creative person, or to exist as a supplier to them as a creative person.

I think the tendency in public broadcasting is very much the same. Before I go into that, I would like to congratulate the subcommittee on not waiting for the findings of the Carnegie Commission before going ahead and drafting a bill and doing some very serious work in this area. I have testified before the Carnegie Commission, and I have had meetings with staff members of the Carnegie Commission, and I am not at all impressed with the vigor of their inquiry.

After I testified, Eli Evans, who was then with the Carnegie Corp., came up and congratulated me on my testimony. I said, well, that is marvelous, Eli. I am delighted. I think now we can really see some changes, and he said, Oh, Julie, you have to understand, things we are dealing with are going to effect television 15 years from now. I mean, you cannot expect anything immediate. I thought, well, that is delightful. You are going on to be president of the Revson Foundation. I am going to be working in public television for the next 15 years.

As a postscript, I would like to add that Mr. Evans has recently, as director of the foundation, made a grant to Channel 13 to do some research and development on a series about the history of the Jews. I called him up to discuss this with him, and I said, Eli, after all the testimony that you have heard, I hear you are making a major R. & D. grant to Channel 13. He said, well, this is something that the head of programing over there has wanted to do for a long time, and it is very important, and you are just being obstreperous. He said, you do not really think that an independent producer should be involved in this. I said, well, I am not personally interested in doing it myself, but I definitely think that that is the way to go about it. Is any independent producer involved? He said, no. He said, this is really something complex. This is something for Channel 13.

I thought to myself, this is like saying, this is a job for big government. I mean, we need someone efficient in here. Let's give it to Channel 13. That is my feeling about the direction the Carnegie Commission and the people involved in it are going in.

I had a subsequent experience in which I went to see Sheila Mahoney at the Carnegie Commission, under the impression that we were going to have a discussion about what we had both discovered about public television over the past year. I proceeded to lay out everything that I had felt about public television, and I said, "Now, Sheila, what have you been finding out?" And she said, "Oh, well, our report is coming out in January. I cannot discuss that with you."

I mean, I did not want the final findings. I thought maybe she would say, "Oh, we have been talking about such and such." It was not exactly the open spirit that I had expected to find in a place of serious inquiry.

There was also a young man at the meeting at the time who was doing some research papers on independent producers, and who was himself an independent producer. He said:

Julie, aren't you concerned that with all that you are going up against, you know, the public broadcasting interests, these people are going to have a lot of money in a few years and they are not going to give you any.

I said, "Well, it has become evident to me that they are not of their own free natural inspiration going to give me any money anyway," but it occurred to me that this indeed was the person who was doing the study on independent producers and their position for the Carnegie Commission, and this thought was obviously very much in the forefront of his mind.

Anyway, so much for the Carnegie Commission.

I would like to get on to public television now. I think what is absolutely essential is that the bureaucratic tendency which totally exists in public television not be supported but be counteracted in every way. Stations do not produce programs. Systems do not produce programs. Independent creative artists produce programs. They are the only ones who do, and they are the only ones who live and die by what shows up on the screen.

I mean, Mr. Iselin is not going to lose his job next year if his programing is indifferent or bad, but an independent producer who produces a crummy show that nobody watches is going to be out. There is no level of risk inside the bureaucracy that is going to promote the kind of creativity that absolutely has to be promoted.

I think, by the way, just as a sidelight on Mr. Iselin and the corporations with which he now is so friendly, I happened to run into Jay in the halls of WNET last week, and I mentioned to him that I had been told by the programing department once more about a new project I had submitted, that they couldn't invest in it at this time, which is a favorite phrase, I said that I was very concerned, because of course it was totally contrary to what I had been told 2 weeks before, which was that it was under serious consideration.

Jay said, "Well, we are really in trouble. We have a lot of big projects, and we cannot get the corporations to underwrite them." I said, "That does not surprise me at all. If I were a corporation, I would not put any money into this outfit. I want to see my money up on the screen, not on your carpet."

Anyway, I do not know if within the last few days suddenly the money from corporations has come flowing in, but I think one of the problems the stations do have with corporations has to do with the fact that they are basically offering them dull and uninteresting stuff, and they would make much further headway with material supplied by independent producers like myself, who would actually go out and talk to the corporations and do the selling for them.

Anyway, to get on to what is in the bill in terms of allocating funds that might have this happy effect, I very much like the idea of a national programing endowment. Although having had a great deal of experience with two national endowments, I shudder at the term. I would almost prefer the national program give-away pot, or anything to get away from that term. I did not have a chance to listen to Mary Ann and Brian's testimony yesterday, but as for the whole system of peer panels, I can tell you that depends completely on who defines what a peer is, and on the staff which actually selects the panels, presents the material to them, and finally makes the decisions, regardless of what the panels say. So, I think rather an energetic, creative staff is much more important than a particular system of peer panel review.

How can we go about getting this? First of all, in terms of the selection of the Board of the Endowment, I am opposed to Presidential appointments, but not because of any fear of political influence. I think that traditionally public television has had such a low priority for the executive branch that they have just not spent a tremendous amount of time and energy finding literally the best people to be on the Board. I think if we keep the idea of Presidential appointments, the selection process should be opened up and there should be input from public television stations and from the creative community.

I would also like to have stipulated on the Board specific slots for professional areas: One performer, one writer, one director, one news journalist, one cameraman, and one editor. I know that this is unheard of, but my bias is specifically that these are the people who will not be threatened by creativity, because they are not people who are traditional bureaucrats, and they are also the people who understand the creative process and support it, and it absolutely has to be supported.

I am also against 6-year terms. I think 3-year terms are long enough, and I do not think any Director of such an endowment should serve for more than 4 years. I think that is another way to get diversity, and it has worked very well in the electoral process in this country. I think the usual argument for the longer term is that it takes a tremendous amount of time to really understand the system. I think an intelligent person with a genuine interest in about 3 months could understand the system if that suddenly became a priority for them. So much for the structure of the endowment. Now we come to the question of who it can give funds to.

I am totally opposed to any programing funds going to the stations whatsoever. I have observed the stations' process of program development and program production. It is inefficient, bad, and boring. There would be only one case in which I would favor 50 percent of the grants going to the stations. That would be if the new endowment became so bureaucratic and so—well, as I said in my testimony, if we scratch the endowment 5 years from now and find under the flaking mylar another CPB, then I would like to have at least another

bureaucracy to deal with and try to get money out of. It is simpler to have two places to go than one, but basically I am opposed to funds going to the stations.

I would like to see the funds go directly to independent producers on a matching basis, because I think creative people should be responsive to society and should have to do some work and raise their own funds. I think if a station were interested in a program or a series, they could then show their interest in the program by giving funds to the independent producer, who could then use that to make the match.

In the interest of preserving a diversity of funding sources, I would like to say that I am really opposed to getting corporations out of funding programs specifically. I do not think that accomplishes the objective of removing their influence, in any case. I think at a station like channel 13 where you have the vice president of Exxon also vice chairman of the board, a corporation can just as easily not fund a station because it does not like the kind of programming it has been doing this year or the kind of programming it plans to do next year. I do not find that that is really a protection at all.

Personally, I would like to see stations totally barred from taking funds from corporations, because I would like to see them go all to independent producers with credit lines, and I think you would find a much greater variety of programming that way, at least in terms of my conversations with corporations, and their responses. I do not think it is true that they do not want to take risks. I do not think it is true they do not want to do interesting things. I think it is kind of a collaboration between stations and corporations, each kind of avoiding taking risks by blaming each other.

I would just like to make one last point about Mr. Friendly's phrase, in which he described the system as being healthy but fragile. I think I would tend to go in the other direction. I think it is strong but sick and I think the things that I have suggested could correct the disease. Thank you very much.

[Ms. Motz' prepared statement follows:]

STATEMENT OF JULIE MOTZ, PRODUCER AND PRESIDENT, HUDSON RIVER FILM CO.

I would like to begin with a brief examination of the state of commercial television broadcasting, because I believe that public television cannot be considered in a vacuum; that is to say that what we desire and expect of public broadcasting must of necessity be heavily influenced by what we have come to expect of commercial television, and the extent to which it has satisfied those expectations.

I think that it is obvious that commercial broadcasting has failed abysmally to realize the potential of what is undoubtedly the greatest information, communication and entertainment medium of our time. It has always been my understanding that the purpose of a competitive commercial system operating in any industry was to supply the best and the greatest variety of products to the consumer, and this is precisely what the current network system has not done. What we have in the case of the three commercial networks is something much worse than price-fixing—it is taste-fixing.

Three corporate entities—three massive bureaucracies—have decided that the American public cannot tolerate anything that is too exciting, anything that is too moving, anything that is too emotionally or intellectually profound or complex. When the contrary appears to be true, as in the coverage of the events following President Kennedy's death, or, on the fictional side, a drama such as *The Autobiography of Miss Jane Pittman*, it is immediately labeled "an exception."

Having dealt over the years with all three networks, I have evolved some theories as to why this posture of monumental contempt for the American audience exists. (And for any one who questions that it is contempt, and a contempt perhaps unique to the television industry, I offer the following proposition: I seriously doubt that you would ever hear the president of General Motors saying that

he would not be caught dead driving a Cadillac, while there are countless upper-echelon network executives who happily proclaim that they wouldn't dream of watching the stuff they put on the air.) Before going into these I would like to point out that theirs is an attitude similar to that held by the monopolistic motion picture trusts in the first decades of this century. These companies, which controlled or manipulated virtually all production and distribution, were wedded to the belief that the public could not possibly follow any plot more than ten minutes in length (exactly the duration of a one-reeler).

What is the purpose of contempt? For one thing, it is a marvellous substitute for fear. If you despise a group of people—in this case, those slob out there watching the tube—you do not have to feel any fear about what you are doing to them. They don't deserve anything better. (They do not have your taste, your refinement, your education, your income or your job!! If you did happen to put on the air things that you yourself would be delighted to watch, how could you continue to feel superior, or to your audience? Since you don't create the programs, what would your advantage over them be?) They want this junk. By never consistently offering them any alternative, you can of course be secure in this judgment. When a dull situation comedy fails, it's because it was dull. When a dull cultural program or documentary is not watched, it's because people hate culture or are allergic to information. All successes which don't fit the formula are, as I have said, considered merely exceptions to the rule.

If the American public is not, as I maintain, fiercely demanding the programming it is receiving (and I think that any accurate rating system would reveal this), whose needs does such programming satisfy? To answer this question we must look for a moment at what it is exactly that commercial broadcasting merchandizes—i.e. what it sells, and to whom. Commercial broadcasters do not sell programs to the American people. What they sell is *our* time and *our* attention to an advertizer. What they sell specifically is access to the American public at a certain time on a certain day or evening. Presumably, the more people who are watching, the more valuable that time is. I maintain that that time would be considered less valuable if the programming were consistently more involving than the commercials, and that this operates as a definite constraint, whether conscious or unconscious on the part of the networks. To put it plainly, if you are totally absorbed, moved, angered, intrigued by a program, you are not likely to focus fully on such important questions as what brand of toilet paper to buy.

What about the American public? I think that the tragedy lies in the fact that although we, as an audience, do applaud and respond to quality (especially when it is vigorously promoted, which at times the commercial networks have proven they can do), we do not by and large complain about junk. We will watch something good when we are made aware of it, but we do not start throwing rocks at our television sets in the face of the vile—we simply turn off, or settle for boredom. (Perhaps, one might argue, it is this fact alone which makes us worthy of the programmers' contempt. Certainly they are not likely to abandon it in the face of our utter passivity, our unfocussed rage.) I think that this attitude stems in part from a prevailing sense that you get what you pay for in this country, and that television appears to be free. Who are we to complain when those people in New York and Hollywood are going to all this trouble and expense to try to entertain us? I think that there would be a very different attitude on the part of the public if we paid for television in much the same way as we do for telephone service—i.e. on the simple basis of how much we watch, and how expensive it is to get the programs to us. I believe that if people paid directly for time spent in front of their television sets, they would become much more demanding in terms of how that time is disposed of. I don't think that any system in which the advertizer alone pays will result in this.

It is more in sorrow than in anger that I observe that the proposed legislation does little to address the problem of what is to me the intolerable status quo, so far as the provisions regarding commercial broadcasting are concerned. There is no talk of reassigning currently held licenses, although the people who hold them have done little to justify their control of the tremendous power which use of the airwaves confers. To me the question is not what tithe should they be charged for the privilege of abusing the intelligence of the American public, but how much longer should we tolerate the abuse? And what about divestiture? If five owned and operated stations are acknowledged to be two too many, why not start as soon as possible to correct that situation?

I do, in part, hold with the optimistic view expressed by others who have testified at these hearings that new technologies will increase the range of available television programming, and, most importantly, allow for the establishment of a

more direct relationship economically between the producer and the public. Obviously, if a viewer can record and watch a program at his leisure, a distributor of programming can no longer sell an advertiser the exclusive privilege of reaching him at a certain time. My own fantasy is that the commercial networks, like those mastodons before them, the motion picture trusts, will be perceived as illegal at exactly the point when they have become totally impractical, and will die an agonized double death.

But what about the immediate future—the next five, ten, fifteen or twenty years? I believe that we need and deserve an alternative immediately, and it is in the light of this that public television becomes tremendously important. Given a commercial system with which there is an understandable reluctance to tamper, it is the only alternative. Considering the clumsy attempts by the commercial networks to imitate some of public television's successes in the past, it might eventually prove the most effective agent of change on the other side of the dial as well.

I would like to begin by congratulating the subcommittee for not waiting for the report of the Carnegie Commission before tackling the problems of public television in general, and public television financing in particular. I have testified before the Commission and I have spoken at some length with the staff, and for all the money that is being spent I find the level of intellect and vigor of their inquiry far from impressive. Considering the amount of time already spent by the Sub-Committee in examining public television issues and the failure of the system itself to evolve any dynamic proposals for change, I find it totally appropriate that you should take the lead in developing creative legislative solutions.

I think that the main problem to be addressed is not how much money shall go into the system, but how that money is to be distributed. To put it bluntly, how can we keep existing and future bureaucracies from swallowing up and dissipating public television funds? I think that the proposed legislation makes an admirable start in addressing this question, but I would like to see it go even further.

One of the most easily observable facts about the commercial television system is that it is virtually impossible for a creative artist (writer, producer or director) to function freely within it, or to act as a supplier to it on any continuing basis. The trend in public broadcasting seems to me, from my own very direct experience, to be running much in the same direction, and it seems essential that everything possible be done to counter-act this. Left to its own devices, a public bureaucracy will operate very much the same way that a private one does (i.e. to minimize risk and maximize power for those within it), although their articulated goals may be quite different. Systems don't produce programs; stations don't produce programs: they can only control, they cannot create. In the past public television, as an institution, has exercised its power by not funding what it cannot control—the individual creative artist. I think that the failure of the system to come up with consistently superior programming stems from exactly this.

The question has often been phrased in an unfortunate way: i.e., "How can we get creativity into the system?" I don't think you can "get creativity into the system." That is a contradiction in terms. What you must do is design and support a system which deals with creativity where it exists: in the independent filmmaking, literary and journalistic communities. There is a persistent myth in society that artists are chaotic, undisciplined, wasteful and inefficient, whereas in fact quite the opposite is true. There is no more efficient machine for organizing and disseminating the vital information of our culture than the creative artist. As a producer, he operates with the fearful knowledge that his support depends directly on the success—the response of the public—to what he creates. He has no job security. Operating outside the bureaucracy, if his work is shoddy, he is not likely to be given another chance. (I am speaking, of course, of an ideal situation—not that which is operating today. It is quite possible for an individual dealing with the current system to produce third-rate work and be hired back again and again.)

So the real question is how can we get the most money out to the best people to produce the greatest variety of high-quality television programs? (I must say as an aside that I am delighted to find no mention of developing a "national programming policy" in the bill. There is no more need for a central agency to decide what kinds of programs should be produced in a given year than there is to decide what kinds of books should be written. In each case the creative artists in the field can be relied upon to have an affinity for the relevant and compelling material of the day.) The place to start to answer this seems clearly the money-dispensing entity: in this case, the proposed National Programming Endowment.

The title of the organization, I confess, gives me pause. Having dealt extensively and most disappointingly with two other "National Endowments," I would be happier with some designation that indicates that the purpose of this particular entity is to get money out of an institution and into the airwaves or onto television screens. I would personally favor something like the "National Programming and Production Fund," but I will not quibble over names if the mandate is clearly set forth and efficiently executed. I would like to point out in terms of the recent history of the N.E.H. and the N.E.A. that "peer panel review" is not necessarily a guarantee of this. It very much depends on who selects the panels, and how you define a "peer." With or without panels, the quality and motives of the administrative staff are key.

I am not fully convinced of the wisdom of a presidentially-appointed board of directors, but not because of anxieties about political control. The problem in the past I feel has been that public broadcasting has been an area of such low priority within the government that not a great deal of time or attention has been given to selecting its governors. I don't think that this situation is likely to change drastically in the near future, so that we suddenly find ourselves with a chief executive whose staff is engaged in an energetic search to find the very best people for the job. If we do stick with the concept of presidential appointees, then I would suggest that some provisions be made for some other input into the selection process as well. Specifically I would like to see the president make the appointments from a slate of candidates proposed by public broadcast stations and the various craft guilds directly involved in broadcast production.

I would also like to see specific professional categories represented on the board: i.e. at least one performer, one writer, one producer, one director, one editor, one cameraman or director of photography, and one news journalist, all of outstanding achievement in their respective fields. My prejudice is quite clear: I believe that creative people are least likely to be threatened by the production of creative work.

I also believe that the terms of the directors should be limited to three, and not six years, and that the chief administrator should not be allowed to hold that position for more than four years. Built-in change, while not an absolute guarantor of diversity and fair play, may at least encourage motion in that direction. It has been argued that it takes "at least a year" to understand the system. I maintain that if understanding the system is a priority for any naturally intelligent and inquisitive individual, three months should do the job. (My belief in the virtue of change is, incidentally, a primary motivation in my support of the formation of an entity such as the Endowment. New bureaucracies are almost invariably preferable to old ones. Even if this one eventually succeeds in rigidifying itself beyond redemption, one can hope for a few bright years at the beginning when the people involved are still prepared to take risks, and be visible and accessible in both triumph and defeat.)

So much for the people who will be giving the money away. What about those who will be deemed eligible to receive it? From what I have observed and experienced of station development and production procedures I am in general opposed to their receiving any money from the programming pot whatsoever. Most public television executives operate in the absolute comfort of knowing that they will keep their jobs whether the programs they produce are good, bad or indifferent. As I have already stated, the only person in whose absolute interest it is to have the very best product on the screen is the individual creative artist. Quality is, and should be his only security. Ideally I would like to see all programming funds go directly to independent producers on a first-come, first-served matching funds basis. If a station believes enough in a project, they can assist the producer by coming up with part of the match from their non-government resources.

The only argument which might be maintained for allowing stations to receive programming funds directly from the Endowment would be that of insuring a variety of funding sources. Should the new entity acquire the byzantine structure of the old (i.e. should we scratch the Endowment five years from now, and discover under the flaking mylar another C.P.B.), then I would rather have the choice of worming money out of two bureaucracies than one. Certainly if stations are automatically to receive 50 percent of all available programming funds, however, they should be excluded from receiving grants from the remaining sum. (An efficient way to do this might be to severely limit the indirect costs on any project receiving Endowment funding. I think there would be a quick loss of interest on the part of the stations, and of large, bureaucratic production houses, in the funds if this were the case.)

In the interest of preserving a diversity of funding sources, I am opposed to the provisions of the bill which have the well-meaning intent of lessening corporate influence over programming. For one thing, limiting corporate contributions to general station support does not necessarily accomplish this. A corporation such as Exxon, whose vice president is also vice-chairman of the board of Channel 13 in New York, can just as easily decide to fund or not fund the station in a given year based on its understanding of what the station will be presenting. A station which is dependent for general support from a corporate community is no more likely to be indifferent to its views than one dependent for direct program support. Personally I would be delighted to see stations barred from receiving support for specific programs from corporations, if credit lines for such contributions to independent productions were allowed. I believe that corporations could be induced to support a much wider range of programming than they have in the past, if they were not continually bombarded with the dull fare which public broadcasting stations develop to try to appeal to them. Again, it is the independent producer whose primary interest is in a continuing creative process who is most likely to come up with the widest range of program ideas, and have the greatest stake in their passionate execution and their ultimate success.

Mr. VAN DEERLIN. Thank you for your delightful testimony.

Our next and last witness for the morning is Dr. Timothy Haight, assistant professor, Department of Communication Arts of the University of Wisconsin.

STATEMENT OF TIMOTHY HAIGHT, ASSISTANT PROFESSOR, DEPARTMENT OF COMMUNICATION ARTS, UNIVERSITY OF WISCONSIN, MADISON, WIS., ON BEHALF OF THE NATIONAL TASK FORCE ON PUBLIC BROADCASTING

Mr. HAIGHT. I would like to say first of all that I am new to the faculty of the University of Wisconsin at Madison, and I am speaking this morning in my capacity as a member of the National Task Force on Public Broadcasting and the former chairman of the citizens advisory committee of the California Public Broadcasting Commission.

I am honored to have this opportunity, and I would like to thank you, Mr. Chairman and the committee for the work that you have done on the legislation we now address. It has often been said that one of the problems in giving communications policy issues the attention they deserve has been the absence of a crisis like the energy crisis. I believe the committee's actions have managed, in a certain way, to create a crisis, so that we have been able to get a marked increase in public attention because of your work.

Of course, the policymaking process H.R. 13015 has precipitated is only a sign of the underlying critical situation throughout telecommunications. New technology is making possible, for good or ill, a radical transformation of our country's system of communications.

Two new means of mass communications transmission, cable—or fiber—and satellite, make possible the replacement of local public television stations by a combination of pay cable and satellite networking including, perhaps eventually, direct satellite broadcasting. Mundane examples of this potential are the presentation of BBC productions over pay cable and the direct broadcasting of public television programming by satellite, eliminating the need for member support of a local station. Public broadcasting finds itself facing new market forces.

Mr. Golodner earlier today pointed out the first, Carnegie Commission's concern with the uniformities that are created by commercial

broadcasting. I will not repeat that here, I would just like to point out that in a similar way to advertising support of television, audience-supported programming tends toward uniformity. The current limited production of Hollywood movies is an example of this. In public broadcasting, these forces have the following consequences:

First, programming succeeds which appeals to those with the means to subscribe. We are familiar with the criticism of "elitist" programming. We are beginning to appreciate the irony that these affluent supporters are those with the means to satisfy their tastes most easily through pay cable or videotape.

Second, the need for substantial audience appeal, if not mass appeal, leads to programming entertainment more than information. The value of entertainment is appreciated by the viewer in the experience of watching, while the value of information is in its usefulness, which may not be as immediately apparent. Again, the irony has been that in creating audiences for mini-series, tennis, and BBC imports, public television has developed programming ripe for cooptation by commercial interests.

Third, a market force with which the committee is certainly familiar is the economies of scale. Chief among these in broadcasting, and cable, are those achieved by networking. But networking increases in efficiency in direct proportion to its lack of diversity. While this need not extend to the scope of commercial television networking, the phenomenon is always present. Even a statewide public television network must, to some degree, sacrifice attention to particularly local matters.

The audiences that suffer from these three results are those that are local, less affluent, and in need of information.

Against these realities of the marketplace, we balance the historical mission of mass communication in the United States, to provide a "robust, open debate" representing diverse viewpoints on those issues necessary to the functioning of democracy at all levels of government.

The first amendment is inherently discriminatory. It discriminates in favor of the articulate. We have rightly encouraged this because we prefer debate to the raw exercise of power. But when articulation becomes a function of possessing expensive means of mass communication, the distinction between articulateness, wealth, and power breaks down. We are left searching for new structures to re-achieve the balance between democracy and economic realities.

A structure we have long supported is the local station, either commercial or noncommercial. The problems of realizing the local station's unique potential, to provide information to the public at the level where citizens can most easily organize and act, have been illustrated very clearly by the failure of the Communications Act of 1934 and the Public Broadcasting Act of 1967 to withstand day-to-day pressures on those institutions attempting to carry out the purposes of these acts.

Now, the new communications technology threatens the local station's very existence. How can the functions be fulfilled that we have in the past said only these local institutions could serve?

I will return to this question, but first we should look at another powerful force in our society, the influence of bureaucracy. As any congressional committee knows, the main impetus of any bureaucracy is to act first to preserve and expand its own organization. A related

phenomenon is the substitution of achievable goals for the original ends for which the organization was established. Another tendency is for the members of the bureaucracy to view their activities in terms of the "reference group" they aspire to join, rather than to serve the intended goals of their own organization. This is especially true when, in the interest of short-range survival, the organization recruits professional managers as opposed to dedicated visionaries. In public broadcasting this has manifested itself in the increasing crossover between public and commercial broadcasting, and in an increasing similarity between the goals of the commercial and noncommercial parts of the industry.

I believe that specific examples of organizational behavior—which I will mention later—will illustrate the power of bureaucracy, but I would like now to move on to consideration of particular parts of the rewrite.

I submit first, that prime consideration must be given to the operations of local public telecommunications entities, both because these organizations are the most threatened by possible changes in the technological environment and because they have the greatest potential for meaningfully serving democracy.

This means funding public telecommunications entities in a way that guarantees enough resources at the local level that a basic service of local news and public affairs coverage can exist at each local outlet. This means revising the present policy of rewarding stations in proportion to the amount of money they raise from non-Federal sources.

In California, under the present system of community service grants, one station received more than 25 times as much as another station in 1977. The public television system displays this kind of distribution all over the country. This has several consequences.

First, the amount provided to the poorest station, in this California example less than \$50,000, is not sufficient to produce even a rudimentary local service.

Next, creative personnel tend to be attracted to the large stations. Combined with the pressures of career achievement in the entire mass communications industry, the result is a large pool of unemployed creative personnel hanging on in the larger cities, while small stations find it impossible to find enough high-caliber people.

Finally, stations who acquire discretionary funds tend to use them to go after the national programming market, leading to the paradoxical result that the most successful stations are often those most criticized for ignoring local service.

The provisions in the proposed act to provide grants for operations from the National Telecommunications Agency in equal amounts to all eligible applicants should, therefore, be vigorously defended and you should consider extending this principle to money available for programming.

This raises the question of why a good percentage of programming funds should not be specifically designated for local news and public affairs. I am aware that this last suggestion would be met with objections of interference in the programming discretion of local licensees. I realize that enforcing compliance with this requirement could raise the specter of Government's policy content. To avoid this danger, I would suggest a less direct approach.

The structure of local stations' governing boards should insure that local citizens can have a meaningful impact upon the stations' activities. The proposed act provides for community advisory boards if a public broadcasting station is to receive funds from the National Telecommunications Agency for its operations.

The literature of political science is full of case studies of the ineffectiveness of advisory boards. With the possible exception of certain boards established to advise the U.S. Department of Agriculture, there are no examples known to me where advisory boards have been able to consistently alter policy options supported by the management of the organization in question. Having personally served on a number of advisory boards, I have found the experience to range from mildly honorific to extremely frustrating.

The only way to guarantee the influence of local citizens is to require that the boards of directors of public telecommunications entities be elected by those entities' memberships, or by the entire community.

The licenses of public broadcasting stations are, of course, granted to a variety of governing structures at present. It may be advisable to require these structures to become more uniform. Several persons, such as former KQED president William Osterhaus, have suggested that all public broadcasting stations be required to become what we now call community stations. Not only would this facilitate the election of stations' boards, but it would reduce the chilling effect of State and local legislators' control of budgets on local news coverage. While States and other non-Federal governments could maintain support of stations, these funding arrangements could clearly indicate the need for autonomy. Hopefully commitments would be long range. Attempts to change this kind of support for political reasons would be more transparent than in many of the subtle budgetary relationships that exist today.

The fear most expressed by supporters of self-perpetuating boards is that direct election of directors would allow demagogues and special interest pleaders to paralyze day-to-day station operations. This reflects a not unusual fear of many bureaucrats that democratic processes may impede their efficiency. While it is true that the best boards limit their activities to hiring and firing top administrators and setting policy, deviations from this practice are not necessarily the fault of how board members are selected.

We are currently witnessing an experiment in board democracy in San Francisco. Two members of the Committee to Save KQED were elected to KQED's board last year. The election has not resulted in the paralysis of station operations. Such normal procedures as staggering the election of board members over some years and allowing boards to temporarily fill vacancies can remain to provide adequate protection against possible abuses. In fact, it can be argued that the power of station bureaucracies has grown so strong that even elections are of little use. One of the new directors at KQED was consistently frustrated in his attempts, over many months, to gain access to station financial records, in spite of his position as a duly-elected director. The task force on public participation of the Carnegie Commission on the Future of Public Broadcasting has undertaken a case study of participation at KQED. I am confident that a review of that report, when it is released, will allay fears that active member participation will cripple a station.

Access to station financial information has been recognized by this committee as a necessary part of public and Government participation in public support. I urge the committee to stand firm in its commitment to the principle, as reflected in the proposed legislation and in the Public Telecommunications Financing Act of 1978.

I also support the commitment to independent producers' access to funds in the proposed legislation, although it is not clear to me whether the relative restraint of language in the act, as compared to that in the Public Telecommunications Financing Act of 1978, represents economy of prose style or a lessening of commitment.

A specific manifestation of the growth of station bureaucracy I mentioned earlier, is the squeeze on creative program personnel. I have recently been told of program staff at one station being forced to move into excessively cramped quarters to make room for an expanding development department. While trivial in itself, the change was seen by some on the production staff as a symbol of how the complexities of fundraising were defeating the ultimate purpose of that fundraising. Studies presented to this committee earlier, including the GAO report and an analysis of WNET's budget, illustrate how priorities, at large stations at least, have tended in this direction.

Structuring funding so that more money goes directly to producers is one way to avoid part of this problem. The commitment to independent production, which has been growing recently, is a step in this direction. Of course, the words, "independent producer" are ambiguous. In some cases it is virtually impossible to distinguish independent producers from station personnel, a problem that has led to union-management conflict at some stations.

One way to avoid some of this confusion is to reaffirm the availability of funds to organizations completely independent of station bureaucracies, such as independent production houses and local cable access centers. While I was serving on the Citizen's Advisory Committee to the California Public Broadcasting Commission, this was one of the major controversies. There, State law required that funding for independents could only go through stations who, by the way, charged overhead on the flow-through. This practice resulted in significant delays in production and excessive time spent by independents in negotiations.

As witnessed by the recent PBS report on planning for public television in the telecommunications era, stations are now considering expanding their activities into areas formerly the preserve of independent video producers and cable access organizations. If properly accomplished, this would be very good. It reflects an accurate understanding of the technological forces that I mentioned before. There is, however, a risk that this expansion will lessen program diversity at the local level if stations attempt to replace these organizations rather than cooperate with them. In this regard, the PBS report reads:

In passing, it is worth noting that organizations and individuals other than those in public television are prepared in some cases to provide a range of telecommunications services. From a public service point of view, this would be acceptable, providing these organizations had the management facilities, essential knowhow, and dedication. Unfortunately, in too many cases, this is not true. A quick look at most "access" and local origination cable systems shows how great the gap is between promise and performance. Most of our stations have extensive resources and dedication that cannot easily be duplicated elsewhere, except at considerable expense and over a long period of time.

It is true that cable access and local origination stations have suffered from extremely limited funding. In many cases they have also had to overcome passive resistance or outright harassment by cable companies. But it is ironic that public television stations should be invoking the lack-of-resources argument so often leveled against public television itself.

Local cable community programers have had to maintain a great commitment to community development simply to keep working against overwhelming odds. The people attracted to this enterprise seem to be in a reward structure that comes from the community, and not from the promise of being on a springboard to higher positions in commercial broadcasting or management. It would be a pity if such dedicated people were displaced by larger organizations with such a broad range of concern that the emphasis on local service became secondary.

I was, therefore, concerned to hear last week of the activities of one New England station to negotiate with a local cable company to take over the local origination channel from its current operators. Increased availability of funding direct to such local access centers would allow them more equality in dealing with turf battles, which we can expect as the impact of technology manifests itself.

I wish to emphasize, I am not demeaning the many efforts over the years of dedicated public television personnel to serve local communities. But the activities of some stations require structural safeguards against the possibility of one part of an emerging public telecommunications entity overwhelming another activity.

An example of this can be seen in the history of KQEC-TV, San Francisco, the UHF station owned and operated by KQED. Originally, channel 32 was to be a local programing center. Members of the community were being trained to operate an open studio station. Financial difficulties at KQED, coupled with the station management's desire to increase national production capabilities, resulted in the abandonment of the project. The channel remained dark until KQED was forced by citizen action before the FCC to either give up the frequency or begin operations. Now channel 32 serves as a vehicle primarily for the rebroadcasting of materials already shown on KQED. If KQEC had been independent with access to adequate funding, San Francisco might now have a unique broadcasting operation.

I recently attended a meeting of the KQED board of directors where the chairman of the budget committee suggested that the method to deal with a cash flow problem was to eliminate a class of service, such as Open Studio, or the nightly local news, rather than to absorb the loss through salary cuts of other devices to spread the shortfall across all station operations. This was happening at a station where the annual salary of its new president was estimated by a board member to be above \$60,000, about 120 percent of what another California public television station was receiving as its entire community service grant.

One must question the relationship of ends and means. The purpose of high salaries is to attract personnel who can provide programing services. Elimination of services to protect salaries illustrates how organizational dynamics can reverse priorities.

For these reasons, I urge the committee to maintain its commitment to local production centers and independent producers, and to require

elected boards, open meetings, and adequate access to stations' financial information.

Another thing that my experience in the bay area has made clear, is that citizens must be able to exercise influence on broadcasters not only through the direct process of public telecommunications funding and regulation, but also by holding broadcasters responsible to the public trustee responsibilities now included in the Communication Act of 1934. The proposed legislation virtually eliminates the ability of media reform groups to exert pressure through license challenges and other means that have provided greater station responsiveness in recent years.

For this reason, I strongly recommend that the committee reconsider the proposals to extend and eventually eliminate license renewal periods, remove the public interest, convenience and necessity standard, and eliminate fairness doctrine, equal employment and ascertainment obligations. While it is true that enforcement of these requirements has been grossly inefficient, reform of the FCC leading to better operations—perhaps with an expanded staff—seems more sensible than abandoning the principles because the practice has not fulfilled the promise.

Even the status quo, with all its frustrations, is superior to cutting public interest groups out of the debate almost entirely. While it is true that the promise of diversity resides in the new technologies, marketplace and bureaucratic forces threaten quite a different future unless explicit safeguards are included.

Finally, I must question the wisdom of making sweeping revisions in the structure of point-to-point telecommunications, as envisioned in other titles of the proposed act. Consumer groups seeking to balance the influence of common carriers are not prepared yet to deal with the massive changes. Historically, their focus has been at the State level, when they have organized at all. Even in universities, experience with these issues, except by a few consultants to industry and Government, is very slight. Our growing awareness of these issues, spurred by the committee's concern, is prompting the development of a number of seminars across the country—my own included—to deal with the impact of technology's convergence of modes. Eventually, we will be more than instant experts.

Until then, proceeding with this major restructuring means that the framework of telecommunications policy may be set before adequate public debate has taken place. If the activity of the committee is to represent more than the brokering of special interests, a more protracted consideration of these issues on an area-by-area basis may be the answer. A starting point is public telecommunications, for if we can put in place strong, locally responsive institutions with adequate funding, some of the risks of other initiatives may be reduced.

I am grateful to the chairman and the committee for this opportunity to appear before you, and for your courage in undertaking this monumental effort. I thank you.

Mr. VAN DEERLIN. Thank you.

Now, if all the witnesses will regather. Maybe the first panel could stay together.

It seems appropriate, before we go into committee questions, to inquire whether any of you have something you would like to say to

one another. I think Mr. Iselin was volunteering, if someone would hand a microphone down.

Mr. ISELIN. I would say two things. One, that these are extraordinarily valuable sessions for each of us. I want to say to Mr. Haight how interesting and informative I thought his testimony has been in terms of citing instances and examples of situations that might not otherwise have come to our attention. I am quite honestly asking him if I could have a copy of his testimony, so that we can examine it in terms of what he put forth.

I think, again, we should commend this committee for allowing us to learn through this process of interchange.

Because Ms. Motz has been such an—as always—stimulating witness, I would like to point out that we honor her presence in our midst, and do so in a number of forms; not only orally, but in the way that she thinks most important, by helping to support the sorts of projects she is involved in. We are a partial funder of her current major production on “The Hudson River”. We look forward at Channel 13, to helping present that program to Metropolitan New York and New Jersey. I think that is an important footnote to those discussions because it reinforces again our colleague, Jack Caldwell that public broadcasting honestly sees its role to try to combine with the creative talent of the community, to try to support it to the best of its ability; and most important, to share it with the country. We are looking forward to the latest production from Hudson River Films, which I believe is the official name of Ms. Motz’s company, and to an opportunity to broadcast it. We consider the fact that we have invested some of the citizens’ of New York and Newark’s funds in the program to be entirely appropriate.

Ms. MOTZ. I would like to comment on that, and certainly I am grateful for channel 13’s contribution.

Mr. VAN DEERLIN. You said that here before a committee, not just in the hallway in New York.

Ms. MOTZ. No, no, we already cashed the check. But the point that I was trying to make in all that, that if you will recall my previous testimony, at which time we had not been funded by channel 13, I went through a long description of channel 13’s total resistance to myself and to the project, until they came finally through with the funds.

I would like to very quickly run over that. They looked at the footage and said in a rather disappointed tone, “Oh, it’s very good.” I mean, I had the feeling they definitely did not want it to be good because that would be one excuse for not funding it. The director of programing said, “Well, what are we going to do about that, I do not know what to do.” I said, “Well, I think what you should do is give us some money.” He said, “I do not have any money.” I said, “I happen to recall that in a conversation a couple of weeks ago you told me that when your Writer-in-America project was in trouble, you took \$100,000 out of Jay’s back pocket.” And he said, “Well, that was for a very important series that we had a commitment to do.” I said, “I am not trying to tell you that you should put money in my show, I am merely pointing out to you that when it behooves you to do a program, you do have the funds. Now, let us sit down and talk about the Hudson River film.”

That was one of the many, many steps of how that funding came about. I am now submitting a new project, "The Peopleing of America—Great Cities and Small Towns." The pilot is a 90-minute film about the city of New York, and I am dealing with the same situation all over again. "We do not have any money for you at this time." So, I won the last battle, and now we are absolutely back to square zero again.

MR. VAN DEERLIN. Yes, sir?

MR. EVANS. This is the first time I have heard Julie Motz talk, and I must say it was very stimulating and I certainly enjoyed it. I think her comments have brought to my mind again something that I have tried to talk about earlier, which is a problem that we perceive at the national level, in terms of the complexity of the process by which programs are identified and are funded. I think one of the things I neglected in talking about that process, is that there is another component that sort of parallels our process, and that is one that takes place at the Corporation for Public Broadcasting, where they have a very active process. At the present time they are involved in attempting to streamline the funding mechanism, so that funds can be freed up much earlier and with much less bureaucratic involvement.

The point I want to make to Julie and the others is that there is a perception, I think, throughout the system, of this problem. The question is, how do you solve it, and I think one of the ways that you begin to solve it is to have communications such as this.

MR. CALDWELL. Mr. Chairman, I have enjoyed her testimony, also. This is the first time that I have met her.

MR. VAN DEERLIN. She should have her own show.

MR. CALDWELL. That might do very well.

MS. MOTZ. It is not because of a lack in trying.

MR. CALDWELL. I think one of the points that keeps coming up is that we just do not have enough money, and we are—local stations—frustrated by having a lot of good ideas and a lot less money, fewer dollars than we need to carry out those ideas.

But I want to point out that when it comes to the independents, and it comes to labor, domestic production and so on, what we are in business for, what I am in business for as station manager, is to see that we get the best programming we can get to serve the local public. I do not care whether it is an in-house producer—I do not really have that many in-house—an independent producer or foreign producer. I think the issue is to find the best people we can, the most creative people we can find in the world, and put them to work, fund them, and get on with top quality production.

MR. VAN DEERLIN. Well, I am glad that the subject of money came up—I felt it might. The criticism of our legislative effort has by no means been limited to the spectrum use fee. As a matter of fact, we had a witness late last week who directed our attention to his fear that he thought that H.R. 13015 might cause new oil spills on the high seas, which was a criticism I had not anticipated.

But I had thought that the criticism of dedicated use of a spectrum fee, to be directed most generously toward public broadcasting, would probably have been limited to witnesses for the NAB, ABC—the people who are going to pay it. It comes to me as quite a bolt from the blue that the principal beneficiaries of what we had thought was an

ideally dedicated new source of money are our critics. I think that you would all agree that the Carnegie Commission's original suggestion for a tax on TV set sales is not likely to fly in a Congress that may have 535 elected politicians, representing the people who would be paying that tax.

Mr. Minow, if you do not like it, I do not know who is going to like it.

Mr. MINOW. I would say this Mr. Chairman, we like the idea, we like the concept immensely. We just are not sure that the way it is worked out here is appropriate. At least we have so many questions about it that we are not satisfied that it does the job you intend it to do.

We like very much the idea of the dedicated source. Just as you mentioned, the first Carnegie Commission had mentioned that. We like the idea of having program funding genuinely insulated and permanent. But our problem is that we are not sure that we want to be dependent on commercial broadcasting. We are not sure how much money that would produce. We are not sure that it would not put us in competition with other beneficiaries that you propose for the dedicated funding, who also have very legitimate claims for support, such as minority interests and rural interests. We are not sure that we are satisfied that this thing is going to fly. Philosophically, we think that the idea is fine. We are concerned, however, whether it will in fact, be effective and meet the needs that we have. It is not the philosophy.

Mr. VAN DEERLIN. I note on page 24 of your prepared testimony an additional objection you voiced, which I would appreciate your expanding on. You say it could even have the side effect of imposing on public broadcasting the burden of providing all the public interest benefits and services that commercial broadcasting fails to provide, with the latter arguing, "After all, are we paying for it."

Now, commercial broadcasters were in a couple of weeks ago describing you as their competition.

Mr. MINOW. I hope we are.

Mr. VAN DEERLIN. I tried to point out to them that if you were competition, you were at least competing on channels which are not taking any advertising money out of the market; and that if the channels—both VHF and UHF—on which you operate were suddenly be made available for commercial assignment, it would surely fragment the source of commercial funds on which they draw.

Now, if public broadcasting had a justification when it was deemed worthy of Federal taxpayer support 11 years ago, I think it was the very justification that you now find objectionable, which was to provide programing which commercial broadcasting, because of its very nature, could not or would not provide. Are you now going to renege on that?

Mr. MINOW. Not at all. We think all broadcasters, including commercial broadcasters as well as public broadcasters, have obligations to serve the public interest. We do not see any reason why they should be relieved of their obligations any more than we are. The difference, it seems to us, is that we have been given a license by the Federal Communications Commission with a restriction, namely, we cannot sell any advertising. We were not given any other visible means of support at the time. We were, as Jack Caldwell said, "Thrown out into the hard cruel world to make our own way, and we succeeded."

