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Mark S. Fowler

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The Federal Communications Commission  
1981-1987: What the Chairman Said

*Speeches by Mark S. Fowler*

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*Chairman of the Federal Communications Commission, 1981-1987. B.A., University of Florida, 1966; J.D., 1969. Speeches compiled and arranged by COMM/ENT. Omissions of whole paragraphs are indicated by asterisks. Grammatical changes are indicated by brackets. Minor typographical errors in the original text have been corrected without indication. Footnotes have been added by the editors. The full text of all speeches is on file at COMM/ENT, Hastings College of the Law, 200 McAllister, San Francisco, CA 94102.
Introduction: Chairman Fowler's Views on His Role and the FCC

The Stated Objectives of Chairman Fowler

1. To create, to the maximum extent possible, an unregulated, competitive marketplace environment for the development of telecommunications.

2. To eliminate unnecessary regulations and policies.

3. To provide service to the public in the most efficient, expeditious manner possible.

4. To promote the coordination and planning of international communications which assures the vital interests of the American public in commerce, defense and foreign policy.

Speech Before the Oregon Association of Broadcasters
June 12, 1981
Newport, Oregon

I am delighted to be with you at your annual convention. As some of you may know, this is my first address to a broadcast group since becoming Chairman of the Federal Communications Commission.

While you and I work at opposite ends of this great country, we in Washington are surrounded with a condition that contributes to the unique charm of this state. I refer, of course, to fog. Now in Oregon, fog is a balm, sometimes a soupy balm, but a balm nonetheless. It calms the environment, soothes its inhabitants, and makes things grow.

The fog in Washington is different. For I refer to indoor fog, one that obscures the environment, clouds thinking, and prevents things from growing. It is a most conducive atmosphere in which to cultivate, along with all sorts of funguses, a bureaucracy. In fact, production has been so plentiful that we have been exporting bushels of paperwork for decades.

I believe that one clear message of the 1980 elections was this: dispel this fog, the pervading environment in Washington that induces not better government but bigger government. I view my job at the Federal Communications Commission as an important part of carrying out this mandate for a leaner, less intrusive federal presence throughout this country. In this effort,
we at the Commission intend to cooperate fully with the Congress in its efforts to modernize the Communications Act.

Remarks Given in North Carolina
May 14, 1982

The FCC is the last of the New Deal dinosaurs.

* * * * *

My job — and the job of my fellow commissioners — is to release these new technologies and to release the private sector from the regulatory straightjacket and to allow the provision of services that you and the rest of the public want — whether Washington likes it or not!

September 21, 1983

The job of Chairman is more than a run for the congeniality prize at a Mr. Popularity Contest. I'm glad to say that both the general and the trade press have been fair in covering us over the last two years. The words have not always been sweet, but they generally have been accurate.

We have tried to listen. And we have tried to lead. Of what I have done as Chairman, I have no regrets. What I said two years ago here is what I stand by today. The office of the Chairman is neither pulpit nor politburo.

* * * * *

The freedom to speak, the freedom to publish, the freedom to broadcast — these are the freedoms that set us apart, as a people and as a nation. If we are to have greatness as a nation in communications, we must have the freedom to communicate.

Let me close with a story. It's the story of six elderly men who find themselves confined to the fifth floor of a nursing home. It's a shabby nursing home — pale walls, a single window. One of these bedridden men, a Mr. Quigley, was fortunate enough to be next to the lone window.

From his prized perch Quigley would tell the other men what he saw. Oh, he would say, there goes Mrs. Schwartz carrying a full bag of groceries for her family. There's the little Jones girl with her mother, off to her first ballet class — doesn't look like she much wants to go! There's Mr. Miller, asleep on the park bench. Day after day, the other men would ask, “Quigley,
Quigley, what’s going on?” Quigley would tell them what he saw.

One day, Quigley died. Another man, Mr. Sullivan, took his place in the bed beside the window. The first day, he said nothing. The men thought, well, let’s not bother Sullivan, so soon after Quigley’s passing. A few more days went by; still nothing. Finally, one morning one of the men asked, “Sullivan, Sullivan, what do you see?” And Sullivan answered, “I see nothing”—for the nursing home window did not overlook a park, or a broad avenue; it looked onto the dark brick wall of another building.

Quigley, you see, had vision. He had hope. That made the difference. No satellite orbiting the earth, no regulation grounded in the law alone can foster hope, can create vision.

You in this room, you on this dais, you are the ones who stand by the window for the rest of a waiting America. Communication depends not only on the tools to describe what is here and now; but on bringing into focus a vision of what yet can be. You in this room possess the tools. May you remember to use them, from time to time, to share with us the vision of our better selves, the vision of what can be.

II

Marketplace of Ideas and Unregulation

Speech Before the Pennsylvania Association of Broadcasters:
“Freedom and Broadcasting”
October 15, 1984.
Hershey, Pennsylvania

For lack of a better word — we call our effort “unregulation.” The distinction between it and deregulation is that we’re determined to finish the job. But unregulation is different from “no regulation.”

The FCC has a job to do in enforcing those rules which make sense and which must remain on the books. For instance, it is elementary that frequencies assigned to a licensee be protected from undue interference. The FCC is not and will never be asleep at the switch when it comes to protecting the integrity of signals. We will punish those who are spectrum slobs or who violate other rules.

The FCC during my term, I’m glad to say, has not let down our guard on these enforcement matters. To the dismay of some, perhaps, this Commission has been vigorously policing
with those rules that are on the books — spectrum interference, must-carry violations, employment discrimination in broadcasting, and other violations that subvert the goals of our Communications Act.

* * * * *

I've done some thinking about what is, or should be, distinctly American about our system of communications. In doing so, I find myself reflecting back to the very earliest days of this country, in particular to the Federalist Papers. . . .

What struck me as I was rereading those documents — and, in fact, what strikes me every day as I come to work as a regulator in the government — is how far we've drifted from the original concept envisioned by the Founding Fathers. What original concept? The limited relation between the individual citizen and the government.

How far we've strayed. There seems to be current in Washington a strange presumption, strange at least from the perspectives of the founding of this Republic. The presumption is, simply put: the government should regulate, unless a compelling interest exists not to regulate. Fill out the papers first, then, maybe, ask why you fill them out. Comply with this requirement, then figure out whether the requirement makes any sense. Run through this set of bureaucratic hurdles, jump through that set of regulatory hoops, then ask whether you needed to run the race at all.

* * * * *

For the past couple of years, Congress has worked, and I must say very diligently, to adopt proposals for broadcast regulation reform. But there, too, we have some legislators asking, "What are you going to give us?" I'm not saying that politics isn't the art of compromise. And as some of you know, I put before the public my ideas on how total broadcast deregulation might be accomplished that involved some give and take.

But what's interesting is that so many in Congress and elsewhere start from the presumption, in the debate over broadcast deregulation, that the government has unquestionably the right to regulate the broadcaster from the point of view of content. It's as if the regulators were trying to analyze the Communications Act with a microscope, but wound up starting from the wrong end of the scope.

The presumption, I think, ought to be just the reverse: the
government has to show its interests in regulating program-
ming content before it can set regulatory ink to paper.

Remarks Before The Oregon Association of Broadcasters
June 12, 1981
Newport, Oregon

Like the great Lewis and Clark who explored the Oregon
territory more than a century ago, we in Washington have a
similar mission. We must hack through the dense regulatory
underbrush transplanted from the 19th century and try to cre-
ate order from chaos. For the laws which to this day guide the
Commission derive essentially from the same laws that
chartered the Interstate Commerce Commission in 1887.
Whatever the validity of those regulatory notions in the age of
the buckboard and the waltz, their relevance must be ques-
tioned in the age of minicam and microwave.

You and I both know, however, that announcing that we are
going to cut through the regulatory underbrush is much easier
to say than to do. When I say the Commission will unregulate,
I am making a promise I intend to keep. I and my fellow Com-
missioners have established “unregulation” as a primary objec-
tive to be vigorously pursued in the months to come.

Address Before the National Telephone Cooperative Association
February 26, 1985

I'd like to talk with you about my philosophy of conservative
populism and how it fits in with my efforts as FCC chairman to
deregulate telecommunications. To do so, we need to step back
for a moment to the origins of populism in the latter half of the
1800s.

In the 19th century when populism swept our country as a
political philosophy, its focus was on the promise of the individ-
ual — the common man — and on avenues to achievement that
this democratic country could offer the common man. . . .

Populist reformers of the day, such as William Jennings
Bryan, tried to shake up vested interests so that the initiative of
the common man could break free. The American frontier was
still a land frontier. Populist reformers promoted the land
grant. This offered ordinary citizens a stake of land in the wil-
derness, where, again, the individual could test his mettle, free
from the restrictions of vested interests. . . .
But, while we have managed to bring a great infrastructure to virtually every square acre of American soil, we've gotten more in the bargain than we planned on. For in the 19th century, government was the catalyst of the populists. It weighed in on the side of the common man to free him from vested interests and to facilitate growth and development. Today, can anyone doubt that government itself has become a vested interest, often as much the problem as the problem-solver?

But fundamental American characteristics are immutable. We still have a radical need for frontiers to explore and conquer. We still believe that the common man has an inalienable right to the pursuit of happiness — freed of vested interests of any sort.

This reflects my own vision of conservative populism. It is a philosophy based on the need to free the initiative of today's common man from the vested interest of a vast, bureaucratic government. I believe that Americans of the information age are making their frontiers ones of the mind and its inventions, and ones of the spirit. We must not let pervasive government intervention bring the wagon train of human technological achievement and personal service to a belabored halt.

During my FCC chairmanship I have tried to turn this political philosophy into a regulatory policy. As in the land grant days, government should step in when special needs of our people cannot otherwise be met. The FCC's plan for assistance to high cost telephone companies, in order to ensure universal service, is one example of positive government action.

But, once these needs are met, government must disembark and allow people to test their own ideas at the information age's frontiers. That is why I have favored telecommunications deregulation whenever and wherever possible.

Message to Smaller Market UHF Television Broadcasters
October 15, 1981
Washington, D.C.

This may appear harsh, but in the long run, I believe that consumers and broadcasters are best served by government that intervenes to the least extent possible in markets.
Whether you sink or swim will then be the result of your own initiative, not the result of protectionist policies from Washington. As one familiar with small broadcasting, I think most of you find the waters of competition most suitable for swimming.

Address Before The Communications Network 1983 Conference:
“Regulation-Free Telecommunications: A Blueprint”
January 31, 1983
New Orleans, Louisiana

I’d like to start by reflecting for a moment on the power we regulators possess. Growing up in Florida as I did, the threat of hurricane was an annual occurrence. Although not common, we became aware early on of the warning signs and knew when it was time to seek shelter. But despite their destructive force, I’ve always been fascinated with the conceptual mechanics of the hurricane.

Just before the storm there is a lull in the air; moisture hangs; nothing moves. The sky is a cloudy amber color and then slowly darkens. There is a fury of the winds pounding the fragile structures of civilization, before once again subsiding into an eerie calm.

In my more reflective moments, I am concerned whether the winds of deregulation may wipe away not only barriers to robust competition but also may harm competition itself. The force we wield in government to affect the environment of business and leisure activities throughout the world is awesome. Uncontrolled, it can wreak indiscriminate havoc without purpose. Jobs are lost, personnel are dislocated, whole sections of industries must be retooled, and the loss in time and energy may give our foreign competitors an unacceptable and unearned head start. But unlike our inability to control the hurricane, we do have the power to control deregulation. We can carefully analyze, plan and provide for smooth transitions. Controlled, deregulation can nurture creativity and productivity — those goals most treasured by man and distinguishing man from all others.

It is with this sense of responsibility and the sense of the awesome impact of governmental decisions on the marketplace that I approach the world of telecommunications deregulation. We now stand in the eye of the hurricane. The winds of reregulation, deregulation, unregulation, and nonregulation have changed our landscape. And I believe for the better. Regula-
tion of terminal equipment is gone or soon we will be; markets are now open to competitors; and the seeds have been sown to restructure the marketplace and those who operate in it.

As we pause to reflect on what we have accomplished and where we should go, we must reaffirm why we are going there. Because soon we will be taking further actions to fan the winds of deregulation. This is important to me, for I'm determined to direct those winds so that the world we leave will enjoy the fruits of our efforts and not the debris of our mistakes.

Where are we going? In my mind, we are heading ultimately towards a regulation-free telecommunications marketplace; a world where competitors offer an abundance of facilities and services constrained only by imagination and the capital market. Regulation's role as a surrogate for competition will be completely unnecessary and our children will be the benefactors.

* * * * *

How will we get to the haven of no regulation? The journey will be a long one. But we have a compass and a map. Our compass is "unregulation." Our map is to incrementally free up selected markets and participants within those markets until the necessity for regulation's surrogate function is displaced by the primary regulator — the consumer.

The journey will not be completed overnight. As with so many of our deregulatory efforts recently, a transition plan is contemplated. The blueprint, however, is still the same: comprehensive regulatory reform on a systematic basis.

* * * * *

Examples of such candidates for deregulation are new services, where no carrier dominates or services such as high speed data. The Commission's recent action with regard to the sales of satellite transponders is another excellent example of how discrete services may be segregated. The entire interexchange message telephone service (MTS) market itself is also a candidate. Let us be clear. This is not a natural monopoly service. In this instance, we have taken the first steps to deregulate. However, we must wait to see the fruits of the modified final judgment and our access charge proceeding ripen. At that time, I expect federal regulators to step away. It is not too soon though to begin studying the potential affects of this deregulation.

As modern deregulators, we should be sensitive to the
problems of deregulation but at the same time be prepared to accept risks and use tools available to us to ameliorate potential ill effects during these transition periods. Our tools include accounting devices, informal regulatory surveillance, reliance on the antitrust statutes, and sufficient transition time frames. Certainty that these markets will be deregulated should be accompanied by the certainty of a definite time table.

Keep in mind that our goal throughout this endeavor must be effective competition, not effective regulation.

Address Before The Communications Network 1986 Conference:
"Back to the Future"
January 29, 1986
Washington, D.C.

Well, ladies and gentlemen, may I propose that today, January 29, 1986, we go back again, but this time, back to the future. Why? Because the future of this country is tied to our ability to move and process information and lead the rest of the world in that hot pursuit. Unless we move forward, as businesses and regulators, we guarantee that the people we're supposed to be serving, the American people, like the fellow in the movie, will be marooned in a time warp. It's a time warp where regulation is a growth industry and competition is not something you beat, but try to avoid.

There is a principled way back to our future. You've heard me many times discuss the touchstone of my stay in government — freedom. In most cases, the subject has been broadcasting. But freedom is also my guiding principle in telecommunications. And its instrument is competition.

Three years ago, I set forth a blueprint for my vision of a regulation-free telecommunications marketplace. I called for comprehensive reform on two levels: deregulate players with no market power; and deregulate markets that were competitive.

Today, I'd like to go further — to fill in some more of the blueprint. Because despite all that's gone on, there's an urgent need to rethink the way we regulate the telecommunications industry.

In 1965, we felt lucky if we could choose one of four colors for a rotary phone. Technology has transformed not only rotary-dial phones, but our ability to insure that regulation is state of
the art. Energies have been expended solving immediate problems, sometimes forgetting that we were also pursuing long-term goals.

Any detailed plan for a shift in regulation must be premised on some fundamental goals. What should these be? First, we need fairness. That means reasonable rates, the absence of unjust discrimination, and universal service.

Second, we need efficiency. The world is spinning its way to a new information age — collecting, analyzing, transmitting and reporting information. As President Reagan has noted, our country can rightly claim to be at the leading edge. But we can’t keep that edge by dulling the private sector with a regulatory grindstone. At the same time, society must not invest more of its resources than necessary in its information network: two subscriptions to the same newspaper doesn’t make you twice as informed.

* * * * *

But despite what we’ve achieved so far, we need to become more visionary. To do that, let us step through time, not to the future, but for a moment to the past — to the dawn of public utility regulation — to an America of levees and toll bridges.

Public utility regulation is a unique creation of the American political and economic system. It’s a hybrid. Organization and management is private; central economic decisions are subject to government oversight. It’s also expressly premised on market failure. That is, the economics of scale and scope are so great that the industry historically has been considered to be a “natural monopoly.” Enter the FCC stage right, state (Public Utility Commissions) PUCs stage left. We rein in the power to overprice or discriminate by regulating prices and restricting a utility’s participation in competitive markets.

