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# Policing the 'Fairness' of Television

By WAYNE E. 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 will push legislation that 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 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 illegal form of censorship. 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 at license-renewal time—the problem of how to demonstrate, for example, that network programs they've aired have been fair, tasteful and in keeping with local community needs.

As Mr. Whitehead described things, the administration plans to propose legislation that would lengthen the term of a station's license to five years from the current three while making it tougher for citizens groups and others to oppose a station at license-renewal time. 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 license.

By linking the impending bill with the sensitive question of balanced network news reporting, Mr. Whitehead already has plunged it into controversy and perhaps dimmed its chances for passage. Indiana Democratic Sen. Vance Hartke has attacked the administration and called for Senate subcommittee hearings on "government censorship of the press." And Sen. William Proxmire, the Wisconsin Democrat, has said he'll introduce a constitutional amendment specifically extending the free press guarantee to broadcasters.

## FCC Reaction

Nor can the administration count on the unqualified support of the Federal Communications Commission, the primary broadcast regulator. That agency has always opposed the idea of policing program content. Besides that, FCC Chairman Dean Burch has never taken kindly to what he considers interference by Mr. Whitehead in FCC matters. None of the Republican members of the commission has commented publicly on the administration plan, but some of them are grumbling privately. One staffer suggests that Mr. Whitehead simply doesn't understand how a local television station operates.

Mr. Whitehead's apparent lack of concern over stirring the controversy has, in turn, raised some question about the administration's motives in disclosing its legislative plans. He insists the plan is a serious one,

aimed at "unraveling the big maze" 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 professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis."

Even if the administration is serious about the legislation, its passage wouldn't be nearly the boon that some local broadcasters might think.

True enough, the longer term would add stability to their licenses, something they desperately want in the face of mounting challenges to those licenses at renewal time. And on the surface, the bill seems to say that a station needn't worry about losing its license as long as it has made a "good faith" effort to respond to the local community's programming needs, 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 61% 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 network standards of "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 "glorify 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 act to correct 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 licenses.

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 best traditions of a "responsible free press," he suggests, and it would take the editor's function away from Congress and the FCC, where it is now, and put it where it belongs.

But there are enormous 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 ac-

curacy 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 viewed that sort of responsibility 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 Federal Appeals Court in Washington. 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 Inglewood, Calif.

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 that sort of control or responsibility where program content is at issue. Quoting then FCC Commissioner Lee Loewinger, he said:

"Talk of 'responsibility' of a broadcaster in this connection is simply a euphemism for self-censorship. It is an attempt to shift the onus of action against speech from the commission to the broadcaster, but it seeks the same result—suppression of certain views and arguments."

"Since the imposition of the duty of such 'responsibility' involves commission compulsion to perform the function of selection and exclusion and commissioner supervision of the manner 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 advance the argument either constitutionally, ideologically or practically."

Mr. Burger concluded by summarizing what seems to be the basic problem the administration faces if it's inclined to push its new plan: "Attempts to impose such schemes of self-censorship," he said, "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.