We now have some help from the Federal Government, we are very grateful for that. We hope to continue receiving it. We would love it if you could figure out a way to have a dedicated fee, either on the spectrum, or whatever, that would continue that. But we do not think that anybody should be relieved of their public responsibilities, certainly not ourselves.

Mr. VAN DEERLIN. Well, scanning your testimony and finding this rejection of our well-intentioned—

Mr. MINOW. We do not reject it, Mr. Chairman, I want to make that clear. We do question whether it is going to be effective. We do not reject it.

Mr. VAN DEERLIN. Oh, well. I must say that when our water heater went off last night, I did not find the water much colder than what I found in this statement.

I hastened on to find the substitute measure that you were going to propose, and my effort was not rewarded. Do you have something that somebody, transcribing the statement, failed to include? Did they leave a page out when it was Xeroxed? If we are not going to tax television sets at the point of sale, and I can assure you that we are not; and if we are not going to come up with some kind of dedicated money from commercial broadcasting, then in the absence of any other proposal, I guess we are going to have to go on ladling it out year-by-year through the Appropriations Committee that never fails to ask you about programs that individual members have found troubling to them or their constituents during the recent months before the appropriations process.

Now, what is your recommendation?

Mr. MINOW. I wish I could say I had it for you today, we do not. We are acutely aware of our obligation to come forward with some suggestions and not just criticism, I assure you. That is why we have started an initiative to come to you, which we are going to do next year, with our own proposal. I promise we will. I do not know if it will solve the issue, but I promise we will come to you with a proposal.

Mr. VAN DEERLIN. All right. That is in the record.

Mr. MINOW. You can depend on it.

Mr. ISELIN. My sense, Mr. Chairman—I am volunteering it—in terms of this point. I picked up among our colleagues a sense of concern about the provision. It goes to some uncertainty about whether or not it might represent a cap because of the maximum amount that could be provided through the fund. It would in a sense represent a commendable concept, but provide insufficient amounts of funding.

Mr. VAN DEERLIN. Oh, is there a misconception here that this represents the total Federal funding that is possible?

Mr. ISELIN. I am simply volunteering that because I picked that up more than once. There is nothing in the bill.

Mr. MINOW. This would put us in a straitjacket.

Mr. VAN DEERLIN. Heavens, it says in the bill that the fee is to be introduced at 10 percent a year over 10 years. Well, of course, there is no way you could start out with \$200 million a year on that basis. But, I believe that we already have authorizing legislation for up to \$220 million through 1983 that has not been appropriated.

Mr. ISELIN. I suspect, if you sort of stripped away a lot of the rhetoric, it is a concern that by buying into the concept one might

not be making a forceful enough case for the variety of programings that need to be introduced. Therefore it would, in a sense, be consigning this promising enterprise to less than fulfillment.

That is just my own hunch. It is something that in principle, I think, is the most ingenious of the many ingenious and constructive propositions.

Mr. VAN DEERLIN. Well, Mr. Minow, if I might ask you just very quickly—not in your new role but as a former highly respected, by me at least, Chairman of the FCC—do you think that regardless of its dedication aspects, the spectrum use fee is an important and a useful tool for spectrum management?

Mr. MINOW. Speaking for myself, Mr. Chairman, I have never understood why in this country we permitted the use of a scarce public resource without something in return for the use of that—just like a grazing fee, et cetera.

While I was Chairman of the FCC we put in the first fees for licensing. So, I indicated my thinking about it. But from the PBS perspective, we are concerned that if we get married to this, it would not be sufficient in the long run for our needs. We see our needs over the next decade getting into \$1 billion a year magnitude.

Mr. VAN DEERLIN. Your needs from what source?

Mr. MINOW. Well, from what we are raising on our own. We see this as becoming a very big enterprise.

Mr. VAN DEERLIN. Well, did not the Carnegie Commission set this goal earlier?

Mr. MINOW. There has been talk about it, but there has not been anything specific.

Mr. VAN DEERLIN. Mr. Wirth?

Mr. WIRTH. Thank you very much, Mr. Chairman.

Mr. Minow, yesterday we had lengthy discussions in the questioning period about the 50-percent set-aside which Mr. Iselin and I were briefly discussing earlier today—I think you were here.

I think one of the issues that bubbled up, and I think you and I talked about this, is what appears to me to be an apparent contradiction between the request by CPB that the Congress earmark 50 percent for community service grants, and that there is not any kind of interference in the process as to how that money ought to be spent; but on the other hand, resistance to any other suggestions by the Congress. For example, your colleagues and employees have been highly critical of the five criteria that we put in the bill. These were massive Federal incursions and reminiscent of the early 1970's. You are familiar with the accusations that were made.

Mr. MINOW. Very much so.

Mr. WIRTH. Let me just read to you the criteria. Encourage innovative approaches, both technical and programing, to reaching new audiences.

The second one, encourage responsiveness to the community served by each station.

The third, encourage cost efficiencies, particularly in increasing programing expenditures in relation to administrative costs.

Fourth, to encourage programs to train women and minorities, and to increase their participation in public broadcasting; and

Fifth, to encourage the use of volunteers by stations.

Now, I was wondering if at this point for the record you could help us, or enlighten us, as to why the dedication and the outlining of that 50 percent for community service grants is any different from what appears to me to be motherhood criteria here, encouraging the use of volunteers—federalize all volunteers and send them into the station.

Mr. MINOW. I think your question—and I heard something about the discussion yesterday, too—is a very important one. Oliver Wendell Holmes once said, “the life of the law was not logic, it was experience and history”. My answer is going to be in terms of history and experience rather than logic, because I think logically your point is very well taken.

As Jay Iselin was explaining, this goes back to the early 1970’s. At that time, during the Nixon administration, there were very serious efforts being made to politicize public broadcasting. There were very serious efforts being made to stop public broadcasting from doing any public affairs programming. There were great tensions between the Corporation for Public Broadcasting and the public broadcasting community at the time.

I was involved in the efforts to try to solve that, and we ultimately worked out through negotiation a 50-50 partnership agreement with the CPB where 50 percent of the funds provided to CPB by the Congress would go directly out to the stations—no strings attached. The stations could count on that just as revenue sharing; it was that kind of approach.

It was the suggestion of the administration at that time to put this into the law, and it went into the law at that time. The Congress put that into the law. When the administration this year—I mean last year, 1977, as I understand it—was presenting its bill to the Congress as to what to do, they took that provision out. When they went around the country they found that public broadcasters throughout the United States said, “Hey, what does that mean? We now can count on that 50 percent as being without any strings, does this mean that we are going to be right back where we were in the early 1970’s?”

As a result, many public broadcasters objected to the failure not to have this in the bill. When Chairman Van Deerlin and Senator Hollings introduced their bill this year, they put that provision back in. It is in the bills that passed the House and the Senate.

I think the perception of most public broadcasters is really in terms of this history. It was put in by the Congress to protect us against the then CPB. Now, today, our problems with CPB hopefully, or happily, are almost over. I think they are over, we are getting along very well. There is a feeling of mutual trust and confidence which did not exist before. So, I suppose that we are on a clean slate logically. We would say to you, “Take it out. It would be better to take it out, and while you are at it, take out all the restrictions that go with it. Just take it out.”

But I think in view of that history it would make everybody very uncomfortable. So, what I would suggest to you because I think your point is well taken, is that this be part of this whole process we are involved in now in looking at the whole thing for the future, but not to make any changes at this moment in it.

Mr. WIRTH. That is very helpful. Do any of the other panel members have any comments?

Mr. McBRIDE. I would just reinforce one part of what Mr. Minow just stated. Looking back historically again, the political pressure was applied back in 1972-73 not against the CSG funds, which had long since been disbursed to the local licensees, but rather the pressure was exerted against CPB and their potential funding of special public affairs program projects.

As long as the corporation continues to exist as it does, in the eyes of many licensees there still exists the potential of some future administration exerting undue influence. And again, it would not be through the CSG because there is more than adequate insulation there. It, again, would come through the funding of certain program projects.

Mr. ISELIN. I think the fear, therefore, would be that this in a sense protected, maximally protected the funds and might in a sense be invaded by someone subjectively picking up one of the criteria that is set forth because we all embrace every one of these objectives with a passion, as a means of saying, "Aha, I just want to go in and decide to what extent you have been innovative, to what extent you have really, truly used the volunteer resources of your area" and, therefore, in a sense contradicting the intent of Congress and clear intent of this committee and perhaps once again put us back in the pickle we were in.

The reason, perhaps, I think we feel strongly about it in channel 13 is because the first program at that time to feel, in a sense, that pressure was a program that we were producing, Bill Moyers' Journal. It was mysteriously suddenly denied funding at that time, after very strong admonitions from the White House that no more public affairs programs would be funded. The curious coincidence of those facts really was a clear enough circumstantial, if not precise, evidence that in fact this kind of action could take place.

As Mr. Minow pointed out, in the next round, once this matter had surfaced, OTP itself recommended that this provision be written in the legislation to forestall any comparable occurrence.

Mr. WIRTH. If you were at that point—getting the history out on the table—if you were at that point so afraid of that kind of interference, why did not that become 70 or 80 percent. I mean, even with the 50 percent you still left yourself open for the political involvement in the other 50 percent, I am sure some of which went toward producing Bill Moyers' Journal?

Mr. ISELIN. Well, I think within the system there is, and there always will be, debate about the proportion between direct distribution to stations to do local programing, and the consignment of a certain amount of funds on a consolidated basis for special programs that can serve the entire Nation—Bill Moyers' Journal, for example. If some programing funds of the sort that the endowment would represent were not set aside, it would be impossible to attract a person with broadcasting talent of Bill Moyers to our industry because no single station would have the resources to do that.

So, the judgment has been to make sure that we do in the first instance commit ourselves to community broadcasting. But we also try to set aside some funds that would be pooled to create important national productions. That really goes to the financial imperatives of television. It means that many productions are just terribly expensive and there is no way to achieve them if we do not set aside

some funds for targeted production of national shows. That was the reason for the split.

Now, whether it should be 70, or 60—as you point out—it is now closer to 60 than 50, which turned out to be a more reasonable figure because of the fact that radio, too, participates in CPB distributions. In fact, what we have is a floor, not a ceiling.

Mr. WIRTH. It seems to me, building on much of the discussion yesterday, one of the things that we are all concerned about is what kind of a mechanism we are going to create. What kind of an animal are we putting together here that is going to be an alternative to what we know now in terms of commercial broadcasting. It seems to me another interpretation that can be given to the 50 percent is that maybe that exacerbates, having that line so clearly drawn with all the implications of some mistrust to any discretion that is being given to CPB, that drawing that 50 percent only exacerbates the problem of trying to tie together and, using your words, Mr. Minow, the mutual trust between PBS and CPB.

It may be the argument can then be made more strongly that we ought to eliminate that 50 percent and really get rid of that artificial barrier. Does that make sense to you?

Mr. MINOW. It does to me, and it is one of the things we are going to be debating throughout the system this next year.

Mr. WIRTH. All right. I am not sure we can pursue that any more, I just wanted to get that out. I think your reference to history and experience versus logic is helpful.

While we are talking about history and experience, let me ask you a couple of other things. I do not think you were on board at the time that this memo that I have come out. Part of, I think, what we want to do today is talk a little bit in preparation for the upcoming conference between the House and the Senate on the public broadcasting bill. At the time when PBS was meeting in Dallas, a quite extraordinary 2-page memo was prepared about the House bill. What I wanted to do was go through this and maybe, Mr. Grossman, you are the person that I ought to talk to about this, about the rationale behind this memorandum, which was highly critical of the House bill, and which was distributed to your membership in Dallas and consequently across the country, which we received. It was well done. We have received a lot of input from a lot of your membership reflecting a lot of the statements in here. I wonder if we might go through these? You are familiar with this memo?

Mr. GROSSMAN. I am not sure which one you are referring to, Mr. Wirth.

Mr. WIRTH. June 28, 1978. This is for station contacts with Members of the House, a PBS memo.

Mr. VAN DEERLIN. Stations of the House?

Mr. WIRTH. No, asking for contact from PBS member stations with Members of the House.

Mr. VAN DEERLIN. Oh, I see.

Mr. WIRTH. The first point is:

Proposed Federal legislation contains no safeguards against encroachment by Federal officials on programing decisions of any licensee, and some subject areas of that legislation could relate to programing.

Now, I was wondering where that appears in the legislation.

Mr. GROSSMAN. It is very hard for me at this point to comment in the absence of the context. I just do not have the memo in front of me. I assume that is referring—but I just do not know—to the CSG criteria.

Mr. WIRTH. There is nothing in the legislation that relates in any way, shape, or form to encroachment by Federal officials on programing decisions of any licensee. Maybe what we will do, Mr. Grossman, I would like to go through these and just remind you of some of the statements that are in here, and maybe we can get a response from PBS about this.

The second point is that:

Legislation permits Federal officials to cut off the flow of scarce funds to any licensee, literally putting it off the air. The threat of that act is as dangerous to first amendment freedom as the act itself, as local broadcasters begin to look over their shoulders towards Washington. That legislation also could be interpreted as permitting an individual private citizen to commence an action to cut off these scarce funds.

The only thing that is in the legislation that relates to this in any way, shape, or form is the fact that there is a reference made to the Secretary of HEW if local stations are not in compliance with the Equal Employment Opportunity Act, of which the Secretary then does a review. You know, there is nothing that I can find anywhere that suggests that an individual private citizen can commence an action to cut off these scarce funds. That is the second point that is in there. You may not want to react to that at this point.

Mr. GROSSMAN. As I say, I have a problem with that. Mr. Wirth, only because I am not familiar with, or do not recognize the document as one that we have distributed as a PBS document. There have been many contributions by various members, and I would be grateful for the opportunity to review the document.

Mr. WIRTH. I guess we would probably be grateful to know who is responsible for writing documents and what was in it. I think that would be helpful.

There are some points in here that I would like you to respond to as well.

New, highly subjective criteria have been proposed to govern the distribution of Federal funds to individual stations. For the first time Government funds can be provided or withheld, based on someone's appraisal of a licensee's program.

There might be a little bit of misinterpretation that I know Mr. Van Deerlin cleared up on the floor at the time the Public Broadcasting bill was on the floor of the House.

Mr. MINOW. Can I interrupt 1 minute and ask if you could excuse our two representatives who have airplanes to catch, Dallin Oaks and Dr. Evans?

Mr. VAN DEERLIN. Yes, although I am bitterly disappointed that we did not have an opportunity to repeat the Florida story.

Mr. OAKS. I will write it up and send it in, Mr. Chairman.

Mr. VAN DEERLIN. Thank you, Stanley, thank you.

Mr. WIRTH. There is another thing in here:

A government agency will have the power to investigate all books and records of any licensee, including notes and records of reporters and producers.

I mean, you cannot get much more inflammatory than that.

Mr. GROSSMAN. Let me repeat, Mr. Wirth, if I may, that one of PBS's roles—and without knowing the document—has not been to distribute a memorandum that may come from the staff of PBS as an official document of PBS. But we do circulate documents provided by members who ask us to circulate them. I think that may be one of those documents that you are reading.

Mr. WIRTH. Why not do this, Mr. Grossman. What we will do is give you this, and you will respond to it and tell us where it came from, and what you are doing to disabuse the membership that is writing to a number of us on the basis of what is in here.

Mr. GROSSMAN. I will be happy to.

Mr. WIRTH. Maybe it would also be helpful to have PBS give to us a copy of what you have distributed to your membership, relating to this legislation. Maybe that would be even more to the point.

I will tell you, I, as one Member, who used to consider myself a very good friend and thought I was a good friend of public broadcasting, can tell you that the kind of "Mau-Mauing" that has been going on for the last 3 months from around the country—I am sure it was spontaneous reaction to what was in the legislation. Right?

I think there is a very severe problem about this. A number of us have talked about this in the past. It continued. We continued to have bombs thrown in over the transom of my office, nasty letters coming in on a steady basis. I for one would like to have a sense of the kind of communications that you are sending out to your membership, presumably in part with public money, for the purpose of informing us about the legislation that we have been working on.

Mr. MINOW. We will be glad to provide that. I am sorry that all the members of this committee were not with us in Dallas, where we had a very open debate on the legislation for several hours, because there is great unhappiness and dissatisfaction throughout the public broadcasting community with a number of provisions in the pending bills.

I think a good deal of it is due to misunderstanding, misconceptions. But there is—I do not minimize that, I want you all to know that—there is great unhappiness. There was considerable sentiment expressed to that, "We would be better off with no bill." As the new chairman, I took the view that we should not oppose the bills in their entirety, but try to work with the Congress to amend and change them through the process more to the views that we adhere to. That is what we have been attempting to do. But I do not minimize for a moment the feelings and intensity throughout the system about a lot of these issues.

Mr. WIRTH. I was accepting in very good faith, Mr. Minow, your arrival in the chairmanship and the good discussions that you and I had, and I had with Mr. Iselin, Mr. Nimerosky, Douglas Cater, and a number of other individuals.

I am not, I will be blunt to tell you, convinced that that good will is reflected in any kind of information that is going out through the constituent stations around the country. To continue to barrage me—and I am sure other members of the subcommittee and probably other Members of the Congress who do not know anything about this—with a lot of misinformation, you know, one of which does keep coming up is this statement about a Government agency having the power to investigate all the books and records of any licensee, including notes and records of reporters and producers. A lot of my colleagues are getting that coming in. That is absolute nonsense.

Mr. MINOW. Well, I think the provision in the Senate bill would permit that.

Mr. WIRTH. Which provision is that?

Mr. MINOW. This is not in the House bill, but there is a provision in the Senate bill that would allow the GAO to audit station records. There are concerns about that.

Mr. WIRTH. The GAO is allowed, and under the House bill as well, to come in and look at the records of the station?

Mr. MINOW. Right.

Mr. WIRTH. The financial records of the station?

Mr. MINOW. I do not think it is limited to financial records.

Mr. VAN DEERLIN. May we return to an even more widely despised document, H.R. 13015?

On page 15 of the PBS prepared statement there is criticism of the bill's separation of programming and operational funding. You state in effect that it would be impossible to separate these costs.

Now, as I understand it, many stations do have accounting systems that separate direct programming costs from overhead and operating expenses. Would it not be possible to define direct programming costs carefully in the bill, so as to make the division easily discernible?

Mr. GROSSMAN. I will respond to that, and our station managers here can respond to it. I think that while theoretically it might be possible, we have had great difficulty in the course of devising, for example, standards for program funding submissions, in determining these kinds of very precise differences. The concern of drawing the line between research and development and promotion and the use of the various facilities of the station does make it often a very difficult problem.

I think that the concern that we have here is trying to have all of the stations and all of the bodies, the independent producers, and so on, adhere to these kinds of separations. We question whether that is appropriate, whether you can have that kind of interference on an operating level, if one wants to use that word, or certain restrictions on an operating level, and keep the programming level totally separate.

I referred in my original testimony to the concern we have at PBS with even the management of the interconnection which presumably is an operating function, as you would, I think, tend to define it here. That involves tremendous efforts in program priority setting, program funding, decisionmaking. As I have used the expression before, it is kind of a seamless web in this business.

Mr. VAN DEERLIN. Well, we have two station managers at the table. Mr. Caldwell, do you separate these in Springfield?

Mr. CALDWELL. No; we do not, sir. With great difficulty we could. I will give you an off-the-top case in point. We have our master control engineer who is much like the one-armed paper hanger, who is running our schedule with three video tape machines. One machine is on the air at the same time he is trying to help with some editing on the other two machines. Part of the time he is operating, and part of the time he is editing a show. What part of the time is he editing, and what part of the time is he operating that has nothing to do with that show?

I do not really want to hire somebody to have to stand around and count that.

Mr. VAN DEERLIN. What about it, Mr. Iselin?

Mr. ISELIN. I think, Mr. Chairman, that the development of accounting principles is entirely in order, and a great deal of work has been done with the professions on the accounting community to try to come up with a uniform approach to public broadcasting, that could be generally followed throughout the system. All of us, I think, believe that is very, very useful, even among ourselves, because we buy and sell an awful lot of programs to each other.

In developing these principles it is entirely in order to try to segregate out overhead expenses from direct cost expenses. Our belief is that there are these debatable accounting points; for example, should research and development be credited to the show itself, or should it be set aside? And above all, to what extent are we obligated in putting on a show, in the sense of going on the air, to promote it? Is that, or is that not related to the direct cost of the show?

It is very important that we be up front about what we are charging, and that those charges be identifiable under a common set of principles. What turns out to be difficult is to say categorically, say with a State-financed system which may very often have to answer to certain State requirements in terms of reporting, to do it exactly the way stations such as WGBY in Springfield, or channel 13 in New York might do it.

So, I think we are very close to a legislative solution that will be very valuable, and that has been expressed in terms of accounting principles. What we are really getting hung up on is semantics. In the accounting community the language makes, apparently, a lot of difference. That is apparent in the use of the words "accounting practices," which mean that there has to be absolute concurrence in terms of the way somebody accounts for things in these areas. Whereas the use of "principles" in the legislation would allow for some operational flexibility with still the desired degree of specificity.

But in terms of identifying overhead as opposed to the area of direct costs, frankly, it is impossible to manage a fairly large station without doing one's utmost to do that. Otherwise, you do not have effective control over your operations.

Mr. VAN DEERLIN. I mistakenly excluded Mr. McBride as a station owner when I said we have only two here.

Mr. McBRIDE. Well, I agree completely with my two colleagues, and I believe that virtually every one of the public television licensees would have considerable difficulty trying to separate one from the other. As Jack indicated, we would have to end up, I believe, making almost arbitrary decisions as to percentages of time certain personnel devoted to one activity versus another. I speak of this directly in my testimony, at the bottom of page 8 and top of page 9.

Mr. VAN DEERLIN. Thank you.

Ms. MOTZ. You know, there is a very simple solution to this problem, which is to totally employ independent producers who have no problem having very straight production budgets. Just put all your production money that way. That would take care of the problem entirely.

Mr. VAN DEERLIN. Mrs. Van Deerlin similarly has easy, simple solutions to my financial management problems.

Ms. MOTZ. You might want to try them some time.

Mr. VAN DEERLIN. Oh, no. Back to Mr. Iselin. Mr. Golodner suggested the need to restrict corporate underwriting of particular programs, but you seemed to disagree in your testimony. How do you, however, respond to the concerns that caused Mr. Golodner to suggest that this source of financing be more tightly restricted than it has been?

Mr. ISELIN. I think, Mr. Chairman, again we have enough history now that we have some basis upon which to, in a sense, form our judgments. It is, I think, entirely in order that any source of funding for public broadcasting be looked at with a great deal of scrutiny because we are, after all, making a public statement to the public that we will do our best to make independent judgments and our best to provide credible information.

If there is even any perception that this information is biased or tainted, then we are abrogating our public trust. So, I understand the the skepticism and the scrutiny that one may possibly bring to this area.

I think, frankly, the various public donors and supporters are as concerned about that perception as we are. They, quite honestly, would see little advantage in our getting in a position where they might be identified as having tried to call the tune. That has obviously been one of the reasons why we have had a very healthy relationship with the corporate community, at least at channel 13. Over these past 10 years we have had really very little or no experience when there was an attempt to pressure us or strong-arm us.

For that reason, even though I understand Mr. Golodner's concerns about what might happen, I can simply report to you it has not happened. We are ever on guard to make sure it does not happen.

That is further reinforced by the fact that there are very few programs in public broadcasting where the corporate sector is anything but a minority participant. The MacNeil/Lehrer report which I cited is a case in point. It would be impossible to complete the funding of that particular program without the participation first of all the stations around the country. They contribute over \$3 million each year to put it on the air. But the \$1 million that comes in through two corporate underwriters finally gives us the total amount to get it on the air. A relatively small proportion is \$500,000 for each underwriter out of the total. It would not be in anyone's best interest to try to let that amount of money jeopardize a program of that importance.

Mr. MINOW. Mr. Chairman, I wonder if I might say a word about that. I have been responsible for raising money as the chairman of a local station for many years, and have gone to corporations and to unions, I might add. Some of the unions in Chicago have given us the money. I would really say to Mr. Golodner, if we could get some more money from the AFL-CIO, we would be happy to have it.

Mr. GOLODNER. You already are.

Mr. MINOW. Very little.

Mr. GOLODNER. From our members, they are paying taxes for it.

Mr. MINOW. Well, that is very little. Your members are also stockholders of companies. But my point is, we are not just looking to corporations for support. We have gone to corporations, and we have said to them, "You are supposed to be good citizens. You give money to symphonies; you give money to hospitals; you give money to uni-

versities, you ought to give money to public television." We have been successful with that. I would say that is a good thing in a pluralistic society. I would invite the unions to contribute to us, too.

Mr. GOLODNER. Quite seriously, we do believe that the average working person, including union members, is contributing quite a bit to the public system through their tax moneys. I think we are failing to see a major point here. We already have a media that is accessible and available to the commercial interests of this country.

We have never yet had a suitable media that serves nonprofit interests, including unions; charitable interests; governmental interests. There is no place for them in the spectrum other than public broadcasting. I am quite alarmed, because all that has been said here today verifies our apprehensions of how far down the road public broadcasting has gone toward its dependence on the very same people who are supporting the commercial media for which public broadcasting was created to be an alternative.

The bulk of prime time public television is corporate-supported. I do not agree with the statement that because we just give an item at the beginning and the end of a program, that is not advertising. And that somehow that makes it different. There is still the opportunity for commercial interests to wield an influence over the public system.

I wish that the trustees of public broadcasting, were as sensitive to that as they seem to be regarding any hint of government participation on that level. The danger is not so much in censorship, but in the chilling effect in what is not being seen because of the caution that the public broadcaster has to exercise, the fear of antagonizing a potential sponsor.

Now, Mr. Iselin has said he knows of no such instance. I am sure he does not. But the New York Times seems to think channel 13 does. I would like to quote, if I may, a November 1975 issue of the Times where they are writing about some of the problems of channel 13:

We used to do what the networks would not do, the staff producer said, "The Poor and Banking" and "Your Money's Worth," real muckrakers. But since we lost the Ford money—Ford Foundation—controversial script play concepts for series are rejected. Public television is now a buyable commodity. When channel 13 went to Chase Manhattan for money, Chase asked if we were planning to do any more shows on "Banking and the Poor." Channel 13 said, "No." Before it decided to fund the show on unemployment, Banker's Trust let it be known that it would not care to see the socialist Michael Harrington on the screen. Lack of corporate enthusiasm has prevented Bill Moyer, the station's resident liberal, from doing shows on industrial pollution and on the influence of the automobile on America's society.

Now, I am not vouching for the veracity of this article by Judith Hennesey, but I think her comments are typical of an array of critics of the Public Broadcasting System. She goes on to talk about one of the world's worst air disasters, which created a tremendous controversy—it had to do with a McDonnell Douglas plane going down in Turkey and in Canada and the lack of investigation by the FAA. Nothing was done on public broadcasting until channel 13—to its credit—picked up a British show. It did not invest in an American producer to do an analysis of what was wrong with our FAA. They had to turn to England to do it. Even then, I do not think it was shown on very many stations.

I am not condemning any particular station, but it is quite obvious from the press and those who have been watching this that the whole system is in danger of going the way of commercial broadcasting.

Mr. ISELIN. I appreciate Mr. Golodner's identifying those first-cited remarks as obviously hearsay from someone or other. I assure you that neither I, nor anyone I know of, has promised anybody ever that we would do or not do anything. That is, again, part of the skepticism one always finds in our country, but I know of no instance when that was ever promised.

I do know the second program that Mr. Golodner cited is indicative of our efforts to call the shots the way we see them. In fact, that program that was produced in Britain—it was produced as a coproduction with channel 13—created understandable dismay on the part of a major company that was clearly identified as having been at fault in terms of that disaster.

Clearly, if we were worried about corporate support, we would not have done a program like that. We did a program like that because we thought it was indeed important to bring it to the attention of this country. It was shown nationally by the Public Broadcasting Service not once, but twice. And in fact, I think that is a perfect example of the fact that we do believe our first obligation is the public we serve. If that means that we are going to offend companies from time to time, that's the breaks of the game.

Ms. MOTZ. I would just like to say—

Mr. VAN DEERLIN. Just a minute. Mr. Hall, do you have something to say bearing on this?

Mr. HALL. Exactly.

Mr. WIRTH. Mr. Chairman, can I ask Mr. Iselin just a question about that statement? I am sure that you would never make that kind of a promise, I would be very disappointed if that were ever suggested.

Let me ask you the previous question. Was the question ever asked, to your knowledge, of anybody in channel 13?

Mr. ISELIN. I am sure that kind of question has been asked. I do not know of it ever being asked by the head of a bank.

Mr. WIRTH. Would you know of examples with the head of a bank?

Now, I am thinking about the public television station in Denver trying to do a story on clean air, and having General Motors and Ford descend on them.

Mr. ISELIN. I do not, again because I think to ask such a question is to set up a presumption that Mr. Golodner is mentioning here. I personally do not know of any such instance.

Mr. VAN DEERLIN. Would you throw somebody out of your office?

Mr. ISELIN. I absolutely would throw somebody out. We have done repeated stories recently, as I think most every station has, on the whole redlining problem. It is impossible to work in one's community without discussing that critical question of where funds are available or not available. It is a fact of life that one reports those stories and covers them. Clearly, you would not do those stories if you made even some inferential promise to any sector.

Mr. WIRTH. To pursue Mr. Golodner's "chilling effect" question, Mr. Caldwell. Do you have any experience in that, do you know anything about that kind of question being asked?

Mr. CALDWELL. Certainly, I know in my local market I am under the pressure that you would expect. I have people that write to the station who are former supporters and say, "I will never send you

another dime because you put such and such a program on." I had a major manufacturing plant withdraw total support from the station because we happened to run a series which that institution's executive officer thought was too liberal. I have had a major manufacturing plant never fund the station because our public affairs department did a show that broke the story on a possible carcinogenic effect of their product. We never received any money from them.

The point is, that is part of the ball game. I think we have to take those risks. I think the reason we can take those risks is because we have a variety of funding sources. As we say when we go on the air in a given pledge drive, say, we are trying to raise \$20,000. I come on the air and say, "I really do not want a \$20,000 check from anyone, I would really rather have a dollar from 20,000 people." I think that is saying what we need is a little bit of Federal money. We need the business money. We need the union money. We do not want anybody to get control of this thing. You just have too much power. We have to be very careful about how we use that power. If we do not get the money from the business community, where else are we going to get it?

Mr. VAN DEERLIN. Mr. Hall, you have been very patient.

Mr. HALL. Well, we have had some evidence, too. In my testimony last April I gave some examples of where in the San Francisco area we had these abuses. There are specific instances that I can give you.

The chilling effect that has just been admitted is there. Fred Friendly yesterday very clearly said underwriting is abused, it is not an innocuous process. The underwriter is not the \$1 contributor, or the one time or few times contributor to the station. The underwriter is becoming a more and more important controller. You can see that by what they demand. They get a lot for their small investment, only around 8 percent of all public broadcasting funding now comes from the corporations. It is growing rapidly. I think that runs around 25 percent when you apply it to programing—I think that is the figure you used, Mr. Golodner, but in total dollars, it's not much.

Try this test on your friends. Ask any viewer of public broadcasting what they think the commercial contribution is percentage-wise across the system. Usually the lowest answer I get on that little test is 50 percent, not the 8 percent they spend. The underwriters expect and demand great visibility for their dollars. And the public subsidizes them. There is a great difference, Mr. Iselin, between disclosure of who is funding a program and the joint publicity campaigns that are undertaken which are then added in together to make up that total of corporate contributions to the system. It is a very great demand of return on the dollar that is asked by these corporate underwriters. It is not just, we should give here because we give to the opera and because we give to the symphony and other such enterprises. That is not the way the corporations are approached. That is not the way that they approach the stations.

Mr. VAN DEERLIN. Ms. Motz?

Ms. MOTZ. If I could. I, of course, yield to no one in my sense of the gutlessness of public television stations, but I think it is not the corporations who are at fault. I mean, I feel that very strongly. I think a public television station will be as courageous or as cowardly as it wants to be in terms of how it values and uses its own power and its own bureaucracy.

In terms of channel 13, I am sorry to report that a producer that did a show that was subsequently shown on PBS, which dealt with the Arabs and the Jews and the whole Middle East question, offered the show to channel 13 for sale and was turned down. He was told that they were not going to risk losing one Jewish dollar in contributions, they would not take the risk of putting the show on the air, of being the people that made the purchase to bring it into the PBS system.

Mr. VAN DEERLIN. That sounds like an——

Ms. MOTZ. Well, I can put you in touch with the producer, if you would like to talk to him.

Mr. HAIGHT. If I could make a comment. We do know that the management of the public broadcasting stations do censor what goes on programs. Frederick Breitenfeld admitted on a CBS documentary in the case of State financing that the presence of that State legislature's control of financing has an effect on content.

I have personally had it admitted to me by other station managers that they, in fact, know which side of the bread the butter is on, and they will not get on the case and do an investigative report on the State legislators.

Now, these stations do this in cases of government support. Why do we believe there is a distinction between government support and private support?

We also know that in the San Francisco area there were specific instances of times when fear of being able to gain contributions resulted in people putting pressure upon the news staff. That has been admitted by an executive there, to somebody who was part of our organization.

Mr. VAN DEERLIN. Mr. Grossman?

Mr. GROSSMAN. I think the logical conclusion of what we have just heard, that stations do not put programs on for fear of membership ire; and stations do not put programs on for fear of government ire; and stations do not put programs on for fear of corporate opposition, then the only clean way to run public television is to absent any funds from it whatsoever. I think that is both senseless and leads us nowhere.

I think the end product of what we are talking about, perhaps the better way to approach it, is that there is an obligation, a responsibility of broadcasters, of those who have control of, who operate the public broadcasting station, as well as PBS, to make sure that they have standards that make them independent of any source of funding, whether it is government, private, corporate, or foundation.

Those standards I suggest, Mr. Chairman, we have worked very hard to develop through PBS and throughout the entire system through our underwriting and other guidelines. And we remain tough in terms of being concerned about interference with program content. The way this conversation has gone, we will end up with no funds because no funds are pure in that sense.

Mr. MINOW. Mr. Chairman, the principal critics of our accepting underwriting are commercial broadcasters. They are not here today, but they are the ones we hear from the most. They say, what you are doing is in effect subtly taking advertising—they do not add—which would otherwise go to us.

I have been through this a number of times at channel 11 in Chicago and I say, "Where is it written in stone that you have the only right under the Communications Act to accept money from a corporation; where?"

It seems to me—and I asked to speak here because I think there is a basic fundamental principle involved here. We are, as I envision public broadcasting, no different from a university, hospital, or a symphony. We are a private institution making our way raising money from a multiplicity of sources. The bulk of our money at our station in Chicago comes from the viewers directly. We have 160,000 families that give us contributions each year. We think that is the healthiest thing. We get some money from the Government through the Congress directly from the Corporation for Public Broadcasting. We get some money from corporations and foundations. We get some money from unions.

We want to be in a position where we are not under the gun to any one of them, that is our whole philosophy. If that is not a philosophy that is shared by the Congress, you should tell us because that is the way we approach it.

Mr. WIRTH. Mr. Chairman?

Mr. VAN DEERLIN. Mr. Wirth.

Mr. WIRTH. At this point I would like to make a couple of comments. I am very sympathetic and in agreement with what you are saying about that, and I think there is a great parallel, which some of us have discussed, between the public financing in public television and public financing in congressional campaigns. One of the chilling effects is the influence that is based very broadly.

Mr. MINOW. Right.

Mr. WIRTH. I think there is a very good and appropriate parallel there.

The other point I wanted to make is that, as I understand the legislation introduced by Mr. Van Deerlin and Mr. Frey, there is nothing there to preclude funding coming from business or other sources; there is nothing that precludes it.

What there is, is a provision precluding the identification of a particular source as the sponsor or developer of that program. Why? I mean, we have heard about the chilling effect. We have heard those kinds of examples and there are others as well which relate to what you were talking about, Mr. Grossman, the need to police the network of public broadcasters.

Let me give you an example which is pretty unfortunate. This is a 1978 publication from Northern Michigan University, called Preview magazine. This is sent out to potential supporters.

Underwriting part of the cost of one of our programs allows us to mention you or you company's name on the air before and after that program is broadcast. If it is a longer program, we can mention your name a third time during the program. Underwriting is deductible as a contribution to Northern Michigan University. The Federal itemization, 50 percent tax writeoff. Our typical listener is 21 to 40 years old; earns \$15,000 a year or more; turns us on for at least 3 hours every day, and views an underwriter as someone who is generous and has good taste, not as a mere advertiser. Individuals, small businesses, and large companies can all help the cause of alternative radio through underwriting. Listen to 90.1 on your dial and give us a call. We will tailor a package to suit your needs and budget.

Mr. WIRTH. Now, that is the kind of problem we are talking about if, in fact, we are talking about noncommercial broadcasting. If we are talking about eliminating that kind of influence, of the chilling effect; if we are talking about real alternatives, we have to figure out what kinds of standards we are going to set that are more than lip service, that are effective and do the job that I think we all agree ought to be done. I could not agree with you more, Mr. Minow, about the need to develop that broad base.

Thank you, Mr. Chairman.

Mr. HALL. I would like to say one thing, too, about two comments that Mr. Minow made. One, there should not be any distinction between the right of commercial broadcasters and the right of public broadcasters to go after commercial money. Two, he said earlier, there should not be any distinction between commercial broadcasters and public broadcasters in matters of accountability. Mr. Minow is wrong at both points. I think that both of these are problems, when in fact, public broadcasters then come back to Congress for money; when public broadcasters use, uniquely among nonprofit entities, public airways to ask for money from the public for their operation.

There is in fact a higher duty of public broadcasters, and that should be exercised. The commercial constraint is so great that commercialism ought to be removed the way this committee is proposing in H.R. 13015.

Mr. VAN DEERLIN. DeeDee Halleck wanted to comment.

Ms. HALLECK. Just a note on that. I think that one of the things that you can see in terms of corporate funding is the kinds of programs that the specific corporations tend to fund. You do not even have to hear about chilling effect to know that when a Citibank of New York sponsors "Inside Albany," which is a review of the politics of Albany, they are not going to be into a kind of muck-raking programing about the influence of banking in Albany. Also, Sperry Rand is the sponsor of "Wall Street Week in Review," or at least was. Some of the sponsorship for "Sesame Street" has been by Kellogg's and by General Food, and I wonder when on "Sesame Street" there has been a really good, hard-hitting discussion with children about nutrition and the problem of sugar in the American diet.

Mr. VAN DEERLIN. A hard-hitting discussion on "Sesame Street"?

Mr. ISELIN. In fairness, and obviously I am speaking only second-hand, I think that Television Workshop, which produces "Sesame Street" because of the current question about the sugar content in various cereals that particular institution which, like everyone in public broadcasting, is constantly scrambling for underwriting funds, has made a voluntary decision not to seek support from the cereal community just because it believes it might in any way even appear to take a position.

I think that kind of effort to make sure that programs which have years and years of investment are protected, is generally characteristic of the system.

I think the citation Mr. Wirth gave us in that report is unfortunately also a part of the way selective stations might, at one time or another, try to rally funds. I think we would all be disappointed if that was any more than an occasional exception.

Mr. WIRTH. I should add very quickly that I am sure that it is the exception rather than the rule. I would also suggest that suggestions like that, I am sure, are very tempting at times when you can get some pretty major funding.

Mr. ISELIN. The general experience we have is that there are relatively few corporations that are sustaining contributors to the cause of public broadcasting at this time. I think it is a substantial mistake to say that most programming comes to us through the generosity, or the ulterior motives of the corporate community. Most of the contributions come through the market place mechanisms of stations buying and selling programs among themselves, supplemented by local dollars.

There are not very many corporations that currently support public broadcasting. And I think the real mission, frankly, is to convince companies that they have a stake in the credible flow of information to the public, and that it is important for them that there be a marketplace of ideas, and that they contribute there as well as they do to symphonies, hospitals, and everything else.

Mr. GOLODNER. If I may, this is where we part company. I disagree thoroughly. The corporations have a huge marketplace in which to sell their wares that dwarfs your meager resources.

I do not feel sorry for them. They know exactly how to articulate their point of view, and they are doing it. Public broadcasting was created to provide an alternative to that marketplace where some little guys can also get on the air—nonprofits who have no commercial reasons for broadcasting, and perhaps may present a refreshing perspective of things.

When you run "Wall Street Week", sponsored by corporations, I do not see how that is going to be a real honest to God muckraking tell it like it is program.

You allow corporations to underwrite "Wall Street Week". But, now let me give you an example of how your rules work. There is a labor history series that has been kicking around for about 4 years. Mr. Iselin, I think, knows about it because channel 13 was involved in it, or was approached about it.

Ms. HALLECK. Was this the American labor history series?

Mr. GOLODNER. The American labor history series. We have never seen a program yet about working people in this country of any prime time quality. That is a program tracing the history and development of the American labor movement which, after all, still comprises some 20 million people in this country.

An independent producer has developed a concept to do this. The National Humanities Endowment has given her some of the largest research and development grants that it has ever given to any program. It has been unable to get additional support. Now, why?

The producer was told by public broadcasting you cannot take corporate support because it is tainted. You cannot take AFL-CIO support because it is tainted. And we do not have sufficient other moneys unless you come in with a match. You have to get some sort of private funding. Now, this is the catch 22 that truly independent producers are faced with today.

Yet, "Wall Street Week" is allowed to be underwritten by corporations, as are public affairs programs, as you just mentioned, a review of the State legislature, I believe, in New York.

Ms. HALLECK. Inside Albany.

Mr. GOLODNER. As if corporations have no interest in the contents of these shows. But, when labor wants to support things like that we are told, "Oh, no, you have an interest in the public affairs being talked about because, after all, that is what you do." But good old Mobile Oil is not interested in public affairs, so they can sponsor those things.

Mr. VAN DEERLIN. Mr. Iselin?

Mr. ISELIN. The Chairman said it for me. In fact, Mr. Minow said, we invite labor unions to help us to bring important programs, such as what is going on in our State legislature. That kind of service, I think, benefits tremendously from the support of labor unions.

Ms. MOTZ. I would like to come to Jay's defense on this particular point. I do not know what Elsa Rassbach, who is the producer of that, was told, but I happen to know quite a bit about the particular series. She went through close to \$200,000 of NEH funds without even producing a script.

Mr. GOLODNER. That is not true, I know there are three of them.

Ms. MOTZ. Well, they had not been done the last time I checked on the project. I think that has to do with the quality of the program. I do not think the requirement that the producer has to produce funds for a match is at all unreasonable. There is no reason why a producer should not find support in other segments of society as well. I do not think that is the point.