That this PUC regime has left its mark on the telephone industry is something of an understatement. It reminds me of the remark attributed to Lord Astor on the S.S. Titanic. When the ship struck the iceberg, he said, “I ordered ice from room service, but this is ridiculous.”

Being creatures of the political process, regulators try to influence prices for telephone service not just according to its cost, but to social and political objectives as well. How? PUCs historically slowed the depreciation of investment to about the pace of molasses in winter, artificially holding down current
rates while maintaining a high level of investment on which the companies made profits.

Averaging of costs and rates endorsed, if not mandated, by regulators spread the cost of wiring the country to achieve universal service. And where companies were allowed to compete, rigid separate subsidies were required.

For all these benefits, some real, some artificial, we've paid a price. Let's add up the tab.

Item 1: We've distorted investment decisions and limited private incentive to innovate with new technologies. Or worse, we've affirmatively discouraged that innovation since it would strand "useful" investment. Translation: "Why replace copper with glass? The copper still works."

Item 2: We've discouraged price competition and provided only limited incentives to cut costs or increase management efficiency. Translation: "Go ahead, spend the extra money. We'll stick it in the rate base."

Item 3: We've dramatically limited the ability of players to respond quickly to changes in supply and demand. Translation: "But we really needed the extra seven months to review the implications of your tariffs."

Item 4: Prices ultimately charged are artificial since rate making with gross numbers and political or social oriented rate structures is terribly imprecise. Translation: "Abracadabra."

Item 5: Substantial resources are spent administering extraordinarily complex regulatory structures with overlapping jurisdictions. Translation: "Let's refer the issue to the Joint Board." Question: "Which one?"

Last Item: Catch-22: The system prevents us from even testing its central premise — that telecommunications is a natural monopoly — by creating express barriers to entry.

Total Cost? Billions and billions of dollars and countless lost opportunities, including productivity gains for the economy in the hundreds of billions.

The past thirty years have made this clear: that the public utility model does not always apply, and perhaps never should have been applied lock, stock, and barrel, to the entire field of telecommunications. It's because the PUC approach forgets to consider competition, regardless of the facts. So when a regulator insists on the immutable presence of a natural monopoly,
what happens? A persistent competitor pops onto the scene and spoils his fun.

The time has come to move from thinking of the past and advance to the future — away from traditional public utility regulation and towards a competitive industry model. Unless we in government, including the courts, retard or kill its potential, telecommunications should become an almost completely competitive marketplace. Let the discipline of competition replace the squeaks and roars of regulators. Prices will fall or rise toward costs. And only minimal subsidies will be needed to maintain universal service.

We see the benefits of competition in the equipment industry. Thousands of domestic and foreign firms are offering more and more complex equipment. The long distance business is on the same track. True, one firm today has significant market power. But isn’t it remarkable how the market has changed in just a few short years? A number of committed players, starting with limited offerings, have expanded their shares dramatically.

Who benefits from all this competition? The man in Iowa calling his daughter at school; the lady in the Bronx who is now paying ten times less for her phone that she once rented, and saving $20 to $60 a year; and the computer programmer in California whose entire industry revolves around devising a way to make one machine talk to another.

Competition will also be felt in the once sacrosanct local telephone market. We see its glimmer already: digital termination systems, cellular radio, multipoint distribution, cable television, smart buildings, BURST switching architecture and yes, even direct connections by long distance providers. As competitive choices increase in the local market, carriers will have to price their services at cost, improve service, offer choices — or lose customers. Regulators must let them try.

Make no mistake, though; as consumers replace the government as regulator, local telephone companies will inevitably lose their monopoly. Consumers will have a choice. And these local companies must now also have the choice of entering and operating in entirely new markets.

“But Chairman Fowler,” you say, “we aren’t anywhere close to that yet! Forget about getting back to the future. Get back to the present.”

Well, that’s right. We aren’t in a competitive world, certainly
as it applies to the local telephone market. But, a lockstep adherence to the public utility regulatory structure is probably counterproductive. We must not deregulate mindlessly or without vision. We must navigate by the light of the competitive industry model, cultivating new entry wherever possible. We must protect competition, not merely competitors.

Now, I don’t deny there is danger during the transition. Some firms with monopoly power will use it. Regulators must be vigilant to oversee and prevent abuse. Discrimination and cross-subsidization lurk in every market’s pantry.

And efficient use of the in-place national network should, indeed must, be encouraged. Our telephone system is a national treasure that grows daily. It’s the best in the world. But it’s a national resource vastly underused. Many regulatory practices cause consumers to install unneeded special access lines, or worse, construct private facilities where the in-place network would be more efficient.

To encourage efficiency, regulators should let domestic carriers price flexibly. Existing companies must be allowed to innovate to recover their costs and encourage users to stay on the system.

Given all this, how do we set forth a model for the future? The model begins with equal access. Equal access to the network and customer was the linchpin for competition in the equipment industry. Equal access to the local exchange network has also been the keystone for full competition in the long distance market.

I say, let’s take this concept further. Move local carriers to provide an “open architecture” network in which functional elements are offered on an unbundled basis. Insure would-be providers of enhanced services that vital access to the local network, is comparable to the access given to the local telephone company itself. With equal access, all players can operate in any market, including existing ones.

With this in place, we can approach the ultimate plan of a regulation-free marketplace, a way, simply, to get us back to the future.

* * * * * *

The key to this change is a commitment and belief in competition. This type of deregulation is not abdication. For unless we pull away from the mindset of traditional public utility regulation, we will be hoisting a 19th century remedy to a 21st cen-
tury situation. In medicine, we wouldn't endorse the use of leeches when lasers are appropriate, no matter how loudly the patient screams for leeches. So it goes in communications regulation.

More is at stake in this debate than merely satisfying the aspirations of the local Adam Smith society. As we expand the means of transmission we multiply the sorts of information that can be sent and shared. Human knowledge expands not just by a new idea, but by the ability to transmit it.

Give a scholar a modem, make it cheap enough, and you give him access to the world's knowledge. The same goes for the world's breadbasket; the commodities market is more efficient when it can know the price of wheat in Bombay, Bristol, Bangor and Bangkok instantly and at a reasonable cost. It's not just economists who love competition in telecommunications; it's all of us whose lives are made better and richer by it.

* * * * * *

We are a free society. . . . And the more we let computers interface, and let calls be forwarded, and let parabolic dishes send messages or meetings up to the heavens and back down to the earth — the more we communicate, the better are our chances of staying free. And, maybe, just maybe, we help others someday hitch a ride with us, back to our future and to their's.

Speech Before the United States Telephone Association
March 6, 1986
Washington, D.C.

Finally, a few words about my "Back to the Future" speech. A few weeks ago I set forth an approach to deregulating many aspects of telecommunications. The approach is based on open network architecture, telephone company commitment to sustaining present universal service levels, and the ability to price more rationally in a free environment. It also recognizes that maximizing the use of the public switched network is good for everyone.

I want to emphasize that my remarks were simply my attempt to further a debate, a critical debate, to your industry. It's a framework, without detail brushed into the picture yet.
Adjusting to change in this industry has often not been easy or simple, if only because change has come so rapidly and on so many fronts. Competition in the provision of long distance services has expanded significantly in recent years. Judge Greene's entered a consent decree ending the integrated system under which AT&T and the Bell Operating Companies shared common incentives and objectives. Technology that provides alternatives to use of the local exchange plant in placing and receiving long distance calls has become more widely available and less costly. Although competition in the provision of telecommunications services began almost 25 years ago, the rate of change has accelerated rapidly in the last decade.

I am convinced that the development of competition in the provision of telephone services and equipment has brought, and will continue to bring, major benefits to the American consumer. The deregulation of telephone equipment is an excellent example.

The variety of telephones available to the average residential subscriber has increased dramatically. Choices in features range from the simplest basic telephone, to telephones with many dialing and transmission features, to "smart" phones that incorporate various information retrieval and processing capabilities. Choices in styles range from the plain old black telephone, to Mickey Mouse and Pac-Man phones, to ones endorsed by famous names from the world of fashion.

Competition in this area has produced lower prices. It's not unusual to see telephones that cost as much as $50 or $60 last year offered at less than half that price today. Competition in telephone equipment has also brought major benefits to large business users. The rate of innovation in private branch exchange (PBX) equipment has skyrocketed, and a greater variety of equipment options is now available.

I know that when you mention economic efficiency, peoples'
eyes tend to glaze over. Despite the obvious sophistication of this audience, I won't belabor the point here, especially in light of the fact that this is Monday morning and last night's mai tais may only now be registering their final blows. But I do want to make a few brief points on this topic. By economic efficiency all we mean is using the resources available to us as a society to produce the greatest amount of goods and services for all of us. Inefficiency is waste. Inefficiency means we are using more to produce less.

Under most circumstances, economic efficiency requires that prices be based on costs. Given the critical role of telecommunications in our economy, inefficient pricing in this sector could have serious real world effects in the form of higher prices, both for telecommunications and other goods and services, fewer jobs for American workers, and a degraded competitive position for this country in world trade.

Let me add that if there were a fairness trade-off — if somehow the costs of economic inefficiency could be translated into benefits for lower income people — then we would be less concerned that we are about economic efficiency. But that's not the way it usually works out.

During inefficient periods in our economy — periods when the economy is producing less than it could — is it the poor who benefit? No. In inefficient sectors of our economy — sectors where productivity is low and prices high — do workers or low income consumers benefit? Not from what I can see.

Speech Before The Hollywood Radio and Television Society:
The FCC and Hollywood: “Truce and Consequences”
October 10, 1984
Beverly Hills, California

I have not worked in Hollywood. But I know that there are many projects waiting to be developed, and produced, and ultimately broadcast. I consider it my job to ensure that the delivery systems for video programming are developed as quickly and as well as possible. More channels and more choice is better for the American people.

Before I became chairman, the Commission was cautious, in my opinion too cautious, about any new technology. Rules and regulations hampered development.

I don't want that to happen again. The best way to ensure
that it won't is through robust competition. Some say competition is too important to leave to the marketplace. I don't agree.

This marketplace approach comes down hard on protectionism, protectionism for any particular interest group. If we want the market to work effectively, we must not protect protectionism. If you toiled in the early days of cable television, you know the Commission took a decidedly hands-on approach whenever cable attempted to provide services. Only in the last five years have those policies and rules that throttled the development of cable been taken off the books.

Of course, not all new technologies are going to succeed in the marketplace. Perhaps we at the FCC have been a bit guilty of cheerleading for new technology. I do not know if low power television will be a marketplace success or failure. I must disclaim any promises of triumph for multi-channel multipoint distribution service. The same goes for direct broadcast satellites. Whether they succeed or fail over the long term, I simply do not know.

But I am committed to preventing them from being stillborn. We at the FCC have an obligation to allow people to "do their thing," as long as it interferes with no one else. That's why we have authorized new technologies. More choice, more channels — that is best for the American people.

I've come to the conclusion about the marketplace in broadcasting not from ideological obsession. Don't believe the rumor that there's an Adam Smith blow-up party doll in my office.

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The point is, if a broadcaster crams air time with cluttered commercials, the viewer can and will change channels. If the station offers public affairs or news programs that interest and involve the viewer, you can bet people will watch.

Now the system isn't perfect. Viewers may choose entertainment over news or public affairs programs. But the choice, on commercial and noncommercial stations, is what matters. Once that choice is available, the FCC should gracefully exit from the living rooms of America and let people push their remote control buttons to their heart's content.

What's at stake is whether the FCC can trust the common man to make a decision about what programs to watch, or whether to watch at all. The aim is to allow programs on commercial TV that are there because they appeal to a public that
wants it, not to satisfy a bunch of government bureaucrats like me.

Speech Before the International Radio Television Society:
“The Generation of New Choice”
September 24, 1985
New York, New York

Changes in the world of broadcasting reflect the pace of modern life. It’s been hard to come up with the apt metaphor for all this.

Then it struck me Saturday night. . . . I went to make some popcorn and hauled out one of those new hot air poppers. Unlike older machines, these poppers require no oil. They pop corn with hot air.

The amazing thing about this machine is that it produces so much popcorn, far more than it appears that it can handle. And it produces it all without the use of what was long thought to be a necessary ingredient of the process, oil.

In many ways, this device describes the deregulatory principle of the FCC’s policy. Remove what was thought an essential ingredient — heavy government regulation — and our communications system still works; in fact, it works better. I call this principle the Popcorn Principle.

Whatever the Popcorn Principle may be doing to change the world of radio and television, there are so many other factors that bear on what the American people see and hear. One complaint about deregulation is that it has somehow led to a decline in the quality of television. With the FCC in favor of a more market oriented approach, so goes the complaint, it’s bread and circuses on TV morning, noon, and night. It’s wall-to-wall music on radio. There’s nothing for children that’s any good and the same goes for their parents.

Well, I have no intention of trying to defend the television industry. Given the twin dragons of TV’s vast appetite and vast audience, it’s no wonder that the medium often reflects medium—a little something for everyone, usually nothing exactly for anyone, unless one likes medium.

And, as important as it is, television is not the World, nor even the most important thing in our world. Important — absolutely. But, so are reading, writing and 'rithmitic. So are active activities; physical exercise, conversation, and good books.
These knobs on our TV sets turn both ways — on and off, as well as sideways. If something on one channel is uninspiring or undesirable, viewers don’t pound on that one channel or write their congressman: they switch it either to another channel, or to cable, or to VCR, or to SILENCE. Under our system — thank heavens — nobody is forced to watch or listen to the media. “1984” has passed, and America has no such law.

Just as we can make more popcorn than before, our system of deregulation gives us more choice in broadcasting than ever before. That’s good news. But having all this choice is also difficult. It’s not just in television, it’s in society at large.

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You know, whatever else you thought of today’s lunch, at least it had one thing going for it — somebody else made the decision on what we would have.

Choice is hard; but the absence of choice is surely harder.

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Deregulation, I think, is the right direction for our nation’s communications system. It leads to more choice. It gives way to greater diversity. Dealing with all the new choice is daunting. But it’s not impossible. And it’s a policy that keeps government from controlling what is said or who says it, even if it’s wrong.

And what is the alternative? Licensing of journalists? A system of government clearances for every broadcast? A purging, perhaps, of news commentators who displease those in charge? A revocation of license for those who disobey the powerful?

Oh, yes, that system has been tried. Berlin had it in 1938. The Soviet Union had it as of this morning. But it doesn’t belong in Manhattan, or Milwaukee, or Mission Viejo. It doesn’t belong in America, period; so long as I’m Chairman, it won’t.

Address Before The National Radio Broadcasters Association
September 13, 1982
Reno, Nevada

I’ve committed the agency to a review of every rule that makes headaches for you with no payoff to the public. We’ve called these ragweeds among our rules the regulatory “underbrush.” And we’ve assigned a group of highly competent lawyers with legal machetes to cut it back.

What kind of rules am I talking about? Consider, for exam-
ple, the Commission’s rules and policies in the hyping area. During rating periods, some radio stations hold contests or other promotional techniques to boost ratings. At times, stations have tried to influence ratings diaries — there have been accusations that stations have tried to purchase diaries from those picked by the ratings companies or otherwise alter the outcome of a rating survey.

Now don’t get me wrong. I am all in favor of fair and square rating surveys. But what does that have to do with communications policy? Why should Washington be supervising the practices of radio stations during rating periods any more than it’s concerned with circulation wars between newspapers or price wars between supermarkets? If a station tries to gum up the works of a rating service, the rating service can throw them out as a client.

More fundamentally, it’s beyond me why the FCC should try to restrict station promotion efforts during rating periods. If somebody wants to give away car washes, or fried chicken or REO Speedwagon tickets — frankly, as a Chairman of the FCC, I’m not sure I care. (In fact, I’d like to win one of them. But I’m probably not eligible.) Somehow the FCC (or the Federal Trade Commission for that matter) got into this business. I’d like to get out of this business.

Fraudulent billing practices is another area in which I think the FCC may have overstepped its involvement. Here again, I’m no fan of flim flam employees gypping national and local advertisers. It’s a disgusting practice. But is it one that we at the FCC should worry about? Can’t a national advertiser who has been ripped off by a station take the station to court?

And these rules put owners at tremendous jeopardy. The number of schemes that a crooked employee can come up with to launch a fraudulent billing spree are virtually unlimited. Even the most conscientious owner can be unaware that an employee has hatched a bunko operation in the sales department. Yet the license is at jeopardy if the station is caught and reported to the FCC. There are other solutions to fraudulent billing, including criminal and civil suits in local courts to punish the wrong doers.

