12-26-1972

Policing the 'Fairness' of Television

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BY WAYNE GREEN

WASHINGTON—Local television stations, worried about keeping their licenses, shouldn’t get too enthused about an offer the Nixon administration made them last week.

At first glance, the terms sound inviting: the administration might allow stations to add a second year to their licenses, which would add two years to the term of a license. In return, the bill would require local broadcasters to police the fairness of network news shows that they air. But closer examination reveals the proposal to be nothing to cheer about.

For one thing, the administration probably can’t pull off the deal, which has been outlined by Clay T. Whitehead, director of the White House Office of Telecommunications. The prospect of such legislation already has prompted serious congressional opposition. Also standing in the way are several court decisions, which have viewed the scrutiny of program content as an exercise in free expression. Moreover, there’s growing suspicion that the administration won’t really push for passage of the bill—that its real objective is just to frighten the networks into friendlier coverage of President Nixon.

Even if the administration’s plan does fly, it will bring local broadcasters a host of new daily operating problems, plus some fresh worries about how long the idea of policing program content as an exercise in free expression will hold up. In return, local stations would have to monitor and somehow challenge “bias” in network news shows and poor taste in network entertainment programs. Failure to do so might cost them their licenses.

By linking the impending bill with the serious issue of “government censorship,” the Nixon administration has given the impression that it is an attempt to shift the onus of action from the federal government to the local community.

The league had objected to certain anti-Semitic remarks made by a commentator while using air time that had been purchased from the station. The station offered the league free equal time to use in any way it desired, but the league refused. It complained to the FCC that the station had done nothing until the programs were called to its attention and that, even then, it declined to either cancel the programs or control the commentator in any way.

In a majority opinion upholding the FCC, Mr. Burger said stations may not exercise the sort of control or responsibility where program content is at issue. Quoting FCC Commissioner Lee Loevinger, he said: “It is clear that the responsibility of the FCC to exercise such far-reaching control over a station simply cannot be imposed on a station simply because of the manner in which that function is performed. The commission retains the ultimate power to determine what is and what is not permitted on the air. If the commission fails to perform its duty, it is held to the same standard as the station.”

Merit the same result—suppression of certain views and arguments.

Since the imposin coarse of the fairness of such responsibility involves commission compulsion to perform the function of selection and exclusion, and other functions of the commission in which that function is performed, the commission still retains the ultimate power to determine what is and what is not permitted on the air. So this formulation does not mean that the argument is constitutional or constitutional, ideologically. The

Mr. Burger concluded by summarizing what seems to be the basic problem. The local television station operates. He insists the plan is a serious one, aimed at “unraveling the big mess” of broadcast regulation, but a number of communications experts disagree. “I don’t think the administration gives a damn about the legislation,” says a Washington broadcast attorney.

It just wanted to deliver the networks a message.

Certainly some of Mr. Whitehead’s rhetoric in disclosing the legislative plan was reminiscent of Vice President Agnew’s frequent attacks on the networks and other members of the press. Mr. Whitehead described some journalists, for instance, as “so-called professional journalists who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis.”

If even the administration is serious about the proposal, its passage will be anything but the boon that some local broadcasters might think.

True enough, the longer term would add stability to their licenses, something they desperately need in light of recent challenges to those licenses at renewal time. And on the surface, the bill seems to say that a station needsn’t worry about losing its license as long as it has made a “good faith effort to exercise such far-reaching control over program content as an exercise in free expression, and as long as it has aired all sides of controversial issues. (The latter requirement is merely a restatement of the existing FCC fairness doctrine, a test stations already must meet in their daily operations.)

Operational Nightmares

But in describing the planned legislation, Mr. Whitehead talked about new obligations that will create operational nightmares for local stations, especially network affiliates that, he says, get about 45% of their programs from the networks. The main obligation: policing the content of all network programs—programs over which they have little control.

In Mr. Whitehead’s view, local stations may no longer accept, in good faith, standards and “taste, violence and decency” in programming. And they must “jump on the networks,” he says, if network programs are “violent or sadistic” or if they “glory in the use of drugs.” Perhaps more significant, local stations must insist on balanced news programs, Mr. Whitehead said, “whether the information comes from their own newsroom or from a distant network.”

Those station managers and network officials who fail to detect imbalance or consistent bias from the networks—or who acquiesce by silence—can only be considered willing participants,” said Mr. Whitehead, who went on to suggest that such inaction might jeopardize their legitimacy.

Mr. Whitehead’s rationale is high-sounding. He says station managers simply would be exercising the type of journalistic judgment that publishers and editors do. This would be in keeping with the traditional responsibilities of local radio stations, and it would take the editor’s function away from the Congress and the FCC, where it now is, and put it where it belongs.

But there are numerous practical problems inherent in such a plan. Local newscasters are forced to rely for much of their national and regional news, for example, on stories provided by newswire services, such as Associated Press. Pressured by deadlines, it would be impossible for them to verify the accuracy and fairness of stories reported from hundreds of miles away.

Network news shows present an even bigger problem because many of them are televised “live” and, thus, aren’t amenable to pre-broadcast scrutiny by local stations. A station simply can’t verify everything that goes on the air,” says one FCC official. “How does it know what Walter Cronkite is going to feed down the wire?”

The Legal Questions

And despite Mr. Whitehead’s free-press phraseology, there is considerable doubt that stations have a legal right, much less an obligation, to exercise such far-reaching control over program content. While Mr. Whitehead talks about increasing the “freedom and responsibility” of broadcasters, courts and legal scholars have in which that function is performed as nothing more than self-censorship.

One such scholar is Warren Burger, the Nixon-appointed U.S. Chief Justice, who addressed the issue in 1968 as a member of the Supreme Court. His comments came in a case on appeal from the FCC, which had refused a request by the Anti-Defamation League of B’nai B’rith for hearings on the license-renewal application of radio station KTYM in Los Angeles. His decision was that the station had done nothing until the programs were called to its attention and that, even then, it declined to either cancel the programs or control the commentator in any way.

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Mr. Burger concluded by summarizing what seems to be the basic problem. The администраци faces if it’s inclined to push its new plan: “Attempts to impose such schemes of self-censorship have been found as unconstitutional as more direct censorship efforts by government.”

The U.S. Supreme Court subsequently refused to review the decision, thus indirectly upholding it.

Mr. Green, a member of the Journal’s Washington bureau, covers the FCC and other regulatory activities. An editorial on this subject appears today.