I do not think, again, it is the corporations who are to blame for any bad influences or laziness on the part of the stations, that has to do with the people who are running the stations and their individual courage, and the level of risk they want to take.

Mr. GOLODNER. That is exactly where commercial broadcasting stands. We are now depending on the courage and independence of the commercial networks and stations. I have a feeling of déjà vu here. From what I can learn, back in the 1920's and 1930's when commercial radio started, RCA was telling people they are not really going to sell the time on the air, it belongs to the public. What they were doing was providing a program service so they could sell the receivers. And there were a lot of sustaining programs in those days.

This is exactly the same thing that the public broadcasters are coming up with now. "Oh, it is just a little amount of money. We are a little bit pregnant, come back and see us 9 years from now."

Mr. VAN DEERLIN. Nine months.

Mr. GOLODNER. "We will have a full-grown commercial baby for you."

Mr. VAN DEERLIN. Mr. Caldwell, the final word on this subject?

Mr. CALDWELL. Mr. Chairman, I think we are getting a lot of allegations that the commercial interests are having chilling effects on what we are putting on the air from people outside the working industry in which I happen to be a manager.

I can tell you that we have never not put a program on the air because of outside influence. There are outside influences, but we have never not put a program on because of that, and we do have good business support, good foundation support. And two of the businesses in our community that I said we had trouble with in the past, I am convinced that within this year they will be back supporting our station.

There are two kinds of underwriting here that I think often get confused. There is the underwriter for the production of the program, and then there is the underwriter in the local community that helps that station acquire that program. Being more in a local station capacity rather than a national producer, we take a "Wall Street Week" and bring it in our market and try to find an institution that will underwrite part of our costs. Very proudly, in that particular case a bank in town said, "We will give you the money to underwrite that program."

We go off with our shopping list and try to find businesses who will put up the dollars, and we proudly tell—and we must legally tell who they are. The FCC law is very clear on that, we must tell who they are, but we may not tell what they make. For example, we can put on the air, "Stanley Home Products has made this program possible", but we cannot say what Stanley's products are. That is fine. Stanley Home Products, then, if they want, can buy an ad in the paper saying, "We are proud that we are helping the local public television station."

What, indeed, is wrong with that? They are helping us.

Mr. GOLODNER. Mr. Chairman, Mr. Iselin and the gentleman on my right know of no instances of the chilling effect here. I would like to ask Mr. Iselin again—this time it is not from a secondary source but quoting Mr. Iselin—speaking of the difficulty of getting funding for "Woman Alive".

The companies were scared to death of it. You have to appreciate what it means for a company's internal management policy to fund a series like Woman Alive. We ran into too many situations where a company had no board member who was a woman. Come back in a couple of years, they said. How can we take a leadership position?

Now, I read that, that you were pleading here that you were under pressure. "How can we take a leadership position when you cannot go to your major funding source for money?"

Mr. ISELIN. Just the reverse, Mr. Golodner, I was identifying the reason there was no corporate underwriting for that particular program. We still produced the program, we thought it was important. We found other ways of putting it on the air through the help of corporations and the help of other stations. We went right ahead and did the program because we thought it was important.

I think Jack Caldwell's point that the next time around some of the companies who might have decided not to do it the first time will say, "Gee, on second thought, that was very interesting."

That was a program that helped constructively further important public debate in this country, and public broadcasting should probably be proud that it went ahead with the program even though we were disappointed that we could not find corporate support. That has been characteristic, I think, again and again of our principal commitment to the public we serve. There is an awful lot of hearsay and supposition on the sidelines that we are "on the make" or "on the take", and I just think the record is not substantiated. One of the great utilities of this opportunity is to surface both the suppositions. I think the statement on our part contradicts the fundamental ethics of our business. We think about ourselves as a profession, an honorable one; and we do not go into the business of communications with the idea that we are going to be "on the make" or "on the take". I think there is no evidence to speak of that furthers it.

Mr. GOLODNER. It is difficult to prove a negative. We cannot know about what never was shown.

Mr. VAN DEERLIN. I move now to recognize one of my sources of pressure, committee counsel.

Mr. SHOOSHAN. Thank you, Mr. Chairman. I will try to keep it brief, considering the lateness of the hour. I just want to follow up with Mr. Minow, if I could, your position on the linkage of the spectrum use fee to funding public broadcasting, or finding an insulated funding mechanism for public broadcasting. As the Chairman pointed out, the 11-year old suggestion of the Carnegie Commission is the only suggestion out on the table today.

Would you support that fee? Would the position you have taken in your written statement be any different if the spectrum use fee were linked only to the funding of public broadcasting if Congress were to decide to fund independently the ownership and rural telecommunications program?

Mr. MINOW. I could not speak for the system without checking with 155 members, as I have learned. But I would say, in principle, that would take away a good deal of our objection. The objection that would remain would be, how much money is this going to produce; how can we count on it; how long is it going to last? Is there going to be a hassle here every year with the Congress and the commercial broadcasters about whether the spectrum fee is really permanent? What happens after Chairman Van Deerlin retires to San Diego, and so on and so forth? We do not want to put ourselves in a precarious position.

Mr. SHOOSHAN. You would prefer a constitutional amendment?

Mr. MINOW. That is right.

Mr. SHOOSHAN. Well, those to me are the kind of constructive questions you should be raising. What concerns me is the language in the statement that this could be perceived as a tax on commercial broadcasting. Do you oppose a tax levied on commercial broadcasting, either on gross revenues or profits?

Mr. MINOW. No, although I think our view is that if there is such a tax, the money ought to go to the general treasury, largely for the reason I mentioned before. We do not see how this is going to produce enough money for what we think is going to be our need. If you said to us, "This is a part of it," and that this is not a limit or a ceiling, I think our view would be different.

Mr. SHOOSHAN. But you said in your statement, or in response to the Chairman's statement, that you are examining, looking for a basis for dedicated revenue.

Mr. MINOW. Yes.

Mr. SHOOSHAN. What I hear you describing to me is that the only basis that would be sufficient enough might be the GNP. What other basis are you looking at?

Mr. MINOW. You are asking the same question of me that I am asking of my colleagues because I do not think it is adequate for us to come in here and say, "We do not want this," or "We do not want that". I think we have to come to you and say, "Now, we have thought this thing through ourselves and this is what we propose." I think the burden is on us to come to you with a proposition, and we are going to do that.

It seems to me if you could rewrite history, if you asked me personally—not speaking for PBS—if you could rewrite history, I would love to have the system they have in Japan, or they have in England. We do not have that in this country. So, we are going to have to come up with something else. We do not have it yet.

Mr. SHOOSHAN. One thing we will be doing, which is not rewriting history, but we will be rewriting H.R. 13015. I conclude from what you just said that PBS is in a position of not, as your statement would indicate here, rejecting the spectrum use fee and the linkage to public broadcasting, but trying to work cooperatively to see whether something like that might be a useful mechanism.

Mr. MINOW. If the committee perceived our position to be a rejection, we did not state it very clearly because that is not our view. We question it, we do not reject it.

Mr. VAN DEERLIN. You see, we would not have a chance in the world going to the floor with a proposal that was renounced both by those whom it was tapping, and those whom it was benefiting.

Mr. MINOW. I understand.

Mr. SHOOSHAN. One last observation more than it is a question, Mr. Minow. I think there is a distressing concern that seems to be around that because of the political problems in achieving something like a spectrum use charge, that it should be swept under the rug in favor of a recurring 5-year advanced funding mechanism. Yet, we are trying to find an insulated funding mechanism for public broadcasting. The current process is really not much better than what preceded it. There is still the opportunity for interference, except now it is 5 years at a time, 3 years in advance.

Mr. MINOW. I think that is well taken, and I appreciate that problem. We are addressing ourselves to it. I do want to ask for some time to come back to you with a thoughtful answer.

Mr. VAN DEERLIN. DeeDee?

Ms. HALLECK. Excuse me, but I really felt it important to keep the record straight on my colleague and a member of the association, Joan Shigekawa, who produced that show, *Woman Alive*, which you said went on the air.

Unfortunately, it went on the air in a greatly reduced number, I believe it was supposed to be a 16-week show, and there were only three shows produced. It was a real disaster. I believe she has already testified before the committee about that show. So, I really object to that.

Mr. ISELIN. Just for the record, there were 10 shows.

Mr. VAN DEERLIN. Mr. Coleman?

Mr. COLEMAN. Thank you, Mr. Chairman. Also, in deference to the lateness of the hour, I have only one question, and it involves an area that does not exactly have the emotional connotations that corporate underwriting with a fee has, but something that the members of our subcommittee prior to the previous conference on the public broadcasting bill were concerned about. That was the use of a significant portion of public broadcasting funds for instructional programing.

I wanted to ask first Mr. McBride, and then any other panelist who cares to comment, whether they feel that an adequate job has been done in that regard since that conference; and whether education has an appropriate share in the provisions of H.R. 13015.

Mr. McBRIDE. Well, I think within public broadcasting itself you can get a variety of answers to the question you just posed.

I think, in part, the answer comes in terms of the particular type of public television licensee that is responding. My particular bias, because it comes from a point of view and perspective of both a university licensee and a State agency licensee, is that our stations, and therefore our network, have a very particular responsibility to educational broadcasting as well as public broadcasting.

I for one feel that additional attention does need to be given to this very important category of programing. I am pleased, I will be frank to admit, that our national organizations recently are paying much more attention to this very important subject than has been the case in the past. I include in that statement both our Public Broadcasting Service and the Corporation for Public Broadcasting. I think this is an area that needs additional attention.

I recall, I believe, that 99 of the 160 licensees who are members of the Public Broadcasting Service are either university, school, or State agency licensees which have a dedicated commitment to educational or instructional television as well as to public television. That is not quite as true of other licensee types, however, I would be quick to state also that community licensees do not turn their backs on this very important category of programing at all.

I will stop for the moment with that response.

Mr. COLEMAN. Let me just ask you one further thing. You said you are heartened by recent things that both CPB and PBS have been doing in this regard. What have they been doing recently?

Mr. McBRIDE. Well, let me give you several indicators. One, the board of the Public Broadcasting Service has activated an adult learning task force, has provided it funding for a consultant and funding for certain operations to seriously address the question of how PBS as our national organization can become increasingly active in the subject of educative programing.

On the corporation side, there has in very recent years been activated an office of education, and the office of education has been given a modest budget. Hopefully that budget will be increased as we look to the future, and it is increasing its activity in terms of educational programing. Those are just two illustrations.

Mr. COLEMAN. Does anyone have comments?

Mr. ISELIN. Mr. Coleman, I think this will reinforce Jack's point. The recent appointees and the selection by CPB would reinforce that. Mrs. Lillie Herndon, a distinguished member of the board of the corporation is a former president of the National PTA, and she has just recently been elected chairperson of the corporation. After an extensive search the board has nominated and elected as the new president a very distinguished university president, Mr. Robben Fleming from the University of Michigan, which would tend to send a signal, it seems to me, to everybody that education continues to be now an important part of the mandate.

That is reinforced by the fact that I think community stations such as my own, and I think WGBY in Springfield, offer as almost one-third of their schedule each day to reinforce teaching in schools, and increasingly offer weekend courses and nighttime courses for continuing education.

Channel 13, for example—and I do not think we are unique in this respect—commits almost \$1 million of its budget simply to the school television service, offering over 65 courses for school children each year. On top of that we have an office of higher and continuing education where we provide with the community and 4-year colleges in the area, a series of evening and weekend courses.

I think we all believe more than ever that the individual citizen's franchise to free education in our society is a mission that we espouse and share and are going to continue to work at.

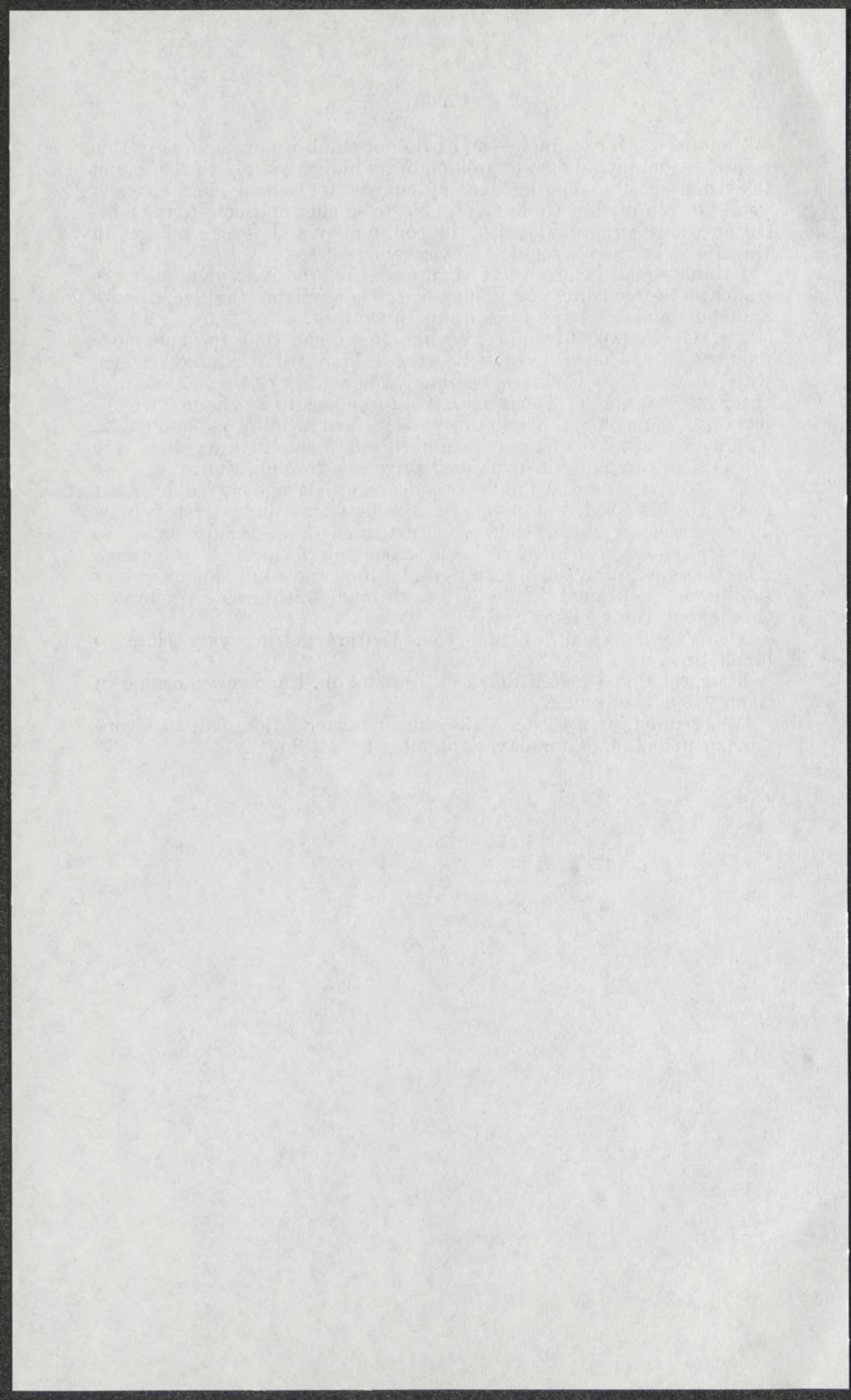
Mr. GROSSMAN. I would just like to pursue that for one more moment, Mr. Coleman, only because I know that Stanley Evans, were he here, would talk very strongly about that as the chairman of the PBS Programing Committee. That happens to be the major subject on the agenda of that committee at its next meeting on October 12. There are initiatives on many fronts with our new satellite system, the prospect of providing instructional programs through that.

The Corporation for Public Broadcasting has not only done what has been described, but it has for the first time in its history now appropriated significant dollars for extended rights for programs, so that we can begin to enable schools to have more use of the programs. And there are many such initiatives, both on the adult side as well as the more traditional kindergarten through 12th grade, going on throughout the system.

Mr. VAN DEERLIN. Thank you. We are getting very close to lunch time.

I suggest that we step down until 9:30 a.m. tomorrow morning in room 2359. Thank you.

[Whereupon, at 2:10 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Thursday, September 28, 1978.]



THE COMMUNICATIONS ACT OF 1978

THURSDAY, SEPTEMBER 28, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2128, Rayburn House Office Building, Hon. Lionel Van Deerlin, chairman, presiding.

Mr. VAN DEERLIN. Good morning. Welcome to what may be the last day of hearings in 1978, at least, on the Communications Act revisions.

Welcome also to a room that is usually filled with bankers and financiers, thus making us feel out of place. We have been asked to give up the room by 1:30 p.m., so Frank Mankiewicz and our other witnesses are going to have to observe a time limit.

The first witness, Mr. Ed Elson, is an old friend of the subcommittee. He is also the chairman of National Public Radio. Mr. Elson is accompanied by NPR's president, Mr. Mankiewicz.

Good morning, Mr. Elson.

STATEMENTS OF ED ELSON, CHAIRMAN, AND FRANK MANKIEWICZ, PRESIDENT, NATIONAL PUBLIC RADIO

Mr. ELSON. Good morning, Mr. Chairman.

You know, Mr. Chairman, I am a director of the Citizens' Southern Bank, and I really came up here for other reasons. I thought this was going to be a banking discussion, and I was not prepared for any radio testimony, but I have jotted some notes just in case.

Mr. VAN DEERLIN. Yes; I have been told that your humor is prepared.

Mr. ELSON. Well, Mr. Chairman, it has been said by some in the public broadcasting community that radio has received a special treatment by courting and catering to this committee. Publicly at this time I wish to deny that, Your Highness—uh, Mr. Chairman. Excuse me.

Indeed, if it were not for my legendary modesty and the fact that I do not like to brag, if you were to call this the Van Deerlin-Elson bill, I would not object at all.

Mr. VAN DEERLIN. Lou Frey probably would not mind, either.

Mr. ELSON. Well, today brings memory of our lonely colloquy, Mr. Chairman, of just 1 year ago this month, which has been a lifetime for public radio, when you and I discussed before this committee and seven other witnesses the long-range funding crisis which was

being waved as a red flag by many. I believe you and I questioned why no one was asking for a permanent funding mechanism, and why no one was proffering a program to justify it. "Give us more money" seemed to be the only cry of that day, and you and I discussed a spectrum tax creating an endowment. We spoke of deregulation. We discussed bureaucracy and rivalries that the present structure encouraged, and now we have before us H.R. 13015.

Your understanding of the problems of public broadcasting is both accurate and perspicacious, and your energy in attempting to find a solution is contagious and visible. Your solutions, I think, are imaginative and creative, but I do have some concerns—not reservations, concerns—for I am convinced that this bill will ultimately be drawn to provide the most successful public broadcasting system in the world.

There is a poor fellow down home who promised he would hang himself before he allowed his wife to have any more children, so after he found out she was expecting, he tied one end of a rope around his neck and another end to a high limb, stood on a box and prepared to jump. Soon he climbed down off of the box, and a friend of his said, "Listen, I thought you said you were going to hang yourself before you would have any more children?" And the fellow said, "Well, you are right; but I got up there on that box and I said, 'Billy Joe, you know, you might be hanging an innocent man.'"

This total, overwhelming protection that this bill gives to public radio really is not needed. We are not only innocent of the excesses laid by many to parts of the public broadcasting community, but also we are no longer shackled by the innocence of youth that requires such extraordinary supervision.

Mr. Chairman, I know you want your bill to encourage, not to inhibit, I know you want it to expand, not to prohibit. While it suggests freedom, it makes radio equal, not free. It makes us a general partner and as such ties us to problems unique to others in the public broadcasting media. We needed to be brought into the partnership. You did it for us, but I have always felt that those who place liberty before equality fare much better than those who place equality before liberty.

We wish to be limited partners. Thanks to this committee, to you, Henry Loomis, and Frank Mankiewicz, we have been given equality at the starting line. Let us run our own race. We will take our chances at the finish line.

Many aspects of the bill are great. Some of them are excessive. It is sort of like buying 1 billion McDonald hamburgers just to see the sign change.

I wonder if you really appreciate how we feel about your efforts? Although it may appear that we view parts of all of this as bringing three truckloads of bean pickers into a field without a foreman, nevertheless, in truth, to us the Good Samaritan was a crude heathen beside this committee. You have done us a great job. But Mark Twain, I think, put it well when he said, "It is not what you don't know that gets you in trouble, it's what you know for sure that ain't, that's what gets you in trouble." And that is why you asked us here today, and that is why we came. We wish to help if we can.

Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Thank you, Mr. Elson. Does your partner have some words to share?

STATEMENT OF FRANK MANKIEWICZ

Mr. MANKIEWICZ. Mr. Chairman, I have a prepared statement which I assume you wish to have made a part of the record and do not want me to read with feeling. However, I do want to say a few specific things about the legislation.

First of all, I want to echo what Mr. Elson said, that despite whatever concerns we may have about the bill, we feel that the overall scheme is an extraordinary one, and the process is one in which we wish to cooperate. We stand ready to help in any way we can. We do not mean to be only critical; we would like also to be constructive and involved in the development of other options.

As we've examined the bill, we have found some provisions that we find troubling. We are concerned, for example, about the fee, because we see no indication it would provide the kind of substantial, permanent funding which you and Chairman Elson spoke of a year ago, and which we think is crucial if there is going to be a substitution of funding sources.

We are concerned that the denial of the possibility of corporate and other underwriting, coupled with an uncertainty about the level of funding that might be derived from the spectrum use fee, coupled further with competition for rather limited funds, might very well place public radio back where it was a few years ago, in a seriously underfunded situation.

We are concerned that the legislation, as Mr. Elson pointed out, seems to make too little a distinction between public radio and public television. Perhaps I could mention the symptom that best characterizes our differences: Of the programming, you see on a public television station, roughly 80 percent is provided in one form or another by PBS, and 20 percent is developed by the local station. What you hear on a public radio station is almost exactly reversed. That is to say, roughly 20 percent is material provided by National Public Radio. The rest is provided by the local station.

This difference results from the economies of the media. It involves the traditional methods of production and delivery of programming, it involves the minimum 126 hour week of public radio stations and mostly, it involves funding. What I am saying, Mr. Chairman, is that if the local stations in the public radio system took every single program that National Public Radio sends them, they would still have to provide 2 hours out of every 3 on their own. When you take that very local, diverse structure and apply to it the separation of the operation of the interconnection and from the scheduling and programming functions and you give an executive organization, the NTA, control over operating funds, and still another group, the endowment, a mandate to provide up to 50 percent of programming funds, but only up to 50 percent, and a restriction on where the other 50 percent can be obtained, I think you are unnecessarily limiting radio production and the operation of a radio system. I think your intent—perhaps a justified one—may be based on a fear that overcentralization might create a different kind of system than what the people of the United

States want. I do not believe, however, that that is remotely a radio argument.

I do not see any danger at the present time or even in the foreseeable future that that kind of centralization and nationalization and Washingtonization of a system could develop so long as our facilities and our funds and resources are taxed at the moment to provide that 20 percent of programing. When radio turns to satellite distribution in 1980, stations will have access to the system from 16 sites, which will diffuse public radio still further.

While public radio has developed within the past decade, as you now know us, we are brand new. I am, as you know, Mr. Chairman, the first president of National Public Radio, and I have only been in office a year. The organization was formed in May of 1977 as a result of a merger of two other organizations—one bearing the same name we have now. It was at the time of the merger that the public radio system made some decisions about the way in which it wanted to conduct its affairs; about how it could most efficiently and creatively serve the public.

What we are saying is that we hope that H.R. 13015 can accommodate as much as possible those desires that were expressed, and are now being executed, by the public radio system, and not move so quickly to break us up.

I have testified before and I will say it again here that there might be reason, although I suppose we will have to wait another 4 or 5 days, there might be a reason to break up the Yankees, or at least that is the historic cry, but we think that you would be ill-advised to break up the Seattle Mariners. We just got in the league.

We think there are built-in limitations in the radio system, because of the nature of the medium, against the kind of centralization that you fear elsewhere. And we would suggest that in its final form H.R. 13015 permit the continuation of something like this kind of structure as long as the stations so choose, where we have one organization, to be sure, that does programing, that runs the interconnection, and that represents its member stations at fora like these as well as before the other bodies of public broadcasting. That may sound like centralization, but the fact of the matter is, it has worked out rather well. It has created and, I think, with the satellite distribution system, will continue to create, a very decentralized system.

We think the nature of radio is that the satellite system will decentralize it even more. There will be 16 places around the country where programs can be originated. There will be up to 24 channels available for distribution of programing. That can only reduce further the authority in the programing area of national organization, but if it is then fragmented as well into interconnection, programing, and operational functions, I think it will not be able to function at all.

Mr. Chairman, we will be happy to answer questions later, and to talk about our views of the spectrum use fee and some of the other things, but in general what we are saying is, the bill does not take enough account of the differences between radio and television, particularly in the production phase. We think as far as the new structure of public radio is concerned, there is too much regulation too soon, too much change in the structure before it has had a chance to operate at all, before we have had any experience to see how this works. As Mr.

Elson says, just as we are at the starting line, we must consider dividing operations, programing, and interconnection. If that division can be usefully made in radio, and I am not sure that it can. It would once again, I think, fragment the system and get us back to a point behind that at which we began last year. At least under the House version of the Public Telecommunications Financing Act of 1978, we are at what the economists used to call a takeoff point.

Under that version of the financing bill, we are ready to go, and we think some of the provisions of title VI of this operate as a drag on that, only because insufficient attention perhaps has been paid to the crucial distinctions between radio and television.

I would only conclude by saying that we applaud the notion of the spectrum use fee. The idea of the grazing fee, as you described it at our convention in San Francisco, we always thought was a good one. The idea that commercial radio might be willing to give up something, a fee of some kind in return for virtually total deregulation is, we think, an attractive one, but deregulation, Mr. Chairman, is likely to lead, as I said in my prepared statement, to a rather narrow competition in commercial radio at least in most markets. It will be a competition that will be confined, I think, to middle of the road music as against soft rock, or hard rock as against folk rock, and that is not necessarily the kind of competition that best serves the public interest, if that is all there is.

Our feeling is that deregulation will make it even more incumbent upon public radio to pick up the slack in news and public affairs and alternative kinds of programing, even alternative kinds of music. To do that, we are going to need plenty of resources. We are concerned that this legislation, while putting that mandate on us and saying the public interest is going to be served because competition will serve the market, and you public radio fellows are going to do a lot of the things we used to require of the commercial stations that they did not want to do, now they do not have to do it, does not permit us to do it as fully and capably as we think we can do it. However, we are anxious to work with your committee and with the staff over the next months, perhaps, in fashioning an instrument that might achieve that in a better and mutually satisfactory way.

Thank you, Mr. Chairman.

[Mr. Mankiewicz' prepared statement follows:]

STATEMENT OF FRANK MANKIEWICZ, PRESIDENT, NATIONAL PUBLIC RADIO

Mr. Chairman, Members of the Subcommittee: Since this is the last day of hearings on H.R. 13015, I'll spare all of us retramping much of the ground that others have already covered. I do wish to add my voice, however, to those who have congratulated you on your efforts to bring the statutory base for telecommunications into the next century.

I expect it was clear to all of you before you introduced this legislation that this might not be a completely popular undertaking. Untested change seldom is. Middle-aged interests don't relish having to alter well-established business practices. Until the introduction of your legislation, in fact, one might say that the established communications industries have planned for the future with, as Mark Twain suggested, "the calm confidence of a Christian holding four aces." Even adolescents, a descriptive public radio gave itself in our last appearance before you, have discovered that life is easier when they sense they have some control over change. We've tried to keep this frailty in mind as we've examined H.R. 13015.

The bill reserves a prominent position for public broadcasting in this country's communications future, a position which we both appreciate and fear. As broad-

cast regulation yields to the marketplace, particularly in the absence of an explicit public interest standard, the public will look with greater insistence to public broadcasting to meet all of its unattended communications needs. In the radio marketplace, without ascertainment, without the Fairness Doctrine, without license renewal, competition will be lively between middle-of-the-road and hard rock or hard rock and acid rock. For treatment of issues, public affairs, special interest and serious cultural programming public radio becomes the only game in town. I believe that radio deregulation is, in most markets, timely, and we welcome the challenge it would hand us. But it is crucial that we have ample resources to do the job. It is our overriding interest, as it is, I believe, of this Subcommittee, to create for public broadcasting and the different media beneath that umbrella—public radio and public television—a statutory framework which will permit us the flexibility, independence and funding to respond efficiently to the public's programming tastes and needs.

During the last couple of months, H.R. 13015 has already encouraged us to pursue that interest by focusing us on new conceptual, structural and functional options for our future, and thereby, inducing us to take a closer look at the direction in which public radio is now heading. The bill has also pointed up a problem that public radio still has—that while this Subcommittee recently exhibited in H.R. 12605 a much appreciated recognition of public radio's peculiarities, an understanding of the similarities of the two media still dominates a sense of the differences. The laudable efforts in the draft 1978 Communications Act to distinguish between radio and television appears to break down in the public telecommunications section. Yet understanding the distinction between the media plays a critical role in determining: What ought public radio be? And how can we best meet our goals for a quality public service?

Public radio and public television are both friends and family. Many of NPR's members are part of a joint radio/television licensed team. Except where the two media are required to divide the same pool of limited resources, we are not competitors. Rather, we share the larger interest of producing and distributing, with public support and free from government control, high quality programs which fulfill special audience needs. In that vein, we are now putting to test what we have only recently learned about our differing systems in the form of significant joint programming.

However, to meet our responsibilities, public radio and public television have had to be free to operate as best they could within what constitutes differently structured media and markets: Radio, for example, is portable and flexible. People look to it for up-to-date news and information—especially about local conditions. It is a good medium of ideas. It uses the basics—the words and sounds of everyday life—to provide familiar, comprehensible bases for exchange of information. Though sophisticated radio production can be extremely complex, radio itself is technically simple. The technology need not, therefore, intrude in the presentation of ideas nor overload a budget with production costs. Radio is personal. It is almost always one-to-one, listened to most often in solitude rather than in social circumstances. The result is that as stations define specific services or formats for their audiences, they often receive in return high allegiances from those audiences. Most listeners listen faithfully to two to four stations, and identify intensely with them. And radio is live! It invites us and the President to sit down together to listen to Rostropovich or Dizzy Gillespie or Pearl Bailey and opens the doors to all of the public to the House assassination hearings.

Radio, most of all, is local. The TV boom in this country drove radio in the 1950's into a largely local mode of operation. The public expectation of radio is thus not only of a flexible medium which can bring the world's sounds and ideas into our living rooms or cars, but also of a medium tied to local concerns and conditions. Radio has already gone through some of the technical and economic revolutions now facing TV. It has come to grips with recordings (perhaps too well, sometimes) and with some of the challenges of access, and, through telephone call-in programs, has provided a basic public forum. It has learned to juxtapose the timely and local with the highly-produced program module from nonlocal sources and has produced specialized programming formats and audience targeting.

This nature of the radio medium—personal, flexible, local, capable of dealing easily and quickly with ideas and events, and technically adaptive—is abetted by radio economics. Good radio is not cheap, but it is cost-efficient. Compared to television production, it is downright inexpensive. Full-service stations operate for a whole year for the cost of a single TV program. These economics have had a great effect on the development of public radio. They have assured that localism

is real; that local production is an economically practical alternative to other program sources, with the result that stations make real decisions about their mix of local and more-than-local programming.

The public radio system—how it operates, why it has chosen funding and programming mechanisms and an interconnection system design which are different from public television's—is clearly an offspring of its medium and of the wide-ranging interests and high standards and expectations of the public radio audience. Because of their different economies, a public radio station's schedule is often a mirror image of public television's—approximately 80 percent of the radio programming is locally produced, 20 percent comes from national distribution. The stations look to NPR for access to a national distribution system for their own locally-produced programming, for programs which have a national orientation and/or which can be better produced where there is a greater concentration of resources and easier access to events, information and a larger pool of talent. They also exchange programs and acquire them from a number of other nonprofit and healthy commercially operated services.

This system has had both its strengths and weaknesses. On the plus side, the stations have worked out with NPR and CPB a programming system which is flexible, inexpensive, diverse and able to respond quickly to programming opportunities. In fact, in discussions two years ago about merging NPR and the Association of Public Radio Stations, so little support was given consideration of any number of mechanisms for stations' buying back nationally produced programs from NPR that it was never even put to a vote. The stations were concerned that any such mechanism would be unresponsive to radio; that it would impose on the system another level of rather substantial administrative costs, would restrain creativity, experimentation and diversity in programming fare and would build into the system a time-lag which would undercut the special flexibility and immediacy of radio. The mechanism that public radio has now is of its own design: NPR receives a bloc programming grant from CPB and then, in conjunction with stations, plans, produces and distributes programs consistent with their wide-ranging needs. This system has proved cost-efficient and fast and results in programming that is at the moving frontier of the state of the art.

On the down side, both shortage of funds and reliance on a single 5 kc telephone line and 2nd class mail for distribution of programming have both taken a toll on encouraging greater station and independent production and distribution. This past year, NPR distributed about 50 hours of original programming each week; approximately 55 percent was produced by NPR, about 20 percent came from the stations and 25 percent from independent producers. The limited capacity of the distribution system has in turn resulted in limitations on who has access to that system on both the front and the back end. As I'll discuss in greater detail later, our satellite interconnection design should eliminate that problem.

Further, compensation rates for station and independent production have historically been disgraceful, often not even approaching the cost of the production. Thanks in large part to language that this committee has put into the Public Telecommunications Financing Act of 1978, in fiscal year 1979 we will finally have some money available to begin to remedy this problem, although still not at rates competitive with groups like the Canadian Broadcasting Corporation. Additionally, we will now have some money for a traveling production advisory group to assist stations and independent producers in developing state of the art production skills. For example, while we have learned a great deal about musical stereo production, we are only beginning to define the frontiers of stereo production for drama, public affairs and news. Our traveling workshop will prepare us for the stepped-up solicitation of station and independently produced programs which will begin next year with our satellite distribution.

What emerges from this description is a picture of a highly decentralized system of public radio stations which, ten years ago, were among about 600 discrete, largely extracurricular low-powered noncommercial stations. Through CPB's planning efforts, its community service grant criteria and its expansion and major-market upgrade projects, and aided by a strong commitment by existing qualified stations to help subsidize system growth, similar stations continue to be nurtured into an expanding professional public radio system. The production, distribution and coordination of activities through CPB and station-controlled groups such as NPR and the National Federation of Community Broadcasters provide the critical strands that tie this diffuse system together.

We expect that introduction of the satellite system in early 1980 will decentralize the public radio system further, opening gateways to production and distribution

which heretofore have been at least partially shut. Under our system design, uplinks will be licensed to 15 stations and NPR, giving public radio 16 regional production sites from where programs can be distributed by satellite. As public radio grows to include, we hope, 1,000 qualified stations, so will the number of producers and the public recipients of this system. To prepare for these changes, NPR's role has already begun to shift from that of sole distributor and primary national producer to traffic manager for the up to 24 channels of programming and information which will travel through the interconnection; to coordinator and assistant for some of the regional productions (we have just been funded for two major drama series which will be produced at KUSC-FM in Los Angeles) and to producer of an even greater range of public affairs, events coverage and news.

Here has been our vision for public radio. The alternatives presented by H.R. 13015 raise the questions: What is the Congressional vision for public radio and does it differ from ours? What are the explicit objectives of this bill for public broadcasting? What are the implicit objectives and how do they apply to public radio? How does H.R. 13015 translate practically for public radio into structure, resources, programming and system and station independence? What are the implications for the public?

Section 611 states that Title VI is designed to further the "general welfare" through the development and distribution to all citizens in the most effective and efficient manner of noncommercial instructional, educational and cultural programs and services and through the expansion and development of public telecommunications and the diversity of its programs. It proposes to accomplish these objectives by providing substantial, continuing financial support from a variety of sources; by encouraging local, state and federal support for public telecommunications; and by protecting it from extraneous interference and control.

These are sound objectives which, I believe, are consistent with our own goals. I'm not sure, though, that, when followed through to their logical ends, the bipartite funding system in Title VI and the legislated distinctions among related functions will allow us to get where we need to go.

Title VI partially replaces the Corporation for Public Broadcasting with a Public Telecommunications Programming Endowment and with two (or three) grant programs within the new National Telecommunications Agency. The implicit objectives here, I think, is to combine strong programming insulation with statutory assurances of station accountability.

This approach is based on a false premise, however—that programming, operations and distribution are functionally and financially separable. In fact, in public radio and, I expect, in public television, they are a part of the same creature. In the broadest, most accurate terms—the public radio station exists only to get programs to the public. Programming costs include, among other things, staff and hardware for planning, selection, production and dissemination of programs. The most expertly drawn distinctions between programming and operations (and distribution) for accounting purposes are, by their very nature, arbitrary.

However, the allocation problems raised by this false distinction are secondary to the havoc it plays with the bill's attempt to insulate public broadcasting. By virtue of the control given to an Executive agency over whatever may be defined as operations—and over the choice and funding of the interconnection system(s)—it gives the federal government a strong and undeniable entree into station management and program decision-making.

At this point, I'd like to turn to our special expertise, public radio, and discuss in more detail how we see the Title VI blueprint affecting the public radio system. Generally, Title VI separates itself into three kinds of issues: financing the system and funding mechanisms, station control and leadership, planning and coordination.

FINANCING

The development and distribution of noncommercial programs and services to all citizens, which embodies two of Title VI's explicit objectives, are dependent upon the resources available to the system and the ease and autonomy with which the system can make the best use of those resources. H.R. 13015 does not make clear how much money is intended for or would be available to public broadcasting and, in particular, public radio, but we can make some reasonable estimates about the implications of the various funding mechanisms.

SPECTRUM FEE

As certain bands of spectrum become overcrowded, a crunch that public radio has felt acutely in its attempt to expand, a spectrum fee designed to encourage its more efficient use makes good policy sense. Use of the fee to subsidize services like public broadcasting, minority ownership and rural telecommunications may also make sense. Public broadcasting, for one, must some day move away from the current matching formula and toward a dedicated endowment or trust fund if it plans ever to have a truly insulated, stable source of Federal funding. However, no such funding mechanism considered thus far seems to have all of the necessary requisites. In fact, the problems with the particular funding arrangement set up in Title VI are substantial enough that they deserve serious additional study.

We've heard estimates that the spectrum fee would bring about \$250 million to \$400 million into the Treasury. We can neither predict from the bill the stability of that fund nor whether, when it is dispensed according to the rules of Title VI, it will continue to provide adequate resources necessary to do the job. Our forecasts are further muddled by how the fee would be divided among the CRC and the three special Treasury accounts, all of which involve good, traditionally underfunded (or unfunded) social causes. Public broadcasting finds itself in the unfortunate position of being pitted against two of the publics it wishes to serve and, with more stations, can serve easily—the minority and rural populations. The Congress, in turn, must make statutory choices about that division whenever a new fee schedule has been issued. If that schedule yields only about \$250 million and the CRC takes a share comparable to its current budget (about \$70 million), any division of the remaining \$180 million will not be enough for public broadcasting. In turn, that periodic Congressional decision, while not exactly an authorization, does keep the Congress involved in making funding decisions for public broadcasting.

FUNDING MECHANISMS

Public Telecommunications Programming Endowment

The Endowment is reminiscent of a Woody Allen animal—it has a head of a lion and a body of a lion, but not the same lion. The Endowment looks like a privately insulated organization, but it isn't. Since its salaries are tied to the Federal Government pay schedule and it lacks the power for capital formation, there are already small cracks in its insulated structure.

The Endowment would disperse funds according to two mechanisms. Fifty percent of the funds would be distributed directly to the stations as basic program grants to be used for direct costs for program production and acquisition only. This mechanism means for public radio a significant change from current practice. Stations now have the latitude to use community service grants for whatever purpose they wish. They are not obligated to earmark funds to buy-back any or all of their nonlocally produced programs—although they can do so if they wish. Instead, NPR receives a bloc grant for programming and, in turn, pays the stations for their locally produced programs which are distributed nationally.

The system proposed under Title VI would, rather than giving the stations new freedoms, eliminate the option for acquiring programming which the stations now choose to follow and force them into a kind of buy-back mechanism which they have historically avoided as being cumbersome for radio.

Approximately 80 percent of the public radio stations are licensed to state and local institutions. Many of these stations fear that their budget-plagued licensees may see the larger grant as a signal which allows them to reduce station support. In any case, stations would elaborately have to defend any money which they wished to pay back out of the station. Under these conditions, the more familiar, broader interest programs get bought. Experimentation, creativity, specialized audience programming tends to fall away. The result, therefore, is a reduction of public radio's flexibility and creativity and elimination of its ability to choose institutional relationships which work most efficiently for the medium.

The remaining 50 percent of the Endowment money, with an exception of up to 15 percent for "highly meritorious proposals," would go to public telecommunications entities for the development, production and acquisition of programming, but for not more than 50 percent of the cost of the project. The funding disin-

centives elsewhere in the bill place the primary burden on the stations to contribute most of that money. This project-by-project matching requirement forces NPR or any other organization chosen by the stations to create a buy-back mechanism. Unlike public television's Station Program Cooperative, however, the Endowment instead of the stations would make the final decision about which projects were funded. This particular problem could be remedied by giving the Endowment explicit block grant authority. The block grant might also eliminate at least two levels of delay—the need to await panel deliberation and the Endowment's explicit approval of each project.

National Telecommunications Agency

H.R. 13015 gives the Executive Branch the master key to the future of public broadcasting. There is a dangerous amount of power vested in a federal agency which is solely responsible for:

- Developing criteria for grants;
- Funding the operations, facilities upgrade and maintenance, facilities expansion and the interconnection of the public broadcasting system;
- Designing the system and deciding how it will grow and where growth of certain components will stop;
- Choosing how and by whom the radio and television stations are interconnected; and
- Establishing guidelines and enforcing statutory requirements through the power of the purse over station operations, however operations may be defined.

This squints toward a federally run system and makes me most uncomfortable.

Tied to the NTA operational and facilities money is an especially troublesome restriction which would prohibit station recipients of the funds from accepting any support for particular programs and series. The stations would also be prohibited from crediting on-air funders for programs or series. While the NTA's mission is presumably non-program related, these restrictions hit right at the heart of many of the program decisions station managers will be forced to make. Money from the National Endowment for the Arts and the Humanities, from the National Science Foundation, from federal agencies, states and local school boards are all mission-oriented. These groups, as well as private foundations and many businesses and corporations operate under either statutory or internal accountability requirements. It is their contributions which have made possible many of the fine programs we hear and see on public broadcasting and which could well disappear under the Title VI funding patterns.

I suspect, though, that the intention of the framers of this bill was not to cut back on public funding, but rather to reduce what is perceived as a growing commercialism of public broadcasting.

I think, though, that this idea of "commercialism" and the implications of discouraging it warrant a closer examination. Let me raise a few points for your consideration:

Diversified funding sources, an objective embodied in Title VI, is the strongest source of system insulation. The proposed identification restrictions would make public radio almost wholly dependent on the Federal Government for money. Aside from the insulation question, it is not clear that without vigorous fund raising ability the public radio system would have anywhere near enough money for sustenance and growth.