And there are still other patches of underbrush. One such tumbleweed is the Commission’s policy condemning the repetitious playing of records. The policy against this particular promotional activity — if there are any lawyers in the crowd, it can
be found at Section 73.4150 of our rules — stems from a 1973 case against a Houston radio station.

From December 19 to December 22, 1972, this station's entertainment programming consisted of the repeated broadcast of a three minute song entitled "Rock-n-Roll Part 2" by Mr. Gary Glitter. The Commission, speaking through its Complaints and Compliance Division Chief, told the licensee that — and I'm quoting — "repetition of any record so as to constitute the station's entire entertainment format for a long period of time raises the question of whether the licensee is making a good faith programming judgment to fulfill his public trustee-ship role or whether he is subordinating that role for his private promotional purposes." Bla bla bla, sincerely yours.

You know what I think? If a station wants to repeat a song to promote a change in its new format — which was the Houston station's purpose here — so what? The reason for this repetition was, and is, obvious: promotion. If the public didn't want to hear this song 17,000 times, they would, unless they are Gary Glitter's mamma, turn it off. I don't see what business the FCC has concerning itself with this practice. And yet there it is, smack dab in the middle of our regulation books.

In fact, in reviewing this particular rule, it calls to mind an episode during my days in the Orlando radio market. Station WHOO — "WHO radio" — was changing its format. It decided it would play the song "Monkey Jive" for 24 straight hours. The highlight of this song is the repetition of the words "Who," "Who." Incidentally, the promotion was a spectacular success. In short, the marketplace responded to a marketplace initiative.

As you can see, there is a great quantity of underbrush that needs clearing, from the rules I've mentioned to rules covering station identifications, main studio location, use of antenna sites, or failure to perform sales contracts. And there are rules concerning astrological programs, selection of sports announcers, teaser announcements, horse racing information — rules that may be silly or superfluous. Are they the business of government — and of the federal government? Or are the problems to which these rules speak better solved by consumer reaction in the marketplace?

The Commission over the years has gotten itself involved in matters that don't have much to do with service to the public. And there are other ways those who may be hurt by broad-
 caster misconduct can get their problems solved. They don't need the FCC to solve them.

Speech Before the Organization for Economic Cooperation and Development: "American Telecommunications: Notes of a Friendly Gardener"
November 18, 1985
Paris, France

Focusing on policy developments, the real message I want to bring you this morning is not how well we regulators are managing this gigantic communications garden. It's this: market forces, wherever they have been given play, are bringing the benefits of human initiative to industry and to consumers.

Our reliance on free enterprise, with a minimum of government intervention, has served the United States well in many fields of endeavor. It has helped raise our standard of living to where it is today. We're finally taking this approach in telecommunications which almost everywhere, including the United States, has operated with tight shackles during most of its existence. The primary task that we have set for ourselves now is to get out of the way of new technologies and of entrepreneurs who believe that they've got a product or service people want.

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Let me turn to... our Computer Inquiry proceeding. Its policies provide a... major example of measured deregulation. Early on, we realized that computer and communications technologies were converging. For each to realize its full potential, they'd have to become intertwined. But the computer industry had been developing competitively, like wild flowers in the Bois de Boulogne. Telecommunications, on the other hand, was partially monopolistic and carefully regulated, like the topiary at the gardens of Versailles.

Simply allowing telephone companies into competitive markets could have led to difficulties in both markets. Ratepayers might be burdened as companies shifted costs of competitive development onto them. At the same time, competitors in un-
regulated markets might be subject to unfair or predatory competition. The solution we adopted was similar in spirit to that underlying the divestiture of AT&T. We separated, by means of corporate subsidiary, monopoly activities from those that were competitive. We would regulate the former, but not the latter.

Terminal equipment was deemed competitive and deregulated. The results have been dramatic. When given a choice, consumers and businesses have voted — with their dollars — for a wider variety of equipment than was available before competition. This is borne out by the statistics I cited earlier. It is direct evidence that the earlier monopoly had not responded fully to the consumer. In addition, literally hundreds of firms have entered the terminal equipment market.

But the technology of computers and telecommunications has already overtaken Computer II. We are currently revisiting it to determine whether we should continue to require such severe separation when there may be substantial economies of joint operation. If we're to allow the development of computers and telephone technology, we've got to remember that a friendly gardener plants and tends; he can't ordain what will sprout, or germinate, or wither. In regulatory terms, the FCC should be trying to identify situations where firms appear to have market power and to regulate them, if necessary on that basis, without drawing arbitrary lines between similar technologies. The reason is worth repeating. We don't know where technology and competitive market forces will take us.

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To enjoy the fruits of the technological revolution, every country will have to recognize that placing extensive regulation on bold entrepreneurship works like heavy doses of pesticides. It kills the crops along with the pests.

Opening business opportunities includes giving business people the freedom to succeed — or to fail. New international private satellite companies, new domestic long distance companies, and old mainstream telecommunications companies

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cannot rely on the United States government to shield them from the rigors of competition if the going gets rough.

This freedom to succeed or to fail is an important dimension of marketplaces that is often misunderstood by people from countries characterized by command economies. This was brought home to me during the debate on separate international satellite systems. The question frequently was asked: "How can you support all this satellite capacity?" The American answer is a simple one. "We won't. But we want to give new companies the freedom to try to support themselves."

The marketplace is one important way people have to express what they want with their lives, and in their lives. The market is not the alpha and omega of satisfaction. There are some things money cannot buy, to be sure. But a vigorous market, one that allows ease of entry and range of choice, is the start of the stuff of human happiness. And those who would over-regulate it would rob us of the flea market and leave us with the fleas.

The prices people pay for telecommunications services must move closer to the costs of providing those services. Charge more and you will fail, because people can turn to alternatives.

We continually need to eliminate regulation, even where it may appear to be necessary at first look. For example, wherever feasible we must permit market entry by anyone wishing to. This has been a hard lesson for the United States and others, accustomed as we have been to the idea that communications is a natural monopoly. But we don't run vineyards by monopoly and we've never been short of wine. If our experience is a guide, the profusion of services that are so capably and quickly targeted to consumer demand are directly related to elimination of entry restrictions.

Allowing entry also means accepting limits on the noneconomic goals that we can pursue via telecommunications policy. On the other hand, U.S. experience offers reassurance that legitimate non-marketplace policies can be maintained. In particular, I'm referring to universal telephone service for all citizens. There are no signs or statistics that it is threatened by competition and change. Should problems arise, we in the U.S. have established a universal service fund to assist those in high cost areas. Low cost services such as the "lifeline" services... also ensure service to all who need it.

Our critics believed the worst. I am delighted to report that
the fears of the naysayers and those who would preserve the status quo have not been borne out.

III
The First Amendment and the Print Model for Broadcasting

Address to Gannett, Executives
December 14, 1981
Washington, D.C.

As I view it, the first amendment does not always mandate what is easy or even common sensical. Take, for example, the right of religious groups to proselytize in public airports. Somehow during the 1970s, airports became the proving grounds for the world's faiths. When I am late for a plane or eager to collect my baggage, I do not relish being accosted by leafleteers trying to subscribe me to their religion or to take my first faltering step by purchasing a daisy for my lapel. But the inconvenience, the hassle, is in a sense what the first amendment is about. These episodes reflect the type of society in which I choose to live. I will grudgingly put up with the inconvenience.

Similarly, I can think of nothing more distasteful than the recent incident in Skokie, Illinois. The American Nazi Party decided that, of all locations on this planet, a village where Jewish victims of the Nazi holocaust dwell was the only place to stage a march. It would be good policy in the minds of some to have forbidden that march, just as it would be good policy in the minds of some to have the government determine whether broadcast journalists have been fair.

But in each of these instances, the first amendment acts as a shield. It compels government regulators to stand aside, in spite of our good intentions, to allow the multiplicity of voices to continue unabated. It is times such as these that we do well to bear in mind Judge Hand's observation. "To many this is, and always will be, folly" he said, "but we have staked upon it our all."

5. See Collin v. Smith, 578 F.2d 1197 (7th Cir.), cert. denied, 439 U.S. 916 (1978)(Skokie ordinance making it a misdemeanor to disseminate material promoting and inciting racial or religious hatred struck down as unconstitutional).
Securing the rights guaranteed under the first amendment to the press in this country has never been an easy job. It took a successful revolutionary war. It took adoption of a most remarkable document in the history of the written word, the U.S. Constitution. And it took ten years more of protracted political debate to adopt and ratify the Bill of Rights.

Those first ten amendments to the Constitution were considered essential by men, giants really, such as Thomas Jefferson and James Madison.

The words of the first amendment stand as a clear prohibition on Congressional action: Congress, it reads, shall make no law. Yet only seven years after passage of the first amendment, Congress passed the Alien and Sedition Acts. Mathew Lyon of Vermont, a Revolutionary War veteran, was tried and imprisoned for writing a letter to the Vermont Journal criticizing the administration of President John Adams. Newspaper publishers in several states were imprisoned under the Act for editorials in political opposition to the Adams administration. Fortunately, public outrage at these prosecutions led in part to the election of Thomas Jefferson as President and the expiration of the Acts in 1801.

To much of the public, I'm afraid, there is a perception that this is all history. Some believe that the Congress would not now pass, nor the courts sustain, any law which abridged the freedom of the press. But I would remind those of you in the media that it was not until 1925, 57 years after the ratification of the 14th Amendment, that the U.S. Supreme Court extended first amendment protection to abuses by state and local governments. About that same time a new phenomenon, destined to revolutionize the expression of ideas, was taking its first tentative steps into the world of journalism. I'm speaking, of course, of the electronic media.

This revolutionary new technology enabled us to relay news, entertainment, and information from anywhere in the world, almost instantaneously. But with the new technology came new regulation, by the Federal Communications Commission.

Since 1927, the government has authorized broadcast stations under the "public interest" standard. Over the years, the stan-
standard, borrowed from statutes regulating freight cars in the 19th century, has been fleshed out by the courts and the FCC.

What emerged was what I call a "trusteeship" approach to broadcast regulation. In exchange for the opportunity to operate exclusively on a frequency, broadcasters were expected to demonstrate a level of public service that had not previously been imposed on a mass medium of communications. The result, as many of you know, was a tradeoff. In exchange for the license, promises were made to carry news and public affairs programs and to fulfill community service obligations. Licensees could also expect, and received, a protectionist approach to competition from new technologies like cable.

As Chairman, I have urged the Commission to move away from this trusteeship concept. Under it, the Commission made rules dictating how the broadcaster was to serve the community. Instead I advocate a marketplace approach. Under it, the Commission will defer to a broadcaster's judgment about how best to compete for viewers and listeners, and how best to attract and sustain the public's interest. Under this rationale, the public's interest defines the public interest in broadcasting. It is measured by the success and failure of stations in the marketplace, their programs and their schedules, one against the other, as well as against competing technologies.

I favor this approach because I do not find that the reasons articulated to justify different treatment of broadcasters from other members of the press sufficient to sustain the trusteeship obligations. The arguments offered to sustain the past regime — the so-called scarcity of outlets as well as the impact of broadcasting — neither of these rationales to my mind justifies a system where the government tries to tell broadcasters what the people want or, what the people should want.

Not only is there no affirmative reason to regulate broadcasting as we have in the past; but I find a strong prohibition in the first amendment to the type of program content regulation that characterizes some FCC handiwork. The time has come — indeed time is overdue — for the government to recognize that broadcasters are entitled to the same first amendment treatment given to other media, from newspapers to movies, from paper back novels to T-shirts.

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We should refrain from telling stations, radio or television, what balance to draw between entertainment and information
services, how and when advertising should be sprinkled among the program mix, or what is or is not suitable for viewing by the whole family. These decisions properly belong to the broadcaster, just as the comparable decisions belong to the newspaper editor, motion picture exhibitor, bookstore owner, even the fellow selling imprinted T-shirts at the Texas Tech bookstore.

We may not like what we see all the time and we may not always be able to obtain what we want. But from colonial days until 1927, we relied on the market to sort out what was offered by the press. Whatever the virtues and vices of past broadcast regulation, the future should insure broadcasters the same editorial freedom enjoyed by other media — the freedom to achieve or fail, the freedom to upset or amuse, the freedom to tantalize or bore, the freedom to dismay or inspire.

Thomas Paine observed two types of individuals in the American Revolution. He criticized those whom he called summer soldiers and sunshine patriots — those who wanted the rewards of freedom, but were unwilling to make the sacrifices necessary to secure them. I am afraid that some of us may be summer soldiers and sunshine patriots when it comes to extending full first amendment rights to broadcasters. I hope more of us join the other type, the true patriot, whom Paine praised for a greater sacrifice.

There are very few friends of a free press in the world. Year by year those countries which enjoy a free press grow fewer in number. Because a free press is the deadliest enemy of tyranny, it is the first target of tyrannical governments everywhere. Among the first actions taken by the Polish government in trying to crush the Solidarity movement was seizure of news transmission facilities. Indeed, there is a very dangerous movement afoot by certain Third World and Communist bloc nations in UNESCO to license journalists and restrict further the free flow of information. It has been used by the government of Nicaragua to justify shutting down the newspaper La Prensa five times in 1981 for stories critical of their government’s economic policy.

But Congress must come to the realization that it is philosophically inconsistent to demand full press freedom abroad while at the same time denying broadcasters full first amendment rights through imposition of the Fairness Doctrine and the equal time provision. It is time to repeal them.
Address Before National Association of Broadcasters
April 7, 1982
Dallas, Texas

There's another, crucial reason for the FCC to get out of the content regulation business. It's found in the first part of the Bill of Rights to our Constitution and by now is probably familiar to everyone attending this convention. The first amendment to the Constitution says "Congress shall make no law . . . abridging the freedom of speech, or of the press."

"No law" wrote those who had fought the tyranny of the British. "No law" said those who had sought refuge from religious persecution in Europe. "No law" cried those who saw their businesses taxed beyond endurance. "No law" spoke those calmly but deliberately as they turned a people's revolution into a democratic evolution.

The first amendment is ally to the weak and powerless. Take the case of David Brown of Massachusetts. He was prosecuted under the Alien and Sedition Acts used by the Federalists against their opponents. What was Mr. Brown's crime? He erected a liberty pole, the 18th century's version of imprinted T-shirts, with slogans that opposed these Acts. "Sedition" claimed the government. His other crime? Brown said it was wrong that "a few men should possess the whole country and that the rest be tenants to the others." For these acts of political dissent, Brown was jailed for two years.

By 1801 the Alien and Sedition Acts had expired. But the tendency toward censorship in one form or another had not. From suppression of speakers and newspapers during the War of 1812, the Civil War, and the First World War, to local and state film censorship boards of the 20th century, we see the contradiction time and again: A government founded by dissenters, a government that discourages or punishes unpopular speech.

When it came to radio and television, the government too often chose to control speech rather than champion the speaker. "No law" said the framers of our constitution. And yet tying renewal of a broadcast license to this percentage of news or that percentage of public affairs, enforcing a doctrine that allows the government to dictate what is reasonable in balancing controversial issues, treating political speech in one medium altogether differently from another — these regulations,
whether benign in enforcement or earnest in intent, are at odds with the first amendment.

The simple fact is, no newspaper and no magazine is subject to second-guessing by a government agency when it comes to fairness. No newspaper and no magazine is forced to sell the same number of column inches to all candidates, with their printing presses taken away if they don’t. It’s one thing for stations to follow principles like fairness or equal time. I call that not only sensible but good business. It’s another when the government enforces those rules. That... I call censorship.

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The right to broadcast as you see fit without the government telling you what you can carry — this is what the fight is all about. Some of you are involved on the cutting edge of controversial speech. All of you are involved in the industry of communicating ideas and expression. The freedom to call it the way you see it, to carry programs that you choose, not because government tells you, is a fundamental right.

No other nation on earth enjoys the freedom of expression that the first amendment guarantees to us. Whether from the right or the left, governments in other countries sometimes tamper with radio and television in order to further political ends. In this country the tradition is different.

It’s a tradition worth keeping as a beacon of hope to those who despair in the shadows of tyranny. It’s a tradition worth preserving for ourselves and future generations. To realize the fullness of life, you have to have the freedom to express yourself directly and have exposure to new ideas.

The people in Krakow, and Gdansk, and Warsaw know this. A year ago the freedoms we take as a matter of course were on their way to the people of Poland. But the freedom that Solidarity gradually kindled was snuffed out in the dead of midnight. A knock at the door, the closing of meeting places, destruction of newspapers and books... the handiwork of totalitarians is familiar to everybody in this room. We can send the people of Poland our food. We can send clothing. But we can also send them a message about what freedom is, and why they should never be afraid to strive for it.

What will you do to preserve this freedom? How will you build upon what we at the FCC have done? I was disappointed when I talked to one broadcaster who said that he was happy to see us fight for full first amendment protection for broadcast-
ers. Why, I asked? Because he said, smiling, he could then avoid the lowest unit charge rule.

Let me make it clear to the broadcaster: that is not why first amendment rights are a priority of my watch as Chairman. A few [broadcasters] in this room see this issue as an expedient way to evade responsibilities. That, of course, is their choice. But I know I am not alone in feeling a little sorry for them. They have lost the vision of what it means to be a broadcaster, a business that deals in ideas and expressions.

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When you return home, think about what you have in common with your film exhibitors and newspapers editors. Consider the ways you can aid each other. When a judge illegally excludes a reporter from a hearing, when vigilantes team up with a city council to run a controversial film out of town, when a newspaper is denied access to the mayor’s office because it editorializes against its policies — when those actions occur, the first amendment is in trouble. Freedom means standing up for the freedom to express the unpopular, the controversial. When the call goes out for legal defense or a show of support, where will you be?

The future of broadcasting lies with the programming offered to the public. By aligning yourself with the first amendment today, you invest in programming freedom for tomorrow.

John Adams once sent a letter to Thomas Jefferson. Adams wrote, “When people talk of the freedom of writing, speaking or thinking I cannot choose but to laugh. No such thing ever existed. No such thing now exists; but I hope it will exist. But it must be hundreds of years after you and I shall write and speak no more.”

Well, it’s time — in fact, time is overdue — to make good on this promise of freedom, in broadcasting as well as print.

Adams and Jefferson knew that it was plainly wrong for the government to deny this promise of freedom. So do I.

“No law,” wrote the authors of the first amendment. What a milestone in the progress of mankind. It expresses the limits of a government over the destiny of a free people. It is our birthright, and it is our charge, our privilege and our responsibility. Let us remind the people of the world, let us remind ourselves, when it comes to government and the right of people to express
themselves, the law is clear, the law is simple, the law is sure. The law is: "No Law."

Address Before the Radio Television News Directors Association: “Full First Amendment Rights for Broadcasters? Yes!”
October 1, 1982
Las Vegas, Nevada

To those who had endured and fought the tyranny of unyielding government oppression, the protections of the Bill of Rights were no idle afterthought. Following the ratification of the Constitution, the First Congress, by two-thirds vote of both houses, adopted the first ten amendments to the Constitution. After two years of exhaustive debate by the legislatures of the thirteen original states, they were ratified.

The debate over the first amendment pitted many of the greatest minds in our nation’s history in an examination of what powers the government should have. Alexander Hamilton doubted the need for a Constitutional protection of the press. He believed that since the Congress had been given no such power in the Constitution, it certainly would never attempt to use it.

James Madison, a more acute, perhaps cynical, observer of human and government behavior, strongly believed that specific restraints had to be included. In a letter to Thomas Jefferson he warned it was wrong to assume that individual rights would always be protected where a majority rule prevailed. “Wherever the real power in a government lies,” he said, “there is the danger of oppression. In our government, the real power lies in the majority of the community. The invasion of private rights is chiefly to be apprehended [when] . . . the government is the mere instrument of the major number of the Constituents.”

In other words, freedom of speech and press could be limited to those who held power and denied those who were powerless. It was the tyranny of the majority over the silent, and silenced minority, that concerned Madison. History quickly was to prove Madison right and Hamilton wrong.

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Since that time, the history of the first amendment has been a history of struggle — a struggle by groups, a struggle by individuals, a struggle by members of the press — to resist government encroachment of their rights. . . .
Out of those times... we've come around to full first amendment protection for the print media and for films. But the rights of radio and television began and remain retarded from a first amendment standpoint. While courts talked about broadcasting being "different," what they were really saying was that broadcasting was protected less.

It may surprise some of you to know that the first time the United States Supreme Court looked at the question of radio and the first amendment was in a 1943 case called *NBC v. United States.* The issue in this case was whether the FCC could impose restrictions on networks — chain broadcasters as they were known in those days. The Court said it could. Writing for the Court, Justice Felix Frankfurter concluded without much argument that the first amendment rights of broadcasters were not violated by these trustee-like regulations.

He declared that the FCC was not merely a traffic cop but was required to determine, as the Court put it, "the composition of the traffic." It was a clever turn of phrase, but one which conceals a radical and, taken to its logical end, authoritarian approach to media regulation.

I believe it's the wrong approach.

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In life, one receives many guarantees. Some are given orally, say, those for automobiles that seem to break down the moment you leave the showroom floor. About oral promises Sam Goldwyn observed, "They're as good as the paper they're written on."

Other guarantees remain valid even beyond their terms, like the unspoken ones that accompany a trusty old tool. The first amendment is one guarantee that is timeless and timely, as valid in the 18th century as it will be in the 21st century.

The founding fathers committed this guarantee in writing. It's kept on display every day in Washington at the National Archives. Next time you're in town, take a look at it... for it's yours, too, or at least it's supposed to be. I say it's time to make good on that guarantee.

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September 24, 1985
New York, New York

We need a print model for broadcasting — what goes for newspapers goes for radio and TV: no more, no less.

I’ve spent much of my time, on college campuses and congressional cloakrooms, trying to make the point that the first amendment didn’t expire with the printing press. Freedom from government intrusion over what to say, and how to say it, has the same relevance for Peter Jennings as for John Peter Zenger. The government’s got no business telling editors or reporters, general managers or talk show hosts what’s unfair or what’s offensive. The public has a very good way of dealing with this. It’s called changing the station.

That’s how the first amendment works. So whether it comes in the form of censorship of entertainment shows that touch on touchy subjects or in prosecutions under the Fairness Doctrine, I said — and I’m still saying — get government out of the news room.

IV
The Fairness Doctrine and Spectrum Scarcity

Address to Radford University
April 8, 1986
Radford, Virginia

Let me spend a few minutes discussing the Fairness Doctrine. First, what is it? The Fairness Doctrine requires that broadcasters provide coverage of controversial issues of public importance. When doing so they must afford reasonable opportunities for contrasting viewpoints on those issues.

Sounds fair enough, doesn’t it? After all, controversy is what the news business is all about. And covering two sides of an issue is what fairness is all about.

But it’s one thing for the editor of a newspaper or the producer of the six o’clock report to decide what’s news and how much coverage to give to one side of an issue. It’s another for a group of politically appointed commissioners in Washington to be making that decision. The first is good journalism. The second is, inevitably, government censorship.
Last year, in a comprehensive study of the history and effects of the Fairness Doctrine, the Federal Communications Commission concluded\(^7\) that the doctrine was the wrong way to ensure the public access to diverse viewpoints on controversial issues. Rather than there being a "scarcity" of information sources to justify the government second guessing broadcasters, we found the public has scores of outlets. From magazines to broadcasting, from direct mail to newspapers, people hear a diversity of viewpoints and attitudes. And if that weren't enough, I suspect most of the students in attendance can identify two or three dorm blabbermouths who will tell you their opinion on anything — especially when you don't ask!

But many would still have government continue to enforce the Fairness Doctrine. They insist it works, even though the government-ordered "correction" comes sometimes years after the initial, supposedly unfair, broadcast. And despite the world of outlooks and opinions surrounding the output of a single radio or television signal, they think that the Doctrine alone guarantees that the public gets a balanced outlook on things.

It's foolish, of course. Worse, it suggests something about those who want to continue to enforce the Doctrine. Their purpose is plain. They say keep licensing the content of one segment of an ever expanding electronic press. They assume the common man is too dimwitted to discern the truth among diverse voices, fair and unfair, moderate and extreme.

Well, I don't agree. The American people have been well served by newspapers for more than 200 years, with no Fairness Doctrine for print, no Federal Newspaper Commission.

If this were just a matter of chit-chat among press-law buffs, maybe I wouldn't be so uncompromising about getting rid of the Doctrine. But it's not. The Fairness Doctrine can hurt.

As the FCC report makes clear,\(^8\) instead of enhancing the discussion of controversial issues, the Doctrine "chills" speech. It puts a lot of tough stories in the deep freeze. Our record is replete with examples from stations, large and small, that told of their fear of government punishment if their coverage of a controversial issue missed the FCC's mark for fairness.

Broadcasters decide it was "safer" not to carry programs on controversial issues. Why cover the nuclear arms race, reli-

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\(^8\) Id.
gious cults, municipal salaries, or other matters of concern, and risk losing your license? When a lawsuit can cost thousands of dollars in legal fees and many times more in lost staff time, why take the risk?

What happens is that broadcasters don't — they don't as a matter of institutional policy. And they are wary of letting anyone else do so on their frequency, either. Maybe you've heard about W. R. Grace & Co.'s current controversial TV ad about the risks of high deficits. On second thought, forget it. Look but you will not find: the networks are reluctant to run it.

Those with a controversial message — whether it's about abortion, the national debt or atomic power — are told they can't buy time. That's not more speech. That's silencing the dissident voice. But the first amendment teaches that the remedy for "unfair" speech is not to censor or regulate it, but to foster more speech.

Address Before National Religious Broadcasters
February 9, 1982

The more potent and influential the medium, the more urgent the need to reduce government control mechanisms. In the past, regulation of radio and television has been justified on the theory of "spectrum scarcity." But as I have said before: "Spectrum scarcity has been used as an excuse to regulate, not a reason!" The technical theory was employed as a camouflage, a coverup, if you will, to justify a dubious social theory. The electronic media, in my view, should be as free, journalistically and creatively, as any other form of expression. The rest is simply a complex rationalization to maintain government power and control over the flow of information and to assure that the information is "socially correct" in the eyes of certain behavioral engineers. This FCC would like to reverse that flow and put the power back in the hands of the governed rather than the government — right where our forefathers intended it.

Remarks Before the Oregon Association of Broadcasters
June 12, 1981
Newport, Oregon

The most widely expressed theory for pervasive broadcast regulation is "spectrum scarcity." Employing the indisputable physical fact that the frequencies available for broadcasting are
limited, it was argued that regulation is required because of limited entry. As some put it, "not everybody who wants to broadcast can broadcast."

But let us examine that theory more closely: how is entry into broadcasting any more limited than entry into other commercial enterprises? The fact is that anybody who has the capital and the drive will get into broadcasting the way most people get into any business, the way many of you entered: they can buy in. It takes the same resources to get into broadcasting that it takes to launch any business — imagination, capital, and entrepreneurial courage. The scarcity argument may have had more weight when there were only a few hundred broadcast stations servicing the whole nation. But it has little validity today.

The FCC's Radio Deregulation decision\(^9\) recognized this situation in rejecting the scarcity argument for the AM and FM services. The same basic premises that led to the recent decision to begin deregulation of radio also apply to television. In addition to the new UHF stations, broadband technologies like cable and other video services dramatically have undermined the case for regulating in the name of scarcity. Regulating over-the-air broadcasters on the premise that an audience can get programming only from the one source, when the audience has literally dozens of video options, broadcast and nonbroadcast alike, is like stringing buoys in a fish pond to keep the trout from swimming from one end to the other.

Remarks Before the American Association of Advertising Agencies, Inc.
October 26, 1981
Washington, D.C.

I believe strongly that the historical justification used to explain the government's involvement with broadcasting no longer can sustain that involvement. Scarcity — that is, the shortage in the number of channels available for broadcast use — is usually touted as the basis for Big Brother in broadcasting. But this scarcity is often the result of a shortage of advertising revenues, not of spectrum space.

And as Judge David Bazelon succinctly put it, we must ask, scarcity compared to what? No doubt, you have observed that Washington has but one daily newspaper. If the TV in your hotel room is working, you know that we have 4 VHF stations and 4 UHF stations along with scores of radio outlets. No one would seriously claim that the kind of licensing regime imposed on broadcasters would be allowable for newspaper publishers. And yet things are altogether scarcer when it comes to newsprint rather than electron beams.

So, in addition to the need to scale back government to a reasonable size and an affordable price, we who toil in the communications vineyard have a constitutional incentive to remove regulatory weeds and policy brambles that offend the first amendment rights of broadcasters. I do not endorse this principle because I myself am a former broadcaster, although I am one, or because I represented small and medium-sized broadcast stations as an attorney, although I did. In fact, the Commission has not abused its licensing powers in the past . . . and I do not believe that you will find a smoking gun in our records suggesting flagrant censorship. But now is the time to endorse the principle of freedom of broadcast speech. I believe that the Constitution does not allow government to step one inch farther than vitally necessary when matters of free speech are involved. The communications laws, as they are on the books, do just that.

As some of you know, the Commission last month sent to Congress its recommendation to remove the Fairness Doctrine and equal time provisions from the Communications Act. I would urge the 4As to consider speaking out in favor of this position. You have much to say when freedom of expression is at issue.

Think for a moment about your luncheon speaker’s presence on the pages of the Post and Newsweek. The salient point is that George Will’s column and Jack Anderson’s and Carl Rowan’s, to name but a few, appear in these publications without the benefit of a federal law requiring them to do so. Some complain that the deregulatory program at the Federal Communications Commission — moving along briskly apace, thank you — will leave broadcasters free to eliminate news and public

11. I.e., American Association of Advertising Agencies, Inc.
affairs programs. But this is like arguing that if Congress passed a law requiring newspapers to print news and then repealed it, there'd be nothing but comic strips, sports, and features.

If the FCC were to close shop this very night, broadcasters would still have an incentive to carry program news and public affairs for the same reason that the Washington Post, Time and other publications in this country do — because there is market for the product. The FCC does not force CBS to broadcast "60 Minutes" nor does it mandate that its advertising rates be among the highest in television. The FCC is not behind the networks' current clamor for an additional half hour of evening news. The networks are aware of the unfailing formula for success in a free economy. It is an elementary formula that this audience knows well: Find an unserved need in the market, and fill it.

The growing awareness of first amendment rights in just the last decade has vitally affected the advertising community. Starting with the Bigelow decision in 1975, the Supreme Court has recognized that arbitrary lines between "commercial" and "noncommercial" speech have no place in the grammar of the first amendment, and that businesses have rights to free speech, too. A broadcasting environment as free as the printed media can be important to advertisers seeking to talk about issues in ways that broadcasters today fear might get them into trouble — or expensive litigation — with the FCC. We need a freedom over the airwaves as robust as the freedom that accompanies paper and ink.

Let me add that my enthusiasm on this score does not stem from a desire to allow only those with the deepest pockets to address issues of public importance. Parity between broadcast and print journalists can mean a freer environment for investigative news reports, for station editorials, for documentaries. And those who might use a big media budget to shoot off a big mouth will probably find themselves greeted by the click, click, click of TV sets turning to another channel. As you in the advertising business know, the public has an uncanny knack to derail products or services they don't like. I have faith that, whatever the shortcomings of the American democracy, its

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people can make up their own mind about what to believe or not believe, what to listen to or not listen to.

V
The Spectrum User Fee
Address Before the Radio Television News Directors Association:
“Full First Amendment Rights for Broadcasters? Yes!”
October 1, 1982
Las Vegas, Nevada

Red Lion\textsuperscript{13} relied on the supposed scarcity of broadcasting frequencies to justify regulation. But as those of you from smaller and mid sized markets know, there are channels available even under today’s allocation tables that lie unclaimed for lack of a taker. In those markets, it’s foolish to talk about scarcity.

Any of us could walk out of this room and apply for these stations, assuming there was capital to support a new venture. Typically there is insufficient advertising or other revenues to support an additional outlet in these markets. That reason, not some shortage of ether, is the real reason why there are fewer stations in smaller markets than otherwise might be.

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One proposal that I have advanced to “break the ice” in deregulation discussions is to consider adoption of a modest spectrum user fee by Congress. This user fee would be imposed not alone on broadcasters, but on all users of the spectrum. Such a fee would be consistent with other user fees being applied to various government services, from airport landing fees to waterway patrols. The fee would also take into account some of the value of the channel exclusivity that the government grants spectrum users.