The mention of supporters for particular programs and series was instituted by the FCC as a consumer protection measure, not to give fund raising efforts a boost.

However, as general contributions begin to level off in more mature stations, those stations must begin to look elsewhere for additional help. Local businesses are often willing supporters, particularly when they can be identified with a particular series the station programs, thereby creating for themselves a limited (name only) positive image in their communities. (And exhibiting what is known in some circles as good business altruism.)

Because of the nature of radio, it is local programming which would be hardest hit by these restrictions. Further, it is the station serving less affluent audiences which must often depend most on the business contribution.

While NPR and PBS could accept underwriting for particular programs and series but could not credit their funders, incentives for contributions to nationally produced programming would be greatly reduced. In fact, for NPR, there would likely be no underwriting at all. We have only recently attained the stature where corporations will begin to consider us seriously. We see great value in attempting

to diversify our sources. Yet public radio is a local medium, where if stations run nationally distributed programs at all, they do so at times that best serve their communities. Corporations therefore find crediting on radio underwriting a risky proposition. Introduction of new disincentives would immediately dry up any potential radio corporate underwriting.

Stations could of course choose not to take NTA money. Assuming that the stations could then recover those costs through unrestricted fund raising efforts, the problem would be only partially solved. Since it is our hope—and expectation—that the stations will make active use of the 16 uplink sites to distribute more of their locally produced programs, fund raising for those programs would fall under the same crediting restrictions as those imposed on NPR and other independent producers. This creates a strong incentive against the kind of station participation in the system that I expect we'd all like to see.

Finally, do we really want to send a message to the business community that their support for public broadcasting is not wanted? If it is undue corporate influence over programming that we are worried about, though I have seen no evidence of it in public radio, guidelines drawn up by the CRC can guard against that possibility. As I know you've witnessed many times this year, public broadcasters are highly protective of their First Amendment rights—however circumscribed they may be. I would be surprised if those rights have been ever sold in public radio in exchange for money.

Section 642 of the bill authorizes that 75 percent of \$75 million for operational and facilities grants would go to television, 25 percent would go to radio. It's good to see here special recognition being given to public radio. It concerns me, however, that the 25 percent floor on facilities for public radio put in the Public Telecommunications Financing Act of 1978 to help us catch up in that area has in H.R. 13015 become a ceiling for operational assistance. That concern aside, in this particular provision, I doubt that any setaside is necessary, especially since we cannot gauge how many stations would even choose, because of the restrictions we discussed earlier, to participate.

Grant criterion for the program would be established and reviewed annually by NTA to encourage the growth and development of all noncommercial educational broadcast stations. It is not clear whether this means that each of the more than 1,000 noncommercial stations, including the 10 watt part-time stations, would receive a nominal grant, or whether NTA should develop public radio qualification and expansion programs similar to the ones CPB uses to aid in building a professional public radio system.

Under Sections 643 and 644, \$25 million in NTA money would be shared annually for facilities development, interconnection and operations for noncommercial telecommunications entities. We will be demanding a great deal from a sum which is \$15 million smaller than the new annual authorizations for fiscal year 1979-81. While assumptions can be made about the distinctions between the facilities assistance offered under Section 644 and that offered under Section 643, the potential overlap points up a major problem I foresee with this bill—conceptually federal assistance may seem to spring cleanly and logically from different sources, but the person who must maneuver through each program, dealing with changing criteria, differences among money pools, distinctions which are functionally artificial and proliferating bureaucracies, is the very same station manager. Public radio station staffs are small. That is part of their strength. Their expertise is program, planning production, acquisition and distribution. Even now, when stations deal with only CPB for the distribution of federal funding, the administrative complexity of running a station imposes a substantial burden on the station. The Title VI plan would necessitate larger administrative staffs and larger budgets, most of which could not be funded from federal sources under a strict interpretation of the bill.

NTA is charged under Section 644 with funding public or private agencies for the construction or lease of interconnection facilities. The entity responsible for operating or managing the interconnection system may not produce or acquire programs, act as a trade association or schedule programs or services for dissemination. Priority use of the facilities would be given to public telecommunications entities and the remaining capacity would be made available to all other persons for dissemination of related materials.

Conceptually, this design may make sense. In practice, I think it's clear from our discussions today that the interconnection, its design and use, plays a critical role in the public radio system. Any radical change ought to be very carefully considered.

For example, PBS has just finished, and NPR is in the process of designing with the stations and CPB, our respective interconnection systems. This I can attest, is not a job that is done easily nor without the full, continuing funding and participation by the stations. Yet I see no requirement in the bill that NTA work closely with the stations in choosing who it will fund and under what conditions.

Once designed, the stations must have some assurances that the system will be operated in a responsive manner. Separation of control of software from hardware, or the legislated division of distribution from programming, scheduling and representation, is a good anti-monopoly principle. Yet where in our staunchly local, highly decentralized, multiple channel, multiple uplink public radio system can there be anything approaching a monopoly? Were control any more decentralized, the system would fracture. And who, other than the public broadcasting community or the Federal Government, would want to operate or manage a nonprofit interconnect when they could not get involved in programming or scheduling? Are we really talking here about a pure common carrier distribution system? If so, how do we assure some order for how and at what time various programs reach the stations? And who could we count on to bear the additional costs for duplication and middlemen?

CONTROL

The framers of Title VI should be congratulated for what I believe is one of their principal implicit objectives—maximum control of the system by the stations. We can see this intention at work through the required expression by the stations of program preferences through a buy-back mechanism. However, as we've discussed, there is risk here of backfire—the station managers who I have talked with prefer to have the option, as they do now, to choose one method over another or even perhaps a combination of funding methods.

The desire to increase station control over distribution of programs and over their local schedules may also be at the heart of the prohibitions against groups like NPR and PBS from operating or managing the interconnection. As I've just mentioned however, this, too, risks backfire. The radio interconnection is designed by the stations to respond to a live, local, program-intensive medium. Someone responsive to the stations' needs has to manage the system. Someone has to assure that live programs go out live. Someone must maintain some order over the system's potential 24 channels of programming.

This question of coordination is a critical one. What does the bill mean by the person "operating or managing" the system? What does the prohibition against scheduling mean, and, depending on the definition of manager, to whom does it apply? And what happens to the 15 uplinks which will be licensed to public radio stations who are very much in the programming business?

I respectfully suggest that this section of the bill needs a good deal more study. It seems to be aimed at correcting deficiencies that do not exist, and thereby creating for public radio new efficiencies and costs. The one serious deficiency for which I feel public radio must take full responsibility has been the lack of access to the distribution system by non-CPB qualified entities. As I've mentioned, I fully expect that this too will be remedied under the satellite plan, and will, I believe, be further guaranteed by the already strong access provision in both this and the most recent public telecommunications financing bill.

LEADERSHIP

Again, while station autonomy is a concept I strongly support, it has been attempted in this bill at the sacrifice of nonfederal leadership and planning. The elimination of CPB, for example, is a net loss to the system, and particularly to public radio, of some very important projects. Public radio, as all of you know, must expand substantially if it intends to provide a responsive nationwide public radio service and take advantage of the possibilities opened up by satellite distribution. We have learned that such expansion cannot take place efficiently, if at all, without planning, performance and power incentives, assistance, and training, all of which are performed now by CPB. Radio's community service grant program sets up its system of incentives for noncommercial stations to improve their service levels, and, as I've noted, this program appears to be missing from the NTA mandate. It should not, however, be a federal function. It should be privately administered in coordination with the stations.

Human resource development is another important service missing from the Title VI proposal; so are industry and engineering research and many others. Some of these missing functions could be assumed by PBS, NPR, NFCB and

other membership organizations if the money were available. Membership dues, particularly under the bill's restriction on raising and using funds, are unlikely to be able to cover such functions. In any case, without nonfederal leadership like CPB and station representational organizations, the glue that binds the system and prod that keeps it moving forward will be missing. The current framework for public broadcasting clearly defines leadership. Without that definition, as in H.R. 13015, the stations must ask: What are the boundaries between system leadership and federal control? Who speaks for what interest? And perhaps most important, who will be a strong voice for public broadcasting in its dealing with the government?

CONCLUSION

Title VI, as you've undoubtedly noticed, is immensely complicated. Each contemplated change sends ripples throughout the system. As a consequence, I'm afraid that I've had to respond to your invitation to testify more with questions than with good, solid suggestions for improving public broadcasting and public radio. I believe improvements can and ought to be made, but each improvement should be examined in the light of whether it promotes simplicity, flexibility, autonomy and efficiency and whether it is effective in meeting the needs of the public. In many respects, I think H.R. 13015 is on the right track. I think its goals are admirable and the issues raised are many of the ones we ought to examine. Further, I think that it has guaranteed us a new Communications Act. I wish all of us luck.

Thank you.

MR. VAN DEERLIN. Thank you, Mr. Mankiewicz. We welcome the cooperation you have offered. Will both of you be able to stay with us?

MR. MANKIEWICZ. Yes.

MR. VAN DEERLIN. The next witness is Mr. Stephen Stamas, vice president of public affairs for the Exxon Corp.

STATEMENT OF STEPHEN STAMAS, VICE PRESIDENT, PUBLIC AFFAIRS, EXXON CORP.

MR. STAMAS. Good morning, Mr. Chairman. I appreciate the opportunity to appear before you today to comment on title VI. I hope that my remarks will be useful to the committee as it considers how to assure the long-term funding and independence of public broadcasting.

Exxon began its support of programs seen on noncommercial television back in the early 1960's. I believe that we are today the largest corporate funder of television programs—our funding last year totaling \$4.5 million. At the present time we are helping to fund a number of programs seen on PBS. In the arts, for example, we support the Great Performances series, which includes "Theater in America," "Dance in America," "Fine Music Specials," and the "Live from Lincoln Center" broadcasts.

In the area of public affairs, for the past 3 years we have helped underwrite "The MacNeil/Lehrer Report," and we are now furnishing partial funding for a new public affairs program series called "Global Papers," which will be seen later this year. Exxon also helped fund for a number of years the Nova science series and the Villa Allegre series for children.

Finally, we are continuing to lend support to a number of instructional programs seen during daytime hours and presented for classroom use.

In addition to our support for programing, we have provided, and I think this is very important, funds for the advertising and promotion of the programs we help underwrite, as well as support for a variety of outreach efforts among students and others that we think further increases the impact of the programs. We have also made direct grants to a number of public television stations to assist them in their capital drives, and in meeting their operating expenses.

Our main objective underlying this support is to assist the development of public television and thereby improve the diversity and quality of television programing. The grants we make to public television stations for programing and other purposes are part of our overall efforts to assist not-for-profit organizations in a variety of fields, including education and the arts.

We believe that our support of public television augments the effectiveness of these other contributions activities. For example, our efforts to help dance companies build new audiences, we think, have been enhanced when these groups appear on television. Surveys of audiences attending live dance performances reveal that many people were stimulated to buy tickets for the first time as a result of having seen a dance company on television.

Exxon, of course, is not the only corporation involved in public television. According to the latest data supplied by PBS, corporations provided \$14.5 million for national programing during fiscal 1977, or slightly over 20 percent of the total cost of such programs. Although several major petroleum corporations have funded a number of prominent series on PBS, the increase in corporate support from 1976 to 1977 was due to a doubling in funding from nonoil companies. I think this is a trend I am very encouraged by, because one of my objectives has been to encourage as many other corporate underwriters to come into support of programing as possible.

The current method of multiple funding, with support coming from a wide diversity of sources, including government, foundations, corporations, and private individuals, has, I believe, worked very well. Corporate participation has been consistent with the American tradition of private sector support for not-for-profit activities. This diversity of support, I think, has enabled public television to avoid dependence on any single funding agency. In addition, I think the present system contains effective safeguards such as the PBS program funding standards and practices against any potential underwriter, even if it wanted to, exercising control over program content.

I am certainly aware of the criticism leveled against corporate underwriting of public television programs, that, at a minimum, because corporations agree to fund some programs and not others, they are in fact determining program content. Exxon has a very clear view on this.

First of all, we believe that an underwriter such as Exxon can only provide support for programing within the priorities established by public television stations and the system. I would point out that in no instance are we the sole funder of a program. Others, including the stations themselves, through the SPC, the National Endowment for the Arts, CPB, and other corporations and foundations, help bear the costs of such programs.

This diversity of funding which is currently available, it seems to me, makes it possible for public television to maintain its priorities, regardless of the preferences of individual corporations or other underwriters. I think there is another point, too.

As program costs escalate, producers and stations find that they must put together a consortium that includes a broad spectrum of funding sources. For example, the Live From Lincoln Center series, which Exxon, along with CPB, the National Endowment for the Arts, and the Mellon Foundation is currently funding, was made possible only because such multiple funding was permitted. I doubt very much that this series, which has an annual budget of well over \$1 million, could have been made possible if the producers were limited to a single source of funding.

I think even if funding were limited to one source, to a governmental source, the question of priorities would make it very difficult for even things like 'Live From Lincoln Center' to come to the top of that priority list against other priorities.

In view of the great strides that public television has made under a system that permits individual licensees to reach out to their diverse publics for a broad range of support, it seems to me a mistake to alter the process so radically that the funding options become severely restricted.

In the absence of evidence that the current system has been harmful to the best interests of public television or has in some way worked against the public interest, I think such a system should be retained. I therefore believe that section 642(c) of the proposed legislation should be reconsidered.

Section 642(c) would disqualify a licensee from receiving operating support from the proposed National Telecommunications Agency if that licensee also received earmarked programing funds from any source other than the proposed endowment, or even broadcast programs containing announcements of such underwriting. As others have said, of course, a station could forgo a grant by the agency and thereby accept underwriting funds, but each station would be forced to make a calculation as to whether the agency grant lost by such a course of action would be smaller or greater than the amount donated by other sources. What concerns me is that a station would be put in the position of being penalized for its efforts to broaden its base of support.

The bill makes no provision for costs of advertising and the costs of promotion other than to specify that such costs are not to be included in program grants by the endowment. If outside underwriters who have helped build audiences for the programs they support by absorbing a portion of these costs are excluded, the money will have to come from the budgets of the individual stations, thus reducing the amount available for programing. Again, I wonder if this serves the best interests of public television.

As one who has talked with a number of individual stations, I can report that perhaps the one area in which the individual stations have told me they would like to have more done by corporate underwriter and others is tune-in advertising and other kinds of support activities that will, in fact, build audiences for individual programs.

I have some concerns over the role of the proposed National Telecommunications Agency. The legislation would seem to give this arm

of the executive branch broad authority to involve it deeply in day-to-day public broadcasting operations, including interconnection and the scheduling of programs. I believe that as you continue your work, the agency's role should be more precisely defined.

Finally, I share your view that long-range funding is the key to the future for public broadcasting, and we all look forward to the Carnegie Commission report early next year in this and other regards. I believe the current system of multiple funding for public television is basically a sound one. I also believe participation by the business community in the program funding process is consistent with the long-range interests of public broadcasting. I would therefore urge that the committee reconsider its approach on this issue and maintain the diversity of funding that has helped bring public television so far in so brief a time.

Mr. Chairman, before I stop, Mr. Mankiewicz talked about breaking up the Yankees. As an anguished Boston Redsox fan, I hope that talk is premature. Thank you.

Mr. VAN DEERLIN. The subcommittee jock is Mr. Frey.

Mr. FREY. It is still one game, isn't it?

Mr. STAMAS. Yes, with four to go.

Mr. FREY. Four to go.

Mr. VAN DEERLIN. I do not like your chances.

Thank you very much.

Mr. FREY. That refers to baseball, I think.

Mr. VAN DEERLIN. Will you be able to stay, Mr. Stamas?

Mr. STAMAS. Yes, I will.

Mr. VAN DEERLIN. Thank you.

Our next witness, Mr. Thomas J. Thomas, is executive director for the National Federation of Community Broadcasters.

**STATEMENT OF THOMAS J. THOMAS, EXECUTIVE DIRECTOR,
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS**

Mr. THOMAS. Mr. Chairman, I have a prepared statement which I have submitted and I would like to have entered into the record which I will summarize.

Mr. VAN DEERLIN. Of course.

Mr. THOMAS. I want to thank you for the opportunity to appear here this morning and share with you the views of the National Federation of Community Broadcasters. I would like to start off by expressing our support of your efforts, yourself and your colleague, Mr. Frey, for the stance you have taken on the need for a fundamental restructuring of communications legislation. We see that your initiative has created a needed forum for a very important and historic debate.

The National Federation of Community Broadcasters is a national membership organization founded in 1975. I was surprised to learn this morning that National Public Radio has only been in existence since 1977. I guess that makes us the senior radio organization here this morning.

We represent today some 50 independent community-based radio stations and groups in the process of building such stations in 28 States and the District of Columbia. We reach about 25 percent of the American people. The stations, which derive over one-third of

their support directly from the public, share commitments to community governance programs reflecting the broad range of culture and opinion in their communities and participation of the general public in virtually all aspects of their station operations. In the 1 year since NFCB first appeared before this committee, we have continued a pattern of steady growth and expanded service as more stations have joined the Federation and several stations we have been working with have taken to the air.

Community licensed radio stations, individually and collectively through NFCB, are a rapidly developing an increasingly important part of the public radio system, and we look forward to taking a key role in the diverse, responsive, and exciting public telecommunications system all of us are working to build for the years ahead.

Title VI of H.R. 13015 reasserts the importance of excellence and diversity in programming for public broadcasting, insulation of programming from political intrusion, and completion of a system providing an effective public signal to all Americans. As we examine the bill, we also see a new thrust towards responsiveness and accountability, responsiveness of the public broadcasting system to the public it serves, and responsiveness within the system, among local stations, national entities, producers, and others. We strongly support this.

Before addressing specific provisions, however, I would like to turn to one element that is missing. Throughout this rewrite, careful distinctions have been made between radio and television, reflecting the different characteristics and development of the two media. That distinction, however, is less clear when we come to public broadcasting.

This is not to say that radio has been ignored, because it has not. Radio was recognized as a full partner in the 1978 public broadcasting financing bill, and that recognition carries over to this rewrite effort. Our concern, rather, is that careful analysis of the distinctions between television and radio are needed to identify the best strategic approaches for continued development.

Ask people what they watch, and you hear program titles. Ask people what they listen to, and you hear station call letters. People watch television programs. They listen to radio stations. In television, specific audiences can be assembled for a special, and target audiences can be served in a half-hour time slot. Radio's hallmark, on the other hand, is consistent, reliable, and relatively homogenous service.

If we are to expand and diversify the service of public broadcasting, reaching new communities of interest, as this bill intends, the implication for television is that we must work on our programs. But for radio the present objective must be expanding and diversifying the stations of the system.

We support the focus of the facilities program on creating new stations, on expansion of service areas, and development of facilities owned and available to women and minorities. We have three observations about radio's needs.

First, frequencies suitable for full service, full power operation, once quite plentiful, are rapidly disappearing. If there is to be a full service station at all in some communities, and if minorities and women are to get a meaningful share of the action, the time to build is now.

Second, the FCC has just revised its rules to provide that the many 10-watt stations will be treated on a secondary basis. Our analysis

shows that this policy change opens a chance to create as many as 45 to 50 new full power stations and 25 to 30 major power increases, all in our top 100 cities. This is a tremendous opportunity for public radio, but one which will quickly disappear. Again, funds must be available now.

Third, and here is where we would amend the proposed objectives, when we talk about extending service, the emphasis in radio must be on audience as well as geography. At this time, some 80 percent of the people who live within the contours of the public radio station never listen. It will take several outlets, especially in major markets, to provide the diverse, effective, and meaningful service our communities need.

The priority for extending service in radio must be for extending service to people wherever they may live, inside or outside the contours of an existing public station.

Turning to the program interconnection, we support the intent to assure neutral management. The relative homogeneity of a public radio sound is rapidly becoming a thing of the past. In its place, we will see a range of formats, styles, and content. We foresee clusters of stations with shared program interests, some broad and inclusive, others quite narrow. If we are to respond successfully to the needs of such an expanded and diversified system, we question the wisdom and utility of continuing to concentrate program selection, funding, and distribution in a single majoritarian entity.

National Public Radio, now slated to manage radio's interconnection is, after all, principally a program service for its members, and affiliation is a programing decision for each station. Until recently, of course, such a decision was not very meaningful. NPR was really the only game in town, and membership costs were only a token fee, the real costs being underwritten by the Corporation for Public Broadcasting.

But if stations must take up a meaningful share of National Public Radio's expenses from their own budgets, and if alternative sources of programing continue to develop, in short, if National Public Radio must compete in a healthy marketplace for public radio programing now developing, a significant number of stations may elect to take their dollars and affiliation elsewhere.

Following this reasoning, public radio's interconnection would then be in the hands of an entity controlled by only a portion of the total public radio constituency. As a trade association and program supplier ourselves, we are well aware of the parochial interests and institutional self-serving that can override even the best intentions of impartiality.

Even so, we are not convinced that the solution offered in the bill is the best one. If NPR, or PBS on the TV side, is not to manage the interconnection, is the alternative Western Union or another common carrier? Or would an ad hoc group be created especially for the purpose? And if so, who would such a group be accountable to?

A more detailed examination of these and other options is needed. For example, it may be possible to prescribe terms and conditions that would accompany a contract for management of the interconnection which would provide for neutrality, accessibility, and diversity, without explicitly excluding anyone. Such an approach might avoid wasteful overlap of functions and scarce resources. This decision on

the interconnection is one of the most important issues of this bill, in our view, and we think that much more discussion and analysis is essential.

This bill emphasizes placing funds in the hands of local stations, leaving them free to aggregate their resources as they see fit. The stations and their membership organizations would be responsible for the development of support and service activities now carried out by the Corporation for Public Broadcasting or national membership organizations now using direct grants from CPB.

If our public broadcasting system is to rest on a foundation of effective local stations, and we believe it should, this bottom-up direction of services and support is a good approach, creating a healthy incentive for internal system responsiveness. Moreover, the expansion and diversity within the system, a point I keep returning to, will be reflected in demands for different services and supportive structures among distinct groupings of stations.

To give just one example with which we are quite familiar, community licensees faced very different problems and opportunities than their institutional colleagues. This bill helps foster the flexibility that is needed.

There is, however, an important omission in this approach. There are certain needs which existing stations do not necessarily perceive to be in their immediate self-interest. Among them are the creation of new stations and attention to the needs of minorities. The facilities program is a partial solution with its focus on new stations and minority ownership. But new stations for anyone take more than just hardware, and we believe additional support is required, perhaps through broadening the planning component of the facilities program and providing additional funds.

There are other needs less recognized in this bill. Ideally, public stations would, on their own, support a program of minority and women's training at a level approaching the close to \$2 million CPB is currently, if somewhat belatedly, providing. But the record does not support that assumption. NFCB believes there must be some provision more clearcut than the nudge now found among the possible criteria for add-on portions to the NTA station support grants, that will specifically address this need.

We endorse the requirement for community advisory boards, but not without some reservations. NFCB stations have community boards, but they are generally the licensee, not advisors. An advisory board is no guarantee of community responsiveness and control for there is no compulsion for any licensee to translate advice into station policy.

Advisory boards can play a needed role in radio, though, especially where licenses are held by institutional boards of directors or boards of trustees whose principal energies are devoted elsewhere and who may not even reside in the service area of their own station.

There is another provision dealing with control and influence, though, that should be dropped: The proposed ban on outside support of specific public broadcasting programs. We can appreciate the concern about the erosion of public broadcasting's noncommercial nature and the perceived growth of corporate influence on our stations' programs, although we would note, there are relatively few

allegations about abuse concerning radio. But this proposed solution is really worse than the problem.

We question whether such a ban is truly enforceable. We are certain support would continue to be tied to assumptions and expectations about program performance, and it is better for such financial relationships, we think, to be disclosed clearly rather than pushed under the table.

We also question the implied assumption that specific program support is principally a matter of pernicious commercialism. A good portion of specific program support now comes from local foundations and service organizations, State-based humanities and arts boards, national philanthropies, and personal gifts.

Most important, though, we are concerned about the consequences such a ban would have on local production, especially for local radio stations. The diversity of these stations' broadcast programming is in part a reflection of the diversity of sources which now support it, from the listener who chips in \$15 to keep a bluegrass show going, to the Kiwanis Club, which helps assure a place for the community calendar, a corporation that underwrites an opera, or the National Endowment for the Humanities, which funds an oral history product.

The proposed ban on program underwriting would collapse this intricate structure at a single stroke and supplant it with a handful of program decisionmakers in Washington. Further, this ban will create serious difficulties for many stations seeking to marshal matching funds needed to secure a grant from the proposed program endowment. We think a great measure of diversity, flexibility, and responsiveness would be lost in the process.

In addition, we believe a proceeding now underway at the FCC on the noncommercial nature of public broadcasting addresses and will most likely remedy many of the abuses which have provoked this proposal. Again, we strongly urge that this provision of the bill be dropped.

I have kept for last what is in many respects the most far-reaching proposal of title VI: The dissolution of CPB, the creation of a Programming Endowment, and the placement of operational funds at the National Telecommunications Agency, an executive branch establishment. We see three questions about this proposed reorganization.

Are programming and operations truly divisible functions? Is there too much latitude given to NTA in the various funding decisions, it is to make? And, is it appropriate to place direct funding of public broadcasting entities into the hands of a Government agency?

There is clearly an overlap between programming and operations, especially at the local level. There are basic station operations that must be maintained and supported for any station to provide good programming, from paying the rent to training staff. And just as providing only programming funds is no guarantee of station survival, protecting or insulating only program funds is no guarantee of independence.

This leads to the second question. The latitude given to NTA in its operational funding decisions causes us real concern. NTA, with only vague direction, decides among other things: The criteria and level of basic operational grants; criteria and level of special purpose grants, the division of funds among the facilities program, the inter-

connection, and operational support for nonbroadcast entities; terms of the contract for management of the interconnect; and the list goes on and on.

The potential for arbitrary judgments is immense. Checks and balances are almost nonexistent. NFCB objects to such an open mandate for NTA or anyone else. Remember, this is not a private entity we are insulating from Government. This is an agency of the Government.

This brings us to the issue of political insulation and the wisdom of bringing a Federal agency into the direct funding of public broadcasting.

Quite frankly, Mr. Chairman, we are not as troubled at this prospect as others in public broadcasting seem to be. In fact, we hear a strong argument advanced by some that the most serious problems with the Corporation for Public Broadcasting stem precisely from the fact that it exists outside the public domain and thus beyond the legitimate demands we can place on other public institutions.

The question of political insulation for public broadcasting is often viewed as a choice between enlightened, unfettered pursuit of noble purpose versus crass manipulation for self-serving political ends. The shadow of the Nixon White House still haunts us, clearly. But against that oft-told saga of public broadcasting's fight against an administration, one can pose the 16-year track record of the educational broadcasting facilities program, smack in the middle of HEW, which enjoys a fine reputation for fairmindedness.

On this basic question of structure, more than anywhere else, with the possible exception of financing, we eagerly await the options the Carnegie Commission will set before us. But we do believe the prospects for political intrusion and the accompanying dangers are often overstated, providing a too convenient excuse to avoid responsiveness and accountability.

Let me just conclude, Mr. Chairman, by noting that we see much work still ahead of us all, and the National Federation of Community Broadcasters is looking forward to working with you, your colleagues, and staff, as you rewrite the rewrite and rewrite that if need be, until we hit upon the solutions that will assure an imaginative and responsive system.

Thank you.

[Mr. Thomas' prepared statement follows:]

STATEMENT OF THOMAS J. THOMAS, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Mr. Chairman, I want to thank you for the opportunity to appear before your Subcommittee and share with you the views of the National Federation of Community Broadcasters on the proposed rewrite of the Communications Act. Community broadcasters support you and your colleagues for the stance you have taken on the need for a fundamental restructuring of communications regulation. Like others who have preceded us in these hearings, we have concerns and criticisms about specific provisions. But your initiative has created the needed forum for an important and historic debate about our nation's communications system.

The National Federation of Community Broadcasters is a national membership organization representing some 50 independent, community-based public radio stations and groups in the process of building such stations. In 29 states our stations reach approximately 25 percent of the American people—with stations of all sizes in all kinds of communities. The stations share a commitment to community governance, programming reflecting the broad range of culture and opinion

in their communities, and depend upon the participation of the general public in all aspects of station operations. Our members derive over a third of their support directly from those they serve, through listener contributions.

In the year since NFCB first appeared before this committee—at last fall's hearings on public broadcasting—the community-licensed stations have continued a pattern of steady growth and expanded service. NFCB's on-the-air stations have increased by over 50 percent, and several more will be broadcasting within the year.

Our ability to meet the programming needs of our communities has increased dramatically. This month NFCB's Program Service offered over 40 hours of program material—public affairs, music, drama, children's programs, poetry and more—every minute of it locally produced. We have made a special effort to involve producers from outside NFCB, especially independents, and have distributed the work of over 25 such groups. About 15% of the programs NFCB has distributed centered on the special interests of women; about 20% were produced by and about Third World people.

NFCB stations have been honored with numerous awards, from the prestigious Peabody award for programming to CPB development awards recognizing achievement in public participation and local support.

NFCB's Washington staff devote considerable effort to representing members in the development of public policy and this has been a productive year. This summer the Federal Communications Commission adopted new rules for non-commercial FM radio that will open the way for more effective, efficient use of the 20 reserved channels we work with. We played a crucial role in providing the information on which these decisions were based. Further proceedings regarding multiple ownership and basic standards of licensee eligibility, both called for by NFCB in conjunction with other public broadcasters, are now underway. Next month the Corporation for Public Broadcasting will open a new outreach program designed to assist stations in reaching full-service operations—a program first proposed by NFCB two and a half years ago.

We have also launched a broad range of services that include consultations on legal, organizational and programming problems, publications that provide basic reference material and other forms of station assistance.

In short, community-licensed radio stations, individually and collectively through NFCB, are a rapidly developing and increasingly important part of the public radio system and a needed complement to the institutionally-based stations so prevalent in National Public Radio. We look forward to a key role in the diverse, responsive and exciting public telecommunications system that all of us are working to build for the years ahead. It is in that spirit that we address the bill before us.

Title VI of H.R. 13015 revisits many themes familiar to public broadcasting: excellence and diversity in programming, insulation of programming from political intrusion, completion of a system providing an effective signal to all Americans. But as we examine the proposals we will comment on today—priorities for the facilities program, the division of programming and operational funding, community advisory boards, more autonomy for local stations, neutral management of the system's program interconnect—we see a new thrust toward responsiveness and accountability: responsiveness of the public broadcasting system to those it serves at both the national and local level, and responsiveness within the system among local stations, national entities, producers and others. We strongly support this.

Before addressing specific provisions, however, I would like to turn to a crucial element that is missing.

Throughout the rewrite careful distinctions have been made between radio and television, reflecting the different characteristics and development of the two media. That distinction, however, is less clear when we come to public broadcasting.

This is not to say that radio has been ignored. We have come a long way from the Public Broadcasting Act of 1967 which initially omitted radio entirely. During the hearings on the Public Telecommunications Financing Act of 1978, we appreciated the close attention to radio's needs evidenced by Mr. Waxman, Mr. Wirth, Mr. Gore, by you Mr. Chairman and others. We were gratified at the degree to which radio was recognized as a full partner in public broadcasting in that bill—and at the degree to which that recognition carries over in the bill now at hand.

Our concern, rather, is that careful analysis of radio's unique characteristics is needed to identify the best strategic approach for continued development and to identify the most appropriate mechanisms by which to pursue our goals.

The two most important differences between radio and television are: the manner in which audiences use the two media and the economics of construction, operation and program production.

The distinction in audience use is that people watch television programs, while they listen to radio stations. Ask a person what they watch—you hear program titles. Ask them what they listen to—you hear station call letters. In contrast to television where audiences can be assembled for a splashy special, and where target groups can be served in a special time-slot, radio's hallmark is a consistent, reliable, and relatively homogeneous service.

To give but one example, a program like *Black Journal* may attract a significant black audience on WETA-TV, regardless of what precedes or follows it. A similar program on WETA-FM, however, would be heard by that station's regular and predominantly white audience. The same program aired on a station specializing in black art forms such as jazz and blues—as NFCB member WPFW has done here in Washington—would be heard by that station's regular and largely black following. Both audiences benefit. But the point is that radio stations have an identifiable following—and these are the audiences its specialized programs will reach.

The economic differences between television and radio are well known. The favorable cost factors of radio have a variety of implications. Lower construction costs make ownership of a radio station a realistic possibility for many organizations that simply could not afford the costs of a TV station. Lower costs of operation make it possible for a community of even moderate size to support several public radio outlets. Lower costs of production mean almost any person or organization can be a radio producer—with skill and motivation becoming more important factors than dollars and cents.

These interrelated factors of audience behavior and economics dictate different long-term strategies for public television and public radio.

In public TV, expanding the system entails completion of a system that will deliver a signal to as many Americans as practicable. The implication for public television is that program development, on virtually a program-by-program basis, is our best means of diversifying and expanding service to various communities of interest.

For public radio, though, diversifying and expanding service go hand-in-hand with expanding the number of stations—for it is stations, not specific programs, that will reach and hold new audiences.

FACILITIES PROGRAM

With the special characteristics and needs of public radio in mind, I will turn to some of the specific provisions outlined in H.R. 13015. In doing so, however, I want to join with others in giving a nod to the Carnegie Commission, with whom we have worked on a formal and informal basis over the past year. All of us in the public broadcasting community are understandably hesitant to take strong and detailed positions at this time, knowing the results of such as extensive review lie just around the corner. At the same time, this bill sets out some choices to which community broadcasters have a clear response.

The proposed facilities program has three clear objectives: creation of new facilities to extend service to unserved areas; expansion of service areas of existing outlets, and development of facilities owned and available to minorities and women. We strongly support these objectives and have some observations about radio's needs.

First, frequencies suitable for full-service, full-power operation, once plentiful, are rapidly disappearing. If there is to be a full-service station at all in some communities, if minorities and women are to get a meaningful share of the action, the time to build is now.

Second, the Federal Communications Commission has just revised its rules to provide that 10-watt stations will be treated on a secondary basis. NFCB's analysis reveals that this policy change opens a chance to create as many as 45 to 50 new, full-power stations and 25 to 30 major power increases—all in our top 100 cities. This is a tremendous opportunity for public radio, but one which will quickly disappear. Again, funds must be available now.

Third, and here is where we would amend the proposed objectives, when we talk about extending service, the emphasis in radio must be on audience as well as geography. At this time, 80 percent of the people who live within the contours of existing public stations never listen. As our earlier analysis indicates, it will

take several outlets, especially in major markets, to provide the diverse, effective and meaningful service our communities need. The priority for extending service in radio must be for extending service to people, wherever they may live, inside or outside the contours of an existing public station.

SATELLITE INTERCONNECTION

As the public radio system expands and its diversity increases, the demands for national or non-local programming will change. We foresee clusters of stations with shared program interests, some quite narrow, others broad and inclusive. The relative homogeneity of a "public radio sound," already crumbling, will become a thing of the past and in its place we will see a range of formats, styles and content.

The coming satellite interconnection will help in meeting the challenge this presents to the system's programmers. We will have the hardware that makes possible simultaneous transmission of several programs, that allows for access to the system from locations throughout the country, and that can accommodate all manner of regional, special interest and other programmatic groupings of stations.

The question of who will control this program flow is a crucial one. Right now it is planned that for radio, National Public Radio will run the show. This bill, however, would change that by specifically prohibiting trade associations and program producers from managing the interconnect.

This bill's approach is attractive to community broadcasters. We question the wisdom and the utility of continuing to concentrate program selection, funding and distribution in a single majoritarian entity if we are to respond successfully to the needs of an expanded and more diversified system. NPR is, after all, principally a program service for its members and affiliation is a programming decision for each station. Until recently, of course, public radio stations didn't have much of a choice. NPR was really the only game in town and membership cost was a token fee, with real costs underwritten by CPB.

But if stations must take up a meaningful share of NPR's expenses from their own budgets and if alternative sources of programming continue to develop—two factors that already are happening—a significant number of stations may elect to take their dollars and affiliation elsewhere. The growth of NFCB is evidence of just such a trend.

Following this reasoning, public radio's interconnect would then be in the hands of an entity controlled by only a portion of the total constituency. As a trade association and program supplier ourselves, we are well aware of the parochial interests and institutional self-serving that can override even the best intentions of impartiality.

Even so, we are not convinced that the solution offered us is the best one. If NPR (and PBS on the TV side) is not to manage the interconnect, is the alternative Western Union or another common carrier? Would an ad hoc group be created especially for that purpose? The point is that a more detailed examination of these and other options is needed.

Alternatively, it may be possible to prescribe terms and conditions that would accompany a contract for management of the interconnection by NPR and which would provide the neutrality, accessibility and diversity such a system needs. Such an approach might avoid wasteful overlap of functions and resources.

This decision is one of the most important issues of this bill, in our view. We think more discussion and analysis is essential.

SUPPORT OF LOCAL STATIONS

This bill emphasizes placing funds in the hands of local stations, leaving them free to aggregate their resources as they see fit. The stations and their membership organizations would be responsible for the development of support and service activities now carried out by the Corporation for Public Broadcasting—or by national membership organizations using a direct appropriation from CPB.

We see this approach as a healthy incentive to internal system responsiveness. Public Radio, for example, has moved beyond the days when hesitant licensees at underutilized stations were guided toward full-service responsibilities. Public radio in the 80's will be an increasingly mature system of professionally staffed, ambitious local outlets, well aware of both their individual interests and collective needs. Moreover, the inevitable expansion of diversity within that system will be reflected in different demands for services and supportive structures among dis-

inct groupings of stations. To give but one example with which we are quite familiar: community licensees face quite different problems and opportunities than their institutional colleagues with respect to funding requirements, legal concerns, volunteer participation, hiring procedures and so on.

If our public broadcasting system is to rest on a foundation of effective local stations—and we believe it should—this bottom-up direction of services and support is clearly the preferred alternative.

There is, however, an important omission in this approach. There are certain needs which are not necessarily in the self-interest of existing stations. Among them are the creation of new stations and attention to the needs of minorities which are widely dispersed across the country. The facilities program is a partial solution to the new station problem, but we believe additional support is required, perhaps through broadening the planning component already proposed in the Act and providing additional funds for this area.

The problem of attention to minority needs is more challenging. Ideally our public broadcasting system would, on its own, support a program of minority and women's training at a level approaching the close to \$2 million CPB is currently (if belatedly) providing. And theoretically the stations would support an aggressive outreach program that would bring minorities into positions of ownership in the system. But the record supports neither assumption.

NFCB believes there must be some specific provision of funds that will address these needs. There is an opportunity to do so under the present bill—in the funding pool for station support administered by NTA, specifically in the balance of funds that will remain after the distribution of basic grants to all eligible stations. If this approach is to be adopted, however, this should be made clear in the bill or report, or these funds could easily disappear in simple “add-on” grants tacked onto the uniform base grants, with little direction provided for their use.

COMMUNITY CONTROL AND ADVISORY BOARDS

One of the key mechanisms H.R. 13015 uses to promote responsiveness at the local level is a requirement that all public stations establish a community advisory board. NFCB endorses this approach, but not without some reservations.

Our stations have community boards, but they are the licensee, not advisors. A community advisory board is no guarantee of community control, for there is no compulsion for any licensee to translate the advice of an advisory board into station policy.

Further, in the case of public radio, it would often be difficult for an advisory board to represent the community at large. In larger markets especially, where stations serve a selected audience, the board would be continually engaged in balancing a variety of community interests against a station format that targets and holds onto a specific audience.

Accepting these reservations, we still think community advisory boards can play a needed role in radio, especially for the larger institutional licensees. In many cases, public licenses are held by a Board of Regents or Trustees whose principal energies are devoted to other areas of institutional operations and who may not even reside in the service area of their own station. In these instances, a community advisory can take on an important role in directing a station's work and assuring its responsiveness to those it serves.

UNDERWRITING

One of the most troubling aspects of Title VI is the proposed ban on outside support of specific public broadcasting programs. We can appreciate concern about the erosion of public broadcasting's noncommercial nature and a perceived growth of corporate influence over our station's programs. The proposed solution, however, may be worse than the problem.

We question whether such a ban is truly enforceable. While underwriters may be denied the accustomed credit attached to a program, we are certain that support will continue to be tied to assumptions and expectations about program performance. It is far better for such financial relationships to be disclosed clearly in public announcements rather than quietly pushed under the table.

We also question the implied assumption that specific program support is principally a matter of pernicious commercialism. We've all heard the stories of non-commercial stations with “rate cards” and the complaints of commercial broadcasters that their public colleagues are stealing their advertisers. But a good deal of specific program support also comes from local foundations and service organizations, state-based humanities and arts boards, personal gifts and so on.

Most important, we are concerned about the consequences such a ban could have on local production, especially for local radio stations. The diversity of these stations' broadcast program is in part a reflection of the diversity of sources which now support it—the listener who chips in \$15 to keep the bluegrass show going, the Kiwanis Club that helps assure a place for a community calendar, the corporation that underwrites an opera, the National Endowment for the Humanities that funds an oral history project. The proposed ban on seeking support for specific programs would collapse this intricate structure at a single stroke and supplant it with a handfull of program decision-makers in Washington. Further, this ban will create serious difficulties for many stations seeking to marshal matching funds needed to secure a grant from the Programming Endowment. We think a good measure of diversity, flexibility and responsiveness would be lost in the process.

We strongly urge that this provision be dropped. In addition, we believe a proceeding now underway at the FCC on the noncommercial nature of educational broadcasting addresses and will remedy many of the abuses at which this provision is aimed.

STRUCTURAL REORGANIZATION

I have kept for last what is, in many respects, the most far-reaching proposal of Title VI: the dissolution of CPB, the creation of a Programming Endowment, and the placement of operational funds at the National Telecommunications Agency, an Executive Branch establishment.

We see four key questions raised by this proposed reorganization.

- (1) The notion that programming and operations are divisible functions.
- (2) The substantial degree of undirected decision-making that is left to the Director of NTA.
- (3) The appropriateness of placing direct funding of public broadcasting entities in the hands of a government agency.

(4) The enhanced role for station decision-making that results from current CPB functions that are given neither to the Endowment nor to NTA.

We have already addressed the last point—this is a positive step.

On the divisibility of programming and operations, we are less certain. There is clearly an overlap between the two, especially at the local station level. For example, there is a basic level of station operations that must be maintained and supported for any station to provide good programming to its community that includes paying the utilities bills, facilities rental, equipment purchase and replacement, etc. As a former station manager myself, I can assure you that at most stations every source of support and every dollar of it is keyed, in station Management's mind, to the final output of programs. In short, simply insulating direct program dollars is no guarantee of overall program insulation for public broadcasting if it is not accompanied by a clear commitment as regards operational support.

As a secondary concern we believe there are several alternatives as to how the line between programming and operations might be drawn. As one example, we think the program interconnection funds more properly belong with other program dollars, rather than with facilities and operations as now proposed.

The substantial latitude afforded the Director of NTA in the allocation of funds causes us concern. The many decisions to be made with only vague direction include:

- Setting criteria for basic operational grants;
- Determining the level of total resources going to basic grants and thus determining the amount reserved for special purposes as well;
- Determining the criteria for special purpose grants;
- Determining the division of funds among the facilities program, the interconnect and operational support for non-broadcast entities; and
- Setting terms of the contract for management of the interconnect.

The list goes on. The potential for arbitrary judgements is immense and checks and balances are nonexistent. NFCB would object to such an open mandate for CPB or the Programming Endowment and we oppose it for NTA.

This is not to oppose lodging these various functions at NTA, a point I will turn to next. It is simply to point out that in moving from CDP to NTA, too much of the needed oversight, responsibility, accountability and input from the system was left behind.

Lastly, there is the delicate question of political insulation, the wisdom of bringing a federal agency into the direct funding of public broadcasting. Quite frankly, we are not as troubled at this prospect as others seem to be. Our present system is only poorly insulated at best. The President appoints the board of CPB

and the Senate must approve his choices. The largest single source of financial support for the system is state and local tax revenue, allocated by elected and appointed officials of state and local government.

This is followed in magnitude by federal funds and the members of this committee, and your counterparts across the Hill, are demanding increased accountability for this investment. I recall the colloquy this spring between Mr. Loomis and Ms. Mikulski, in which she asserted that if CPB were to draw from public funds, it should expect to perform as a public agency. There are many who agree with her.

In fact, some argue that the most serious problems we have seen with the Corporation for Public Broadcasting stem precisely from the fact that it exists outside the public domain and thus beyond the demands we can place on other public institutions.

The question of political insulation for public broadcasting is often viewed as a choice between enlightened, unfettered pursuit of noble purpose versus crass manipulation for self-serving political ends, and the shadow of the Nixon White House still haunts us. But against the oft-told saga of public broadcasting's fight against an Administration bent on evisceration, one can pose the 16-year track record of the Educational Broadcasting Facilities Program, smack in the middle of HEW, which enjoys a fine reputation for fair-mindedness and political restraint. The HEW facilities program has been open to pressures, of course. But some sensitivity to political pressure can be a healthy thing, an assurance of accessibility for a variety of interests.

We are not prepared, Mr. Chairman, to come down one way or the other on this issue at this time. Here, more than anywhere else, we eagerly wait to see the options the Carnegie Commission will set before us. But we do believe the prospects for political intrusion and the accompanying dangers are often overstated—providing a too convenient excuse to avoid responsiveness and accountability.

Mr. VAN DEERLIN. Thank you, Mr. Thomas.

Our next witness, Mr. James Fellows, is president of the National Association of Educational Broadcasters.

STATEMENT OF JAMES FELLOWS, PRESIDENT, NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS, ACCOMPANIED BY LAWRENCE T. FRYMIRE, EXECUTIVE DIRECTOR, NEW JERSEY PUBLIC BROADCASTING AUTHORITY

Mr. FELLOWS. Mr. Chairman, I have with me Dr. Lawrence Frymire, from New Jersey, whom I will introduce more fully in just a few minutes.

We, of course, are pleased to join the others in having the opportunity to present our views concerning the proposed revision and rewrite of the Communications Act. It seems to use that so many comments and opinions have already been expressed that rather than take time to read through a digest of questions and concerns about that, we would like to submit for the record a brief paper in which questions and concerns about the various aspects of the bill are raised. Most of these have already been covered in one form or another, so I see no point in trying to review them here.

I will say, however, that our principal concerns with the proposed changes generally cluster around two points. One is the numerous instances where a provision is simply not clear, or a recommendation is subject to a variety of interpretations. This makes it very difficult to analyze the bill. The second point is the extent to which these proposals would federalize public broadcasting. As you would imagine, that is a matter that troubles a number of us in public broadcasting very greatly, but even we had not thought this through quite fully

by reading the bill until we saw the provisions laid out on a chart which we have reproduced as the second page of the written testimony.

What it shows is, out of the five major sections of the areas for support, four of the five are connected with the executive branch of the Federal Government, and the first, which is the Public Telecommunications Programming Endowment, which is a private, nonprofit corporation, nonetheless is subject to a number of Government operational conditions.

We think that that reveals about as well as we can the concern we have about the extent to which the proposed programs involve the Federal Government at virtually every point. I think it is also worth knowing, Mr. Chairman, that the proposal both for the endowment and the public broadcasting aspects of the National Telecommunications Agency do not appear fully to enjoy the complete confidence of the sponsors.

Over and over the statute calls for predetermined percentages or prohibitions of one sort or another, about one thing or another. There is not one major area of expenditure for which some earmarking or set-aside has not been made, revealing, I suggest, a considerable lack of confidence in the structures proposed to carry out these important activities.

One way of interpreting that is, it does sound like trouble at the very roots of these concepts. Throughout the discussions about the rewrite, I have been impressed with the areas of unanimity, by and large, the general points about the values of public broadcasting, its need for more support, for independence, for accountability and so on. I have been equally impressed with the extent to which there is substantial disagreement about the best ways of achieving those laudable objectives, and the operating consequences of specific provisions.

Now that the hearings are nearly over, what can be forecast for the next phase? Next year, when there is a further rewrite on which to comment, there will be hearings once again at which everyone will applaud your efforts as chairman of this committee to rewrite the act, well-deserved applause, I should say. There will be disagreement about what things mean, and there will be the familiar observations about how wonderful but underfinanced this whole enterprise is. That, I think, is the kind of rerun none of us need.

The phrase that comes to mind is, we ought to stop meeting like this. It does seem, frankly, that there must be a better way than for your staff and our organizations to go off into separate corners and come out with new papers which are either self-serving, misunderstood, ill-conceived, or otherwise troubled or flawed, so I would like to describe a way of improving on this situation. NAEB is encouraging the regional organizations to establish a Joint Committee on Federal Policy Matters through which the licensees can work together, can work with national organizations, and work with you and your colleagues and your staff to develop not only a legislative plan, but also a series of policy recommendations that would enable the system of public broadcasting itself to articulate and implement effective policies on the important topics currently the subject of what a number of us feel are troublesome legislative solutions or directives.

Our conclusion is that Federal policy appears when system policy is defective or nonexistent, and our response to that problem is to encourage the establishment of a means by which the licensees can carry on outside the formal auspices of any of the national operating organizations, although it surely would be cooperative and coordinated with whatever they may undertake, and we believe as well, that this effort should fully involve the staff and members of the House and Senate committees.

We need your perceptions. We need your perspectives. We need to know your concerns, and you need to know ours, and we need to put our best efforts and best people on the task of resolving these problems, clarifying issues, formulating practical and useful policies, and seeing to it that they are implemented.

I am very pleased to tell you, Mr. Chairman, that the regional organizations are actively interested in this effort, and to brief you on the initiative that has already been taken recently by the Eastern Educational Network that will, I think, help to bring this about.

I would like to introduce Dr. Lawrence T. Frymire, who is executive director of the New Jersey Public Broadcasting Authority and the person who will chair the effort on behalf of the Eastern Educational Network.

Mr. FRYMIRE. Mr. Chairman, thank you very much for allowing me an unscheduled appearance with your committee today.

As Mr. Fellows has described, I am the executive director of the New Jersey Public Broadcasting Authority, which is comprised of distinguished New Jerseyites who hold a license to four noncommercial UHF stations which comprise the New Jersey statewide public broadcasting system, but I am not here to speak for the authority or represent the authority, rather, in my capacity as chairman of the board of trustees of the Eastern Educational Television Network, the EEN, which I know you are familiar with, with headquarters in Boston.

Again, but just for the record, since I know you know of us, the EEN is a regional association of public television associations located primarily throughout the northeastern United States, but with class A or licensee members now extending from Maine down through Virginia and extending into Ohio.

In addition to the class A members, we also have program service members in most of the principal cities of the country, and we currently serve some 86 public television stations throughout the Nation with our program services. Since our primary interest and service area remains in the northeastern States, we still maintain our regional interconnection system, which links our system into a public broadcasting network unique in this country. EEN members regularly exchange programs among and between their stations in this system, and we join with our program service members in a series of consortia which acquire distinguished television programs from a wide variety of sources, programs which are not available through our membership in PBS.

With that brief description of EEN, I move to the purpose of my appearance today, which is to describe to you a recent action taken by the board of trustees at its most recent meeting September 19,

1978. Mr. Chairman, before that meeting and for a considerable portion of the sessions themselves, our members discussed H.R. 13015, and sought to plan a useful course of action which would enable our members to understand the many ramifications of this comprehensive piece of legislation, as well as to attempt to come to a consensus on many of the elements of the proposed bill.

We reflected upon the role we might play in assisting you and your colleagues to fashion legislation which we could enthusiastically support, and which would best serve the interests of our viewers and the rest of the American public television audience. During our discussions we recalled that we were able to come to a consensus on a set of principles which helped guide our study of other legislation in the recent past, the Public Broadcasting Telecommunications Financing Act, and most recently our efforts along with other regional public television associations to assist PBS itself in establishing policy for the new satellite interconnection system, which, by the first of the year, as you know, will serve virtually every public television station in the United States.

Our members unanimously adopted the following resolution which seeks to bring together all of the regional organizations, the EEN, SECA, the Southern Educational Communications Association, CEN, the Central Education Network, the PMN, the Pacific Mountain Network, to "develop a series of principles and legislative goals which reflect a consensus of opinion of EEN members and of the larger public television community."

I am pleased to report to you that the board of directors of the Central Education Network just this Monday also endorsed this resolution and will now join with EEN in these efforts. We hope in the very near future to acquire similar statements of support and participation from SECA and the Pacific Mountain Network.

Here, then, is the resolution which we adopted and placed in your record.

The development of new Federal legislation or policy, both short and long term, affecting public television, is of enormous importance to every station. We recognize the continuing efforts of PBS, the PBS managers' resource group, the NAEB, and others, in seeking to find a consensus among the public television community on principles and major points that should be the basis of any such legislation.

The EEN believes that every one of its member stations must play a key role in gaining acceptance of such principles by the Members of Congress, your committee, and for any new legislation. Only through this kind of educational effort can the public television stations determine their own future and the future of public broadcasting with your help.

With these objectives in mind, and with a clear understanding that the EEN effort in this area will seek to work with other PTV stations and cooperate with them in seeking common goals, it is hereby resolved that the President be and hereby is authorized to appoint an ad hoc committee on Federal legislation and FCC initiatives with the following instructions: One, to develop a series of principles and legislative goals which reflect a consensus of opinion of EEN members and the larger public television community; two, in carrying out the above, the ad hoc committee should consult with and take advantage of the work of the PBS managers' resource group, the PBS staff, the NABE, and other groups with similar objectives; three, if the ad hoc committee requires special funding to carry out its mandate, it shall make application to the executive committee of the EEN, which shall be authorized to provide such funding within existing budget limitations; four, that CEN, SECA, the Pacific Mountain Network be asked to participate in the work of this committee.

This resolution was adopted unanimously, as I mentioned, by the board at its meeting September 19, and most recently on this past Monday by the CEN board.

Mr. Chairman, we firmly believe it is possible to provide you in the near future with a set of principles which should serve as a means to measure this bill, or any rewrite of it, or in fact any other national or State developed legislation which would affect public television in the future. We look forward to joining with our regional colleagues, our fellow PBS members, the NAEB, and others who seek to provide the American people with the finest public broadcasting service in the world.

We will appreciate an opportunity to inform you of our progress toward this goal and to furnish you with our final statement of principles which we hope will aid you in your important task.

Thank you very much. Thank you, Mr. Chairman.

[The comments of NAEB follow:]

COMMENTS OF THE NATIONAL ASSOCIATION OF EDUCATIONAL BROADCASTERS
CONCERNING H.R. 13015

In this review, we have covered only Titles VI and VII. There is a general overview of the proposed organization and funding elements; there follows a summary of the five major components and a list of questions in each instance that indicate areas of concern about the consequences of the Bill's intent and specific proposals.

GENERAL COMMENTS

(1) The Act is very difficult to analyze, because it is not at all clear what governing philosophy or principles are influencing the policies and processes that are proposed.

(2) The Act attempts to distinguish operations and programming. It seeks to avoid (at least rhetorically) federal involvement in programming, but proposes various ways in which operational involvement of the federal government is facilitated.

(3) By eliminating program related underwriting, in order to qualify for certain kinds of support, the entire system of public broadcasting becomes much more dependent than now on federal revenues and federal rules and regulations.

(4) Programming support procedures place a greater emphasis on program resources outside of the licensees than within the licensee structure.

(5) It is not clear what kind of "institution" of public telecommunications the legislation is seeking to develop, if any.

(6) Levels of support are very modest, even if there were no expansion of eligible entities for programming operations and facilities funds.

(7) The "spectrum use fee" to generate revenue for the Telecommunications Fund, places public broadcasting's support in a controversial framework which has little or nothing to do with its needs for support. Moreover, it will compete directly, within the administration of the Fund, with programs that are largely unrelated to it, as well as with the regulatory body under which stations would continue to be licensed.

(8) There is no evidence that the proposals have any "insulating" effect from the federal government. Instead, there is even more federal involvement, adding to what has already been proposed, the Office of Management and Budget, which is to formulate accounting systems for all of public telecommunications.

(9) The proposals seriously jeopardize the ability of the stations to act as private, independent, non-governmental entities. Even those instances where the proposed legislation indicates that no federal status is implied, (officers of the Endowment, for example) are treated under rules that govern federal officials.

SUPPORT OF LOCAL REGIONAL AND NATIONAL PROGRAMING: THE PUBLIC
TELECOMMUNICATIONS PROGRAMING ENDOWMENT (621)

Questions

(1) In what way or ways is the Endowment meant to be different from and an improvement over the Corporation for Public Broadcasting?

(2) Is the 50 percent that is directed to be distributed to the stations a ceiling or a minimum? Can the 50 percent that is not earmarked for stations be used by stations upon application? If not, does this mean that, at the proposed levels, \$100 million would be available for stations to use in programing, but that \$200 million (\$100 million plus a like amount to be matched) would be spent by the Endowment for programing with the intent that it be carried by licensees? Does this mean that the federal government is proposing a situation where the Endowment will control twice the amount of programing dollars as the stations?¹

(3) The Endowment is to receive its funds in quarterly payments from the U.S. Treasury, according to its certification of cash requirements for the next quarter. Does this subject it to federal influence and involvement on a regular basis?

(4) Officers of the Endowment and Directors are to be compensated according to federal guidelines. Does this not jeopardize its intended status as a nongovernment entity?

ASSISTANCE FOR PUBLIC BROADCASTING FACILITIES AND OPERATIONS (642)

Questions

(1) Does the prohibition against specific program support also apply to school system that may subscribe to instructional program services? Does it apply to a schedule of programs (e.g., Saturday morning children's programs)?

(2) Is this provision meant to invalidate the FCC's rules (which may be adopted by the Communications Regulatory Commission) wherein disclosure of program support is required?

(3) How is it envisioned that a practical distinction can be made between program costs and operations costs? Is the distinction being made so that it can be argued that there is no federal influence over programing, but that funds for operations and facilities can be subjected to federal conditions?

(4) Do these provisions make the stations and therefore their program services much more dependent on the federal government? Don't these provisions reduce the diversity of funds that a station may reasonably accept?

(5) If a station chooses not to accept federal funds for operations and facilities, will this make them more dependent upon corporate sources than ever before?

(6) Inasmuch as funds for this program are tied to the Telecommunications Fund, which will have controversies surrounding its revenue generation, and which will have competition for its funds, does this financing scheme render the stations helpless in the face of circumstances over which they have no control?

(7) What should a community advisory board do that a governing board does not do?

(8) Do these provisions eliminate the requirement for ascertainment of community needs; is this to be done by the community advisory boards? Is there any guarantee that a Communications Regulatory Commission may not impose "ascertainment" type requirements in the future?

(9) What incentives are these for stations to generate revenue from other than federal sources?

ASSISTANCE FOR EXPANSION OF PUBLIC TELECOMMUNICATIONS FACILITIES (643)

Questions

(1) The provisions indicate that public telecommunications facilities funded will be used only for non-commercial instructional, educational, or cultural programs. If it is concluded that a cable system should be funded does this mean that only such programs can be distributed on it?

(2) Will this program tighten the control of the federal government which can determine which and where facilities will be established, expanded, and given operating funds?

(3) This provision also provides that operation costs of non-commercial telecommunications entities can be provided through a program of grants. Is this consistent with the nature of the assistance program, i.e., the expand facilities?

(4) States can receive funds under this program. Is it reasonable that a State should be required to have a Community Advisory Board?

(5) Applicants must participate in comprehensive planning for public telecommunications facilities. How will this be satisfactorily carried out? Is it always required? What is the planning organization or authority?

¹ As will be noted later, there are restrictions on licensees with regard to solicitation of funds for program support, so it is doubtful that major matching support could be earned by the licensees, if they also wish to benefit from support through NTA.

ASSISTANCE FOR INTERCONNECTION FACILITIES (644)

Questions

(1) What are the reasons for prohibiting the manager of the interconnection system[s] from scheduling the distribution for the convenience of the users? How can programs not be scheduled?

(2) What role would licensees have in managing the policies for operating the interconnection service?

(3) Would program suppliers have access to the interconnection system. On what basis? Does this include independent producers? Would it include corporations which have programs they would like to make available to public telecommunications entities for distribution to the public?

(4) There are a number of services related to supplying programs on an interconnection system (e.g., promotional materials, information about program content, rights ancillary uses that could be encouraged, etc.). Would these services be prohibited? If they were not provided by the manager of the interconnection services, how would they be provided?

(5) Does this arrangement for interconnection place the licensees largely under control of the National Telecommunications Agency?

TELECOMMUNICATIONS DEMONSTRATIONS (661)

Questions

(1) Why does this program not support innovative ways of using broadcast technology?

(2) Why is it appropriate to house this program in HEW, when all other aspects of telecommunications planning and development are in the National Telecommunications Agency?

(3) It is possible that the \$5 million could be spent for a series of unrelated and unimportant projects. What assurances are there that these funds will be used for important and worthwhile research and development efforts?

COMMUNICATIONS ACT OF 1976, REVIEW OF ORGANIZATIONAL AND FUNDING PROVISIONS RELATING TO PUBLIC BROADCASTING AND PUBLIC TELECOMMUNICATIONS—OVERVIEW

Type of support	Agency or organization	Type of administrative agency
Support of local, regional, and national programing.....	Public telecommunications programing endowment.	Private, nonprofit corporation.
Assistance for public broadcasting facilities and operations.....	National telecommunications Agency.	Executive branch of the Federal Government.
Assistance for expansion of public telecommunications facilities.....	do.....	Do.
Assistance for interconnection facilities.....	do.....	Do.
Telecommunications demonstrations.....	Secretary, Department of Health, Education, and Welfare.	Cabinet department of the Federal Government.

Authorizations proposed	1980	1981	1982	1983
Support of local, regional, and national programing.....	\$200,000,000	\$200,000,000	\$200,000,000	\$200,000,000
Assistance for public broadcasting facilities and operations.....	75,000,000	75,000,000	75,000,000	75,000,000
Assistance for expansion of public telecommunications facilities; assistance for interconnection facilities.....	25,000,000	25,000,000	25,000,000	25,000,000
Telecommunications demonstrations.....	5,000,000			

Note: Costs for all aspects of these programs are proposed to be allocated from a telecommunications fund which will be financed by a license fee for all users of the electromagnetic frequencies.

Mr. VAN DEERLIN. Thank you.

Our next witness is Susan Harmon, general manager of WAMU-FM here in Washington. Good morning.

STATEMENT OF SUSAN HARMON, GENERAL MANAGER, WAMU-FM, WASHINGTON, D.C.

Ms. HARMON. Thank you, Mr. Chairman. It is a pleasure to be here. I appreciate your patience in inviting all of us from a diverse

and vocal community to come here and appear before you in these hearings.

I am interested today in relating some of our experiences and those that I perceive at other public radio stations, with a few of the provisions proposed in the bill. My concerns relate primarily to questions of funding and structure.

It is, of course, encouraging to all of us who work in public broadcasting to see proposed legislation which clearly recognizes the potential of a well-funded public broadcasting system to serve the American people. As all of you know, we have been talking about how to fund public broadcasting from the Federal standpoint for years now, with numerous congressional committees and study groups and private commissions. Within the industry we sought adequate Federal funding levels with the longest possible authorization periods.

I commend you for taking a rather adventurous approach to solving the Federal funding question. However, I am afraid the proposed spectrum use fee does in fact make me uneasy. I cannot offer constructive alternative proposals to you, but only hope that Carnegie II, with its attention on funding mechanisms for public broadcasting, might in fact provide us with some recommendations that might be of guidance to all of us.

First, it is difficult to predict the actual monetary return for public radio from the spectrum use fee. We can only make the roughest estimates at this point. Enough funds may not be generated to finance adequately the social services your legislation proposes to cover. I can imagine a long and difficult debate in the future over balancing the concerns of minorities, rural communities, and public broadcasting against the amount of money available. These choices might be arbitrarily made and without the greatest sensitivity to the points at which these purposes are not competitive ones, but rather should be cooperative. We have no assurance that the money will really be enough to finance these concerns.

Second, I am troubled by the principle of charging one system of broadcasting for the development of another. I may be more skeptical of this principle than my colleague, Mr. Mankiewicz. In our own case, we have found commercial stations in this city to be generally supportive of our efforts, and I am concerned about a system of funding broadcasting which may strain these relationships unnecessarily.

Just as we want commercial broadcasters to recognize our right to grow to our fullest potential, I can share their concern that a spectrum use fee might put a hardship on the many small commercial radio stations contributing media services in this country.

My final concern with the spectrum use fee is, of course, the greatest worry. It would seem that your proposed legislation does not allow us to develop funding sources from corporations and foundations. Here I echo some of the other testimony you have heard today. If we were limited to seeking our 50-percent match from only listener memberships and our parent institutional support in order to receive Federal dollars, I am afraid we simply could not finance the public radio service here in Washington.

I know that some commercial broadcasters are concerned that by seeking program underwriting support from local businesses, we may be pulling away advertising dollars from the commercial sector. Their

arguments do not convince me, since we must be left free to attract these dollars to public radio if we are to offer the best possible service in our community. If the public radio system merits such attention, many sectors of the local community should be called to support it. I cannot really feel that we should solicit contributions from individual listeners without also asking corporations and foundations to share the responsibility.

Currently our station is funded at about \$500,000 annually. With that yearly investment, we operate a 24-hour service specializing in public affairs, talk programs, music programs, particularly bluegrass and jazz. Half a million dollars is simply not enough. Our resources are spread too thin. Salaries are not high enough to attract and retain the best talent available. We project within the next 2 to 5 years our budget should climb to \$1 million, double the current amount, if we are to serve the local community with the best possible service.

We receive our support from a variety of sources, including the University, listener contributions, corporations, foundations, the National Endowment for the Humanities, and the Corporation for Public Broadcasting. I might tell you listener support has grown geometrically, in our case from about \$4,000 in 1971 to an anticipated \$160,000 this year.

We believe, however, our next phase of growth must be financed by combining increased Federal funding with increased funding from corporations and foundations. We are currently operating under a 3-year challenge grant from the National Endowment for the Humanities, which is stimulating increased contributions not only from individuals but from businesses in our city. It has only been in the last 2 years that we have begun to attract corporate dollars to our station's operation. We must do more in this area if we are going to grow. Our parent institution cannot help us to grow.

As a private institution, the American University has very limited resources. We expect that listener memberships will in fact level off in the next few years, and we cannot completely rely on Federal dollars to make up the difference. We are not concerned that corporate funding will ever dominate us. In public television, where corporate funding has been typical for a number of years, it still represents a relatively small percentage of the overall financial mix. Further, we had never experienced any problem with corporate or foundation contributors regarding questions of program control.

On the contrary, they have shown a great sensitivity in this area. They want the public to understand that program control rests with the station. I believe they really do not have the time or interest to pursue these issues. They understand our guidelines for corporate underwriting of programs from the beginning and, in our experience, it simply has not been a problem.

Finally, I would like to switch my attention from comments about the spectrum use fee to questions about structure. I am concerned about what the proposed legislation has to say, both having to do with management of the interconnect and also with changing the face and function of the Corporation for Public Broadcasting. Let me make brief comments about the latter.

We have literally grown up with the Corporation for Public Broadcasting. With the rapid growth at the national and local level, all of

us, as you might have expected, have suffered growing pains, but I think the operational procedures between the stations and CPB have improved year by year. We obtain our community service grants from CPB with a minimum of really time-consuming paperwork, and I think we feel, all of us accountable to CPB for the funds we receive.

I feel with time and stable good leadership at CPB this agency can serve us well. I am, of course, not convinced that CPB should be collapsed in favor of the National Telecommunications Agency and the Public Telecommunications Programming Endowment. The proposed funding mechanism for these agencies seems confusing and difficult. It is very hard for me to separate programing costs from operational costs in a medium where the two are so inextricably tied. I would welcome legislation that builds more substantially on the structure for dispensing funds we already have in place.

Regarding the interconnection, I appreciate the committee's interests in guarding the prerogatives of local station control. I believe it is this concern which influenced you to propose that entities which manage any interconnection system should be prevented from producing or acquiring programs; acting as a trade association; and scheduling programs.

When National Public Radio was formed, it was a creation of the stations. Because of the nature of the radio medium, stations saw the need to vest production and distribution responsibilities in one organization. Radio is immediate. Program decisions must be made often very quickly on behalf of the system.

To decentralize that capability would drastically limit our ability to deliver lively radio programs, especially in the area of news and public affairs. This concept will be even more important to us when the satellite is in place. With the satellite, the volume and variety of program material available to stations will increase, and some organization just must function as traffic cop on our behalf.

Almost 2 years ago, public radio representatives saw the need to focus more services at the national level. They decided to merge the programing functions with the representative ones at NPR. A key motivation in that move was to provide more control rather than less, more control to the stations by focusing those national services which the station cannot on their own provide. With our governance structure, our board of directors being composed of both elected station representatives and representatives of the public, the stations clearly have control of NPR.

It is an aggressive membership. Stations can withhold membership dues or change their elected representatives if NPR does not do their bidding. More than any other feature of the Public Radio System, NPR has brought us of age. Legislation which would force a separation of its most crucial functions could set us back a decade. Most importantly, the American people would suffer the loss of what we believe is a very high quality service.

Thank you for your time and attention today. It is a privilege to appear before a committee which shows such dedication to improving the quality of public broadcasting in this country.

Mr. VAN DEERLIN. Thank you, Ms. Harmon. Can you stay for the remainder of the morning?

Ms. HARMON. Yes, sir.

Mr. VAN DEERLIN. Thank you.

Our next witness is Mr. Frank Norwood, executive director of the Joint Council on Educational Telecommunications.

Good morning, Mr. Norwood.

**STATEMENT OF FRANK W. NORWOOD, EXECUTIVE DIRECTOR,
JOINT COUNCIL ON EDUCATIONAL TELECOMMUNICATIONS**

Mr. NORWOOD. Thank you very much, Mr. Chairman, for the opportunity to appear.

I have a written statement which, if I may, I would like to submit for the record and rather than repeat those remarks here, simply to talk about some of our major concerns and highlight some of the things which the written testimony covers.

At a recent meeting of the Joint Council on Educational Telecommunications, the board gave a considerable amount of its time to a discussion of this bill, and particularly the section concerning public broadcasting. It is the intent of the board to give this matter continuing attention. Although we talk about public broadcasting today, it is quite clear to the Joint Council on Educational Telecommunications that this is only one area in which this bill touches upon our concerns.

The substitution of a new regulatory agency, cable regulation or deregulation, the spectrum use fee, all of these clearly are matters of concern to the JCET. Even such issues as common carrier, which one might at first think are far removed from the concerns of educators. Indeed, that is not the case, as the JCET indicated in extensive comments before the Federal Communications Commission in its MCI docket almost 10 years ago.

So, broadcasting and nonbroadcasting services are not totally foreign to our concerns, and if we may we expect to give further consideration to other aspects of the bill and submit written or oral comments when appropriate on those, but this morning I would like to talk about the public telecommunications in title VI of the bill.

I must begin by saying the Joint Council wants to add its name to that growing and diverse list of witnesses who have indicated that they regret the absence of that venerable and venerated phrase, "public interest, convenience, and necessity." As the chairman already knows, I spent 7 very pleasant years of my life teaching, among other things, the history of broadcasting, at San Diego State University, so I am not naive about whether that is a magic formula that solves all of our ills, or that by declaring those words from the housetops, that all broadcasting will operate in a way that will be remarkable in its service to the public.

Mr. VAN DEERLIN. You noticed.

Mr. NORWOOD. That was my observation, even in San Diego.

But we do question whether a license fee can be a complete substitution for concern for the general good on the airways any more than it is on the highways.

We do offer to the committee our unanimous applause for its attention to education and instruction in this bill. I should mention perhaps, that the Joint Council on Educational Telecommunications began life 28 years ago as the Joint Committee on Educational Television, and its role was to marshal the troops to get television channels reserved for non-commercial broadcasting, so clearly we are accessories before the fact in the matters under discussion now, but I would also

like to point out that our organization has gone through several metamorphoses, from the Joint Council on Educational Television to the Joint Council on Educational Broadcasting, and then about 12 years ago to the Joint Council on Educational Telecommunications, because we recognized, as indeed this bill recognizes, that while public broadcasting is a very important part of educational telecommunications, it is by no means the only part of educational telecommunications.

So many of our members were quick to instruct me to express to the committee our deep appreciation of the fact that it is recognized that other educational and nonbroadcast entities have an important role to play in this broader arena.

We are delighted to see the Public Telecommunications Programing Endowment would make funds available to those who are not station licensees, and also that the section dealing with facilities is open more widely than it has been before, although in a minute or so I will have to report that what is given us with one hand appears perhaps to be taken away with the other.

Let me turn to the matter of insulating programing from the chilly hand of the Federal Government. It seems to us, while attempts to do that in the establishment of the Endowment, it may in fact later on in the bill, in the section dealing with NTA, place the possibility of Federal hands on other parts of public telecommunications' anatomy.

You have heard from a number of speakers this morning and in the past about the difficulties many of us find with the prohibition on program underwriting, and lest you think you have heard all of the difficulties, let me call to your attention a couple our board mentioned that have not come to the fore.

Very often State departments of education and local school systems are in fact the ones who pay for programing which is seen on the day-time school schedule. Now, while I am sure the committee had not thought of that in terms of the underwriting prohibition, in fact it is not clear to us that that is not also program underwriting and might in this bill be prohibited. It is a thorny question, and one that clearly raises a number of problems that need further examination and resolution.

The NTA operating grants program for which \$50 million is proposed seems to be formula grants that do not present any greater difficulty perhaps than the present CPB community service grants program, but the \$20 million that is reserved for carrot-and-stick grants requires that somebody in the Federal establishment establish criteria and then apply them to competing applicants.

We note the goals are admirable but the judging process raises for us some bitter memories that you have heard about from other people who have been testifying before this committee.

The JCET, as I have said before, is interested not only in education and communications in all its aspects, but, of course, in the establishment and application of new technologies. In 1950, the new technology that we tried to interest the educational community in was one called television. Now the new technologies are much broader and we are delighted to see that recognition in this bill, but the provisions for new technology are somewhat confusing. Let me suggest that—Well, somewhere I had jotted down here—Well, here it is. I seldom lose anything, but I do misplace quite a few things.

The funds that are available for what I think of as nonstations—I have forgotten exactly the language of the bill—provides for the planning and construction of new public telecommunications facilities operating grants for noncommercial telecommunications entities, and grants for interconnection systems, but the criteria for those public telecommunications facilities are as follows:

“Provide new facilities to serve presently unserved areas”—that is certainly admirable—“to expand the service area of existing stations,” which is, I gather, to serve presently unserved areas that are at the fringe of existing stations’ coverage. I would think that includes translators and the like, microwave to cable head ends; and “to develop facilities owned by and available to minorities and women,” but that seems to us to create some problems which I think are not intended. For instance, to take an example drawn from life, in San Diego, there are IFTS systems which are operated by the San Diego County Department of Education and also by San Diego State University and KPBS. Unless I read this incorrectly, there would be no grant money for either of those facilities, certainly not for the schools, because it does not meet any of those criteria spelled out, and possibly for the station, but not for the university.

It is clear that if my friend, Paul Steen, manager of KPDS-TV wanted a grant for an IFTS facility to extend his station’s coverage, to bring the Mayor of Casterbridge to Descanso, it would fit under the second of those criteria, but to do what was recently done, to use that ITFX station to bring a satellite signal to a convention of Sharp Hospital, seems to me not to fit any of these.

Now, I am not suggesting that those things should not be supported. I think that clearly they should, and I believe that is the general intent of the committee and staff, but it seems to me that that again is a part of the bill which will require further adjustment.

The matter of our concerns about NTA were expressed very eloquently on Monday by Henry Geller, and that confirms my judgment, I believe, in two ways: One, that we have a right to be concerned that indeed an agency of the executive branch could, under the provisions here, abuse the opportunities to influence public broadcasting, and two, that Henry Geller is one of the President’s best appointments. I think back to the time when Tom Whitehead was explaining to all of us in Miami that there would be no long-range public funding for public broadcasting until public broadcasters stopped operating like the fourth network. If indeed the OTP had had the power immediately at the conclusion of that speech to call up the Bell Telephone Co. to say, “We are not funding any interconnection after the 30th of this month,” we can speculate about whether that might have happened, but it is clear that Government influence, in public broadcasting is not only limited or could not only be approached through programing itself.

I said before that we were very pleased to see that the facilities program is open to nonbroadcasters and to new technology, and I have spoken about what I see as some of the difficulties in the new technology, but it seems all of these questions may very well be mooted by the amount of money provided, \$25 million for facilities operating grants for noncommercial telecommunications entities and for interconnection.

I checked again with my friend, John Cameron, and his people at the educational broadcasting facilities program, and they tell me the evidence in their files indicates that television alone would require \$20 million per year over the next 10 to 15 years to meet the requirements that are already there and unmet, and that another \$9 million a year would be required to bring public radio to 90 percent of the American people.

Well, you add \$20 million and \$9 million, that leaves, to put it mildly, very little out of the \$25 million. On top of that, national interconnection via the satellite is budgeted at \$10 million a year for television and another \$2.5 million, so there goes half of what we no longer have, and the conclusion I come to is that new uses and new users cannot anticipate very many crumbs from an already bare table.

Finally, I would like to express the concern of the JCET board about what seems to us to be an important omission, one which I am sure will be addressed later on. In the report of the original Carnegie Commission, there was envisioned in CPB an independent nongovernmental agency which would be the focus for planning, promotion, and for the concerns of all of public broadcasting. In substituting the programming endowment for CPB, there is left no agency that we can identify to take that role, and no function in our view is more important than that of thoughtful leadership.

As I indicated at the start, we find much to praise and support in this bill, and little that we would choose to condemn, but some things about which we have some serious questions, and those are the questions I have tried to express here.

We recognize the present bill is a dissertation in progress, so we raise these questions in the hope that satisfactory answers can be discovered, perhaps by the process that my good friend and a member of my board, Jim Fellows, suggested in his testimony, a dialog which would include members of the committee and staff and those of us who are in public broadcasting and concerned about it, and together, working overtime, we can all resolve this to our mutual satisfaction.

To that end, we offer the committee and staff whatever help we can provide. Thank you very much.

[Mr. Norwood's prepared statement follows:]

STATEMENT OF FRANK W. NORWOOD, EXECUTIVE DIRECTOR, JOINT COUNCIL ON EDUCATIONAL TELECOMMUNICATIONS

At its recent meeting, the Board of Directors of the Joint Council on Educational Telecommunications gave over a considerable portion of its agenda to discussion of the Communications Act of 1978. Each of the members of the Board represents one of the nonprofit organizations in education, public broadcasting, and library and information science which make up the Joint Council. Many of these organizations have already gone on record or plan to submit written oral testimony in the future.

It is not my role this morning to attempt to summarize all of the views of all of the JCET's member organizations, but I can say that there is wide agreement that all of this legislation is worthy of our deep concern and careful study. The establishment of a new regulatory mechanism would have its impact on the educational community as it would upon all citizens. The issues of common carrier telecommunications are directly related to the concerns of educational institutions and programs as we made clear in the FCC's "MCI docket" almost ten years ago. Broadcasting and nonbroadcasting services—aside from public telecommunications—are not totally foreign to our concerns. And the establishment of the National Telecommunications Agency would clearly have its effects on our interests. The JCET Board is resolved to keep the matter under review

and to be prepared to continue to take its part in what is sure to be a lengthy dialogue about rewriting the Communications Act of 1934.

This morning the focus is, of course, on Public Telecommunications and Title VI of H.R. 13015, but I must begin by saying that the Joint Council wants to add its name to the growing and remarkably diverse list of those who regret the absence of that venerable and venerated phrase, "the public interest, convenience and necessity." We all recognize, as with many another statement of high principle, vexing problems may arise when one attempts to define or apply it, but we do not believe that a license fee can be a complete substitute for public responsibility on the airways anymore than on the highways.

We give our unanimous applause to the committee for its support for education and instruction as important parts of the matrix of public telecommunications and for its recognition that support should be expended to institutions and organizations with a role to play in the field. As we have told this committee, in connection with the Public Telecommunications Funding Act, we are pleased to see reflected the JCET's long standing interest in new communications technologies and education.

We recognize that the authors of the bill have made a diligent effort to insulate programming and content from the threat of influence by the Federal government, but we believe that this issue is one which requires further study and additional work. For example, the division of grants between programming monies to come from the Programming Endowment and operational funds from the Executive Branch National Telecommunications Agency assumes that at the level of the public telecommunications entity, such clear distinctions can be made. In practice, regulations and rules will have to be articulated, and the making of those rules will necessarily involve the Federal government in the process.

Also in need of clarification is the effect of a prohibition of program underwriting. State departments of education and local school systems (and they would be eligible for Endowment grants) typically pay the costs of the school programming on a public television station's schedule. Is this prohibited "underwriting" in the view of the committee? In the view of some future bureaucrat who will be charged with enforcing the prohibition?

The NTA operating grants program also raises questions in addition to that of determining the differences between operating and program costs. If that distinction can be satisfactorily made, distribution of the proposed \$50-million in formula grants may present no greater problems than those encountered in CPB's Community Service Grants program. But the \$20-million reserved for "carrot-and-stick" grants requires that a person or persons within the Executive Branch must establish criteria and apply them to and/or among competing applicants. The goals are admirable, but the judging process raises among some of us bitter memories of the head of another Executive Branch telecommunications agency who told us that long term funding for public broadcasting would never be ours until public television restructured itself to fit the White House's view of what public telecommunications should be.

The bill moves the present Educational Broadcasting Facilities Program to NTA, a move likely to be preceded by its move to NTIA by the Public Telecommunications Finance Act. While provision is made for the planning and construction of new broadcast stations, it is not clear to us what is intended in regard to what are now "improvement" grants which support stations' acquisition of new equipment for better service to the public.

The "new technologies" are given recognition and support, but only as means of extending the service of existing stations or of providing new opportunities for women and minorities. The limited views of what ITFS, cable systems, low power TV "translator" technology and the rest have to offer appears to lead to some internal contradictions.

For example, drawn from life: In San Diego, public television station KPBS and San Diego State University operate several ITFS channels. They are used primarily to deliver specialized nonbroadcast television to target audiences within the station's coverage. A recent example is a conference for dietitians, sent by ITFS to the auditorium of Sharpe Hospital. The San Diego County Schools also operate an ITFS system which, with cable TV, is used to bring classroom programs to the schools.

Under the criteria of the bill, it appears that neither San Diego State University nor the schools could receive support for ITFS because they do not extend or expand the present service area of public broadcasting. In fact, KPBS-TV might

be ineligible, since ITFS is being used to serve audiences within the station's present broadcast coverage.

The members of the JCET Board find a strange contrast in the fact that the Programing Endowment is opened up to schools and univeristies, that "noncommercial telecommunications entities" are offered the attractive prospect of operating grants, but that facilities monies are only available for extending broadcast services, unless one happens to be a woman or a member of a minority.

We doubt that this is what the committee intended, and we hope that the paradox will be resolved.

A situation, however hypothetical, in which NTA could or must decide that KPBS can use ITFS to send "The Mayor of Casterbridge" to Descanso, but cannot send a lecture on dietetics to Sharpe Hospital illustrates how difficult it is to keep Federal hands off programing.

The fact that this same NTA program would fund interconnection systems raises the same vexing problems. When Tom Whitehead and the White House Office of Telecommunications Policy were decrying public television's development as "the fourth network", what easier way to bring public broadcasting to heel than by withholding funds for the PBS interconnection.

But all of these questions might well be mooted by the fact that the bill calls for only \$25-million for facilities, operating grants for "non-stations" (i.e., non-commercial telecommunications entities), and for interconnection. The present Educational Broadcasting Facilities Program can document that there are unfilled needs for conventional public broadcasting stations which for TV alone would require \$20-million per year for the next 12 to 15 years, taking inflation into account. To bring public radio to 90% of the American people would take \$9-million per year.

National interconnection will take half of that \$25-million off the top, with \$10-million per year (including debt service) for television interconnection via satellite and about \$2.5-million for interconnecting National Public Radio's member stations.

New uses and new users cannot even anticipate crumbs from an already bare table.

Finally, the JCET Board notes that moving program grant functions from the Corporation for Public Broadcasting to the Public Telecommunications Endowment, and operating grant responsibilities from CPB, to NTA does not account for all of the functions with which the CPB is charged.

In the report of the original Carnegie Commission and in the Public Broadcasting Act of 1967, there was envisioned an independent, non-governmental agency which would be the focus of planning, promotion and concern for the whole public broadcasting (here public telecommunications) enterprise. No function is more important than the function of thoughtful leadership, and H.R. 13015 makes no home for that.

As I indicated at the start, we find much to praise and support in this bill, and little we should choose to condemn at this time. There are, however, many areas in which we would raise serious questions, some in reference to public telecommunications, others which we have not discussed today which are likely to touch our interests even though the words "education" or "public telecommunications" may not be found there.

We recognize that the present bill is a "dissertation in progress," and so we raise these questions in the hope that satisfactory answers can be discovered. We offer to the committee and its staff whatever help we can provide to that process.

Mr. VAN DEERLIN. Thank you, Mr. Norwood. You have indeed touched upon some points on which the proposed legislation is unclear; it was not intended to be that way.

Our next witness is Mr. David P. Snyder of the World Future Society in Bethesda. Good morning, Mr. Snyder.

STATEMENT OF DAVID P. SNYDER, EDITOR, WORLD FUTURE SOCIETY

Mr. SNYDER. Good morning.