Now, broadcast deregulation is overdue whether or not a fee is imposed. But some feel that a modest fee is a fair return to the public for grant of a channel exclusivity. If adopted by Congress in connection with deregulation, the fee would replace the old \textit{quid for quo} under the trustee regime — content regulation and other “taxation by regulation” in exchange for a likelihood of license renewal.

Should Congress deem it appropriate to impose a user fee, it

might also consider applying this fee to support public radio and television. This support dovetails with a deregulated broadcast environment. For as we move away from content oriented rules for commercial broadcasters, there may remain program needs that the marketplace fails to meet. Children's programming and long form radio news are two examples that some feel are in too short supply in the commercial arena. The recent demise of CBS Cable suggests that marketplace mechanisms may not yet be in place to provide high cultural fare, at least on an advertiser-supported basis.

User fees collected from broadcasters and other spectrum users could be used to support these types of programs. To my mind, the situation is similar to the National Park concessionaire who pays a fee to the National Park Service for the right to run a park restaurant. That fee is used to support other worthwhile park activities that might otherwise not be provided in the marketplace, from nature trails to campfire programs.

Now, the park ranger doesn't tell the concessionaire how much syrup to put into the soft drinks or the composition of hamburgers (or the frankfurters for that matter). In fact, he doesn't say whether it should be hamburger, or quiche, or nature nuts. He leaves that to the marketplace.

So, in broadcasting, it's time for the FCC to get out of the business of telling you about the content of your business. Let you and your audiences decide that. It wasn't the FCC that created the increase in network news over the last year. It wasn't the FCC that made audiences increasingly turn to programs like "60 Minutes," "Good Morning America" or "NBC Overnight." It was the broadcaster meeting needs — in this case information needs — of the marketplace and responding to them in creative, interesting, or even peculiar ways.

So I ask you to join us in Washington to get the job done — to bring full first amendment rights to broadcasters. Consideration by Congress of a user fee may be the nudge that opens a window of opportunity.

Deregulation makes sense on its own terms. Public broadcasting makes sense on its own terms. The user fee may make sense on its own terms.

But by combining these three concepts there could develop a

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14. See infra section VI (detailed discussion of Children's Television in the context of Content Regulation).
system of broadcast regulation that best serves the American people. We would have a system that leaves you free absolutely to do what you do best — report, edit, criticize, extol, or simply kibbutz.

Speech Before the National Radio Broadcasters Association
September 13, 1982
Reno, Nevada

This past summer, your organization made big news by proposing to Congress a broad deregulatory scheme and a modest spectrum fee as part of the overall package. Coincidentally, this past summer, my legal assistant Dan Brenner and I published an article in the Texas Law Review which, among other things, took a look at spectrum fees and their relation to a marketplace approach.

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Frankly, I think [spectrum fees] deserve a close look by anyone concerned with deregulating broadcasting. That includes Congress and the industry itself. Radio broadcasters — indeed spectrum users generally — receive an exclusivity from the government when a license is granted. Now, I realize not all exclusivities are necessarily valuable. For example, there are portions of the electromagnetic spectrum unused today and, for all purposes we know of today, unusable. Granting, say, an exclusivity at twenty-five megahertz does not transfer any great wealth from the government to licensees — at least not today. Nor does exclusivity guarantee instant wealth or even long term success.

However, it's clear that the exclusivity that radio stations get from us does often take on great value in the marketplace. And so in the minds of some, it seems fair that the government be given something in return for this exclusivity.

In the past, this exchange consisted of promises about programming or other forms of good citizenship. But these Dudley Do-Right pledges had very little to do with what a community actually wanted to listen to. These trusteeship promises were vague, lacking in logic, and from a first amendment standpoint, constitutionally suspect.

In the future, this passel of promises could be replaced by a spectrum use fee. As your organization has suggested, fees could be based on a modest percentage of gross revenues. These fees could in turn be used to support FCC licensing and enforcement activities. Moreover, such a fee should apply to all spectrum users, not just broadcasters. This way, all users, from cable TVs microwave hops to holders of industrial frequencies, would share the risks and rewards of spectrum usage, and the fee from any one user would be much smaller.

What else could the fee be used for? One possibility would be to earmark these fees for nonprofit spectrum activity. By this I mean public radio and television, whose programming mission could supplement, not duplicate, the offerings of commercial broadcasters. Whether it’s educational children’s programming or long-form radio news programs, there’s a job for public broadcasting to do in a deregulated environment.

A spectrum fee won’t solve all the problems of public broadcasters — it wouldn’t even cover all of their program expenses. But a viable public broadcasting system would fill in gaps left by the commercial system, as those gaps develop. It’s certainly one solution to the financial plight of public radio and public TV that ought to be looked at.

I applaud the NRBA for having the wisdom, not to mention the guts, to propose a spectrum fee. As we look for a way out of the morass of outdated trustee-like obligations that have been part and parcel of broadcast regulation, a spectrum fee is one that is clear cut, and one that many feel is the fair alternative.

But, we who are regulators must remember that a spectrum fee approach can be abused. Excessive fees, or fees not related to revenues, can discourage marketplace activity rather than encourage it. This would contradict the whole purpose behind the marketplace approach and the institution of a fee. But a fee carefully tailored to the realities of the broadcasting business is certainly manageable and affordable.

VI

Content Regulation

Remarks In North Carolina
May 14, 1982

In the broadcasting field, my goal is to remove restrictions on what the public can see and hear so that the American people
can watch, and listen to, the programs they want — not what the government says it must have! That does not mean obscene programs will be allowed. There are criminal laws against putting such materials on the air. But if the American people want more sports — or more movies — or more comedies — or more news — or even, Senators, more political debates — that choice should be up to the people, not the FCC.

Address Before the Academy of Television Arts and Sciences:
"The FCC, Hollywood and the Blank Generation"
January 15, 1982
Los Angeles, California

For many in the creative community, working on projects for television as opposed to motion pictures requires a different artistic approach. I doubt that your different approach was based on a fear of what might happen if the FCC caught wind of your idea. More likely it is the result of deciding what is appropriate for a mass appeal, home-based medium with a commingled child and adult audience. But to the extent that you have been frightened into an excess of caution because of what the FCC might do, let me say here and now, and on a plot of land where jungle tribes and spacemen and dinosaurs of Hollywood’s past once roamed, that the FCC wants to get out of your way and stay out of your way as you explore the limits of creativity in video.

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With your indulgence, I will take a few minutes to engage in a bit of armchair speculation. In doing so, let me again stress that I do not believe it is my job as FCC Chairman to tell you which programs to air or not to air. But because we are all interested in television here today, I cannot but observe that reaching the new emerging audience is a most formidable challenge.

Young people — and some not so young people — are turning to alternative uses of television receivers, such as computer terminals and Astro Smash gameboards, not to mention Pac-Man (available later this spring). The medium itself has a significance distinct from the content it used to carry. This observation was made, if somewhat prematurely and rather obscurely, by Marshall McLuhan in the 1960s. But we are witnessing new forms of television which have little to do with the traditional storytelling and information activities that have characterized
its last 30 years. Whether it be video games, the Weather Channel, or the unpredictable access channels, television's content is changing. So is its audience.

The generation of post-Vietnam youth has been described as the "blank generation." This group was recently profiled this way: "No moral lesson, no messages, no political outcry, no personal plea, no artistic slogan — nothing is insisted on and the voice is never raised. Indeed, this is a world governed by style alone and that style's strongest injunction is: Never say or do anything embarrassing."

Some would liken this blank generation to those who grew up in the 1950s, quiescent, with aspirations that pointed ever upward. But today's predicament is quite different. In terms of experience, there can be no avoiding the fact that, far from dewy-eyed innocence, teenagers in this country probably know more about drugs and sex than their parents and have far readier access to both.

In a material sense, the next generation of Americans cannot count on achieving what their parents had, let alone surpassing them. From the extinction of the slide rule to the ascendancy of high school courses in psychology, the pathways of growing up in America have become harder to discern.

What emerges in some circles, then, is immobility. Armed with more options, greater technology, the blank generation is caught in a freeze. They ask, what career should I pursue, told by those in the job market that an undergraduate degree is of minimal relevance. What lifestyle should I strive for, in a world where the Harriett Nelsons and June Cleavers have been supplemented by single parent homes led by working mothers. So, this blank generation leaps from style to style, last year's designer jeans are replaced by this year's preppy ensemble. The authentic sounds of the young may be as present in the angry, morose lyrics of new wave musicians as in traditional voices. Talk to a teenager. See what they have to say about their prospects. I find this situation ironic and distressing because I believe that under the President's leadership this country is now poised for greater opportunities for individual achievement in an atmosphere of greater individual freedom.

Generalizations about any generation are always hazardous, but this new generation of Americans possesses an austere vision. And when I think about the problems that young people face in this country, and I consider my position of responsibil-
ity, I am tempted to depart from my principles of staying out of the content regulation business. For I have eyes that can see and ears that can listen and a heart that can break when I read that members of this blank generation find their futures so bleak. No less am I dismayed when I hear about increases in serious drug abuse and teenage suicide.

I do not know what the magic of television can do to help or even if it can help in these matters. Nor do I know if television programming in this country has contributed to the predicament. What I can do, as a responsible public servant, is to clear the regulatory thicket for those who can thoughtfully address these issues of public importance, either in dramatic or informational ways. And I can encourage new outlets so that more voices, rather than fewer voices, are heard. I believe this is what a conscientious broadcast regulator should do — put aside his or her own personal judgments about what is good, true or beautiful and work hard to insure that creative commitments to these concerns have the best possible opportunity to get on the air.

There are those, from all shades of the political spectrum, who would have it otherwise. Parents and educators decry the level of violence in some programs and ask us to intervene. Religious groups condemn the depiction of unpopular or controversial ideas and ask us to intervene.

But I favor alternatives to having the heavy hand of government step in. Supervision of a child’s viewing habits is of the essence of good parenting. Adults who find programs offensive have the option of turning the set off — pulling the plug. Through negotiation, protest, and boycott, concerned groups can and have let programmers and advertisers know what they think.

Address before Arizona State University: “Children’s Television And The FCC”
February 11, 1983
Tempe, Arizona

Upon assuming Chairmanship of the FCC in 1981, I decided to end government by raised eyebrow. I did not want to be in the business of sending signals, however discreetly, to promote programming that I might personally feel valuable.

This is not because I am a Scrooge, or don’t care about children, or don’t care about children’s television. These are im-
important to me. The Fowler family has not been spared the brunt of the cultural and social upheavals of the last ten years. I know, first hand, what it means to try to raise children in the 1980s in a household where both parents work. I... know that if we are to have a sensible policy for television regulation in the next fifty years, we have to start undoing the myths of the past system. Foremost among those myths was the trusteeship concept of regulation where eyebrows were raised and signals were sent. I want to end official sanctioning of internal subsidies behind broadcast regulation.

I want an era of true competition among different video technologies to allow broadcasters to compete freely with other technologies. These reforms cannot come about by continuing to insist, however compelling the perceived need, that broadcast our regulatory hoops, hoops labeled news and public affairs, hoops labeled children’s television.

By taking this stance, I know that there may be risks, particularly for that vulnerable group of viewers known as children. As I noted, some long established programs have been cancelled. Few new undertakings have been launched by the commercial networks. But if we are truly to bring sensible regulation into the broadcast industry, to treat broadcasters on the same level as print journalists, to end for all time government censorship of program content and so honor the first amendment, then we can raise our eyebrows at these program decisions no longer.

When there is a decline in children’s programming in over-the-air television, the reason is no mystery. Given available programming choices at a particular hour and a set number of channels in a market, other programs may be more profitable or more popular. I don’t believe that the FCC should second guess those judgments, for we have no way of ourselves arriving at the right answer. Pay cable on multi-channel systems can eliminate part of this problem, because a small but intense demand can be met on an unused channel. Just as a child’s book department doesn’t crowd out adult offerings, wide-band cable has room for many tastes.

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I believe it is incumbent on those who care about children’s programming, and I include myself among those, to advocate a sufficient budget for public broadcasting to help meet the needs of the child audience. Public broadcasting has an impressive
track record in children's programming, and it should be given further opportunity to fill gaps in the commercial sphere. I believe this is the prudent way to go, both from the standpoint of regulatory policy and from the first amendment.

Beyond this proposal, and this commitment, I am somewhat at a loss what it is that advocates of children's programming would have the Commission do. Would they have the FCC mandate a minimum number of hours for children's programs? If so, how much would be enough?

... Should we ban sales of syndicated situation comedies to create a haven for programs especially designed for young viewers? Are we to insist that networks commit a certain percentage of pre-tax profits to their children's programming divisions, lest their licensed stations be put in jeopardy?

I simply do not know what the FCC can do without violating the first amendment rights of broadcasters. In saying this, I do not wish to minimize the significance of children's programming. I do not wish to devalue the need in society to make the television experience valuable to our young.

But I think it's important to place the role of television in its proper perspective. Those whose sole mission in a public policy arena is the advocacy of more and better children's programs — an advocacy I welcome — sometimes lose this perspective. TV is only one piece of the child's total environment, an important piece, but still only one piece.

I reject the premise that TV watching is decisive in molding a child's attitudes, beliefs, values and behavior. Schools are likelier to influence the way a child grows and develops. The values taught by teachers and especially by classmates — from the sandbox to the playground to the chemistry lab — mold the world views of a child.

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And advocates of children's television seem to forget — or at least underestimate — the role of religion that becomes part of a child's identity. Some may think television is the end-all of the value structure for kids, but the inculcation of values through religion and family philosophy is a powerful force.

And most important in the development of a child are parents and family. Television has never held itself out as a replacement for parenting, nor can it. Those parents who abdicate responsibility to television as their electronic babysitter should not expect TV, or government, to right their wrong.
This phenomenon is not exclusively a problem of poor parents or even working parents but cuts across all types of families. Let us not blame television when the culprit is child neglect by a parent.

And bad parenting is no minor problem. Many kids are born into this world unloved, unwanted. What provokes the twelve year old runaway? Not boredom from silly cartoon shows; but disappointment from people who apparently excelled in bringing him into the world but show no interest in helping him through it. TV is no substitute for time spent with a child on homework or home life. Nor can it replace the need for parents to tell a child what they expect and for children to tell a mom or dad what they expect.

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To blame television for all the woes faced by young children today or to use it — or more accurately misuse it — as a caretaker for kids is, I submit, a cop-out. Time spent before the television should be endowed with quality. Television is but a small piece of the myriad potent influences which shape a child’s mind, heart and character; it’s no substitute for parenting. We shoot dangerously wide of the mark when we believe it is.

So let me be clear — I have no enthusiasm for mandated minimums when it comes to children’s programs. In fact, the Commission has never done this. In light of the first amendment, my own commitment to deregulation and the inescapable competition from new technologies, now is a particularly bad time to consider these obligations. The reality is that no broadcaster has ever had his license imperiled on a children’s programming issue, and I do not foresee starting up a new obstacle course.

So if I am asked, do broadcasters have a responsibility when it comes to the special child audience upon which their license renewals will depend, the answer, I think, should be no.

Do, however, broadcasters have a responsibility toward the child audience, as private enterprises dealing in a very public business? There, a different answer obtains.

For the operator of a family-oriented neighborhood theater, there is a responsibility.

For the author or publisher of a children’s book, there is a responsibility. So, too, for the broadcaster who enters the
Remarks Before The First Amendment Congress
May 20, 1982
Leesburg, Virginia

The issue was clearly joined: Was there a right of access for the public to commercial television? Or did the trusteeship concept for broadcasters mean something other than that? In 1973, the Supreme Court in *CBS, Inc. v. Democratic National Committee*\(^{17}\) ruled there was no right of access, but it was badly divided on the issue. Justice Douglas straightforwardly concluded radio and TV stand in the same position under the first amendment as newspapers and magazines. Justices Brennan and Marshall, dissenting, found that an absolute ban on controversial issues during advertising time was at odds with the first amendment.

The majority opinion concluded that broadcasters had the right to refuse to carry the ads. “For better or worse,” the Court said, “editing is what editors are for; and editing is selection and choice of material.”\(^{18}\)

I look to this decision not so much for what it says about the right of access, but for what it tells us about what’s protected by the first amendment. It’s not the right of a local station’s editorial that’s always at stake in a first amendment battle. The first amendment can also apply in broadcasting to matters of placement of one programming element against another, or the decision not to carry certain programming elements at all. These are subtle practices, but they are interests protected by the first amendment — the interest in expressing ideas or presenting information without the government telling you how to do it.

We can draw lessons from the dissent in *Kovacs*\(^{19}\) and the majority opinion in *CBS*, as we explore how the first amendment ought to apply in the 21st century. From *Kovacs* I draw this lesson: categorizing a technology for first amendment purposes is the wrong approach. Whether it be a sound truck or situation comedy, the first amendment doesn’t play favorites. Broadcasters and newspapers, sound trucks and Sunday supple-

\(^{17}\) 412 U.S. 94 (1973).
\(^{18}\) Id. at 124.
\(^{19}\) Kovacs v. Cooper, 336 U.S. 77 (1949).
ments — all are protected activity under the first amendment. All are entitled to extra protection from laws that regulate their content.

From the CBS case I discern this principle: Emphasize function over form. What the first amendment is concerned with is creative activity, editorial enterprise. Sometimes it's hard for lawyers and judges, who do not work in the media, to understand the differences between activities that bear on the editorial processes and those that don't. But that is the crucial difference — the thing that makes the first amendment come alive in a controversy.

This principle doesn't give carte blanche to a company just because it's part of the media. The Supreme Court has told us that newspapers can be subject to the antitrust laws without violating the first amendment. Activities that fall outside of editorial functions in any media do not trigger special protection.

First amendment questions arise with great momentum in the new technologies, some of which come under the FCC's jurisdiction. Consider cable television. Unlike a broadcast station, which is an integrated program supplier and distributor, small system operators — those with six and twelve channel systems — generally act as repeaters of over the air signals which they're required by federal regulation to carry. No editorial functions seem to be present. Labeling them as "electronic newspapers" doesn't change that.

On larger systems the issues are more complex. Some systems originate programs by producing them. These are the coaxial equivalents of broadcast activity. They deserve first amendment protection.

Other systems are in the business of brokering channels to pay cable networks or picking from among distant signals. Although they do not participate in the editorial makeup of these channels, they do determine which of the many competing services gets space. For example, cable systems have to decide which of the premium channels to carry — HBO, Showtime, The Movie Channel, or one of the other services, or one of their own devising. They have to decide whether to offer

a combination, and, if they offer one, in what order the offer will be made to subscribers.

While these decisions don't involve content directly, there are differences among these channels. And just as newspapers carry syndicated columns based on what readers want or need, a cable system operator takes communities into account in deciding what services to offer and how to offer them. This type of decision is clearly one with first amendment implications; "editing, after all, is what editors are for."

Finally, there are systems with channels available for leased or free public access. By definition, a system does not exercise control over content of these channels. But can a system be required to provide leased access channels if it claims that they impair its ability to offer premium channels? How many first amendment hats can cablecasters be expected to wear?

These seem to me to be questions based on function, not categorical generalizations. These are the types of questions we should be exploring in the days ahead. They've become especially important as the electronic and the printed press, in terms of technology, come together. The rights won or lost in this decade by broadcasters will be the rights inherited by broadband communicators.

VII
The Breakup of American Telephone & Telegraph
Remarks before the United States Independent Telephone Association
October 5, 1981
New Orleans, Louisiana

In 1930, only 41% of U.S. households had telephones. But there existed a company — AT&T — that appeared big enough and competent enough to transform the telephone from a luxury to a necessity. In exchange for a grant of monopoly power, the company's profits would be controlled by a combination of state and federal agencies. This prompted the second major social goal — reasonable prices. As a result, there has developed (with the aid of companies like yours) a reasonably priced, sophisticated single system available to more than 97% of our people. Along the way we developed convenient mechanisms to foster the social goals such as allowing revenues from business
service to subsidize residential service or allowing long distance service to subsidize local exchanges.

However, it is these very same social goals that must now be scrutinized through a different prism: the free market. Our regulatory superstructure has forestalled efficiency and competition, both of which are fueled by the incredible technology of the computer. It is time to reassess the way in which we meet those original goals.

But how can the Commission and other policy makers create the environment for the new to grow without disrupting the accomplishments of the past and present — developed by you? How can we allow new entrepreneurs to try their hand while not disadvantaging those established and experienced service providers in their effort to innovate and continue to offer service to the public?

Address Before the Infotel '82 Conference
March 30, 1982
Washington, D.C.

As I sat in my office on January 8th and was briefed on the proposed agreement reached between the Department of Justice and the Bell System,21 I had an almost surrealistic sense of history occurring. The players involved in running the central nervous system of the most powerful country on earth were suggesting some radical changes. To a man who grew up with the "System is the Solution," I was suddenly hearing "Reach Out and Interconnect Someone."

My first reaction was, what does this mean? My second reaction was that I should have taken one more antitrust course in law school. My third reaction was that Gary Epstein, our Common Carrier Bureau Chief, is going to demand combat pay.

Actually, I was pleased that a settlement occurred during this administration and that we at the FCC will have a role in implementing these profound changes. And have a role we shall. While the Commission as a whole is now formalizing its posture with respect to the proposed settlement, I would like to take a few minutes to provide my personal reaction to this momentous proposal.

The consent decree modification dovetails quite well with one of our major commitments: the unregulation of competi-

tive telecommunications markets. I believe that the interplay of competitive market forces can best determine the services that should be available to the public. For this reason, I strongly endorse new entry and the development of new services. And, when deregulation is not yet possible, in markets which are not yet competitive, I am committed to regulatory improvement and development of transitional measures that promote the development of competition.

The consent decree modification, in a bold stroke, separates regulated "bottleneck" local Bell Operating Company (BOC) services, such as local exchange service, exchange access and additional "monopoly" offerings made under tariff, from the restructured AT&T. The agreement provides that the BOCs cannot discriminate in interconnecting long distance services offered by AT&T and its competitors. Significantly, the new AT&T, stripped of control of these bottleneck facilities, may engage in telecommunications services, terminal equipment offerings or hula hoop manufacturing, for that matter. This meshes with the Commission's pro-competitive views and also with what I believe to be our public interest mandate.

Based upon my preliminary analysis, two precepts emerge as relatively clear. First, the voluntary agreement of the parties in the litigation is an extremely positive, healthy step toward promoting new forms of competition. Therefore, I fully endorse removal of the 1956 consent decree restrictions upon AT&T activities. I intend to urge the Commission to facilitate implementation of the decree insofar as, in its final form, it embodies and is consistent with our public interest goals.

Second, Congress has charged the FCC with implementing the public interest mandate contained in the Communications Act. The consent decree does not, indeed cannot, alter that independent responsibility. We intend, above all, to protect the public interest in the new environment created by the decree.

The task facing the Commission now is to ensure consistency between the decree's antitrust-initiated provisions and our public interest goals. We intend to do so by working with the Department of Justice in a spirit of cooperation. In addition, we plan to explain in detail our jurisdictional concerns and policy interests to the Court and the Justice Department by filing an amicus brief and participating in the Tunney Act proceeding now underway.

The proposed decree is an antitrust implementation tool. Re-
quiring AT&T's divestiture of the BOCs calls for a major upheaval in telephone network structure, during which ownership of lines will shift between companies, radio licenses will be transferred and new tariffs will have to be filed. I believe the statutory provisions under Titles II and III of the Act give the Commission considerable authority over the divestiture called for by the decree. While the Commission will not, and indeed cannot, abdicate its authority in this area, I am confident it will exercise its authority responsibly. Full cooperation and coordination between the Department of Justice and the Commission can and will ensure that the public interest is best served.

The theory at the base of the consent decree modification is sound from an antitrust perspective. I also believe it can be integrated into national telecommunications policy. The divestiture plan establishes one necessary predicate for a more vital competitive stage for long distance services. The essential unity of interests shared by the BOCs and AT&T will be eliminated. Theoretically, local exchange companies will no longer have the incentive to favor access by AT&T over rivals because they will no longer be serving the same shareholders. Long distance competition without favor is the target. Under the decree's terms of equal access, competing long distance carriers will be able to obtain equivalent interconnection to that provided AT&T, and to offer services essentially identical to AT&T's. Nonetheless, competitive survival in the long distance market will depend on service, efficiency, innovation, and cost.

So much for theory. From a more substantive FCC perspective, there are several issues relating to the divestiture proposal that must be resolved in order for it to be successfully implemented. These include the financial viability of the divested BOCs, Commission regulatory jurisdiction over interconnection and the superintendency of the national telecommunications grid. The Commission's jurisdiction is broader than that of the antitrust court. Therefore, it is incumbent upon us to review the decree modifications in light of the effect on the telecommunications market in general.

I am troubled by the prohibition in the decree modification against all competitive activities — communications and non-communications by the divested BOCs. Organized as they may be under the AT&T plan into seven regional operating companies, these will hardly be small entities. Yet, the public might
benefit from their competitive entry either now or in the future.

Options exist to permit competitive entry by the divorced local exchange companies so as to enhance their viability. The restrictions could be eliminated wholly. Computer II-type\textsuperscript{22} subsidiaries could also be imposed on the entities to prohibit potential cross-subsidies between monopoly and competitive services. Alternatively, the flat ban on competitive entry as set forth in the decree modification could be reassessed after a set period of time with a burden placed on the Justice Department to show that continuation of the restrictions is necessary.

The theory underlying the antitrust settlement is that a flat ban provides the absolute assurance that cross-subsidizations will not occur. Unfortunately, however, this ban eliminates incentives for the divested entities to innovate for fear of running afoul of providing an enhanced or competitive service. Moreover, should the Commission ultimately deregulate what are now considered "natural monopoly services" such as radio common carrier activities, the divested companies may be left without growth potential.

Further, such a restriction on competitive entry could lead state commissions to regulate as monopoly services those newly developed endeavors that are competitive. The states would soon experience the mental gymnastic contortions of Computer I-type\textsuperscript{23} service distinctions.

In the world without the decree, I continue to support Computer II-type\textsuperscript{24} subsidiaries to prevent cross-subsidies. In a BOC divested environment, however, I believe the cross-subsidy issue for those entities might be of significantly less concern. Consequently, I could endorse a modification of the decree that eliminates the restriction against competitive entry or one in which the restrictions would be sunset at some future time absent a compelling justification for their continued retention.

One additional point regarding BOC viability requires mention. A reorganization plan which is not properly conceived could affect the divested BOCs in a manner that increases their capital costs. This effect could be reflected both in local exchange rates and in access charges. A coordinated effort by the

\textsuperscript{22} Computer II, Final Decision, 77 F.C.C.2d 384, paras. 2-13 (1980).
\textsuperscript{24} Computer II, Final Decision, 77 F.C.C.2d 384, paras. 2-13 (1980).
Commission and the Justice Department to review the plan will provide adequate assurance that it is well-conceived.

Aside from competitive restrictions on the BOCs, another important concern I have relates to the decree requirement that divested BOCs provide exchange access by tariff and that they set out certain terms and conditions to be incorporated into the access tariffs. These tariffs would replace the division of revenues process now used to reimburse the BOCs for exchange access. Since the FCC has jurisdiction over interstate end-to-end service, including the local exchange portion of interstate phone calls, these tariffs should be filed at the FCC. This is essential if the nation is to retain a cohesive telecommunications rate structure.

The importance of access tariffs is directly linked to the most publicized aspect of the decree modification: will our phone bills rise? The question of local rates requires careful analysis, for there is much uninformed speculation fueling the passions of the pocketbook.

First, the decree has no effect on the jurisdictional separations procedures embodied in the Commission's rules. Separations is the procedures by which plant and expenses of providing services are allocated between the interstate and intrastate jurisdictions for ratemaking purposes. Because this procedure is unaffected by the decree, separations will continue to allocate the costs between the jurisdictions. Thus, any BOC access charge tariff for interstate service must reflect any costs allocated to the interstate jurisdiction by the separations process. Conversely, local exchange rates will reflect the remaining costs allocated to the intrastate jurisdiction.

As the Justice Department's competitive impact statement makes clear, the requirement that charges for exchange access be cost justified on an element-by-element basis governs only the BOCs own efforts in formulating access charges. This requirement, however, does not prevent the FCC from utilizing the exchange access charge for any other mechanism as a vehicle for payment to the BOCs of costs allocated to exchange access by jurisdictional separations. In other words, the results of our own access charge proceeding and the Joint Board's separations reexamination may justify a subsidy or surcharge for cer-

25. See infra section IX (detailed discussion of local rates).
tain geographical areas. Nothing in the settlement agreement limits our ability to affect access costs.

Yes local rates may rise. But as I have indicated before, it is other pressures such as inflation, increased depreciation rates, terminal equipment deregulation, changes in the separations process itself, expensing of station connections and access charges that are involved — not the consent decree. To the extent these are FCC mandated policies, we believe that they responsively respond to the technological revolution in the telecommunications industry. In taking such steps, we have repeatedly underscored our concern about local rates and have implemented our policies in a manner designed to avoid massive disruptions or dramatic rate increases.

My prior reference to a properly conceived reorganization plan focuses, of course, on what, I believe, will become the central point in discussing consent decree implementation in the next several months. In these unique circumstances, we must work toward a merging of antitrust and communications policy. In exercising its authority, the Commission fulfills its broader Section I mandate to structure a communications network with adequate facilities and reasonably-priced services.

I am enthusiastic over the changed environment created by the proposed settlement. Long distance competition I believe will rapidly develop. I am optimistic that deregulation of long distance service will be possible under the proposed decree in the future. But that day has not yet come.

The changes that will come about by the consent decree modification will not be fully comprehended for some time. I do not envision full competition with a new national numbering plan until the beginning of the next decade. But if we do our jobs right, competition in this industry eventually will be vibrant, healthy, and pervasive. With competition in place, we can eliminate the skewing force of government intervention. this can only inure to the good of the consumer. This is a noble goal.

We at the Commission must exercise our charge to let the telecommunications market perform. I do not have a crystal ball to see what the future will be. But I do have a vision of how things should be. That perspective tells me that the basic outline of the consent decree modification is sound. It also tells me that the Commission will have to be actively involved in its implementation, and that we have the people in place today
who can lead that effort. I am confident that under the new telecommunications order, providers will benefit, service will be expanded, and consumers — you and me — will be the ultimate winners.

Address Before the International Radio Television Society: “The Boom Goes Bust, the Bust Goes Boom”
September 21, 1983

Well, I have spoken of the boom that goes bust and then starts up again. Let me turn to the other half of the title, the bust that goes boom. The bust I am speaking of is more appropriately the busting up — of AT&T. No event in communications will affect the consumer so directly, or so profoundly, as the decision of the phone company and the Justice Department to settle their thirteen year old law suit.

The solution was divestiture of the Bell operating companies from the rest of AT&T. The impact on the radio and television community is not direct, but it could be profound. On January 1 of next year, a new communications giant will enter the marketplace, AT&T. It is a trimmed down company with a well developed momentum to compete — this result is one of the reasons why the phone company agreed to the breakup in the first place.

How it will enter the marketplace will, of course, be the decision of its leadership. But the phone company and video communicators will now be on the same playing field for the first time. This is not to suggest that AT&T will be in the broadcasting business as of January 2. But as two-way communications becomes an increasingly diversified field, people in television ought to better understand the telecommunications business.

Address Before the Conference on Managing the Long Distance Revolution: “Managing the Revolutions: An FCC Perspective”
October 23, 1984
Washington, D.C.

The theme of this conference is not simply the “long distance revolution,” but “managing the long distance revolution.” This title demonstrates the confidence of the American entrepreneurial spirit in good management. Faced with the tur-
moil of a revolution, the immediate reaction is, "Let's manage it."

Revolution management can be quite a problem. Revolutions tend to be untidy, somewhat uncontrollable, affairs. In preparing for this address I was wondering what the best approach to managing one would be. While these things change, the last time I looked, Harvard Business School did not offer Revolution Management in its curriculum.

In fact, many of you might be willing to forget about anything other than just managing to survive the telecommunications revolution.

But I'm sympathetic to those who would like to manage the telecommunications revolution. We at the FCC often feel that we're asked not only to manage a revolution. We're asked to regulate one. There may even be those who, viewing the hurly-burly of competition and looking back on the more settled, quiet days of monopoly, would like us to regulate that revolution out of existence or at least to slow it down.

But that would be impossible. Once the genie of competition is out of the bottle, it cannot be recaptured. And competitive forces will keep the industry changing, fueling the revolution with new ideas, new technologies, new ways of providing service—and new ways to circumvent regulatory attempts at counter-revolution.

That's not to say that regulators and legislators are unable to shape or help the progress of the industry during these tumultuous times. But with the new technologies and the new competition, telecommunications is no longer very malleable to the goals and wishes of regulators or legislators.