Mr. Chairman, my comments this morning are principally to be directed to part B of title VI which relates to nonbroadcast communications.

MR. VAN DEERLIN. Could you, for the record, tell us what the World Future Society is?

MR. SNYDER. Certainly. The World Future Society is an association of approximately 45,000 members worldwide, the bulk of them in the United States, who are interested in the study of the future and of specific aspects of the future, such as technologies and institutions, as well as educational efforts at all levels of society to get people to examine the issues and options confronting society in shaping the future.

MR. VAN DEERLIN. You are the society's editor?

MR. SNYDER. I am editor of one of their journals, *Life-Styles Tomorrow*. This is an avocational activity for me. My regular profession is as a senior planning officer with the Internal Revenue Service, where I have been actively engaged in the planning and installation of telecommunications technologies of all kinds for the past 10 years, including its toll-free taxpayers' service telephone system, its facsimile transmission system, one of the largest in the United States, and also the communications network for its integrated data retrieval system for managing its active accounts.

I have also been working with the National Science Foundation on test installations of computer conferencing and other advanced telecommunications technologies.

MR. VAN DEERLIN. Thank you.

MR. SNYDER. Before making my comments on the specific features of part D of title VI which relates to nonbroadcast telecommunications demonstrations, I would like to comment briefly on the other aspects of the nonbroadcast portions of the bill, particularly as those portions relate to the so-called information society.

There is a great deal of discussion today regarding the substantive meaning of the information society. Fundamentally, it means that individuals and institutions within our society, reflecting the growing rationalization of behavior that is the hallmark of a maturing culture, require more and more precise information in their planning and decisionmaking. The imperatives of our more rationalized lifestyles demand information. Truth in packaging, environmental impact statements, open dating, unit pricing, truth in lending, freedom of information suits, the Surgeon General's warning on cigarette packs, are all manifestations of the growing role of information in our lives.

In consonance with this trend, the basic knowledge required for effective day-to-day functioning in our society—what Dr. Gregg Edwards of the National Science Foundation has called the common science, of our society—has become increasingly sophisticated. As a result, the demand for education has grown commensurately, to the extent that today more adults attend school in the United States than do juveniles, reflecting a mass demand for knowledge, for both vocational and avocational purposes, and leading to the adoption by the U.S. Office of Education of a "lifelong learning" policy.

The need for information—the demand for information—thus reflect a fundamental reality of the information age, a reality which was acknowledged by the Commission on Federal Paperwork. As they indicated in their report, information is a resource. Throughout our society, raw data is gathered, refined, analyzed and produced as information by individuals, institutions, and data processors of all kinds. The information and knowledge produced by our common

enterprise is prodigious. Each year, 10,000 new chemical compounds are developed or discovered; 50,000 new Federal, State, or local laws are enacted; and 75 billion new documents are created each year in this country alone. It is little wonder that recent estimates indicate that more than 50 percent of America's gross domestic product and more than 55 percent of our labor force are currently linked with the processing of information.

Thus, in our transition to an information economy, knowledge and data have become primary resources, and institutions and computers serve as the factories and assembly lines which convert raw material—that is data—into useful information products. The third essential component of an information economy is the mechanism by which these raw materials can be gathered and by which the finished products may be distributed to their consumers. The portions of H.R. 13015 which relate to nonbroadcast telecommunications would establish a governing framework within which our citizens and their institutions may collaborate and compete in the development of the most effective and efficient mechanisms for gathering and distributing information.

It is, in fact, the fundamental wisdom of this measure, as drafted by the committee, that it relies on a framework rather than trying to prescribe or direct the nature of the telecommunications system it is supposed to govern. It is clearly too early in the evolution of the information economy to identify an optimal array of technologies, institutional responsibilities and priorities for the Nation's telecommunications infrastructure. To try to do so at this time would be rather akin to having tried to prescribe a detailed national transportation plan 100 years ago, when the railroad was preeminent. In transportation technology, the auto was in its infancy and aircraft was still 30 years from birth.

In designing the governing framework embodied in the act, the committee has struck a careful, creative balance between the legitimate need to regulate telecommunications as a critical element of our social, economic and political environment, and the equally legitimate needs of the society, the economy and the policy that our telecommunications industry be free to evolve as flexibly, innovatively and rapidly as possible at this critical juncture in our national development. In adopting this approach, the committee has chosen a distinct alternative to having merely augmented the existing statutory mechanism for governing telecommunications, a course of action that would have left the American telecommunications industry in a situation very similar to that of the American housing industry today, whereby numerous potentially fruitful technological and social options are foreclosed by a rigid, interdependent nexus of regulations and institutionalized interests.

In summary, it is my judgment that the basic orientation of the nonbroadcast portions of the committee's bill is so sound that Congress need only pass them as they were introduced to have taken a landmark legislative step, the social and economic benefits of which will be as substantial as they will be long-lasting.

Mr. VAN DEERLIN. You ought to stop right there.

Mr. SNYDER. Unfortunately, Mr. Chairman, my next statement is that, at the very distinct risk of sounding as though I were presuming to improve upon perfection, I would like to offer two proposals for enhancing the effectiveness of the act.

Mr. FREY. We feel better, We were a little nervous for a while.

Mr. SNYDER. First of all, in proposing the establishment of the grant program specifically directed in funding nonbroadcast telecommunications demonstrations, the committee has given clear evidence of its appreciation for the evolving relationship between the national enterprise and its telecommunications sector. I would strongly urge, however, that such a program be statutorily required to publish an annual report of the status and performance of the projects it has funded, including assessments of the applications and benefits suggested by such projects, as a guide for the prioritization of future capital and R. & D. investments in both the public and private sectors.

In a second, more substantive area, I am somewhat concerned that the projects currently provided for in part D are limited to demonstrations of the transmission, distribution, and delivery of health, education, and public or social service information. As broad as this charter is, it excludes several important aspects of applied nonbroadcast telecommunications technology, including productivity enhancement, work at home, and transportation-communications substitution, all of which have enormous implication for the Nation's economic, energy, transportation, and community development strategies.

Similarly, with the recent Postal Service announcement of its intention to substitute a nine-digit zip code which necessarily entail a multibillion dollar expenditure by both the public and private sector alike, there is an imminent imperative for a large-scale, comprehensive evaluation of electronic alternatives to moving billions of pieces of paper throughout our society.

To assure that such telecommunications applications issues as these are afforded the same opportunity for practical application and assessment as part D would presently provide for health, education, and B other social applications. I would recommend in addition to the \$5 million annual appropriation authorized the Secretary of Health, Education, and Welfare under section 667 of this act, that the Secretary of Commerce be authorized an additional similar amount specifically designated to fund demonstration projects and other research on non-broadcast telecommunications applications not under the purview of the Secretary of HEW. Such funds could appropriately be administered by the Office of Telecommunications with statutory guidance to emphasize projects involving productivity enhancement and energy/resource conservation.

At a time when the Nation is deeply and appropriately concerned over a declining economic productivity, inflation, capital and energy shortages, dwindling investments in research and development, the export of jobs to labor surplus nations and international challenges to our technological leadership, America's information and communications industries possess the immediate capacity, given the opportunity, to provide this Nation with a broad range of new services and productive capabilities that would make it possible for our institutions and our individual citizens to generate a literal cornucopia of innovative social and commercial initiatives that could substantially ameliorate many of these problems. If enacted, H.R. 13015 would provide that opportunity.

Further, based upon my own working experience with a number of the new telecommunications technologies, I believe that, given the opportunity, these technologies can offer substantial enhancements to

the quality of everyday life in America, including the strengthening of our family and its restoration as a productive economic unit. H.R. 13015, in my judgment, would provide that opportunity.

There is a clear consensus today among scholars, researchers, and many executives that the evolution of institutions, economies, and civilizations is inherently a process of complexification. In his remarks before the 11th meeting of the Panel on Sciences and Technology of the House Committee on Science and Astronautics, the British cyberneticist, Stafford Beer, observed that the primary challenge of the postindustrial era will be to manage modern complexity. If we are to make proper use of 10,000 new chemical compounds each year, if we are to adhere to, enforce, and evaluate 50,000 new laws a year, if the intended recipients of 75 billion documents are to meaningfully utilize that awesome information flow, in short, if we are to indeed manage modern complexity, Americans and their institutions will need to have vastly improved access to our information resources. Under H.R. 13015, as regards the nonbroadcast portions of H.R. 13015, Americans would be afforded such access as rapidly and as economically as our marketplace and our technology can provide.

Mr. VAN DEERLIN. Thank you.

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. VAN DEERLIN. Our next witness will be the Reverend Patrick J. Sullivan, associate director of communication for film and broadcasting at the Catholic Conference of the United States. Father Sullivan?

I thought there were not any reverse collars out there.

All right, we will instead hear from Mr. Andrew Horowitz, co-director of the Public Interest Satellite Association in New York.

Welcome to the subcommittee, Mr. Horowitz. Your mother has been one of our most faithful attendees.

STATEMENT OF ANDREW HOROWITZ, CODIRECTOR, PUBLIC INTEREST SATELLITE ASSOCIATION

Mr. HOROWITZ. I appreciate your extending such kind treatment to her. I am also happy that you have saved the best for last, Congressman.

Mr. VAN DEERLIN. I am sure that is what she would say.

Mr. HOROWITZ. I am only sorry our Catholic friends could not be here today to precede me.

My name is Andrew Horowitz. I am a founder and codirector of the Public Interest Satellite Association. PISA was formed in 1975 to advocate the public interest in policy formulation of new and advanced communications systems. The focus of our work has been on the communications needs of the small educational and public interest user.

For the past 3 years we have conducted studies and explored ways recent advances in telecommunications can benefit our Nation's schools, hospitals, community service organizations, public interest and consumer groups, and other nonprofit agencies. On behalf of this constituency may I express my appreciation for the invitation to comment on this subcommittee's proposed revision of the communications laws, as contained in H.R. 13015, the Communications Act of 1978.

It is no secret that we have many disagreements with some of the things you do propose. We congratulate you, however, for having brought to the attention of Congress and the American people the reality of an impending information age, of a new world of interconnected computers and electronic fund transfer systems, of wall-to-wall electronic sight and sound and a whole new environment for packaging, storing, and transmitting vast amounts of information.

We know today that we are not talking about toys or exotic specialized technology which in other times we might have a chance to accept or reject. In the information age, we are told, all messages pertaining to food, health, education, and commerce will, like money itself, flow through this emerging network. Who will be the user or citizen of this new world? Who will not be? Will those not connected to, those not interacting with, those unable to voice their needs, those unable to afford the messages sent to and received from, those not educated to use, to act in and through this system be relegated to complete passivity? If the "user" is not plugged in, will the "user" survive?

The vast and diverse constituency of nonprofit users has only the foggiest notion of what such enormously important proceedings as the subcommittee has initiated are all about. It has only a vague inkling of what profound impact decisions you will make will have on its ability to communicate, to survive, in tomorrow's electronic matrix.

This constituency comprises the very fabric and underpinning of American society—its schools, its hospitals, its libraries, its social and community service agencies, its political institutions. It has been bypassed by the silent communications revolution.

PISA is one of many organizations today actively seeking to educate, inform, and bring the weight of this vital segment of society to bear on the passage of humane and decent communications laws and the development of communications systems for social and community service. We, for one, are about to embark on a new idea in telecommunications for the nonprofit sector, a nonprofit, user owned and operated communications service entity that we are calling the Telecommunications Cooperative Network.

When implemented in the spring of 1979, it will provide the nonprofit sector with vital communications services at costs it can afford. Initially, this cooperative will be able to offer substantial savings to members on their monthly long-distance telephone bill. By establishing a shared telecommunications network, as is now permitted by regulation, this cooperative will also enable its members to take advantage of new technologies which will be essential for effective work in such emerging fields as continuing education, telemedicine, information processing, community service, independent broadcast distribution, and electronic news reporting. The needs of the small nonprofit user for reducing costs on existing telecommunications services and for obtaining access to more diverse and flexible service offerings are great today. They can be expected to grow enormously in the years ahead.

An early goal of the cooperative is an educational satellite communications system capable of meeting the many and diverse informational needs of domestic nonprofit users, as well as the needs of the developing world, at costs as much as 100 times below current levels. We are at work even now to insure the development of the appropriate satellite technology and to secure the needed frequency spectrum

for its future use in the 1979 World Administrative Radio Conference.

It is from the perspective of this newly forming constituency of users and these service goals that we have examined our proposed revision of our communication laws. While we endorse and see as extremely innovative many of the ideas contained in your proposed legislation, there are many which we both do not like and greatly fear. We know that much of what we have set out to accomplish can be done under existing law and regulation. At the same time, we know that our long-range objective may require statutory changes and alterations in national policy for which we are already working.

I would refer this subcommittee's attention to H.R. 14046, the Public Service Communications Satellite Act of 1978, the bill recently reported to the Science and Technology Committee in the Congress by Congressmen Ottinger, Fuqua, and Rose.

While we wholeheartedly concur with you that the Nation needs new legislation that will guide the responsible development of the potential of telecommunications for service to the American people and to all peoples of the world, we are extremely skeptical of the instrument you have fashioned to achieve it.

Our concerns begin up front in the general provisions which identify the objectives to be served. There can be little disagreement over the intent of our laws to promote "telecommunications services which are diverse, reliable, and efficient, and which are available at afforded rates" and to "advance U.S. foreign policy, the national defense, and the safety of life and property." These objectives are essentially the same as those contained in the current Communications Act, which this subcommittee and others have criticized as being wholly inadequate for guiding us into the future.

They do not speak directly to what we believe ought to be the chief purpose of our telecommunications policy, which for a democracy entering an information age must be to guarantee every citizen, that is, "user," the right of affordable access to and use of our Nation's scarce telecommunications resources.

The primary aim, we believe, should be to direct our telecommunications resources to solve basic social and human problems, to advance the education and welfare of our citizenry, and to promote our fundamental freedoms of speech and assembly. It should provide us with goals and sights worthy of achievement. These aims and these aspirations should not be implied but clearly stated. They should stand as the benchmarks for judging how well our telecommunications marketplace performs. We view such standards for inclusion in your bill as basic, since we see the possible demise of the small nonprofit organization as a consequence of their being ignored. Instead, you would permit marketplace forces to settle these delicate evaluative and juridical functions in purely economic terms, and I might add, in a freer regulatory environment than now exists.

We, too, are believers in "the marketplace." Indeed, the shared telecommunications network we will implement next year could not have been even conceived without the struggle that has taken place over the past few decades to introduce some form of competition against the telephone company in telecommunications. The benefits that have resulted from this competition in such areas as lower rates and more diverse and more flexible services were only made possible through strenuous regulation, spurred on by pioneering entrepreneurs.

Bell's predatory pricing habits in the competitive services area are too well known to recount here; we believe, even under existing regulation, that these habits have severely inhibited what little competition there is today.

There seems to be nothing in your bill to preclude the possibility of Bell overwhelming its competitors in a deregulated marketplace environment or at the very least limiting the number of competitors overall. While oligopoly over monopoly may be workable for some, for the small, nonprofit user, we fear the end result would be much the same, not good.

If anything, what the small user in this country needs is more competent regulation, not less. Our concerns about the possibility of a "free marketplace" emerging that is dominated by the likes of A.T. & T., IBM, RCA, ITT, and Exxon are only heightened by how your bill would affect ratemaking. The fact that it would limit the new Communications Regulatory Commission from any active role in the establishment and review of rates raises in our minds serious questions about the impact this would have on our own proposed competitive undertaking, albeit a nonprofit, cooperative one. We are uneasy enough as it is, even in today's favorable regulatory climate. We do not know whether we would be able to survive in an unfriendly one.

Rather than weakened and stripped down, perhaps the FCC ought to be strengthened and beefed up. In this regard, we applaud your bill's creation of an Office of Consumer Assistance that would aid consumer interests in proceedings, albeit how few and narrow they may be, before the CRC. We would only suggest that there be added to it an Office of Small Telecommunications Users, to represent nonprofit and other small users in matters affecting their telecommunications needs and requirements.

We can perceive the logic in the dismantlement of A.T. & T.'s vertical monopoly and the need for strong antitrust regulations as a prerequisite for deregulation of rates and services, but we find the quid pro quo that would force Bell's divestiture of Western Electric in return for entry into presently unregulated businesses and new technologies completely unsatisfactory.

A more logical move from the point of view of the small nonprofit user might be forced divestiture of A.T. & T.'s Long Lines, although we would hesitate to suggest anything specific in this area at the present time.

But more disturbing to us than the questionable logic contained in your bill is its unfortunate use of language. Its placement onto center stage of the term "marketplace forces" serves only to revive and strengthen a strain of commercialism in communications which already has had a crippling impact on our people. We have children who cannot read, adults who cannot participate in the governance of their lives—and many who do not even know how to participate, having neither the language nor the access to do so—and a society which cannot react, which frequently confuses reality and the real world with what it sees on the tube.

These are our social products. Our major educational system has been commercial television, and now in turn educational packagers are producing products which are modeled after this commercial medium of exchange. The need for our Nation to apply its telecommunications resources to seek remedies for our basic social and human

problems is what we would urge this committee to clearly state in its bill.

We know this subcommittee is sensitive to our concerns, and we commend it for those sections of its bill which do attempt to come to grips with many of these problems. We congratulate you for having squarely tackled the vexing problems of funding, structure, and the introduction of new technology in the area of public broadcasting. While we have certain reservations about how you've gone about it, we fully endorse your concept of public telecommunications and the notion that public broadcasting facilities, with the aid of new technology, should be transformed into public telecommunications centers designed to bring resources to bear on meeting the diverse communications requirements of the small, nonprofit user and the specialized audience.

The needs of the nonprofit public service constituency are indeed diverse. For the most part, these needs, particularly in educational and medical areas, are not, however, broadcast in nature, and therefore cannot be easily met by the framework of conventional broadcast television. Effective use of telecommunications in the public service area must stress the interactive, the flexible, the two-way flow of information. It must allow for the tailoring of one's needs as one becomes more and more aware of the options available for changing conditions.

Present technology must be redesigned to provide low-cost access to medical care in a time of escalating costs and concentration of medical ability in a few areas. It must be engineered to provide direct user access to educational resources at a time when the educational system is in a shambles. It should provide for the ability to communicate with one's political representatives, to make oneself heard on important issues that arise from time to time.

It must be carefully tailored to the specific programmatic needs of a large, diverse, presently unstructured community of users. Above all else, such services and such technology and such systems must be affordable to the user. If this prime prerequisite cannot be met, nothing will be accomplished. Users will not use what they cannot afford to pay for.

Public broadcasting, because of its history and original purpose, offers a particularly unique opportunity to address the needs of our time. In order for it to exist, in fact, to preserve, modernize, and even perhaps export our political system, it must be assured, as this subcommittee has recognized, of absolutely secured funding and appropriate technology. Critical also to its survival and its ability to meet human needs is the need for direct user control. It must be freed of the executive branch control and oversight contemplated by your proposed legislation.

While we fully support the creation of a strong policy and long-range planning agency in the executive branch, we see no useful role for it in the day-to-day affairs of public telecommunications. Clearly, a serious effort to use telecommunications in a socially conscious way will require a great deal of rethinking, reevaluating, reorienting, and redesigning. It will require great intelligence and imagination in directing our telecommunications from a user point of view.

We believe that this subcommittee, in calling for the creation of an independent National Telecommunications Agency, is fully aware of the need to move in this direction. We fully support the creation of such an entity and the overall charter given to it in your bill.

We particularly support the central role you have defined for this new entity in the area of spectrum management. Access to the limited number of frequencies available, combined with wise and intelligent planning of their use, will be among the quintessential factors determining the small user's ability to either move smoothly into the information age or not to move into it at all.

Today, our spectrum resource is badly wasted and poorly managed. While the societal demand for spectrum is increasing dramatically, our radio frequencies have become captives of outmoded technology and outdated controls. The design of communications systems can either allow for a full flow of information or, like a faucet regulating the flow of water, narrow that flow down to a mere trickle.

The problem with our present designs, even with Public Broadcasting's new satellite interconnection system, not only is that they are designed primarily for one-way broadcasting. They also tend in the direction of wasting precious resources, therefore becoming deaf to needs. We must carefully reexamine the proper mix of needs, users, technology, and costs. We favor, as does your bill, the assignment of this responsibility to a long-range executive branch planning agency. But this new agency must be a special one. It must be instructed to insure that this proper mix allow for the design of a system for adjustment and adaptability for all. It must plan for overcoming the exploitation of motivation by our commercial media. It must face squarely the inefficiencies and inequities of our present systems.

It must be equipped to assist user needs and to offer concrete proposals for uprooting the rigidity, regimentation, and inflexibility of these systems. It must take a new and different look to the future.

At the present time, we have on the top stratum of society a communications system of unparalleled sophistication which, unfortunately, few people understand. This top stratum processes information at a bewildering rate of speed, in part because it has had the greatest say both in the design and the purposes to which this technology is put.

The bottom stratum processes information at an extremely low rate of speed, indeed, even in another set of "languages." It is a population, as I have pointed out, that needs communications and information to survive, but has not been informed about the options available.

The rewrite of our communications laws, we believe, must provide for the development of such options and for the mechanisms whereby they can be implemented.

Thank you, Mr. Chairman, Mr. Frey.

Mr. VAN DEERLIN. Thank you, Mr. Horowitz. Can you remain for the round of questioning?

That is all right. You may come back. I see that Father Sullivan has arrived, and will be able to present his testimony. The Reverend Patrick J. Sullivan, associate director of communication for film and broadcasting, the U.S. Catholic Conference.

Good morning, Father.

STATEMENT OF REV. PATRICK J. SULLIVAN, S.J., ASSOCIATE SECRETARY OF COMMUNICATION, U.S. CATHOLIC CONFERENCE

Reverend SULLIVAN. Thank you, Mr. Chairman. Good morning. My apologies for being somewhat late. I had been told to be here by 12 o'clock, and I thought I was on time in arriving at 11:30. My apologies, sir.

Distinguished members of the subcommittee, you have in hand a copy of my testimony. My name is, as your chairman has indicated, Patrick J. Sullivan. I am associate secretary of communication, U.S. Catholic Conference, specifically, director of the conference's office for film and broadcasting. Needless to say, we are most appreciative of the opportunity to testify before this subcommittee on H.R. 13015, and specifically on title VI, public telecommunications.

I will pass over that portion of my testimony which defines the U.S. Catholic Conference. I think you are familiar with that definition. With the permission of the Chair, I would like to make one short preface to the effect that our testimony on title VI presupposes that, according to an understanding with Chairman Van Deerlin's office the testimony of the conference on the overall bill prepared and submitted by Robert B. Beusse, USCC secretary for communication, was submitted to this subcommittee on Tuesday, September 26, in written form and, at the request of the chairman's office, will be made a part of this record.

That testimony commends the initiative taken by the subcommittee to begin the whole process of rewriting the Communications Act of 1934, because that act no longer meets the needs of the people. At the same time, the U.S. Catholic Conference calls for an adequate period of public education, discussion, and debate with respect to H.R. 13015 in order that the people of the United States may understand the issues and the options that will be opened up or closed off by legislation.

The USCC would commend the Congress for the seven regional field hearings held during the course of the summer. This was a promising beginning of the public debate, but in our respectful judgment, only a beginning. At five of these hearings, spokespersons for our local churches appeared and offered testimony. Church representatives moreover attended and monitored the other two hearings. We learned from what we heard. In some cases, we have even modified previously tentatively taken in the light of the evidence produced at these hearings.

We encourage continuation of these efforts to tap public opinion as broadly as possible and pledge our own U.S. Catholic Conference cooperation in the entire process of public education and debate.

Whereas the U.S. Catholic Conference is not unmindful of the services that commercial broadcasters do indeed deliver to the American public, in our written testimony we have insisted that a new communications law must incorporate, not discard those aspects of the 1934 law which require that broadcast licensees operate in "the public interest, convenience and necessity." The Nation's telecommunications services, even those yet to be developed, must be constantly measured against a clearly stated public interest standard. To eliminate such a standard and to propose, as this bill does, "regulation only to the extent that marketplace forces are deficient," is to take the final step in delivering the national television and radio services to commercial interests.

With this preface and brief overview of some of the points made in our written testimony noted, may I now turn to the specific area of reflection for today's hearings, namely; title VI, public telecommunications?

We first of all commend the subcommittee most sincerely for having chosen public telecommunications as the overall title for this section and for the very evident effort that has been made to come to grips with the longstanding problems that public broadcasting has had to face in the areas of structure, funding, and new technologies.

Public broadcasting must be conceived and planned as more than a broadcast television or radio service. We endorse the concept long supported by many public interest organizations that public broadcasting stations take on the use of multiple technologies such as video discs, video cassettes, satellite, cable, ITFS, and a number of other developments and transform themselves into public telecommunications centers offering a number of services to many specialized audiences, however small.

The overall objective is for public broadcasting to assume a decisive role in providing services in the whole array, not only of over-the-air cultural, educational, and entertainment programing, but also of information/communications systems that provide affordable public access to information in the amount and variety, in the form, at the time, and at the place needed.

Satellite technology has a unique and critical role in public service telecommunications. While the economic implications of satellites are generally recognized, the political implications are perhaps less obvious. The marriage of electronic information systems, including nonvideo formats and devices, with advanced communications systems, can decentralize and democratize the dissemination of information in ways not yet available to the entire public.

In addressing the relationship of public telecommunications to the public good, we may have underestimated the rate at which technological advances are outstripping our capacity to exploit them for public benefit. New legislation cannot overlook the real possibility that political and commercial decisions can deprive the public of basic rights as well as benefits emerging from the new technologies.

These and so many other issues affecting public telecommunications were clearly before the framers of this bill, but deserve much more extensive discussion and debate than the drafters of the bill have been able to give them until now. The present hearings mark only a modest beginning of the process. We would specifically urge that no redrafting of title VI be undertaken until the report of the Carnegie Commission on the future of public broadcasting has been published, and the public as well as this subcommittee has had the opportunity to study and discuss the Commission's recommendations.

Before concluding this brief oral testimony on title VI, we wish to express major concerns about the two new entities that would be created as a result of H.R. 13015. The first entity is the Public Telecommunications Programing Endowment. The Corporation for Public Broadcasting, which PTPÉ would replace, has not been the total disaster that some would claim. It has had its problems, sure, and unquestionably requires reorganization, yet in tandem with the Public Broadcasting Services, CPB has been a major agent in developing for the American public an alternative to commercial broadcasting.

The Service has done an admirable job in a broad educational sense with cultural programs from the fine arts to those of popular music, with children's programming that is creative, entertaining, and informative; with programs for ethnic minorities and minority interests; and with documentaries that broaden our knowledge of our own society and the rest of the world.

Each week our Office for Film and Broadcasting is able to publish for the Catholic press throughout the United States and indeed Canada many reviews that recommend public broadcasting programming. In spite of its defects, the Corporation for Public Broadcasting has endeavored to be a voice for and a coordinator of public broadcasting.

The Public Telecommunications Programming Endowment appears to us to be so insulated and limited in scope as to offer no voice for or responsiveness to either the public or the radio and television licensees. Although the quality and composition of CPB's board have been criticized, H.R. 13015 would give us an even smaller board for the new PTPE. Moreover, all members would still be appointed by the President, with no members coming directly from the public or the stations.

Of even greater concern, however, is this bill's proposal for the creation of a National Telecommunications Agency. As portrayed by the language of H.R. 13015, this National Telecommunications Agency would be a kind of communications czardom with complete control of funding and with policies restrictive enough to hamper expansion and development.

Public broadcasting, for example, would be competing for program and facility funds with rural, minority, and other instructional and narrow cast interests, to the benefit of no one, as it appears to us. Although the bill insists that NTA is to be an independent agency, yet its Director and Deputy Director would serve at the pleasure of the President, and the Agency itself would be "an establishment in the executive branch of the Federal Government."

Thus, public telecommunications would be subject to the pressures of the Presidency. Every source we have consulted across the country firmly opposes this approach.

We are also gravely concerned that public telecommunications' insulation against political pressures and influence is further diminished by the elimination of a diversity of funding sources. At this time, public broadcasting receives only some 25 percent of its funds from the Federal Government, while funds from private groups, States, and public membership continue to grow.

We feel this is far healthier than dependence upon one Federal source.

Finally, the dependence on license fees that the bill proposes requires commercial broadcasting to be so very successful in the years ahead that all competing interests will be funded at adequate levels.

Looking at recent estimates of the amount to be collected, we are not confident that public broadcasting, rural coverage, and minority interests, not to mention other public telecommunications needs, will receive adequate funding to serve the various publics from license fees alone.

In summary, we believe that title VI of this bill is concerned with one of the most critical legislative areas that Congress must address

because public telecommunications reach into the heart of our society. If our huge pluralistic democracy is to survive, we must have an electorate that functions together as a vital society that shares information and endeavors to achieve a consensus on basic assumptions and beliefs.

In the face of an ever-accelerating pace of technological change, our participatory democracy requires a national communications system that serves first and foremost the needs of the entire society.

May I thank the members of the committee and the chairman for this opportunity to testify on behalf of the United States Catholic Conference? Thank you.

Mr. VAN DEERLIN. Thank you, Father Sullivan.

Will the other panelists join Father Sullivan?

You have all spoken for various amounts of time this morning, and have listened to the testimony of others. I wonder if, before we proceed with the subcommittee questioning, if there is anything that any of you would like to say to one another?

No questions or comments?

If not, Mr. Frey?

Mr. FREY. Thank you, Mr. Chairman.

I guess for the last 3 days and before that informally many of you and other people have been worrying about something, which is the problem in public broadcasting of the insulation of public broadcasting from the Government, and this is no question. It has been a problem. We initially drafted title VI to try to provide more insulation. Some of you apparently do not think that, A, we have done it, or B, judging from the testimony, really can do it, and I am beginning to wonder now, and I have been a supporter of public broadcasting for a number of years, if maybe what you are saying does not have some validity in the long run, that there probably or maybe is no way, as long as Federal money is involved, to be able to insulate public broadcasting from governmental pressure, governmental influence of one kind or another.

In redrafting it, and I do not see any reason to wait for the Carnegie Commission, by the way, whatsoever—I am sure they are going to do good work, I know some of their people have been here, but we have been working at it pretty hard, too. Maybe the draw we have to make in the redraft of this is to face up either to the fact that you are never going to get complete insulation or to phase out the funding over a period of 2, 3, or 4 years, or maybe just look at the facilities only. Maybe look in that direction for increased funding. I do not know.

You are persuading me more and more that there is no way to insulate, and I just throw it out. Maybe we ought to eliminate the title, you know, and say, we will keep it like it is. It will expire in 3 years. How is that for something to start questioning with?

Mr. VAN DEERLIN. You seem to have aroused a response from Mr. Mankiewicz.

Mr. MANKIEWICZ. Congressman, I think the record will show at least our testimony was not particularly concerned on that point, because frankly, I do not want to give the feeling that this is the belief of the entire public radio system, but it is mine, and I suspect it is shared widely in the system.

I agree with the thrust of what you were saying, that there is no way to insulate anything that participates in public funding entirely from governmental influence. An administration that wants to meddle in public broadcasting, a Congressman who wants to meddle in public broadcasting, an administration, a Government agency that wants to force itself into that picture, is going to do it. You cannot draft legislation that is going to prevent that.

The question is, how is the institution going to respond? You can create a framework in which intelligent, capable, strong, independent people can resist it as well as they can, but you cannot do any better than that, and I think the present situation begins to approach that. I think a lot of concern about insulating public broadcasting entirely from the role of Government is unrealistic. We have had recent examples, and we will have more, not only the examples of the executive branch but, I think, in the legislative branch as well, of people saying, well, we are putting up the money, let's have some programing here, and calling people up and putting on pressure and conducting the thing in various ways so as to suggest to the managers of the system that if they want to get along, they had better go along. Then the question, is what do those managers do?

If they are strong and tough, as I say, and independent, and have a sense of what they are about, they will resist if we keep the public channels open so that there is communication and access to the other media so that the country knows what is happening. That is protection, isn't it, under our system of government? You cannot make people nice.

Mr. FREY. Amen to that. I guess to a certain extent, if I read you right, what you are saying is, I guess, the line we have been trying to follow us to accept that as a given, that you are not going to be pure as Ivory Snow, or whatever it is, one side or the other, to try and draw the line as much as you can between them, recognizing that fact.

Mr. MANKIEWICZ. I think so long as you do not encourage Government intrusion.

Mr. VAN DEERLIN. One of the witnesses, Ms. Harmon, seemed concerned that the spectrum use fee might insulate her from commercial broadcasters.

Ms. HARMON. I do not quite understand your use of the term "insulate."

Mr. VAN DEERLIN. Well, your fear was that the fee might erect barriers between you and commercial broadcasters. You seem to have found some common ground.

Ms. HARMON. My feeling is that that varies from community to community. Here in Washington I do not sense a great strain between the commercial and public broadcasters.

Mr. VAN DEERLIN. Well, there should not be. You are doing things that they will not do, or say they cannot do, and you have been established to do it. They should be tickled to death that you are there.

Ms. HARMON. I agree with you. I think in communities where that strain is felt it is because commercial broadcasters, some commercial broadcasters are concerned that public broadcasting is beginning to cut into their audiences. I fully agree with you, there are different purposes and counterprograming, and that that strain should not exist.

Mr. VAN DEERLIN. Mr. Stamas?

Mr. STAMAS. Mr. Chairman, I would like to just add another point to Mr. Frey's question, if I may.

It seems to me that it is possible to have increased government funding on a long-term basis for public television, and I think this is absolutely essential and still insulate public television adequately. As I suggested in my testimony, one way to accomplish this is through the diversity of funding which can be built on. After all, public television does not have this as a unique problem. Private universities today receive substantial funds from Government, have the same kinds of problems, and they approach it much as I am suggesting, through seeking diverse support. I think that with diverse support you can have the proper balance between accountability and insulation.

Mr. MOORE. Mr. Chairman, did I understand the gentleman's remarks that he thinks that HEW's regulations and universities are getting along compatibly at this point? That has not been my experience with universities in my district. Quite the contrary. They are bitterly opposed to the interaction of the Federal Government tying strings to the funding they receive. I would like the gentleman to further explore that point if he cares to.

Mr. STAMAS. Are you addressing this to me?

Mr. VAN DEERLIN. Yes, Mr. Stamas.

Mr. STAMAS. I am sorry, I did not get the essence of your question. Would you repeat it for me?

Mr. MOORE. Did I understand you to say that it is your experience or your point of view that universities are getting along compatibly with HEW?

Mr. STAMAS. No. I said that there are always difficulties in any kind of funding, private or public; and that with public funds particularly, there has to come a high degree of accountability.

What I was saying was that private universities and public television can have as a source of strength in dealing with these problems of potential interference and potential control, the diversity of funding which they presently enjoy. With diversity of funding from HEW, from corporations, from private givers, public television is in a better position to resist any efforts at intrusion that are unreasonable and unwarranted.

Mr. MOORE. I think your comments are laudable but just do not exist. Most universities I know are starving for funds and must take whatever Federal money is available, and must also swallow the regulations that go with it, and they really have no choice.

Mr. STAMAS. I am not suggesting they are happy with the regulatory environment in which they find themselves, but they would be worse off if the private universities did not at least have the diversity of funding they do have.

Mr. MOORE. Well, I would certainly hate to see public broadcasting find itself in the position of American universities today. I know of no one who runs an American university who appreciates the interference they are receiving, not on accountability of funds, but the regulations that Congress and HEW have imposed on how to spend funds. It goes far beyond accountability, and I think that is the very kind of thing we do not want to see happening in public broadcasting. Accountability, yes, but we think it is a bad example, between HEW and the universities, to compare that with broadcasting and the funding we want to get through the Congress.

Mr. FREY. I just want to agree with the gentleman. The sad part is, they take it because there is no choice, and that is part of the problem I think we are wrestling with in public broadcasting. Everyone comes racing up here, understandably so, as a source of funds. How much are you going to have to swallow to take it, and where is the line? I guess that is what title VI in our thinking, or at least in my thinking, what it is trying to aim at, how do you draw that line.

I brought this question up because I think part of the testimony has been interesting. It has been pretty blue sky. It is a very realistic world, and we are trying to draw a line between something that—I do not know. You cannot have it either one way or another, and if you are going to come here and expect to take funds, I think you are going to have to start with the premise that there is going to be some accountability with it.

It seems to me that that part of the problem with the title, and not just your testimony—I am just reviewing the two or three days—has been that a lot of people do not get beyond that point, anyway.

Mr. VAN DEERLIN. Mr. Thomas first wanted to say something.

Mr. THOMAS. Yes. I would like to respond to your question, Mr. Frey, and associate myself somewhat with Mr. Mankiewicz' remarks. I think the thrust of our testimony raised less concern than any other witness from the public broadcasting community that has been before you with regard to the lodging of funding responsibilities and so forth in a Federal agency, NTA. Part of the reason that we have taken that position is that we think that the concerns of the system with providing insulation have been somewhat mistaken. That, as Mr. Mankiewicz said, there are always going to be intrusions, influences, and pressures. That is the name of the game.

The best way that we see to respond to that is to assure that no single source of pressure, no single source of intrusion, rules the day. That in the funding decisions that are made and the parties that can participate in influencing public broadcasting, that it be an open, accountable, and responsive kind of process.

Mr. FREY. Do you think, for instance—we will get back to the Exxon thing, corporation contributions and that sort of thing. The other day, I half truthfully said—they said \$1 million is not too much, and I said, what if they offered you \$10 million, and he though a little bit and said, it depends on what kind of programs it went into.

Do you think our thrust against those kinds of contributions makes sense, that there should be a dollar amount limit on it instead of just an absolute prohibition?

Mr. THOMAS. That level of funding for public radio, sir, so stretches the imagination and experience we have had, it almost defies an answer.

We are opposed to the thrust of the bill that would place a ban on any source of direct funding of programing. Many people see this as essentially a ban on corporate underwriting, but in effect it would rule out a whole broad range of entities and institutions and organizations and individuals who now contribute in a variety of ways to public radio programing.

Mr. VAN DEERLIN. Mr. Thomas, just to keep the record straight, there is no ban on the use of corporate funds in the bill. It has to do only with donations earmarked for specific programs, and public recognition associated with specific programs.

Mr. THOMAS. As I read the bill, not only the public recognition of the contributions, but also seeking support for any specific program. The only kinds of corporate contributions this bill would allow would be the general station support.

Mr. VAN DEERLIN. Foundation grants.

Mr. THOMAS. Our experience has been that most donors to public broadcasting prefer to have their contributions associated with the kind of interest and area of activities that prompt their involvement in the first place.

Mr. VAN DEERLIN. Questions as to why this occurs would more suitably be addressed to Mr. Stamas.

Mr. STAMAS. Mr. Chairman, there is nothing very unique about this. While companies like Exxon give some unrestricted funds to universities and other institutions, by and large our approach and, I think, the approach of most corporations and private foundations, has been to seek either specific projects or broad programmatic areas, so that we can know what the incremental dollar accomplishes and what change it brings about.

Mr. FREY. Do you mean you are not interested in improving Exxon's image?

Mr. STAMAS. Yes.

Mr. FREY. Oh, come on, now.

Mr. STAMAS. Let me address both aspects of that. Of course, I am interested in the generalized good will.

Mr. FREY. If not, you would have corporate directors going to jail. You would be wasting money.

Mr. STAMAS. If you are asking, would I support a program on public television as long as I knew the dollars were going to go to a specific activity, without identification of Exxon, the answer is, in some cases, I would.

Mr. FREY. And in some cases you would not.

Mr. STAMAS. I suspect that the question of public identification at Exxon would play some role. We do want the good will, but most of the things we do on public television are things we think need to be encouraged, either as models or because they are useful in themselves. That is the test, that is the major test. Of course, I am not kidding you in saying that we are not interested in the good will. We are interested in another form of accountability, too. We want the public to know when we are associated in supporting a particular program, and, of course, we want the good will, as we do with our education grants and our other things.

Mr. FREY. I am not saying it is wrong, I just think you ought to be fair about it.

Mr. STAMAS. But I was trying to address the rather specific question of identification.

Mr. MANKIEWICZ. It is not limited to corporate donors, either. It is the plaque on the hospital room door.

Mr. FREY. Sure; I understand that, I just think we ought to make sure we all are coming from the same place. That is all. You know, you are in a scramble for money, and it is understandable. I happen to think personally public broadcasting has a tremendous future, especially diversity. There are many areas it has not filled, and there is a need for the service, not from a negative standpoint, but I get back to what I said. I am not just talking about your testimony. It has been

over a period of time, a somewhat holier than thou, if you will pardon me, Father, attitude sometimes. We are just trying to deal in the very real world, and trying to put something together to make it better.

I think if you do not have the basis you are starting on, if you are not starting in the same place, it is pretty hard to have any communication going. I guess that is what I am searching for, not only here, but maybe anyone who reads the testimony, who takes the time to see what we are doing. Maybe we could start at the same place, and hopefully the suggestions that could come in would be constructive ones. If not, there is no hope of working it out that way.

Mr. VAN DEERLIN. Mr. Elson?

Mr. ELSON. Mr. Congressman, Brooks Hays used to tell the story about his brother-in-law, who was a census taker, who went up in the hills of Arkansas to take a census. He went up to the cabin, knocked on the door. A woman came to the door. She said, "What do you want?" He said, "I am here for the census." She said, "What is the census?" He said, "Well, they sent me from Washington to find out how many people there are in the United States." And she said, "Well, you came to the wrong place, because I do not know."

That is the problem with this whole term "insulation." Since the first day I became involved in public radio, I heard "politicalization" and "insulation." I felt for a long time they were wrapping themselves in this piously sacrosanct cloak of insulation, when it really meant nothing at all.

You have the first amendment, which generally protects folks in this country in what they want to say and what they have to say. You have the overview of this committee, which we hope would be oversight rather than overseers, and I think perhaps if anyone is talking about insulation, that is what they are referring to, quite specifically.

On the one hand, if a radio station wants to cater to a political entity, they can easily do it, and if a political entity wants to force a station to do something, it is not that difficult, so you are talking about a term which indeed is fixed. It defies definition, for it is defined by each individual's perception of what it means.

Mr. MANKIEWICZ. You see, I think the tradeoff is what is interesting here. Stations now before the rewrite are held to certain standards by the Government, having to do with ascertainment of community standards, fairness, equal time, all of the things that a station has to do, and if it does not do them, then there is trouble at license time from the Government. That is pretty thin insulation. Indeed, in those respects it is not insulation at all.

Now, what you are proposing here is to remove those, for the most part, at least as far as radio is concerned, and as I indicated in my testimony, I think, and others have said it as well, and put that burden pretty much on public broadcasting. If it were wise in 1978 for radio to present within a reasonable time frame all sides of a controversial question, and if it was in the public interest for radio to do certain other things having to do with reflecting community views and the rest, then presumably that is still in the public interest in 1979 or 1980, after the rewrite.