Speech Before the I.E.E.E. Conference on Communications: "Economic Freedom and Telecommunications"
June 25, 1985
Chicago, Illinois

I'd like to address one simple idea which underpins everything that's happened in telephony for the past decade. And it's this: economic freedom.

Economic freedom must be the first principle for the organization of the telecommunications industry in the post-divestiture era. Economic freedom for all the participants in the industry—customers, vendors, new entrants, and traditional
telephone companies—must be protected. We've got to foster it if America is to participate fully in the information age.

Economic freedom is not only a very desirable goal. It’s an imperative of the new order in the telecommunications industry. Policies or business schemes based on captive customers and legal restrictions on customer choice and destined to prove unworkable and unsustainable. They're the long way home to disaster.

Like all things that are truly valuable, the growth of economic freedom in telecommunications has not been without significant costs. The divestiture of the Bell System was the most complex business reorganization ever undertaken in history. It’s likely to hold its place in the Guinness Book. Along with divestiture has come the repricing of telephone services, also part of the competitive scene. While the growth of competition has provided many economic opportunities for customers and vendors, it’s imposed a difficult adjustment on traditional suppliers. However, I submit that in the long term, opening markets to competition is going to increase economic opportunity. There is no returning to a system of closed markets and government control.

Let me provide a few examples of the benefits, the inevitability if you will, of cascading economic freedom. First, I'd like to look at the challenge open interconnection has presented in the office equipment area, the first arena of challenge to the closed network.

We all know that, like the Great Chicago Fire, the terminal equipment revolution started with a small event. An individual entrepreneur, Tom Carter, thought he had a better idea. His Carterfone was an idea that required some basic limited association with the telephone network. But it was so limited that it is almost misleading to use the word interconnection.

From that small beginning the interconnection revolution spread. In a brief time period we moved from limited interconnection to the registration program. Competition became, like the sparks in the days of Mrs. O'Leary's klutzy cow, a conflagration.

He quickly found, however, that the growth in economic freedom for the interconnection industry ran the risk of economic imprisonment for the traditional providers of customer premises equipment (CPE). In an increasingly competitive en-
vironment, traditional providers of telephone equipment couldn't survive a regime of cumbersome tariff regulation.

The tariff process and social ratemaking were just not consistent with extensive competition. Extending the regulatory net to other providers was a little like trying to roll up our sleeves by turning them inside out. The solution, a highly deregulatory one in its day, was the FCC's decision in the Second Computer Inquiry. The FCC said, let's detariff and deregulate all CPE. The price AT&T had to pay? A fully separated subsidiary for its competitive ventures. This separation requirement was later extended to the regional holding companies' competitive activities.

The debate on the proper role of competition has turned full circle. Ten years ago, you'd hear the claim that single source monopoly was the only way to make an interconnected telecommunications system work. The explosion of customer choice that has occurred in the last decade has demolished that proposition. We now see the reverse proposition. Large vendors are touting their packaging as the way to integrate office systems. The diversity of suppliers is a given. Small parts lead to a whole which is greater than the sum of the parts.

Yet this deregulatory solution, which was an unambiguous increase in freedom and flexibility relative to its predecessor, has today grown increasingly suspect. The Computer II restrictions for AT&T place artificial barriers between customers and those responsible for product development. One American firm must incur costs that its large competitors do not, and suffer restrictions that do not apply to non-U.S. competitors. And that firm is AT&T.

We need to be careful, however, as we revisit our regulations to make crystal clear that neither public policy nor the market place will ever lead us back to when a large established carrier tried to extend its market position in transmission in an anti-competitive manner to the sale of equipment and enhanced services. Concern about the costs of our present regulations will not provide any excuse for remonopolization by any carrier. In other words, to turn around a popular phrase, if it is fixed, why break it?

The office and home information equipment industry today offers users a diversity of choice almost unimaginable in 1975.

just a decade ago. The process of competition in this area is as vigorous as in any part of our commercial life. At each stage, we've seen a need to revisit our institutions and further reduce government restraints. This process must continue.

In the area of international telecommunications services, the fires of competition are beginning to warm things up. As many of you are aware, the governments of both the United Kingdom and Japan have taken steps to privatize their telecommunications organizations. Following America's lead, they've both opened aspects of their domestic markets to limited competition. Neither has gone through a reorganization as extensive as the U.S. divestiture. But both have recognized that to have an information market place, you need economic freedom. That won't occur if you insist on an end-to-end public sector monopoly.

VIII
The Access Charge Decision

Address Before Televent 83: "The U.S. Telecommunications Profile"
October 23, 1983
Montreux, Switzerland

[W]e have been called upon to assess our achievement and to resolve some fundamental questions governing the workings of the market and the relationships among its players. I'm referring to our Access Charge Decision.27 That decision concerns the allocation of costs between local and long-distance telephone service. It is intended to "level the playing field" to assure that all participants pay the same cost and can compete on an equitable basis.

The decision may appear to be largely a domestic issue. However, I believe that the forces which have driven the Commission to this decision are already beginning to make themselves felt in other countries.

In the access charge proceeding the Commission repriced the way users pay for what we in the United States call the "local

loop" — the wire that connects a subscriber's telephone to the local network switching station.

Under the plan, subscribers will pay a monthly flat-rate "access charge" to cover the partial costs of the local loop. The charge will be phased in over three years. In 1984, residential subscribers will pay two dollars per month; in 1985, three dollars; and, in 1986, four dollars. Further increases will be phased in only if our review indicates that the policy is working and that it is not creating any unreasonable hardships. Business users will pay a corresponding higher access charge to reflect their greater demand on the network.

Under current practice, the phone company recovers only a portion of the costs of the local loop costs from the monthly charges for service. The balance of those costs are recovered — or, as it turns out, not recovered, in some cases — as part of the per-minute charges for the share of costs attributed to long distance, or long-distance service. Stated another way, long-distance service was allowed to subsidize local service. In the access charge proceeding the Commission ended this general subsidy. A subsidy, where necessary should go to those who need it. It should not be based on some need-blind, knee-jerk rule.

The decision is intended to accomplish four goals. First, the policy more fairly allocates telephone costs by placing them on those who cause them. Second, it assures that owners of the network will recover the investment they have made in the network. They will have the capital necessary for future investment so that the network will continue to be available to all users at reasonable charges.

Third, it encourages more efficient use of the inter-exchange network by lowering the costs attributed to inter-exchange calls. As access charges go into effect our studies indicate that long-distance rates will decline by about thirty-five to forty percent. In short, more people will make more long distance calls.

We can see this already by the effects of lower rates offered by the new, competitive long distance networks. Access charges will allow the user of AT&T lines to enjoy reductions as well. The decline in long distance rates will benefit all users, including those with lower incomes who use long distance as a substitute for travel. Small businesses will be better able to use long distance to market goods and services to a wider clientele. And the vast potential of the marriage of computers with the
telephone network will more likely be realized by making use of the network dramatically cheaper.

Finally, the access charge decision attempts to end the growing flight of large long distance users from the interstate network. This "bypass" phenomenon may misallocate costs and cause long-distance rates to be too high. These misallocations have resulted in distortions in communications markets. Large-volume users are aware that the net effect of the fifteen cent per-minute charge used to subsidize the local loop is that they wind up paying too much. Having the means to develop lower-cost alternatives, they increasingly avoid the public network. They seek volume discounts or build their own facilities. We cannot afford to lose these users and the revenues they represent. If bypass is not checked, smaller users who do not have the bypass alternative will be forced to pick up more of the costs; this could result in enormous increases in residential telephone bills. Our access charge policy removes the incentive for bypass by reducing the public network charges.

The old policy and the subsidy were justified in the name of "universal service" — that is, price local service low enough so that virtually everyone can afford it. Critics of our decision suggest that it will increase the cost of local service so as to threaten universal service. These criticisms, however, miss the mark. Under our decision, state telephone regulators can waive the access charge through the so-called "lifeline" service — that is, allowing a subscriber to have a telephone connected to the network at a minimal charge so that the customer can receive calls and can make emergency calls. One state has already announced such a service, proposing a rate of five dollars per month, another at $3.50 per month. And our access-charge policy creates a "universal service fund" to fund subscribers for rural areas where subscriber density is low and costs higher.

Speech Before The Washington Journalism Center
October 4, 1983
Washington, D.C.

I've got a sneaking suspicion you'd like me to speak about the FCC's Access Charge decision. Don't worry, I've had plenty of practice. In fact I may have a slight time advantage over today's other speakers in stating my case because of my Op-Ed piece which appeared in the Wall Street Journal this morning.
Actually, I do want to speak about that decision — what it does; what it means; why we did it; and why we felt we had to do it.

As you're all aware, there has been some disagreement with our action. And, in my view, there's been a lot of misleading information and argument. So I welcome this opportunity.

Let me start out in the simplest terms, because I know it's impossible to keep this discussion simple for long. Each and every one of us with a telephone has a copper wire running between our home or office and the telephone company local office. No matter how we use that wire — for local calls, for long distance calls, for lots of calls, or for no calls at all — there's a cost associated with that wire. All told, there are billions of dollars in fixed costs which the telephone company has sunk into these wires.

Long distance users currently pay part of the cost of the local loop each time they make a toll call — about fifteen cents per minute, hidden in the overall charge.

This is unfair and inefficient because all telephone customers impose loop costs on the network, no matter how many toll or local calls they make.

Meanwhile, those who make few or no long distance calls are getting benefits, and paying no costs. Everyone — rich or poor — is being subsidized by long distance callers.

This discourages long distance use. And it has the real potential of driving the largest users off the network with a resulting huge increase in telephone costs for all of the rest of us.

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We fully expect long distance rates to fall between thirty-five to forty percent over the next few years as the direct result of our decision.

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Let me end by saying that I think we've been wrongly attacked for forgetting the consumer and the consumer's interest. I've tried to outline today why our decision is in our country's interest and in our people's interest. This is an issue on which reasonable people may differ. But I do not believe that there's been a disregard for anyone's rights, interests, or concerns. We've spent enormous amounts of time and energy considering this issue over the course of five years. And after conducting hearings, evaluating pleadings, and reviewing evidence; after studying and reappraising, predicting and protecting, consider-
ing and reconsidering, we came up with the decision as it now stands. We believe that we made the right policy judgement.

Much of this outcry about our decision can be traced to the huge amount of misinformation being disseminated. Some of it results, quite naturally, from the complexity of our decision and the intricacies of the Bell breakup. And some, I'm afraid, comes from the telephone operating companies by their inopportune price hikes. It's been difficult cutting through the misimpression. I hope you can help.

All of this change means these are tough and trying times for the telephone industry. And they are exciting times. We can't afford to leave anyone behind; but neither can we afford to push large long distance users off the system. I believe our access decision is a reasonable reconciliation and one that deserves consideration and support.

Speech Before the United States Independent Telephone Association
October 17, 1983

What are the benefits and harms of this plan? Some of the benefits are already apparent. AT&T has proposed to drop its MTS rates by over ten percent in 1984 as a result of these access charges. By 1990, toll rates should be down by about forty percent from 1983 levels, expressed in constant dollars. Lower toll rates will stimulate greater toll usage by businesses and residences. There will be concomitant rises in productivity. As we move into the information age, more efficient usage of telecommunications services will spawn new industries, create new jobs, and bring new wealth for this country.

Importantly, lower toll rates also decrease incentives for inefficient bypass. This advances universal service. If large users remain on the network, they will not strand exchange plant, and small users will not be saddled with cost burden that would lead to astronomical rate increases.

As another benefit of our plan, unfair cross-subsidies are reduced when each subscriber pays the cost of his own loop. The universal service fund provided by the plan and the joint board's proposal are carefully targeted to high-cost areas. Subscribers in study areas with non-traffic sensitive costs exceeding 115 percent of the national average will receive support from the universal service fund according to a sliding scale. Payments from the fund are designed to help prevent unafford-
able rates for exchange telephone service, to limit interstate access charges to no more than twice the national average, and to provide incentives for efficiency. Contrary to the claims of some, interstate carriers will help pay for non-traffic-sensitive exchange costs through charges to the universal service fund. These payments will amount to about $900 million in 1984 dollars. In addition, the provision for waiver of interstate access charges is carefully targeted to needy people subscribing to life-line service. Residences and businesses that are heavy toll users will not bear the current unfairly large cost burdens.

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I would like to comment briefly on bills in Congress that would freeze the implementation of end-user access charges. One motivation for these bills is the concern that rate hikes now being sought for state-regulated telephone services will force many subscribers to discontinue service. But, as I've said, access charges are not the culprit for large rate increases sought in many states. The Commission's two dollar access charge just couldn't be the justification for the much-publicized twenty dollar rate hike that Southwestern Bell sought in Texas. Freezing access charges will not make state rate increases vanish. Rather, to keep those rates from going sky-high, state regulators will scrutinize the requested increases and are likely to grant only a portion of what was requested.

I would caution against bills too heavily weighted in favor of maintaining existing rates and service arrangements. Such bills tend to freeze existing inefficiencies. They prolong unfair subsidies. They also may choke off emerging services, technologies, and growth industries.

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The bills before Congress will not cure the difficult problems which are perceived as a result of proposed telephone rate increases around the country. Telephone rates may be rising, but the access charge plan is not the principal reason. Setting aside that plan will not cause these increases to evaporate.

Remarks Before the National Conference of State Legislatures December 14, 1983

I want to explain why bills repealing the Access Charge Decision would be a disastrous public policy direction for our country.

It seems that every day for months newspapers and journals
have carried stories about yet another initiative to restructure our telecommunications system. The state commissions, the FCC, the courts, and the U.S. House of Representatives have all taken action. Some carriers cry out “Enough is enough;” others insist that fair competition can only take place after more changes.

It’s no wonder that the average telephone consumer’s state of mind is somewhere between a busy signal and a disconnect. Let’s try to make some sense out of the present situation.

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Basically, our decision is a necessary response to massive technological change and to the national policy favoring competition in telecommunications. The historical record which I faced upon assuming my position is quite educational.

Beginning during the Eisenhower administration in 1959, the FCC began to introduce competition into the provision of telecommunications services with the so-called Above 890 decision. At that time, the FCC rejected the notion that a single telephone supplier should be the sole source of interstate communications for our nation. Behind this decision lay recognition that there might well be people and technologies outside of the beloved Ma Bell that could provide communications services better, cheaper, and more varied than the telephone company offerings. In a subsequent series of decisions, the FCC — frequently prodded by, and occasionally superseded by, the courts — moved to open up equipment and private line services to full and fair competition.

Along this road to competition came warnings. Primary among them was this: competition and subsidy are inconsistent. Competition inexorably drives prices to their actual costs; indeed, this is one of its more desirable features. The system of subsidies that developed in the monopoly, Ma Bell, days was massive. Approximately ten billion dollars collected from long distance calling went toward lowering local exchange rates. In the past, telephone regulation and higher interstate usage increased the amount of local loop costs to be paid as interstate charges — from around three percent in 1940, to eleven percent in 1968, to twenty percent in 1976, and to twenty-six percent in 1981.

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This subsidy system could not continue with the coming of competition from private networks and other common carriers, who did not have to pay the same subsidy. Users, and especially large users, chose alternative services to avoid the more subsidy-inflated rates. To assure fairness — a level playing field — subsidy costs had to be removed from all long distance carriers and from their customers.

The question for policy makers became: how should these costs be recovered from customers, since ultimately, all costs must be recovered from some customer? One possibility was the traditional “usage sensitive approach” — that is, for every long distance call you make you pay part of these costs, an estimated fifteen cents per minute. The problem with this approach is that large users of long distance, such as corporations, would rapidly realize that they were paying for more than the costs of their service and set up private systems to route their calls out of the local exchange. These alternate routes are know as bypass systems.

Bypass can become a vicious cycle. As large corporate users who pay much of the freight drop off the local exchanges, telephone company revenues decline. At the same time, most of their costs remain. Rates for remaining customers rise, causing further drop-off by other large users. As I will explain more fully later, average residential and small business users, and others without technological alternatives, are left to pay the increasing costs of a declining network when large scale bypass occurs.

This is the reality that caused the FCC to turn to flat rate charges for each customer.

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Inefficient bypass will be stopped and this will ultimately keep average citizens’ rates down and maintain universal service. Right now, however, large corporate users are quickly setting up their own systems to avoid using the local exchange and paying the long distance subsidy; microwave, satellite, optical fiber, and cable systems are all viable bypass alternatives. Through bypass, large users are not “stung” by the public network subsidies.