The question is, how is that going to be performed, and it seems to me that to the extent that public radio is going to be doing that, much the same standards are going to be applicable. So to that extent,

there is not really any insulation anyway. What you are saying in this bill is, if we do not do that, then there is not going to be the license procedure every 3 years. Presumably there will be something else, and this committee will be moving in fairly quickly, I would think, and so would others, if that burden is not being met in a variety of ways.

As Ed Elson said, I think we are trying to define a phrase that is very elusive. Radio lives with Government intrusion all of the time. We are licensees, and as long as we go and get a license and agree to do certain things, and every time a radio station offers equal time to another political candidate, or every time a radio station refrains from a certain type of editorial comment, every time a radio station thinks about its news coverage in terms of fairness, it is differentiating itself from other news entities, differentiating itself from other types of communicators because of Government interference, if you want to call it that, or, as Father pointed out this morning, the public interest.

Well, it is still the same thing, and that burden is going to shift under this rewrite, but I think we are all kidding ourselves if we think it is going to disappear.

Mr. VAN DEERLIN. Mr. Frymire?

Mr. FRYMIRE. Mr. Chairman, Mr. Frey, I think what we are talking about, and I do not know whether you can draw a hard and fast line—if you get \$1 million, it is all right; if you get \$10 million, it is not—but the thrust of the legislation we have been addressing ourselves to is that it seems to indicate the Federal Government with this legislation would have more and more direct involvement with the operation and programing structure of the system, and I think that what we are suggesting is a closer look at the separation that now exists. Given the circumstances that Mr. Mankiewicz describes is equally true in television, given those circumstances, we still survive, and we do maintain a level of insulation, no matter how we choose to describe it.

I think that what we are suggesting is that as we look to the rewrite of this bill, that we try to remove the suggestions that drive toward further direct Federal involvement rather than less, given the fact that as we accept Federal money we are going to be held accountable, but we want to make sure that we try to mediate that direct Federal involvement as much as possible. I think that is what many of us are talking about as we use the term “insulation.”

None of us can live in a freedom. There is just none of that left, especially when we begin, as you say, to associate ourselves with Federal grants or Federal money. There is no question about that.

Mr. VAN DEERLIN. Ms. Harmon?

Ms. HARMON. I would only add to that, as the microphone comes past here, that this insulation semantics game, I think the point here is, wherever the money is coming from, we have got to be very careful what the guidelines are. We know pretty clearly now what the guidelines are for us as stations to take money from the Corporation for Public Broadcasting. We should know those guidelines with our corporate donors in the sense that when we get into the negotiations, people know precisely what we are talking about. If those guidelines are clear, you should not have many problems as you go through a series of funding situations.

Mr. VAN DEERLIN. Does your station at American University solicit or receive funds from foundations or corporations?

Ms. HARMON. Yes; we do. We receive the greatest amount of current support from the Van Ameringen Foundation in New York. We are just now beginning to get corporate money, a very low percentage per year, around \$15,000. The National Endowment for the Humanities grant is encouraging that money from both corporate and foundation givers as well as individuals.

Mr. VAN DEERLIN. Is there anything in the bill's restrictions on underwriting that would reduce this flow to your station?

Ms. HARMON. I am concerned about the underwriting credit on the air, because so far as our experience has shown us, that seems to be important, I might add, it is important to individuals who contribute as well. When they give money, they want their names on the air. So far as that is a part of the legislation, I cannot support it. We would be hard pressed to accept the NTA money if we had to match it without corporate and foundation money and I am not sure without the on-the-air credit we could get it.

Mr. NORWOOD. I want to take a moment to point out the purpose of on-air credit. If one looks at the regulations of the Federal Communications Commission, it is not primarily to supply an opportunity for the sponsor to get his name mentioned, but to let the public know where the program is coming from. The Commission has put licensees in jeopardy because they failed to give credit. They failed to indicate to the public who it was funding the program, so it has a dual purpose, and I think it needs to be looked at as something beyond just the opportunity for a corporation to have its name prominently displayed.

Mr. VAN DEERLIN. Do you mean you are protecting the viewer's right to know?

Mr. NORWOOD. Precisely.

Mr. ELSON. Mr. Chairman, there is another problem that comes up, that we found in looking through the bill, and that is to say, in public radio we are just trying to nurture a system. We are trying to grow and bring in new stations and build new facilities, and in order for a new station to accept facility grants, in order for them to get started, it is important, one, that we have that 25 percent which you are giving us under the facilities program. Under the rewrite, however, the new stations are going to be limited in getting any other funds, because they will have to accept prohibitions which other stations already in existence did not labor under when getting started.

Mr. SHOOSHAN. I just wanted to point out that it seems to me Mr. Norwood has raised a catch-22 situation, since the impact of the provision in the bill is to prevent corporate underwriting or any underwriting of specific programming. Then the abuse being protected against by making the announcement to the public would disappear.

Mr. NORWOOD. Yes, I only wanted to cite what the reason for the Federal Communications requirement is, and of course the intent of the bill as Mr. Shooshan points out, is to prevent corporations from providing money for specific programs. I think I have heard other members of this panel and speakers in the past few days question whether indeed that is a wise policy, because if we are concerned about the possible intrusion of Government control, to deny public broadcasting access to other contributions is only to concentrate the control still further.

It is clear to me, at least, and, I think, to all of us that this business of insulation and the business of accountability are dynamic forces that tend to balance one another. We are not and should not reasonably be seeking to be totally without responsibility as these are Federal funds, these are public funds. That, I think is a major consideration, that public broadcasting needs to be accountable, when it spends public moneys, to the public, and that is somewhat different from being accountable to an agency within the executive branch of the Government.

In fact, I would suggest the history of the past few years has indicated that when the executive branch of the Government wanted public broadcasting to behave in one way and not another, the public broadcasting community roused itself and essentially appealed over the heads of the executive branch to the Congress and public at large to say that indeed it was not going to Kowtow to what one particular agency within Government felt public broadcasting ought to be.

Mr. MANKIEWICZ. I would question, Mr. Chairman, that interpretation Mr. Shooshan just mentioned, as to the meaning contemplated here by specific programs. We have in public radio what we now are calling an events fund, which would pay for all of the special events programing that we do during the year, mostly congressional hearings, Presidential press conferences, special news events, other press conferences, maybe court proceedings if we can get in, maybe the House of Representatives. For that kind of thing, which costs about \$400,000 for the year, we are seeking corporate underwriting to cover about one-fourth of it and maybe foundation underwriting to cover another one-fourth of it.

Under the rewrite, is it contemplated we will be able to say during the course of hearings coverage that the coverage is made possible by a grant from the X corporation and the Y foundation? It is not a specific program. Or is it? Our point being, what we wanted to do was insulate our programing from the corporate contributions so that it could not be said that an oil company was sponsoring the proceedings on the energy bill, or that some other corporate interest was sponsoring something related to its own concern. The underwriters would have no control over what we would cover. We would make those decisions. They would just contribute to events coverage.

Mr. SHOOSHAN. Let me ask you the question, Mr. Mankiewicz. You have dealt with soliciting the funds. Why is it important to the person giving you funds for what is at the time the contribution is made, as I understand your description of it a general purpose, special events fund—they do not know what they are providing the money for—why is it important to them that their name be associated with that particular broadcast? Why would it not be sufficient if at various during the day people who have supported your programing were identified on the air?

Mr. Wirth read into the record yesterday a solicitation of underwriting from one particular university-associated radio station—

Mr. MANKIEWICZ. I heard about that.

Mr. SHOOSHAN. Which solicited funds based on the promise of on-air credit much like a commercial-buy. Why do we hear over and over again on public television and radio, credit being given to a corporation and never John Smith, Mary Jones, and all of the people who have provided funds to that station as well?

Mr. MANKIEWICZ. Well, in the first place, you rarely hear that corporate name on public radio, because they have not found us. I will say, though, not for lack of trying.

Obviously, we are talking about two things here. One is the FCC's at least expressed notion when the requirement went in that the public had the right to know who is paying for this. The other side of it, of course, is the philanthropist's wish that his anonymous gifts be publicly known.

When you add to that the corporate concern, the shareholders' concern for how the money is to be spent, and obviously, their desire for this generosity, that is consistent with taste and the law.

Now, maybe a listing, once, twice, three or four times a day of all contributors to all programs solves that problem. I do not know but I think as long as it is permissible to say that funds for this program are made possible by a grant from X company, they are going to want that. If I were a vice president in charge of corporate philanthropy and anonymity, I would want it, too.

I think that is the answer, and the question is, how far can we go without giving up something very important, which is our ability to say what we are going to put on in that time.

I think it is the same as with the Government. They can do a little corrupting, if you are dealing with corrupt people. I do not think in broadcasting, though, that is the case.

Mr. VAN DEERLIN. Is it possible that in some instances you might reach a situation where the preceding program was brought to you, not just by Woodward & Lothrop, but by the pants department of Woodward & Lothrop?

Father?

Mr. MANKIEWICZ. With the finest polyester in town. That is the next step, isn't it?

Reverend SULLIVAN. Mr. Chairman, I would just like to support the concerns that have been expressed by a number of the panelists here about the elimination of corporation underwriting for public broadcasting. Our own position would be, we would not want to see it eliminated. We would submit there are various ways in which it certainly could be improved. Certainly we would not want to see corporate underwriting so developed that there would be any intrusion by the corporate underwriter in the choice of programing subject and development. Our main concern is about those things which are not underwritten.

Public broadcasting has served us very well, but in a very limited area, it seems to me, when it comes to addressing the substantive issues that are facing our society living in an interdependent world. Contributions made by the Exxon Corporation would be very admirable if they were put toward underwriting probative examinations of injustices in the third world, for example, the role the multi-nationals are playing in the development of economies, et cetera, et cetera. Perhaps that is blue sky.

I would make one final point, Mr. Frey. You very well said, we have to start with the given realities, you know, and perhaps sometimes we of the cloth are a bit more idealistic than we ought to be. In this matter of underwriting, I would submit that at least as I would define it and understand it, it is something to be encouraged for this reason. It encourages accountability on the part of business

to do something for the public good. The fact that their names are associated with things that are serving the public good is not something to be ashamed about. It is a part of the human condition, and I think it can encourage wider and wider corporate contributions as we face the future.

I commend the corporations, in spite of imperfections, for the interest that they have up until now shown in underwriting public broadcasting. Thank you.

Mr. VAN DEERLIN. Mr. Stamas?

Mr. STAMAS. I would like to make two or three points to react to some of the panelists. First of all, I do not believe there is a great rush by corporations to underwrite activities on public television. I find it a little strange listening to this discussion, when I spend so much of my time trying to persuade my colleagues in business to do more.

The figures show that corporate support is a very small percentage of the total operating and program activity of public television. The second point I would make—

Mr. VAN DEERLIN. What percentage is it, Mr. Stamas?

Mr. STAMAS. Four or five percent, perhaps, and a larger percent of the programing budget. When you take the total funds going to public television, it is a very small percentage, and my perceptions are a little bit different from this tide of corporate underwriting.

Secondly, I would like to say to Mr. Mankiewicz that Exxon Corp. at least does not seek anonymity in its contributions activity. We publish every year in detail how our funds are used and dispersed. We seek accountability.

The third point I would make is that we are in fact, through some of our public affairs programs, Father Sullivan, dealing with some of the issues you have indicated need to be dealt with. We have a forthcoming program called Global Papers, whose first paper deals with the international food problem, and while I have not seen that program and do not know what its content is, I am sure it is going to deal with the role of multinational companies in the food problem.

Mr. FRYMIRE. Mr. Chairman?

Mr. VAN DEERLIN. Father, your name was mentioned.

Reverend SULLIVAN. Just for the record, I must give testimony to the fact that what has been said about underwriting the Global Papers, and the first one on food problems, is very accurate. I was present when the Exxon Corp. person responsible for these things was meeting with the people from Pittsburgh, and on behalf of the U.S. Catholic Conference, I supported the request for funding from the Exxon Corp., and I commend them, indeed. Thank you.

Mr. VAN DEERLIN. Mr. Horowitz, and then Mr. Frymire.

Mr. HOROWITZ. Well, I will use both microphones.

Mr. VAN DEERLIN. Maybe it will come through in stereo.

Mr. HOROWITZ. I feel compelled to say a few comments. Father Sullivan, I thought I would be the last of the speakers this afternoon, and you received the honor after all. I could not agree more with my Catholic friend. I think the questions of insulation and underwriting have to be analyzed in the context of the purposes of public broadcasting. I do not think the original idea was that public broadcasting would become something that either now or 10 or 15 or 20 years from now might be predominantly in the hands of various commercial

underwriters, although that might be a very appropriate thing to happen. If so, maybe what the Government ought to do is recognize that public broadcasting is moving in this particular direction today. Perhaps the Congress ought to let this trend continue and concentrate its attention on the types of needs and requirements that I think the original purpose of public broadcasting, in part, was directed—to education, social and community service, to services that do not easily fit within the context of what we have come to know as broadcasting.

People want entertainment and culture. Personally, I think the commercial broadcasters are happy as peaches that Government funds public broadcasting. This certainly takes a lot of pressure off of them to be responsive to community needs and interests. Frankly, I think the Government ought to consider pulling out from this area and, instead, focus on the development of technologies that would speak to some of the needs which Father Sullivan talked about, which I talked about, and which a lot of other people are talking about today. This would, I think, begin to place the questions of insulation and underwriting in a different context, and would perhaps move us in a different direction. Thank you.

Mr. VAN DEERLIN. Mr. Frymire?

Mr. FRYMIRE. In response to your question, Mr. Chairman, to my knowledge 20 percent of the PBS nationally distributed programs are underwritten by corporations, but you have to place that in context, now. As a licensee of noncommercial television stations, 52 percent of our total schedule on the air is education, not underwritten by anybody except the people of New Jersey and those we can help get us to keep those stations on the air.

Twenty-five to thirty percent of our on-air schedule is locally produced programs, so when you place in context the full spectrum of a program schedule of a noncommercial station, I have no fear at all about corporate underwriting becoming predominant, overwhelming, or out of place, or inappropriate. I think we should encourage more of it. I think with the guidelines we now live under, we properly can do that.

The concern I have with the proposed legislation is, I think we would be inhibited from being successful by having that sort of participation by the whole community, the business community as well as the public community, and public broadcasting, by not being able to give proper credit where credit is due.

Mr. THOMAS. Mr. Chairman, I have a concern that our discussion on underwriting has been a discussion of corporate underwriting, and I certainly do not have the figures to present to the committee, but I am certain that if they would be available, that corporate underwriting is but one portion of a broad range of specific program support now available to public television and public radio from a wide variety of sources, all of which would be barred as title VI now reads. And I think one of the things the committee should keep very clearly in mind as it continues to discuss and redraft this legislation, is that certainly corporate underwriting is a question, and it ultimately must be dealt with, but do not throw out everything else as well, particularly unintentionally so.

Mr. FELLOWS. Could I add to that a further comment about corporate underwriting?

Mr. VAN DEERLIN. Yes, Mr. Fellows.

Mr. FELLOWS. It seems to me it does illustrate the need for us to have a little better dialog between the drafters and the people who have experience within the field. First of all, it seems to me very necessary to understand what the current practices are, and I think we have gotten some information about that on the table now from the point of view of the people who are in a position to contribute in the corporate sense to public broadcasting, and as Mr. Stamas points out, there are not a lot of people outside the door eager to do that at the moment. It is a very hard sell, as many people who try to do it have certainly discovered.

I think it is also useful—I think Sue made this point, too—to try to formulate what constitutes abuse. When do problems occur? At what point do you call something a problem? And then devise a means by which those abuses can be checked, discouraged, or prohibited in the future, but to take the whole area of underwriting, as Thomas pointed out, and assume that the abuses, such as they might be in the corporate underwriting area, are generalizable to all, I think, reveals a serious problem in policy formulation, and I would hope that by the kind of thing that Larry and I and others have talked about today, we could shed some more light on these matters in the redrafting.

Mr. VAN DEERLIN. Mr. Elson, do you have another story?

Mr. ELSON. Yes. I was going to quote Maimonides, the theologian from the 14th century, about giving, but I will instead send you a copy of what he had to say.

The problem, from what everybody is saying, is what is good is what suits me and what I am accustomed to, and I was interested because I was looking forward to our futurist's comment, if there was to be one, on this subject. Corporations, contributions, foundations, we do not know what their future is, and with the drafting of this bill, I hope consideration is given to the fact that sometime might come when this Congress will put greater limits on charitable contributions from any source, and consider what the problems will be to public broadcasting at that time.

Mr. VAN DEERLIN. Mr. Snyder?

Mr. SNYDER. Of course, as I said in my prepared statement, I support the "framework" aspect of the legislation in the first place because there are so many elements and uncertainties in the evolving nature of these technologies and their interactions with our social and economic systems that it was a better way to arrange the regulatory process in that fashion, rather than trying to stipulate formal institutional roles and relationships, et cetera.

I think that in terms of what might happen, for instance, to corporate giving, and looking at it from the standpoint of the Internal Revenue Service, for example, where we see the first amendment issues being raised on grass roots lobbying and how that issue might spill over into the underwriting of programs is just one of any number of ways in which the future of corporate contributions to this process is in doubt. On the other hand, Federal law prior to 1836-37 used to require corporations to operate "in the public's interest," and in this era of the "social audit," one could easily conceive of corporations being required to spend some portion of their profits on good local projects like public broadcasting.

So, I do not think there is any way we could specify today what institutional forms and constraints we can expect to see 20 or 30 years from now, which is why I think this is something it is best we remain flexible on.

Mr. VAN DEERLIN. Thank you. Mr. Shooshan, Chief Counsel?

Mr. SHOOSHAN. Thank you, Mr. Chairman. I just want to follow up a couple of points. I was particularly interested to hear the generous offer of input from Mr. Fellows. I think it is important. He said in his statement, and I just wanted to highlight that, that you feel that this new regional organization setup and efforts that NAEB will be undertaking will be useful in developing a legislative plan. I think that is very heartening, because I believe you, Mr. Fellows, were one of many about a year ago who sat before the subcommittee and said everything was fine the way it was and we did not need legislation.

So, we are particularly happy to have that input from you.

I did want to ask, in addition, in looking at the underwriting question, particularly, that the concern of the committee for commercial underwriting rather than noncommercial entities like—of course, I was about to say Children's Television Workshop, but I guess they are not a noncommercial entity any more. It would be useful if in addition to the breakdown that was suggested about the 20 percent of PBS programing being underwritten by corporations, to break that down further and let the committee know if anyone knows—PBS people in the room might be helpful—what percentage of prime time programing fed by PBS is underwritten by corporations.

That kind of information would be useful. Also, Mr. Fellows, too, in your statement you had a very helpful chart that broke down the way in which the types of support proposed under the bill would be handled. I think one thing that seems to be missing as I look at the chart is a column for how it is handled today. I wanted to go through that quickly with you.

First, you say that support of local, regional, and national programing would be handled through the endowment, thereby a private, nonprofit corporation. How is that handled today, essentially?

Mr. FELLOWS. Essentially by the Corporation for Public Broadcasting.

Mr. SHOOSHAN. A private, nonprofit corporation. OK. Assistance for public broadcasting facilities and operations, you point out that under H.R. 13015, would come from the executive branch of the Government, NTA. How is that assistance provided today?

Mr. FELLOWS. It is provided in two ways. The operational part is provided to a large extent through the Corporation for Public Broadcasting. The community service grants and facility support are provided through HEW.

Mr. SHOOSHAN. So a portion of that is already provided by the executive branch; that is, the facilities program at HEW. Do you think it is appropriate that the Corporation for Public Broadcasting, which was set up initially to fund public broadcasting programing as its primary goal, should be in the business of making operational grants to stations?

Mr. FELLOWS. I have difficulty distinguishing programing costs from operational costs, and that is exactly the kind of thing I think we need to take a look at. I mean, getting a group of people who really have to resolve that problem every day, and find out what the

details of that difficulty are. I think Mr. Frymire or others might like to describe that problem, but at what point a producer becomes an operational cost versus a programming cost is, I think a tough question when you are trying to resolve it statutorily.

Mr. SHOOSHAN. It is much tougher, I agree, when you are talking about paying for the services of a person. I was thinking more of the use of those community services grants to buy cameras, to buy the hardware that goes into the stations, which again the GAO audit found an increasingly larger portion, at least in the major producing stations, were being used for.

The question as to where the line could be drawn is one raised by the bill, and we would like to have your input as to whether it is feasible to do that.

Mr. FRYMIRE. In response to your earlier question, Mr. Shooshan, I think it would be interesting for you to have a copy of the utilization, station utilization reports that PBS supplies the system on its scheduled programs as they are distributed. Your question was, how many of the corporate underwritten programs are distributed in prime time. I do not think that is as important as to know how much of the prime time schedule of the stations is devoted to corporate underwritten programs.

Mr. SHOOSHAN. I would be happy to see both figures.

Mr. FELLOWS. There is a difference there. It may be true that PBS is distributing those programs in prime time. I can assure you likewise it is not entirely true that the stations are using those programs in prime time or at the time of distribution.

Mr. SHOOSHAN. We would be happy to see it. Let me go further down the list, just to complete this. The assistance for expansion of public telecommunications facilities, you say, under H.R. 13015 would be handled by an executive branch of Government, NTA. How is that now funded, Mr. Fellows?

Mr. FELLOWS. That is part of the HEW program.

Mr. SHOOSHAN. So that is now funded by the executive branch of the Federal Government. Assistance for interconnection of facilities would be under the bill provided for by NTA, and that is now handled how? Where does the funding come from?

Mr. FELLOWS. The Corporation for Public Broadcasting.

Mr. SHOOSHAN. So that would be a major change, perhaps the only one we have come across so far. Telecommunications demonstrations, you point out, would be handled by HEW under the bill. How is it handled now?

Mr. FELLOWS. It is handled at a lower level by the Secretary of HEW, which is different from the way the rest of the facilities program is handled.

Mr. SHOOSHAN. But it is handled by a Federal department now?

Mr. FELLOWS. Excuse me. Mr. Frymire reminds me there are other Federal departments involved in telecommunications demonstrations.

Mr. SHOOSHAN. The point of going through this was to see how radical a departure from the current practice H.R. 13015 was, and I was struck by a point that Mr. Norwood made, which we hear a lot before the subcommittee, what if Tom Whitehead were to come along and follow up a speech such as he gave in Miami by ordering that Federal payments for the interconnection be abandoned. I suggest to you that probably the same thing that happened when he gave his speech

in Miami, which was a tremendous rush by this committee and by the Senate committee to investigate what was going on, and that probably the only thing that would change is, those hearings would be called probably about 2 weeks sooner if what was proposed was to eliminate funds to pay for the interconnection.

Mr. NORWOOD. I think that is quite right, and speaks to the point I tried to raise before. The ultimate responsibility for public broadcasting, for the use of public funds, is to the public itself that this Congress represents. I might make one point, if I may, and that is that you raised a question, Mr. Shooshan, about whether it is appropriate for the Corporation to make community service grants which may then be spent for operating funds or the support and purchase of equipment and so forth.

I think the history of the Corporation, the Carnegie Commission, and the Public Broadcasting Act of 1967 clearly indicates the Corporation's responsibilities for general overall support of the system and not for programing alone. So, although much of its activity and money has been devoted there, I would suggest it is not inappropriate for the Corporation to do a number of these things, and in fact it takes me back to the comment I made in my testimony, which is that the programing endowment is not a substitution for the Corporation, but only one of the functions the Corporation has had.

Mr. SHOOSHAN. If what you are saying, and I certainly understand and appreciate it, Mr. Norwood, is that the 1967 act was drawn in general terms as to what the responsibility of CPB should be, I would agree with you.

Mr. NORWOOD. My interpretation of the 1967 act is, in the question of insulation from direct Federal governmental pressure, that it was to be that buffering organization, and that if its money was not disbursed wisely, that then the appeal was to the Board of the Corporation, which was to be a distinguished board of citizens to represent the general good.

Mr. SHOOSHAN. Everybody wants to get back to insulation. My point was simply going to be that I think that it was the understanding or expectation of most of the people who were present at the time the act was first written that the primary and overriding responsibility of the Corporation was to fund programing, and that there has been increased discontent evidenced by this subcommittee and the Senate subcommittee about how much of those funds have been diverted to other uses.

That is the basic concern, delineation of responsibility.

Going back to Mr. Mankiewicz's statement, you raise a couple of interesting points on the spectrum use charge and the linkage to funding public broadcasting programing, two that seem to be at variance with each other, just one page apart.

On page 13, you suggest that one reason the fee gives you some pause is that it might not produce enough money for public broadcasting. A page later, on page 14, you talk about the fear on behalf of the stations that too great an increase in Federal funding might hamper their station's support from other sources. I would like to know how we are to resolve that dilemma. We have heard it before. That is, if the Federal share increases too rapidly, that States and other institutions might remove their funding. Where does that leave us?

Mr. MANKIEWICZ. We find it very difficult in radio to even imagine a situation in which there was too much money from any source. You will note that the discussion in my written testimony to disincentives to State and local support referred not to amount of funds, but rather to the requirements placed on the stations for use of those funds outside the station, resulting in an inflated misperception of wealth for the individual station.

Mr. SHOOSHAN. On page 13, you talk about the money may not be enough for public broadcasting:

Anticipating a yield of \$250 million, and the CRC takes a share comparable to its present budget. Any division of the remaining money would not be enough for public broadcasting.

Now, my point was to square that with the concern you raised on page 14, where you talk about 80 percent of public radio support, or 80 percent of the stations being licensed to State and local institutions, and those institutions being likely to cut back their support of public radio if the Federal share increases.

Mr. MANKIEWICZ. It is an inconsistency that I suppose is hard to explain. What I am saying is that State and local institutions will look, for example, as they did at the financing bill this year that was originally proposed in the White House version, and say, well, you are getting \$1 billion; perhaps our funding can be decreased.

Mr. FREY. Sort of the CETA approach?

Mr. MANKIEWICZ. A little bit. A little bit. I think the thrust of this point on page 14 is that whatever the spectrum use fee yields, it will be seen as additional funding, at the station level whether in fact it is or is not and in that respect some of our stations may have a problem.

Mr. SHOOSHAN. I understand that you were citing these different concerns to make different points, but what you seemed to be saying was that one problem with the provision in the bill on the spectrum use fee is, it would not yield enough money from the Federal Government. By the same token, a page later, you were saying too much money from the Federal Government might mean withdrawal of support from State and local institutions, and I just did not know how to square that.

Mr. MANKIEWICZ. I think what we are saying is, the system—one system that seems to have been devised here is not in fact going to increase the amount of funding available to radio, and what comes in on one side will be withdrawn on the other, and I am not sure that is the purpose. The purpose, I take it, is to increase the funding.

Mr. VAN DEERLIN. Ms. Harmon?

Ms. HARMON. One point here. When we were looking at various proposals for merging 2 years ago in public radio, we looked at the buy-back mechanism, and I think that has something to do with this problem at the local level. We looked at buy-back where more money would pass through CPB to the stations, and stations would buy back national programming. That was not tolerated very long in the system, and was one of the proposals earlier thrown out. One of the problems with it was, it would cause problems at the local scene, where a lot of money would come into a station. The owner of the station would be forced then to send it out, and the fear was, the local institution may say, we do not want to do that, we want to withhold that for other purposes.

Mr. SHOOSHAN. There is a vote on, and I know the chairman does not want to come back. He wants to wrap up. I want to ask two additional questions, one of you, Mr. Mankiewicz, and then one of Ms. Harmon, on the fee.

Would NPR be more inclined to support the linkage of a spectrum use fee to funding public broadcasting programming if that were the only linkage made?

Mr. MANKIEWICZ. Yes.

Mr. SHOOSHAN. Second—

Mr. MANKIEWICZ. Which is not to say that we do not have any support for it at all in its present form.

Mr. SHOOSHAN. I understand.

Mr. MANKIEWICZ. But I think that would make the linkage clearer.

Mr. SHOOSHAN. I would point out the \$250 million figure which you cite in your testimony, which, I think, is taken from the estimate in the staff's draft of what a fee schedule might look like, only relates to the funds derived from the broadcast portion of the spectrum use charge, not the nonbroadcasting uses, which would also be put into this.

Mr. MANKIEWICZ. I understand that could be a sizable amount. You will note that we attempted to take that into account by also citing a \$400 million figure.

Mr. SHOOSHAN. Ms. Harmon, I would like to raise just one question with you, and this is my last question on the spectrum use fee. The purpose of the spectrum use fee in H.R. 13015 is to require payment by those who use the spectrum for commercial purposes for a scarce resource for which they today pay nothing. It also introduces an economic basis into management of the spectrum which everyone from Henry Geller on down to Chairman Ferris has endorsed as a good idea. That is going to generate a sizable amount of money.

Are you saying that public broadcasting does not want any part of that money because you are afraid that it is going to create a bad feeling with commercial broadcasters in your community?

Ms. HARMON. That was one of the lesser points I made in concern about that, not knowing what the impact would be, and colleagues—I think Mr. Mankiewicz and I are at variance on that, to some extent, as to what the connection is there. I have seen in some other testimony before the subcommittee interesting notions about taking that spectrum fee, putting it in the general treasury, and then money flowing out to public radio and public television in that form.

Mr. SHOOSHAN. How about taking it and putting it into a dedicated fund like the highway trust fund, and having it flow to public broadcasting from there?

Ms. HARMON. One of the problems with that is the arbitrary nature of setting what that money is going to be and how it relates to the actual costs.

Mr. SHOOSHAN. You are confusing apples and oranges. I am telling you, if this legislation were adopted, there would be a spectrum use fee which would be applied to all commercial users of the spectrum, and I am asking you whether you would like to see public broadcasting share in the money derived from that use fee.

Ms. HARMON. I am saying, A, I do not know, and B, I do not know what the limit of that fund is and how it relates to our financial needs.

Mr. SHOOSHAN. Thank you.

Mr. VAN DEERLIN. What she is saying is a line as old as melodrama itself. "Take back your gold."

On that note, we will end the hearings. Thank you all for being with us. I hope to see many of you again early in the new year. Please stand by.

[The following statements and letter were received for the record:]

STATEMENT OF MICHAEL F. PORCARO, EXECUTIVE DIRECTOR, ALASKA PUBLIC BROADCASTING COMMISSION

Nowhere but in Alaska do the stark contrasts of old and new present themselves with such depth and texture. We have satellite technology in villages without toilets; television without telephones. Our State is vast, diverse, unique, and unexplainable from the experiences of those living in the co-terminous United States.

In terms of sheer mass, Alaska is one-fifth the size of the continental United States of America. Fractions do not convey the true magnitude of Alaska. Let me verbally superimpose the area of Alaska over the lower forth-eight states. Ketchikan, our southern-most city is located near Savannah, Georgia; Barrow, our northern-most city is located near International Falls, Minnesota; and Attu, our western-most city (or eastern-most city, if you are a purist in geography) is located in the San Francisco, California area. In this enormous area of 586,000 square miles live approximately 400,000 people. There are fewer miles of roads in Alaska than in Connecticut, and much of the state is inaccessible except by aircraft. Add to this enormous area four (4) time zones, as well as rugged ranges of mountains, glaciers (one the size of Switzerland), lakes, rivers, and channels and you may begin to appreciate the absolutely vital and essential role of communication in Alaska.

In order for the Committee to understand and appreciate what we have been doing in Alaska, it is important to have some background on the establishment of the Alaska Public Broadcasting Commission (APBC). The APBC was created to encourage, supervise and coordinate the development of an integrated public broadcasting system for Alaska. The enabling legislation and APBC policy with respect to that legislation are set forth in Attachments A and B.

Since its inception in 1970, the APBC has hel ed to establish public radio stations in 11 cities, public television in 3 cities, Mini-TV stations in 42 communities and Mini-radio in one community. In accomplishing this, our major problems have not been technological; they have been legal and regulatory. And it is these legal and regulatory problems that I would like to dwell on here.

Let's first consider Mini-TV. The Mini-TV stations established in Alaska are nothing more than 10 watt translators found commonly in the western United States. Since Alaska is so vast and its villages so small, it is impossible in rural ("bush") applications to use the translator in its conventional mode of operation (i.e. the reception of a primary signal and the translation of that signal via another channel). In most areas of rural Alaska, there simply are no signals to be received and translated. Hence, Mini-TV was born out of necessity in 1973. Attachment C is the first Mini-TV authorization and waiver granted by the FCC. This new form of telecasting is rightly viewed as a miniature television station rather than a translator. The Mini-TV can rebroadcast programming via tape (¾ inch video cassette) or via a direct feed from a satellite, in those areas having satellite earth stations. Attachment D lists all Mini-TV stations.

Since the cost of a Mini-TV is relatively low—\$10,000 for tape; \$20,000 for live satellite interconnection—most villages can afford to provide television via a Mini-TV station. The only limits are regulatory. The Alaska Public Broadcasting Commission has asked the FCC to recognize Mini-TV stations as more than mere translators. Mini-TV stations are the only potential source of news, entertainment and instruction in isolated, sparsely-populated villages in Alaska. The APBC has asked the FCC for Mini-TV origination authority to enable these stations to provide local news, town meetings, elections and basketball coverage, weather information, health and safety, social security and income tax information, and emergency information. Mini-TV is not, and cannot, be regarded as a translation service; they are as important in their isolated, sparsely-settled communities as are the high powered TV stations serving urban Alaska and the rest of the United States. In human terms, in fact, they are more important.

In one instance, the FCC has recognized the unique benefit that Mini-TV can provide. The FCC granted the North Slope Borough School District (located

some 300 miles above the Arctic Circle) a special waiver to allow them to broadcast lessons in the native Eskimo dialect of Inupiaq.

The Alaska State Legislature, this session, appropriated \$11 million to provide television service to every community of 25 people or more; due to budgetary constraints this amount was reduced to \$3 million. Presently, the major urban centers of Alaska, as well as 23 selected "bush" communities, enjoy live and same day commercial as well as public television feeds. In addition, public television station KYUK-TV, Channel 4 in Bethel, Alaska, and its 13 translators receive commercial television via satellite under an extraordinary agreement with the commercial networks and a waiver from the FCC that permits KYUK-TV to air commercial television, with the commercials intact. (See Attachment E).

The idea of a public television station carrying commercial programming, as well as commercials, may sound peculiar, but in Alaska it makes sense. Where else in the U.S. would public television provide the only television service. Where else would 10 watt FM radio serve as the sole source of news and entertainment.

The FCC has not reserved a discrete band of FM frequencies for non-commercial radio in Alaska, as it has for the rest of the United States. In the coterminous forty-eight states, the lowest 20 of 100 FM channels (201-220, 88.1-91.9 MHz) are reserved for non-commercial use. With the exception of three channels (218, 219, and 200 and channels in border areas) educational channels are assigned on the basis of interference considerations only. In Alaska, the frequencies 100.1-107.9 MHz (Channels 261-300) are available for both commercial and non-commercial use. Alaskan non-commercial applications are thus placed at a distinct disadvantage in obtaining channel assignments.

An Alaskan applicant must undergo, when no channel is assigned to a community—which is more often the rule rather than the exception—this process: 1) Petition for rule making to assign a particular channel (class A or C) to a community 2) File comments in the rule making restating essentially what it has already stated in the petition, and 3) Request a waiver of the minimum power requirement for 10 watt operation. All of this unnecessary activity costs money and valuable time, and more importantly delays a community's first radio service.

The APBC, via Docket 20735, RM-1974, RM 265, proposed that Channels 296-300 be reserved exclusively for noncommercial use in Alaska for Class D operation. In the lower forty-eight states, fully one-fifth of the 100 FM channels are reserved for non-commercial use. The APBC has requested that only one-eighth of the forty channels reserved for Alaska be reserved for non-commercial use.

In an area such as Alaska, where many communities still do not receive any radio service, we at the APBC feel our request if adopted by the FCC will promote the growth and more efficient use of FM broadcasting for the public good.

In addition to the use of low power radio and television to serve isolated areas of Alaska, the APBC has also aided communities in establishing more traditional broadcasting facilities. Presently, high-powered AM stations serve as the only source of news, instruction, emergency information, point to point messages (there are few villages with reliable telephone service) and entertainment to the following villages: Barrow, Kotzebue, Dillingham, and Bethel. Attachment F lists all public radio and TV facilities in Alaska; Attachment G shows coverage contours for all public radio, television and translators, and Attachment H is a facilities map.

In addition to public radio stations in Barrow, Bethel, Anchorage, Dillingham, Kotzebue, Juneau, Kodiak, Ketchikan, Petersburg and Wrangell, the APBC has applied for an AM station to serve Homer (and the lower portions of the Kenai Peninsula) and will apply this year for AM stations to serve McGrath (in the Interior) and Sand Point (on the Aleutians). All public radio stations in Alaska are interconnected via the Alaska Public Radio Network (APRN). APRN provides state coverage, as well as full-time National Public Radio (NPR) service to NPR and non-NPR qualified stations. Attachment I is a copy of this one-of-a-kind agreement with NPR, which allows full-time interconnect to non-NPR stations.

As mentioned above, regulatory constraints with regard to Alaskan conditions make no sense. Alaska is in the position time and time again of having to prove that certain regulations have no bearing when applied to real Alaskan conditions.

I cite as another example the venerable FCC "Clear Channel" proceeding, Docket Number 20642. As long ago as 1946 the FCC was presented evidence that a relationship exists between the differences in propagation and the differences in geographical latitude. Here again, Alaska suffers because of engineering considerations that simply do not apply in Alaska, and because of the lack of motion on the part of the FCC. I have pointed out in this testimony the lack of radio service

for the people of Alaska; yet when evidence is presented illustrating that "clear channels" assigned to Alaska will have no adverse effect on other radio stations, we still receive no relief.

A case in point (see Attachment J) are comments filed in Docket 20642 for KBRW, Barrow, Alaska. KBRW operates on a day-time power of 10 kilowatts, and a night time power of 5 kilowatts. (The use of the words "day" and "night" in Barrow are quite academic since the sun neither rises nor sets for six months of the year.) KBRW is the northern-most broadcast station in the United States, located above 71°N latitude on the edge of the Arctic Ocean. It seems ludicrous, given the inapplicability in Alaska of engineering standards developed for the lower latitudes of the United States, that KBRW should have to reduce operating power in Barrow in order to "protect" KNBR radio which operates in San Francisco. What is even more tragic is that KBRW is the only station which serves the North Slope of Alaska. Full-time 10 kilowatt operation would certainly provide greater coverage and more consistent service for people who depend on KBRW for their only link with the outside world.

Mr. Chairman, I hope I have given you, through my remarks, some idea of our accomplishments as well as our frustrations. We ask in conclusion that Alaska be considered separately as you proceed. Thank you.

NOTE.—The attachments to the statement may be found in the subcommittee files.

STATEMENT OF THE AMERICAN LIBRARY ASSOCIATION

The American Library Association is a nonprofit educational association of some 35,000 libraries, librarians and information specialists, library trustees, educators and communicators. The Association supports the efforts of Congress to revise the Communications Act of 1934 and particularly to give it a broader focus to accommodate the newer technologies.

Libraries collectively are a major disseminator of occupational, educational, and recreational information to the American people. As such libraries make use of the various forms of communications technologies. In order to provide needed information to all citizens, libraries must be able:

1. To share informational materials over distance.
2. To reach out to those persons not previously served nor served well by libraries via a means to which they can relate: broadcasting, primarily television.
3. To expand current library services involving computers and telecommunications to all libraries and information centers throughout the United States so that all citizens, no matter how remotely located, can be served equitably.¹

These concerns prompt us to urge an integrated approach to telecommunications policy-making which would include that which travels over telecommunications lines, namely information. Hardly anywhere in HR 13015 is this mentioned; it simply makes no sense to create a "skeleton" (the telecommunications system) without discussing the "flesh" (information, which gives it purpose).

We are also concerned that the bill avoids making any mandate to the Communications Regulatory Commission to regulate in the "public interest, convenience and necessity." At first we thought this to be an oversight but have since concluded that this was specifically intended by the drafters of the bill. We are deeply troubled by the fundamental change which this occasions in public policy. It is difficult for us to see how a balanced, diversified, reliable and efficient telecommunications service can be achieved without some safeguards to protect the public interest and without accountability to the public they are designed to serve. The marketplace alone is, in our judgment, insufficient to replace the "watchdog" function which the FCC has traditionally been established to serve. The payment of a spectrum use fee should not relieve and release the broadcast industry from its public service responsibilities. The public, as the owner of the airways, must be assured that some federal agency is looking after its interests.

In the bill, radio is virtually deregulated, television will be substantially deregulated after ten years and its restrictions significantly reduced before that time, and cable television is totally deregulated. This is a curious state of affairs especially when Congress proposes in the same bill to change the name of the Federal Communications Commission to the Communications Regulatory Commission.

¹ There are 2,200 libraries and library systems which catalog their materials using a large computerized data base in central Ohio; over 4,000 use computer terminals to provide computerized literature searching services to their publics; and over 200 are actively engaged in cable casting—to cite just a few known applications.

The bill then proceeds to relieve Congress of its regulatory role. The FCC was established to regulate communications media for the public—not to pursue a “hands off” policy in regard to them. We are concerned that total deregulation of any communications media will lead—in the absence of competition—to unregulated monopolies. The situation we face in cable television is illustrative of what will likely happen with other media once they are deregulated.

Deregulation of cable television

The proposed Act calls for the total deregulation of cable television on the federal level. The ALA feels this is a serious mistake and one that is not in the public interest. Cable TV is a monopoly granted by local governments to prospective franchisees, but the federal government, at the very least, should continue to establish minimum technical standards and require a minimum amount of public access. If this is not done, federal regulation would be replaced with a patchwork of state and local rules which will lack uniformity and consistency from state to state. This would present serious problems for libraries as they move toward information networking between libraries nationwide.

We are concerned that deregulation will lead to enormous unregulated power in the hands of cable conglomerates who are rapidly supplanting local cable operations throughout the nation. Absent present federal regulations which limit pole attachment fees for example, telephone companies could well demand exorbitant charges or even take over cable operations. Why will protect the public from excessive and escalating service fees? We would hope there would not be a return to the pre-1972 period, when there was often a total absence of basic procedural safeguards such as notice of hearings, sufficient time for the public to become educated to the possibilities of cable communications, the opportunity for the public to be heard on the issues, and licenses given in perpetuity by local communities. Cable's potential as a community information system has still not been realized in most communities and there is little likelihood that the full potential of cable TV will be realized without minimum federal regulations which will insure a balanced development of cable services throughout the nation.

Why is cable TV important to librarians? Cable is important for several reasons:

(1) Cable offers a quantum jump in the public's ability to have access to information. Information-giving in the future can no longer be confined to the walls of a school or library; we now have in cable a medium which has a sufficient channel capacity to open up information to all our citizens. The day of the electronic home wired for all kinds of TV, voice and data services is drawing nearer. It is an information carrier with a capacity 10,000 times greater than the telephone.

(2) Cable provides a built-in capability to retrieve knowledge and information. Storehouses of films, tapes, records, still pictures, videocassettes, microforms, computer data and instant print-outs can be dialed up on any wired-in TV receiver. These can be supplied on demand.

(3) Cable makes it possible technically and feasible economically to transmit highly specialized packages of information to small, select audiences. It can reach, if the sender desires, the inner city, the suburbs, the deaf, retirees or any other special group within the larger community. Everything need not be for everybody.

(4) Cable television has proved to be a unique medium for communicating local matters. It offers the ability for local origination wherein community groups have the opportunity to participate in the planning and production of programs of interest to citizens.

Libraries have recognized for some time the value of cable as a local origination resource. Over 200 now produce their own video programs; others obtain them from other cities or video libraries. About 75 use the local cable system regularly to disseminate their programs to the community. Typical library programs include story hours for children, discussion groups, local ballet and musicals, local sports, educational films and speakers on interesting subjects. A local information exchange is created and a community spirit developed. Some libraries have established communications centers where groups and individuals can produce their own cable programming for showing on cable systems.

This rather extensive use of cable access channels by libraries is due in no small measure to the requirements which were established by the FCC in 1972, reserving an educational access channel for education in each cable system with over 3,500 subscribers. In effect, the FCC served as a stimulator and catalyst in the development of local origination by libraries. Without this impetus in the future, we fear that local access by library and other community groups will gradually disappear.

The potential of cable as a community information resource and communications medium deserves Congress' attention, and provides a compelling rationale for a minimum degree of federal regulation. We recommend that the CRC or the FCC

be given jurisdiction to regulate cable television. Such regulations should establish minimum technical standards which state or local governments would be free to exceed. Minimum standards should include sufficient channel capacity to meet anticipated community needs, and insuring that all citizens will be able to utilize cable for community communications purposes. Cable systems should also provide the technical compatibility to interconnect with neighboring and nationwide systems, two-way capability, interface computers, minimum basic service to rural areas, and limited concentration of ownership. Communities should be wired-up for cable equitably—not connecting wealthier areas first and some poorer areas not at all.

Public Telecommunications (Title VI)

The American Library Association would like to commend the Subcommittee on Title VI of the bill dealing with public telecommunications. We concur with most of the recommendations being made on the reorganization of the public broadcasting system. With the reservations noted, we are especially supportive of the following provisions of Title VI:

1. The transfer of the Public Broadcasting Facilities Program from the Department of Commerce to the Executive Branch.

We were uneasy initially with the assignment of this educational program to the Commerce Department because we felt strongly that the program should remain in the U.S. Office of Education where it could be coordinated with other educational technologies and programs. Although its assignment to the Executive Branch would be an acceptable second choice for us, we much prefer that the program remain at USOE, where it now is located in the Office of Libraries and Learning Resources, and then be moved at a later time to the proposed new Department of Education once that department has been established.

2. The requirement that commercial broadcasters pay a spectrum use tax for the privilege of using the public airways and that this tax be used to create a Telecommunications Fund to support public broadcasting, loans to minorities for station ownership and the expansion of rural telecommunications.

This is a particularly strong recommendation because it accomplishes several noteworthy objectives: the establishment of a financial base for public broadcasting; the lessening of pressure on the public broadcast industry in conducting fund-raising drives; the provision of capital on a loan basis to minorities so they can share the privileges of station ownership, and the urgently needed expansion of public telecommunications to the vast unreached rural areas of our nation. The Telecommunications Fund should be seen as only one of several sources of funding for public broadcasting, however; and one which, to accomplish all of its purposes, may need to be supplemented.

3. The mandate that public broadcasting place a high priority on instructional telecommunications.

At present instructional television and radio are treated as step-children in the public broadcasting family. The area of instruction (educational television) has been the bedrock of educational broadcasting since the first public broadcasting station went on the air in 1953. In all probability public broadcasting would not exist today had it not been for the major financial support given to it by schools and colleges. Yet, in recent years public broadcasting's track record in this area has been far from exemplary. We are pleased to note, therefore, that the bill lists second among the purposes of the new Public Telecommunications Programming Endowment "to support the development of noncommercial instructional television and radio programs and services designed for use by elementary schools or school systems, secondary schools or school systems, or institutions of higher education in connection with regular courses of study."

This is a welcome breakthrough, and we applaud the drafters of this section for reminding the public broadcasting industry of its responsibilities in this vitally important area. However, the growing interest of adults in continuing education, lifelong learning and nondegree educational programs should be recognized. As the average age of the population increases, such informal learning opportunities should be encouraged. We recommend that support for programs and services designed for use by libraries and other providers of nondegree education programs be added to the purposes of the Endowment.

4. Endowment financial assistance, in the form of grants to and contracts with, elementary and secondary schools and institutions of higher education for "the purpose of developing, producing, or acquiring noncommercial instructional, educational, or cultural programs and services for local, regional, or national distribution."

This provision would fill a much-needed gap in present legislation which fails to provide any funding whatsoever to local schools and colleges for instructional television programming. Because responsibility for education rests with local public education authorities, it is highly important that local school districts desiring to produce television materials for use in conjunction with their curriculum have a source of funding on which to draw to supplement what the school districts themselves are able to budget for this purpose. Television production is a very expensive undertaking and school districts need financial assistance in producing high quality video materials that are indigenous to their region. These materials can, in turn, be exchanged with other school districts once they are produced. This has the great advantage of encouraging local initiative in the production and use of materials, thus decreasing the abject dependency of these districts on nationally produced materials.

Again, however, eligible recipients should be expanded if nonacademic non-profit community organizations such as libraries (which are often better able to identify the needs and wants of their client groups) are to extend informal educational services through the mass media.

5. The authorization for public groups to use the excess capacity of the public broadcasting satellite interconnection system.

The American Library Association in February of this year conducted a highly successful satellite communications experiment with fourteen key urban locations in the south and southwest on the new copyright law. The experiment, designed to inform librarians of the implications of the new law for their work, was conducted on NASA's CTS (Communications Technology Satellite) and featured telephone feedback for questions and answers between copyright experts located in Owings Mills, Maryland, and each of the fourteen sites. One of the major results of the experiment was a consensus of the 2,000 participants that more such satellite teleconferences were needed on many topics facing librarians nationwide.

ALA therefore applauds the timeliness of the provision in HR 13015 that would allow organizations such as ours the privilege of using the excess capacity of the public broadcasting satellite interconnection system for teleconferences and professional education purposes. Such an interconnection system can serve not only intra- and inter-organizational information and training needs of professional associations, but also be used to deliver much-needed communication services to people in isolated areas, such as migrant workers, American Indian reservations, school and farming cooperatives in rural areas. The excess capacity of the system can and should be used on a shared basis with educational institutions, libraries and other public services organizations to make possible such uses as the following: regional or national teleconferences, continuing education courses for viewers at home, data transmission, delivery of instructional films to schools during night-time hours. Such shared uses would give public broadcast stations an unexcelled opportunity to have greater contact and relationship with the communities they serve.

6. The requirements that all meetings of the Board of Directors of the Public Telecommunications Programming Endowment and all meetings of the boards and advisory bodies of the station licensees who are recipients of grants from the Endowment, shall be open to the public.

The ALA heartily endorses this requirement. We feel the time has come to put the public back into public broadcasting. The Corporation for Public Broadcasting's track record in the area of public involvement in its activities leaves a great deal to be desired. The recent and disappointing dissolution of the Advisory Council of National Organizations to CPB (of which ALA was a member) leads us to have serious reservations regarding the present Corporation's ability to enlist the public in any meaningful way in the decision-making processes of CPB or in its programming efforts. Hopefully, the newly appointed national Task Force on Participation in Public Broadcasting will offer recommendations for further improvement in this area.

7. The requirement that public broadcasting stations, in order to qualify for facilities grants from the National Telecommunications Agency, must establish community advisory boards whose members shall be composed of individuals who are representative of the communities served by such stations.

We assume that such community advisory boards would be in addition to the Board of Trustees of each of the licensees. Whether they are in addition to the Board of Trustees or in lieu of them, the requirement is still valid.

Again, ALA is pleased with this provision. With the dissolution of ACNO, mentioned above, CPB has had no regular input from any citizens' advisory group other than from local public broadcast station boards. Local boards currently are composed largely of business and financial leaders in the community

and often lack representation from groups such as librarians, teachers, clergy, civic and labor groups. We feel it important therefore that at the very minimum, local citizens' advisory boards be established to provide citizen input into the system.

8. *The inclusion of special reference to minorities and women throughout the bill, most especially in Sec. 641 (Grants for Public Telecommunications Operations, Facilities and Expansion).*

The ALA is pleased to note that one of the purposes of the public telecommunications grant program, as stated in the bill, is to "increase public telecommunications services and facilities available to and owned by minorities and women." We commend the subcommittee on this provision. Public broadcasting needs to be made continually aware of its responsibilities in this area. At last count, only four television station managers were women and only one is a minority person! This situation needs to be rectified.

9. *The emphasis throughout Title VI on "telecommunications" rather than on "broadcasting".*

This fundamental change in policy and orientation is a change we heartily endorse. Section 641 states clearly that the purpose of the facilities and operations grant program is "to assist in the planning, construction, and operation of public telecommunications facilities in order to (1) extend delivery of public telecommunications services to as many people of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies."

ALA would encourage a systems approach to technology for the delivery of public broadcasting programs. The present system of dissemination seems altogether too limited to serve all the educational and cultural needs of public audiences throughout the nation. Because the Public Broadcasting Service at the present time reaches only 80 percent of the American public with its signal, nonbroadcast technologies (cable TV, Instructional Television Fixed Services, translators, videocassettes, videodiscs and especially satellite transmission) are needed in order to reach the other 20 percent. A broader range of services, such as transmission of data, two-way interactive uses, and increased access to information resources could also be provided by these nonbroadcast technologies. Such services would increase the options available to communities both in programming and communications services. In our judgment the emphasis has for too long a time been on broadcasting to the neglect of valuable nonbroadcast educational resources which remain untapped. Emerging new technologies will enable us to move beyond the one-channel-per-city capabilities of public broadcasting to a multi-channel system offering a diversity of program options for all of our citizens.

One aspect of this bill relative to nonbroadcast technologies, however, gives us grave concern. The bill provides that nonbroadcast systems could be funded only when they (a) provide new facilities to serve currently unserved areas, (b) expand the service areas of existing stations, (c) develop facilities owned by and available to minorities and women. These criteria apparently exclude currently available grants for facilities improvements (such as new cameras and tape recorders) for existing stations and—perhaps this is unintentional—grants for Instructional Television Fixed Service, cable or other technologies, unless audience reach is extended. A school system, university, library or hospital within the coverage area of the existing public television station would appear to be excluded from obtaining a grant, unless qualified under the "minorities and women" provision.

We are pleased, however, to note that applicants for facilities grants now include "a nonprofit foundation, corporation, institution, or association organized primarily for instructional, educational, or cultural purposes." This opens up the possibility that an applicant might be other than a public broadcast station or system of stations. Under the present Act only public broadcast stations are eligible for construction and planning grants. As we interpret this, a school district or library system which wishes to operate an Instructional Television Fixed Service (ITFS) system would be entitled to apply for a grant under the new Act provided other criteria now specified in the bill are also met.

Last, but not least by any means, is our concern regarding the establishment in Title VII of a National Telecommunications Agency. To provide some background for our concern, we refer you to the Quincy Rogers report entitled National Information Policy² prepared for the Domestic Council in the Ford administration.

² Domestic Council. Committee on the Right of Privacy. "National Information Policy; Report to the President of the United States." Washington, D.C.: National Commission on Libraries and Information Science, 1976.

This volume describes the concept of the "information utility," technology-based, and available to all. It clearly defines issues to be addressed, suggests some viable solutions, all in the context of the concept of "information as a social good" which must be made available widely in order to keep from creating an information elite, or, more accurately, a power elite. The volume for the first time addresses information issues in conjunction with those in communications.

However, H.R. 13015 recommends that the recently created National Telecommunications and Information Agency be renamed the National Telecommunications Agency and given a different purpose. Information is no longer mentioned, nor are information policy issues among its functions. In short, under the proposed legislation, there would be no national focus on information in the federal government, much less one which combines both areas. We urgently recommended that this section be revised to reflect information policy issues along with those germane to telecommunications alone.

In summary, the American Library Association, believing that an informed citizenry is basic to the national interest and recognizing that marketplace forces alone are not sufficient to achieve this goal, recommends an integrated approach to telecommunications technology and information policy developments. We urge that the basis of federal action on these interrelated matters be the "public interest, convenience and necessity."

We appreciate this opportunity to present to the Subcommittee the views of the American Library Association.

COMMENTS FOR THE RECORD BY FCC COMMISSIONER JAMES H. QUELLO ON
TITLE VI, H.R. 13015, "COMMUNICATIONS ACT OF 1978"

I appreciate the opportunity to place in the record of this important hearing a few, brief comments relating to Title VI of the Bill dealing with "Public Telecommunications." I believe it's important to carefully focus upon the concept of public broadcasting within this context and to benefit from whatever history might teach us to further its development.

Public broadcasting is a relatively young concept in this country and it's sometimes hard to place in proper perspective the growth and maturity it has achieved in such a short time. Congress first saw fit to finance the growth and improvement of local public stations in 1962 and, five years later, approved the Public Broadcasting Act of 1967 to provide assistance for production, national interconnection and system improvements. Assistance from both the public and private sectors have encouraged rapid development of the public broadcasting systems. Today, there are 278 local public television stations and more than 200 sizable radio stations and hundreds more on the verge of qualifying for support from the Corporation for Public Broadcasting.

Unfortunately, even with this growth, an estimated 40 percent of the American homes still do not have access to an acceptable public broadcasting television signal. Rural areas are particularly underserved. The FCC has undertaken an inquiry into the roles which might be played in these underserved areas by low-power broadcasting stations and translators. I would hope that the Commission—or its successor—will continue to focus on this problem so that service can be extended to virtually every American home.

The Commission has recently taken another step which, I believe, will have a profound effect upon the ability of public broadcasting to provide more service to more people. We have insisted that manufacturers of television sets significantly decrease the self-generated noise in UHF receivers. While such improvements will benefit commercial and non-commercial UHF service alike, public broadcasters are likely to be the primary beneficiaries since two-thirds of the public television stations are licensed in the UHF band. The Congress, in the All-Channel Receiver Act, spoke of "comparability" between VHF and UHF receivers and I am convinced that prompt implementation of the new noise-figure requirements will be a significant step toward comparability.

Title VI generally recognizes the significance of public broadcasting both now and in the future. I believe that the drafters of the Bill genuinely attempted to provide the support necessary to assure public broadcasting's growth and prosperity. In my opinion, however, Title VI contains two major flaws which threaten future growth and viability.

First, the proposed method of funding of "Public Telecommunications" would seem to be both inadequate and potentially oppressive. The inadequacy stems principally from the reliance upon spectrum usage fees which, in the real world,

are not likely to be sufficient to cover the costs of the Public Telecommunications Programming Endowment Account, the Rural Telecommunications Loan Account, and the Minority Ownership Loan Account. Without even addressing the advisability of funding all of these accounts from commercial spectrum users, primarily broadcasters, it appears that any realistic fee schedule simply will not provide adequate funding for all these projects. Therefore, I would propose that funding of these accounts be derived from the general treasury and that spectrum usage fees be considered separate and apart from the funding requirements set out in H.R. 13015.

In my comments on Title IV, I placed myself on record as being supportive of some kind of reasonable spectrum usage fee for commercial broadcasters. However, any methodology for deriving a fee schedule should receive the closest scrutiny by the Subcommittee to ensure that such fees are levied equitably and reasonably. Moreover, such fees should be levied independent of any funding requirement for public broadcasting or anything else.

Section 642(c) (2) (A) and (B), whatever the intent of the drafters, would almost certainly have the effect of discouraging private support for public broadcasting. Those provisions prevent identification of sponsorship of any particular program or series of programs. The FCC has expressed its concern with possible abuse of the sponsorship identification rules by some public broadcasting stations but the Commission has recognized the very important role played by private donors in providing some very excellent programming for public television. I certainly do not believe that sponsorship identification should be extended beyond mere identification, but I believe it's important to continue to provide some incentive for corporations to lend their support to this very worthwhile undertaking. Instead of focusing upon whatever benefit might be received by sponsoring entities, I urge the Subcommittee to focus upon the very significant benefits which inure to public broadcasting and to the general public through private participation in program underwriting.

While funding is a serious concern with regard to H.R. 13015, I am also very concerned with the role in public broadcasting contemplated for the Director of the National Telecommunications Agency. As I have stated before in commenting upon other parts of the Bill, I would feel much more comfortable with limited government direction resting with a collegial body with the oversight of Congress instead of a single individual under White House control. While Title VI attempts to isolate public telecommunications from government control, per se, I think it's fair to caution that government influence will be felt to the extent that public telecommunications must rely upon government-provided funding. It is for this reason that I am troubled by Section 642(a) which authorizes the Director of the National Telecommunications Agency, in consultation with public broadcasting station licensees and others as appropriate, to "establish and carry out a program of grants to public broadcasting stations to assist in meeting the costs of facilities and operations of such stations."

Public broadcasting is still in its youth but it seems to be developing well and moving toward maturity consistent with the wishes of its parent, the Congress. Despite some aberrations which are to be expected with youth and inexperience, I believe that it is well on its way to becoming the finest such system in the world. I doubt that we have adequate assurances that any new scheme of federal involvement will prove to be superior to the one already in place. I believe that the Congress should properly focus upon removing present program restrictions regarding political broadcasting and the granting of First Amendment rights and responsibilities to public broadcasting to the fullest extent practical. But, I don't believe that more federal involvement, except funding, is desirable or likely to produce the kind of robust, innovative system of public telecommunications the American public has a right to expect.

I don't have any magic number as to the extent of federal funding necessary for the continued development of public telecommunications over the years ahead. Those directly responsible for public broadcasting are talking in terms of a billion dollars. Since I haven't made any independent assessment of the dollar requirements, I can't offer a specific or informed recommendation. As a general observation, however, I think it's clear that more money is needed. The new Carnegie Commission will doubtless have some thoughts and recommendations on this subject. I'm sure we're all looking forward to reading that Commission's report which I understand is to be released within the next few months.

I will follow with great interest the revised version of Title VI this coming year. Public broadcasting's great potential for contributing to the quality of all our lives, needs and deserves continued encouragement and support.

WRITTEN TESTIMONY ON H.R. 13015, SUBMITTED BY ROBERT B. BEUSSE,
SECRETARY OF COMMUNICATION, U.S. CATHOLIC CONFERENCE

The Department of Communication of the United States Catholic Conference (USCC) herewith submits this detailed statement on H.R. 13015, referred to as the "Communications Act of 1978." This testimony complements the oral testimony provided to the subcommittee, a copy of which has also been provided to the subcommittee.

The United States Catholic Conference (USCC) is a civil agency of the Catholic Bishops of the United States assisting them in their service to the Church in this country by uniting our Catholic people where voluntary, collective action is needed. The USCC insures coordination, cooperation, and assistance in the public, educational, and social concerns of the Church at the national, regional, state, and, where appropriate, local levels. The Department of Communication, of which I am secretary, is the principal national agency for the Catholic Church in communication in the United States.

NEW LAW IS NEEDED

The United States Catholic Conference supports the need for the nation to adopt a new communication law. The USCC encourages the initiative taken by the Congress to begin a process of rewriting the Communications Act of 1934. That Act no longer meets the needs of our people.

The USCC urges that new legislation be enacted which will permit the responsible development of the full potential of telecommunications for service to our people and to the people of the world.

However, it is our conviction that the needed new legislation can be developed only through an extended period of high-minded public discussion involving all levels and all segments of society.

A short round of summer 1978 one-day Congressional outings to seven cities have not accomplished this purpose. We recommend a three year period of debate accompanied by extensive public education on the issues, prior to Congressional action on new legislation. This public education should be a shared responsibility of the government and the private sector. It is something we are already doing within our own constituency—and are prepared to do cooperatively with a new citizens' education group, the Telecommunications Consumer Coalition.

The objective of developing broad public involvement is to help to write a comprehensive law which will reflect the coming-of-age of information resources in this country. Call it a national maturation. That implies determination to remedy past inadequacies and to respond to newly perceived responsibilities and opportunities.

HIGH LEVEL DISCOURSE IS CALLED FOR

The "General Provisions" of the proposed legislation set forth what are said to be objectives of our nation's telecommunication services: these services should "advance United States foreign policy, the national defense and the safety of life and property."

These might be the objectives of any of a number of U.S. industries or government agencies. They do not pertain uniquely to our nation's telecommunication services. Listing them does not encourage the high level of discourse concerning the purposes of telecommunication in our society that we so critically need today.

The chief aim of our telecommunication services, we believe, is the unity and advancement of people. We believe that all telecommunication services should be judged by the contribution they make to the common good.

The Church sees media as "gifts of God," as "wonderful technical inventions" that foster communication among human beings. Common sense takes the same view.

Modern media offer people a great "round table" at which they seek and find a worldwide exchange of brotherhood and cooperation. This exchange takes place only when media are at the disposal of all and are channels for public dialogue.

These channels can and should make every person a partner in the business of the human race. This interchange can create or foster mutual and sympathetic understanding, leading to universal progress.

Those who work in telecommunications in this country cannot consider themselves merely as reporters, entertainers and technicians. More than most people in today's society, they make and shape the contemporary view of our world.

Communicators broadcast the information and the ideas that are essential to the functioning of society; they help to shape the very ethos of the world in which we live.

Besides, U.S. communicators have a global responsibility. The media offer instantaneous information and exchanges from every part of our limited world. Americans are international leaders in the technology, content and style of contemporary mass media. Technological and creative products of American genius have an unprecedented importance throughout the world. Therefore, U.S. communicators ought not to take a parochial or narrowly nationalistic view of their responsibilities. They must be extremely sensitive to the cultural and moral imperatives of other societies than our own. This is a big job.

Nowhere in H.R. 13015, however, are our people's sights raised to these horizons.

Some extol the virtues of H.R. 13015. They tell us we are on the threshold of an utterly new era in telecommunications. But the bill they present merely says we face a change in degree and not in kind. For H.R. 13015 merely strengthens—on into the final decades of the 1900's and the next century—that heavy hand of commercialism which has pressed down on our people since the 1930's. The same hand has increasingly burdened other peoples of the world.

PUBLIC INTEREST STANDARD MUST BE RETAINED

A new communication law must incorporate, not discard, those aspects of the 1934 law which required that broadcast licensees operate in "the public interest, convenience and necessity." This crucial concept must be retained. It must be the heart of new legislation.

Americans are convinced of the need constantly to measure the nation's telecommunication services against a clearly stated public interest standard.

To eliminate such a standard and substitute for it "regulation only to the extent that marketplace forces are deficient" is to take the final step in delivering the national television and radio services to commercial interests—an unfortunate trend which has been regrettably countenanced by the executive branch and by the Congress since the 1930's.

It is not difficult to trace the erosion of the rights of the public with respect to the electronic media services in our country.

The Catholic community in the United States was among many in the 1930's which asserted the media needs of non-profit groups including schools, churches, labor unions and others. In the early 1930's, a Paulist Father, Rev. John Harney of New York City, argued that 25 percent of the then-existing radio frequencies should be set aside for non-profit users, many of whom had helped to pioneer development of radio in the United States.

But, commercial interests argued for vaguely defined "cooperation between commercial broadcasters and non-profit groups." So, instead, "access to existing commercial facilities" was called for and broadcasters were asked merely to "cooperate in good faith under the direction of the Federal Communications Commission."

By the time the present communication law was enacted in 1934, much of the airtime which had been allocated previously to non-profit organizations for public service use had already been diverted to commercial use.

The decline of the public interest standard had already begun.

By the mid 1940's, the FCC was again calling for "well-balanced program schedules," balanced interpretation of public issues" and coverage of "significant minority tests and interests." But, once again, commercial interests prevailed and the so-called FCC Blue Book of the 1940's was never enforced.

But, the Blue Book had also recommended a new program form, a "mere announcement" for non-profit groups which was later defined as a "public service announcement." So, stations began to use public service announcements as a simple way to meet the needs of their communities. A further decline of the public interest.

In 1960, the Commission said broadcasters were still expected to "inform themselves of the real needs and interests of the are they serve and to provide programming which, in fact, constitutes a diligent effort, in good faith, to provide for these needs and interests."

Fourteen categories of public-interest programming were listed, among them programs for children, religious programs, educational programs, agricultural programs, programs for minority groups, etc.

But, the FCC also declared "there is no public-interest basis for distinguishing between sustaining and commercially sponsored programs in evaluating station performance." Thus, programs which lacked commercial sponsorship began to disappear.

Moreover, broadcasters were no longer asked to submit information to the FCC about their public service programs. Public service announcements became the only form of free service to nonprofit organizations about which the FCC continued to request data.

The "public interest" slippage went on.

By the mid 1960's, broadcasters were asked merely to report on three types of program service: "news", "public affairs" and "all other". By this particular action, the FCC abandoned its "oversight" of diversity of program service offered by licensees.

Even sharper decline lay ahead.

The 1966 FCC reporting form was the last to ask stations for program information as evidence that licensees were meeting their public responsibility.

By 1974, all questions about programs that serve the needs and interests of local groups or organizations were eliminated from reporting forms.

Today, only the Ascertainment Policy of the FCC continues to require licensees to "find out the needs of the community they serve and to program to meet those needs." H.R. 13015 proposes to eliminate the Ascertainment requirement.

Elimination of all traces of public interest standard, coupled with indefinite station licensing and restriction of the proposed Communication Regulatory Commission solely to technical supervision, would deliver our nation's telecommunication services finally and totally into the hands of commercial interests. Thus, final public disenfranchisement would be effected.

IT'S A TRIPARTITE RELATIONSHIP: PUBLIC, LICENSEE, GOVERNMENT

Any responsible rewriting of the Communication laws of the country must begin with a strengthening of the public's rights which we submit circumscribe the rights of the broadcast licensee.

There is no evidence in H.R. 13015 that the drafters recognize the pivotal role of the licensee's public.

The new legislation we envision would be based on acknowledgment of the tripartite relationship between the public, the licensee and the government. As a practical matter, we believe broadcast media have no existence outside of this relationship.

There is a principle in the law that broadcast licensees serve as "proxies" for the community. This relationship of the licensee to the public is the proper focal point for needed new legislation.

The Supreme Court has held that whatever rights the licensee may possess are circumscribed by public interest.

Mr. Justice White, in *Red Lion Broadcasting*, said the broadcasting system must ultimately serve the viewers and listeners whose rights are deemed paramount.

The Court recognized that a licensee uses a definite portion of the limited electromagnetic spectrum. In the Court's words, licensees are "given the privilege of using scarce radio frequencies as proxies for the entire community."

Chief Justice Berger, writing for the Supreme Court in *CBS vs. Democratic National Committee*, stated: "A licensee must balance what it might prefer to do as a private entrepreneur with what it is required to do as a public trustee."

In the final decision handed down by the Supreme Court before its recess in July of 1978 (*FCC vs. Pacifica Foundation, Inc.*), the Court upheld the right of the FCC to enforce standards of content. The Court had the public interest in mind when it held that "of all forms of communication, broadcasting has the most limited First Amendment protection." Among the reasons for specially treating broadcasting in the opinion of the Court is the "uniquely pervasive presence which that medium of expression occupies in the lives of our people. Broadcasts extend into the privacy of the home and it is impossible completely to avoid those that are patently offensive. Broadcasting, moreover, is uniquely accessible to children."

We submit that there is a danger that under H.R. 13015, the licensee would be permitted to expand his role to the complete exclusion of the public interest.

We recognize that the trusteeship concept has not yet been thoroughly developed. It is our conviction that many of our present difficulties flow from an incomplete analysis of this concept.

We believe that the trusteeship concept means more than merely access. The extended public discussion of a new communication law which we have called for will permit further analysis of this concept.

In short, we believe H.R. 13015 is fatally flawed because it fails to recognize that telecommunication legislation does not merely involve two parties: government and licensees; but also a third party—the citizen—whose rights are, in the last analysis, more significant than either of the other two parties.

COMMERCIAL PRESSURES ON INDUSTRY SELF-REGULATION

In considering whether as citizens we should willingly exchange our rights under the "public interest and convenience" clause for "regulation only to the extent marketplace forces are deficient," we should also examine the self-regulation performance of the broadcast media to date.

USCC is committed to the principle of voluntary self-regulation for all the communications media.

But, experienced has shown us that the broadcast industry as a whole has not been able to undertake effective, open and accountable self-regulation because it has been unable to reduce the impact of commercial pressures on program decision-making.

These commercial pressures have made the audience for primetime television not the general American public but older teenagers, young adults and the affluent, who have money to spend on the products advertised. Children, the poor and the aged have been left out in the cold.

There continue to be some other generally recognized problems—for example, the gratuitous television exhibition in recent years of violence and exploitative sex. Yet, many industry leaders have themselves called for increased protection of our young people from potential psychological and moral harm through media!

PUBLIC INFORMATION ON CONTROVERSIAL ISSUES

The Fairness Doctrine has been a failure in practice under present FCC regulation because of the way the regulation was written. Many broadcasters have misused the Doctrine by avoiding controversial public issues entirely, thus incurring no obligation under the Doctrine to provide time to satisfy the requirements for balanced discussion.

We have no reason to presume that broadcasters, under the proposed "equity" requirement, would do any better in informing the public in a balanced way about controversial issues. In fact, without a public standard upon which to measure broadcast performance, it is more likely that broadcasters could shun coverage of important controversy to avoid polarizing their audiences.

ACCESS FOR ALL CANDIDATES

We believe that equal-time provisions should be retained for national, State-wide, Congressional, mayoralty and other important elections. To do otherwise, we believe, will open the door to charges of favoritism to certain candidates. Exemptions for Presidential races can be approved by the Congress as circumstances warrant.

LICENSE PERIOD EXTENSION

We understand that license terms need to be extended. There has long been a need for extended turn-around between renewals. This would encourage technical improvement in station properties.

We propose the inclusion of a provision for six-year license terms for both radio and television stations. This would encourage public discussion of local broadcasting services every six years. It is our belief that a fixed period of license is essential for radio and television, both in the public interest and for the licensee's planning purposes.

However, the public must still have an opportunity to challenge licensees at license-renewal time.

H.R. 13015 would deny the public any chance to challenge the performance of a licensee at time of license renewal. Obviously, this is not a workable idea. There must be some kind of public review. If there is not, we open the door to forms of public disorder. The law must provide some means of redress for citizens' complaints.

NEED FOR DIRECT PUBLIC INVOLVEMENT

If as proposed, a Communication Regulatory Commission is limited to the "technical supervision" of licensees, we shall need other effective means through which the public can become directly involved, as it should be involved. It would be impossible to serve the public interest without such means. Perhaps other nations, through their experience, can teach us the usefulness of regional and/or local broadcasting councils, elected in somewhat the same manner as we now elect local school boards. These are not censorship groups. They are simply the vehicles through which public participation and the public interest are maintained.

We believe that Ascertainment, the heart of current broadcast regulation, must not only be retained in television and radio but further developed through more direct participation by the public in broadcast practice and in the licensing process.

Development of a process of citizen ascertainment is necessary in conjunction with current station ascertainment procedures.

For example, a citizens' ascertainment committee might be elected which would hold public hearings after suitable community notice. The committee would assess issues of public importance in each community, then notify stations of the community's information needs in this regard. The goal would be improved and balanced public affairs programming service.

JOBS FOR MINORITIES

We are against the proposal to eliminate FCC requirements that broadcasters take affirmative action to employ minorities and women. This requirement was approved by the Supreme Court (*NAACP v. FCC*) as one designed to assure that programming fairly reflects the tastes and the viewpoints of minority groups.

While H.R. 13015 would not exempt broadcasters from Federal and State laws prohibiting discrimination, these laws often do not require affirmative action and usually exempt the smaller companies where most beginners find jobs.

PUBLIC BROADCASTING: REFLECTING THE LOCAL SITUATION

We commend the Subcommittee in its efforts to come to grips with the long-standing problems in the areas of funding, structure and new technologies for public broadcasting. Particularly, we endorse a concept long supported by many public-interest groups—that public stations take on the use of multiple technologies such as videodiscs, videocassettes, satellite and cable, and transform themselves into public telecommunication centers offering a number of services to many specialized audiences, however small. This kind of effort would be in keeping with the original Carnegie Commission idea that public broadcasting should reach small audiences with specialized programming. We see this as a means of putting the public back into public broadcasting.

Also, in the area of public participation, we would like to see public boards at all stations. However, we feel that even if such boards are to be mandated by the Federal government, they must be elected locally. Otherwise, we risk undermining the Carnegie Commission's original aim that local stations be autonomous. Public boards have little power and the special-interest infighting will continue to sap energies and effectiveness. There are many different types of station licensees—community, State, local school board, and university. We would like to see these licensees reflect their local situation, not what is mandated in Washington. A public board on top of the local school board or university board may invite chaos.

H.R. 13015 frees commercial broadcasting while strapping public broadcasting with regulation. If public boards are to be mandated in one area of broadcasting, then perhaps they should be mandated in all.

Major questions arise in the creation of the two new entities for funding of public broadcasting.

The first entity is the Public Telecommunications Programming Endowment (PTPE). This Endowment was once meant to be a voice for and a coordinator of public broadcasting. Now, under H.R. 13015, the Endowment would be so insulated and so limited in scope as to offer no voice for, or responsiveness to, either the public or the stations. A major problem has been the quality and composition of the board. H.R. 13015 gives us an even smaller board—still appointed by the President—with no members coming from the public or the stations. Stations would be likely to respond only to the source of funding. And most of that funding would come out of the National Telecommunications Administration.

NTA, as portrayed in H.R. 13015, is a kind of communications czarism with policies restrictive enough to be non-expansive and non-developmental. For public broadcasting would be competing for program and facility funds with rural, minority and other instructional and narrowcast interests. Also, we envision the NTA funding many different competing interconnection systems, none of which would effectively serve the public.

Then there is the major question of insulation. While commercial stations are left to compete in the marketplace, public stations will be cared for and fed by a Federal agency. This agency—the NTA—would decide how much money should go to public radio and how much should go to public television. This should not be decided by a Federal agency. Rather, it should be decided by the system itself, with public input.

In one section of H.R. 13015, NTA is forbidden to inquire about program content. Question: how will NTA determine how and where to give money for minority-oriented stations if it doesn't look into program content? Other stipulations regarding cost efficiency and training would require NTA to look into station operations.

NTA, as noted in the bill, is to be an independent agency, yet the director and deputy director would serve at the pleasure of the President. Thus, there is no escape for public broadcasting from the pressures of the Presidency.

There is further insulation lost in doing away with the diversity of sources of funding. At this time, public broadcasting receives only some 25 percent of its funds from the Federal Government, while funds from private groups, States and public memberships are growing. We feel this is far healthier for the system than dependence on one Federal source.

Finally, the dependence on license fees requires commercial broadcasting to be so very successful in the years ahead that all competing interests will be funded at high levels. Looking at recent estimates of the amount to be collected, we do not feel that public broadcasting, rural coverage and minority interests will receive adequate funding to serve the various publics from license fees alone.

CABLE TV: HARDWARE AND SOFTWARE

We support the concerns raised by many over the neglect of cable TV in the current draft of the proposed Communications Act. In their rush to Federal deregulation, the drafters of this bill should have paid much closer attention to this industry.

Cable TV offers the best hope of greater diversity in programming and of greater sensitivity to community access needs at the local level. For this reason, the strengthening and safeguarding of the cable industry must be a major priority of the new communication act.

We recognize that there might well be efficiencies and economies in combining telephone and cable services into a single system. But H.R. 13015 gives no assurance that cable systems would be operated as common carriers, obliged to carry communications on a non-discriminatory basis.

We urge common carrier status for cable TV, and along with it assurance of local access channels and facilities for local origination.

The rich promise of cable has been held before our eyes for many years. Realization of those hopes has been slow in coming.

In some parts of the country, the public's experience with cable TV has been unfortunate and negative. There have been dramatic instances of unscrupulous activity by some users of access channels, leased channels—or even by cable operators themselves, who appear bent on making the word "cable" synonymous with X-rated material. This applies to only some in the field. But their impact has adversely affected the image of this new industry in some communities.

We are also concerned about reported instances when "access channels" were not really as accessible as the term implies. Community leaders have not had the opportunity to present their message to the local community. For example, religious leaders have not been able to develop the "electronic connection between the local church and the community," which many had hoped they could achieve.

In some instances, the fault may lie with a lack of leadership on the part of the religious community. In other situations, this unfortunate communication gap may be the result of a closed system mentality on the part of local cable-company managements.

We believe that Federal regulation must guarantee access to cable systems on a non-discriminatory basis.

Under this umbrella of Federal "oversight," State and local regulations should aim to assure an even broader sense of community responsibility on the part of cable operators.

With this same concern in mind we see nothing that should prohibit AT&T from entering the transmission aspects of the cable industry. We distinguish here between suppliers of transmission facilities and the suppliers of programming.

In many parts of the country, such an action—permitting AT&T to move into the transmission aspects of cable—might be the swiftest, most effective way of making the alternate of CATV a reality.

We recognize that AT&T is an industry super-power. But the same can be said of the three commercial networks involved in over-the-air broadcasting. We do not see how the public could be further threatened by AT&T's entry into the transmission aspects of cable. Indeed, it might provide strong and needed competition with commercial broadcasting.

The added number of channels would hold out hope of making "access" more of a reality for communities. This would seem the likely outcome (certainly on the basis of economics), if there were to be substantially increased opportunities for transmission.

In a unique way, the powerless, the viceless minorities of our society can be given a voice through cable. Educational opportunities can be provided to a society whose citizenry is today being cited as less educated despite the influence of television. Churches, with their respected traditions, can work with cable systems to help them realize their humanizing potential. The spirit of the standards proposed in the new law must help to realize these possibilities.

In summary, cable TV should be regulated by the Federal Government to assure non-discriminatory access to it, and AT&T and other corporations should be permitted to provide cable transmission facilities to serve every community of the nation. Complementary local regulation should assure access for local self-expression.

In a word, let the "big boys" supply the hardware. But keep cable TV open, as a common carrier, for free and diversified programs. These programs must not be dominated by a few industry giants.

There are many other aspects of this proposed legislation that deserve our comment. For this reason, we look forward to participating in the needed period of thoughtful study and intelligent debate on the shape that our new communication law should take.

We should recall that the recently adopted Copyright Act, legislation of comparable substance, was the fruit of more than a decade of debate.

Only through extensive public discussion can we produce a communication law that will give us the confidence we need as we look forward to whatever the development of communication in a space age may offer.

We believe a new law is needed and a high level of discourse is called for. From the experience we've had at the "field hearings" and at the hearings in this chamber, we are certain that the subcommittee will aim for the highest possible standard of public service in the new law. Nothing less will respond to the public will.

NEW HAMPSHIRE PUBLIC TELEVISION,
Durham, N.H., October 25, 1978.

HON. LIONEL VAN DEERLIN,
*Chairman of the House Communications Subcommittee, House of Representatives,
Washington, D.C.*

DEAR CONGRESSMAN VAN DEERLIN: Thank you kindly for your letter suggesting that I submit my written comments to you regarding the rewrite of the Communications Act.

I believe the Communications Act of 1978 is a very bad piece of legislation and I urge you and your staff and the Senate to consider a rewrite which will address itself to these concerns.

The Communications Act must continue to safeguard the public interest at all times allowing public input into all the rulemaking of the regulatory body. The bill should allow the public to challenge radio and television licenses in the interest of serving in the public interest, convenience and necessity. The public interest must be put ahead of the private interest. These radio frequencies and television channels are a great national resource and must be safeguarded as such by our regulatory commission.

Radio and television stations should be required periodically to renew their licenses in a process which measures performance. This provision makes for a strong and viable system and should not be abandoned.

It appears the bill, which is at best difficult to analyze, would abolish the FCC's fairness doctrine, that provides for the airing of controversial issues and would eliminate some important equal-access provisions for political candidates. I strongly urge you to retain the fairness doctrine and the equal-access provisions for political candidates. In my 30 years of broadcasting experience, I have found these provisions to be strong tenets of broadcasting principles; and in the public interest.

The Communications Act of 1978 would eliminate public broadcasting's system of program underwriting, as qualifications for certain kinds of support, this making public broadcasting even more dependent than we are now on Federal revenues. The healthiest public broadcasting stations in this country are those with a wide range of support from the private citizen, business and industry, school systems, foundations, and State and Federal funding. This kind of support should be encouraged.

The Act must clarify what kind of "telecommunications" the legislation is trying to develop and regulate.

The "spectrum use fee" places public broadcasting's funding in a controversial framework which has little to do with its need for support.

The Communications Act of 1978 provides no "insulating" from Federal Government Interference into public broadcast affairs but rather seems to propose even more Federal involvement.

The Communications Act must respond more specifically to public broadcasting's specific needs, both to the spectrum, capital and operating funds needed in the foreseeable future, new technology and a funding plan which will respond more adequately to the development of the Western World's finest educational broadcasting system.

Thank you kindly for permitting me the opportunity of presenting this letter to your Committee.

Sincerely,

KEITH J. NIGHBERT,
Manager.

[Whereupon, at 1 p.m., the hearings were adjourned.]

[NOTE. Field hearings on the Communications Act of 1978, held at Boston, Mass., Chicago, Ill., Westwood, Calif., Lakewood, Colo., Trenton, N.J., Cincinnati, Ohio, and New Orleans, La., will comprise Vol. V, Parts 1 and 2 of these hearings, Serial Nos. 95-199 and 95-200.]



The first part of the report deals with the general situation of the country and the progress of the war. It mentions the fact that the country is still in a state of anarchy and that the war has not yet been brought to a close. It also mentions the fact that the country is still in a state of anarchy and that the war has not yet been brought to a close.

The second part of the report deals with the military situation. It mentions the fact that the military forces are still in a state of anarchy and that the war has not yet been brought to a close. It also mentions the fact that the military forces are still in a state of anarchy and that the war has not yet been brought to a close.

The third part of the report deals with the political situation. It mentions the fact that the political situation is still in a state of anarchy and that the war has not yet been brought to a close. It also mentions the fact that the political situation is still in a state of anarchy and that the war has not yet been brought to a close.

The fourth part of the report deals with the economic situation. It mentions the fact that the economic situation is still in a state of anarchy and that the war has not yet been brought to a close. It also mentions the fact that the economic situation is still in a state of anarchy and that the war has not yet been brought to a close.

The fifth part of the report deals with the social situation. It mentions the fact that the social situation is still in a state of anarchy and that the war has not yet been brought to a close. It also mentions the fact that the social situation is still in a state of anarchy and that the war has not yet been brought to a close.

The sixth part of the report deals with the international situation. It mentions the fact that the international situation is still in a state of anarchy and that the war has not yet been brought to a close. It also mentions the fact that the international situation is still in a state of anarchy and that the war has not yet been brought to a close.