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How big is the bypass threat? Consider these examples.

On November 15, 1983, Olympia and York, the largest office developer in North America and the second largest office build-
ing landlord in New York City, announced plans to bypass the local exchange and to link its buildings within Manhattan and between eight other cities through a satellite and microwave communications network. It is estimated that tenants in the Olympia and York Manhattan buildings alone generate 24 million dollars' worth of voice calling every year.

Citicorp, an 80 million dollars per year phone customer, last year paid 24 million dollars to purchase satellite transponders and 10 million dollars for earth stations, again to develop a bypass system.

The states of New York, Virginia, Oregon, California and Kansas are all planning, or have in place, their own governmental telephone bypass systems.

"Starnet," a bypass system, has been set up in Las Vegas, Nevada. It is designed to route long distance calls from large hotels there, without using the city's telephone network. Just one of these hotels has more telephones than any single local exchange in Nevada, except for the six largest.

One study shows that in Texas, thirty-nine percent of the operating companies' large customers are now bypassing and seventeen percent more plan to do so within the next three years.

Facts and figures are similar around the country. Figures supplied by the Bell System indicate that six percent of its largest accounts represent sixty-one percent of total (business and residential) interstate gross revenues. Two percent of Bell System business customers account for over eighty percent of its interstate business revenues and forty-five percent of its total business and residence interstate revenues. Calculations based on the present contribution of the top six percent of customers to local exchange service show that a loss of their contribution, through bypass of local exchange service, will add $4.46 to each subscriber line. When these companies abandon exchange lines leaving "stranded investment," these costs, too, will increase the $4.46 figure significantly.

Everywhere, large business callers, who are the "bread and butter" customers of local telephone service, generate a great bulk of long distance calling. They are also financially able to build their own bypass systems.

In a recent California Public Utilities Commission finding, Pacific Telephone stated that 1.2 percent of California business customer locations generate thirty percent of its business revenues, or 700 million dollars annually. If these revenues were
lost to bypass, an average of about eight dollars per month per California customer would be left to be picked up by remaining customers.

Figures supplied by the New York Telephone Company show that in the State of New York, .3 percent of business customers generate thirty-three percent of total business toll revenues, and five percent of business customers generate seventy-one percent of total business toll revenues. In Georgia, .5 percent of business customers generate fifty percent of business long distance calling revenues and in Nebraska, .3 percent of businesses bring in twenty-eight percent of business long distance revenues.

These large accounts are prime bypass candidates. As these figures strongly suggest, if these businesses leave the network, rates for “captive” ordinary citizens will inevitably skyrocket.

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Congressional alternatives to our decision must be seen for what they are — patchwork approaches that will ultimately harm the average U.S. customer and engender further confusion. When the Federal Communications Commission perceived a problem that threatened the very viability of our superb nationwide communications network and acted pursuant to its congressional mandate, to prevent a crisis from arising, some politicians chose to depart the world of reality for a fantasy world in which, they claim, everyone can have everything.

I believe that their “solution” is nothing more than an attempt to postpone, but not eliminate, the crisis. At the same time, it falsely lulls people into believing that things are all right and that we can move into the new world of competition, and its public benefits, while at the same time maintaining the existing system of subsidies for most residential and many business users. That cannot happen. It will not happen. And anyone who promises it is either ill informed or dishonest.
IX
Local Rates

Speech Before The National Association of Regulatory Utility Commissioners
November 17, 1981
San Francisco, California

Today I would like to focus on the cost of receiving telecommunications value in an environment where anyone can provide service or what I call the Rubik's Cube\textsuperscript{29} of competition and cost.

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It is perhaps useful for a moment to reflect on the relative value of basic local telephone service as reflected in its cost over the years. In 1925, one could subscribe to local residential service in New York City for about $3.50 per month and reach approximately 17 million phones. In 1950, the cost was $4.75 and, in 1980, $8.66. During that time, the number of telephones serviced in the country has increased to a remarkable 181 million — all interconnected. The cost may have risen in absolute terms, but in relative value the cost reduction is dramatic. And I haven't even mentioned the tremendous increase in quality of service such as direct and touch-tone dialing.

My point in this comparison is to demonstrate that technological advance is reflected, at least in gross terms, in cost — and this in a noncompetitive, regulated market. Inject competition into this closed system, and society benefits even more. It benefits in the long run by creating new jobs, by rapid improvement of equipment and services, and by lowering the relative costs of that equipment and service through price competition.

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In the short run, costs will rise. These increases are the result of a conscious choice made by the Commission — a trade-off for the long and short term beneficial results of the free market at work. Although I believe that, over the next decade, the rates of some local exchange may rise, I also believe it is time to analyze in somewhat more detail the individual factors that will tend to drive up local rates.

\textsuperscript{29} Rubik's Cube is a game involving a group of colored squares attached to one another. The player's goal is to arrange the squares so that only one color is visible on each side of the cube.
Competition has caused the Commission to fashion new policies that place increasing pressures on local rates. But it is a leap in logic to maintain that competition is the cause of price rises. It is this relationship of prices and competition that requires analysis. Like the six-sided Rubik's Cube, there are several sides to position properly in the local rate puzzle. It is vitally important that we recognize and understand that all sides relate to each other so that, in grappling with difficult issues, we will not be misled in either our motives or objectives and will be sensitive to the impact of our actions.

As I perceive the six sides of our Rubik's Cube of local rates, they are inflation, customer premises equipment (CPE) deregulation, depreciation, expensing of inside wiring and station connections, separations changes and, finally, value of service pricing. Let's analyze each of these sides.

A first, critical factor, which will result in increased exchange and interexchange rates is the gnawing inflation we all face. As the cost of debt and equity capital rises, rates eventually must follow. The simple fact of life is that a ten percent inflationary increase in costs compounded yearly for ten years by itself will result in approximately a 160 percent increase. Parenthetically, this fact makes it all the more important to expand the telecommunications market. For a robust telecommunications system plays a large part in the productivity and financial health of our nation.

The second upward force upon the cost of local service is deregulation of customer premises equipment. CPE deregulation is clearly a policy that has been necessitated by competition. Competition in terminal equipment markets is expanding almost geometrically and intensifying from all parts of the world. I believe that detariffing of CPE and its removal from the Separations process should take place as soon as carriers can accommodate it. But we all know that abrupt changes could — and I emphasize could — have a severe impact upon local rates. This is why strategies to phase-in the effects of new policies have been critical to the Commission's decisionmaking. A phased approach will give all companies time, not only to make necessary rate adjustments, but also to reap the benefits of lowered equipment and maintenance costs that will help forestall any large rate increases. Importantly, the approach will also allow the implementation of industry changes without interminable delays and with minimum uncertainty.
A third important factor affecting local rates is the Commission's significant modifications in its depreciation policies. We have determined that telephone companies may use faster, more precise means of capital recovery — equal life group and remaining life depreciation methods. These will allow carriers to accelerate capital recovery to more realistic levels. It places them in a position to take advantage more quickly of new technologies and bring the benefits of those technologies to their subscribers.

Although competition undoubtedly has had a hand in precipitating the adoption of new depreciation procedures, the role of competition is just that — the role of catalyst to changes in capital recovery. The need for these changes had already become obvious to the industry and regulators alike.

Facing lost efficiency of outmoded plant, vulnerability to new products and services, and potentially unrecovered capital investment, the industry required a solution from its regulators. That solution is a realistic depreciation methodology. We recognize, however, that we must provide that means to alleviate the pressures of rapid price increases engendered by rapid depreciation. Again, our response is that new depreciation methods must be phased-in.

A fourth side to our cube influencing local rates is the expensing of inside wiring. The new accounting treatment for station connections will be introduced gradually over a period of four years, and the amortization of embedded equipment may not be complete until 1994.

Although originally not a factor, competition has become a consideration in the decision to require station connection expensing. These costs are dictated largely by the selection and placement of terminal equipment. Now that terminal equipment markets are being opened to competition, some have argued that every carrier should have the same regulatory status in marketing all aspects of CPE as any other equipment vendor.

Phase-in strategies are also vitally important in the decisions being made by the Joint Board. Tomorrow we on the Joint Board will discuss the fifth factor affecting local rates — the revision of the Separation's manual to deal with local exchange cost allocations and proposals to change the subscriber plant factor (SPF) formula.

Again, we must be clear about the reasons why these changes
in separations are taking place. Competition plays only a part, and it does not require any particular solution. One of the proposals now before the Joint Board is to reduce SPF to subscriber line usage (SLU). This would dramatically reduce allocations to the interstate jurisdiction and increase local revenue requirements. But this is only one of the options. The Joint Board could consider adopting some other allocation measure altogether. In any case, these alternatives are being evaluated so as to realistically situate the industry for the environment of competition and, ultimately, for the potential benefits to the ratepayer.

Finally, to a very great extent, value of service pricing may determine the way in which new Federal policies will affect local service. The rates in some exchanges may rise substantially because they are now inordinately low. For example, an increase from a five dollar rate to a fifteen dollar rate may not necessarily be unreasonable in this day and age, particularly for those areas which may have had a constant price for many years. Each of you as a state regulator has a great deal of flexibility in adopting creative pricing systems to determine how rate impacts will be felt in different exchanges. We must keep in mind that unadorned statistics may be misleading. We must view them with an eye toward their real social and economic significance.

In the final analysis (if there can be finality in this dynamic industry), unlike some other puzzles, our Rubik's Cube of local rates may have no single solution. Competition is the force that turns the cube. Combined with the technological explosion, changes in usage and demand for services and equipment, and revised political economic theories, the puzzle is difficult to decipher. The best that we in Washington can do — either at the Commission or in Congress — is set the parameters; codify the ground rules so that the players know what to expect. We recognize that different states can, quite properly, develop their own solutions to the problem of pricing basic local service. These different solutions will reflect the varying circumstances best understood and appreciated by state officials.

I believe the structure we have provided at the Commission gives the industry the element of certainty and consistency needed to operate in the years ahead. For in the end, we are all interested in creating and preserving telecommunications value that redound to the benefit of us all. It is toward 1984 and be-
yond that I see that value increase. That is the ultimate effect of solving the Rubik's Cube. And I am excited at the prospect.

October 6, 1986
Seattle, Washington

I'd like to cite a few examples of states that are responding to fast paced change in telecommunications with progressive, deregulatory approaches.

Example number one. Currently about ten states have imposed intrastate end user charges. This month Mississippi joined the group, voting for an intrastate customer line charge.

Example number two. Nebraska has deregulated all services other than local exchange services and will review basic local service rates only in certain circumstances.

Example number three. Washington and Illinois permit their regulatory commissions to adopt relaxed regulations for companies and services when the commissions find these to be competitive.

Fourth example. "Social contract" forms of alternative regulation have been submitted to state legislatures in Idaho and Vermont. A number of states, including Oregon, have adopted relaxed regulations for all inter-LATA carriers, including AT&T.

Commissioner Maudlin of Oregon has also proposed a Universal Service Protection Plan. Under his proposal, states would require that charges for residential service never rise to their costs. In return, regulators would stop almost all regulation of telephone companies' competitive services, leaving each company to determine how to pay for residential service subsidy.

Meanwhile, Governor Bob Kerrey of Nebraska has submitted a comprehensive proposal to the National Governors' Association. It promotes state environments favoring technological advance. Governor Kerrey advocates removal of restrictions on information services and manufacture of customer equipment by Bell companies, tax structure reform to treat telephone companies and competitors fairly, and ensuring availability of enhanced services for everyone.

In part because of your educational efforts many state gov-
ernment leaders appreciate that those states which do not push telecommunications deregulation will fall behind in the race to build an Information Age infrastructure. Technology is like any other physical matter — it chooses the path of least resistance. States that put up too much regulatory resistance to innovation will soon find their citizens purchasing out-of-date services, using obsolete equipment. And they'll see high-tech companies, both domestic and foreign, locate elsewhere.

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Minority Role In Communications

Remarks Before the National Association of Black Owned Broadcasters, Inc.
September 24, 1981

Although I have had several opportunities to address groups on general broadcast issues, today I would like to take advantage of this forum to address the problems of minority entrepreneurs in telecommunications.

First, however, there is a perception in some quarters that needs to be dispelled. I have heard voiced the misperception that this administration does not care about the problems and aspirations of minorities in America. Although the FCC is an independent agency and does not take policy direction from the White House, it's no secret that I'm a Reagan supporter. As a Reagan supporter active in two campaigns and as a political appointee of the President, I can tell you flatly there is absolutely no credence to those statements. I am firmly in support of policies that advance minority interests.

When this administration took office in January, our country was in severe economic trouble. You as broadcasters have experienced this phenomenon perhaps to a greater degree than any others. Inflation, fueled by uncontrolled government spending, was robbing the average working man and woman of all real gains in personal income. Business expansion, such as programming investment, was becoming more and more difficult. An ever-growing web of misguided government regulation was strangling individual businessmen and entrepreneurs, frustrating the very people who provide the overwhelming majority of jobs.

Tough decisions had to be made. I believe that future generations will be the real beneficiaries of the decisions of this Presi-
dent, who is not afraid to make the tough decisions. You'll find that we at the FCC also are committed to making the tough decisions, but they will not be used to stop or turn back the gains made by minorities in this country and they will not frustrate the gains made by minorities in telecommunications as long as I am chairman.

As chairman, I continue to support the Commission's tax certificate and distress sale policies. These policies have enabled minority entrepreneurs to enter broadcasting and to expand their holdings. But what these policies do not do is address the fundamental problem of attempting to increase minority voices in the information mix. The problem centers, not on the number of stations available, but on dollars for minorities to make financial headway in an extremely competitive environment. Minority entrepreneurs have shown real gains as a result of the tax certificate and distress sale policies but greater gains cannot come without opportunities in all aspects of telecommunications.

The days of "white only" television and radio are gone forever. Because of the pioneering efforts of groups such as the National Association of Black Owned Broadcasters, minority audiences are no longer captives of "plantation broadcasting." And because of the efforts of our Spanish language broadcasters, millions of Spanish speaking Americans can participate in the great public debates that shape this nation's future.

These gains are important because they recognize the rich cultural diversity that has made this country unique and, if recognized and nurtured, can only bind us together in a stronger commitment to the future. As broadcasters, you are well aware that I have called for removing artificial barriers to entry into the telecommunications marketplace. Then I was speaking of outdated government rules, regulations and statutes as artificial barriers. Today I am asking our financial community to remove the artificial barriers of outdated ideas and preconceived notions. The growing number of black and hispanic broadcasters is proof of your abilities as businessmen. But I must candidly admit that if white entrepreneurs had faced the same skepticism in the venture capital marketplace as you have, color television and satellite communications might be considered science fiction today.

Financial institutions must be convinced that their investments are sound, which means you must work to demonstrate
your abilities. The marketplace is no place to argue for special treatment, but minorities must be directed to the institutions which see the benefit of investing in the communications industry — whatever the color of the investor.

The greater gains which could be made in minority ownership of telecommunications facilities are restrained by the reluctance of our country's financial institutions to back minority entrepreneurs. Our banks, our large financial institutions, and our venture capitalists have too long ignored the very real successes of minority owned telecommunications. It is time that they open their eyes and recognize that minority entrepreneurs are willing and able to take the risks to compete successfully in the telecommunications marketplace.

Those financial institutions that are farsighted will reap the rewards of allowing the minority entrepreneur to tap the market of 38 million minority consumers. Those that close the door now will be left behind later with only thoughts of what they might have been. The task is to make the financial community of our country aware of its ability to enhance its own interests.

I am challenging America's financial community to throw open the door of the telecommunications marketplace to the minority entrepreneur. Let all the players play.

If there is any doubt about the seriousness of my challenge, I have asked by fellow commissioners to approve the creation of a blue ribbon advisory committee chaired by Commissioner Henry Rivera to examine ways of financing increased minority ownership in telecommunications. This group will include influential leaders of the financial community, the economic community, and you, the minority community. Importantly, the committee will not be for show. I expect them to report back to the Commission their specific findings and recommendations within five months. They will be specifically charged with looking at ways of expanding capital financing of both new and existing minority owned telecommunications facilities.

But I cannot ask either you, my fellow commissioners, or the financial community to follow unless I can give you my firm commitment to lead. I will share that leadership by asking for your guidance and support, and, in return, I will take your concerns and recommendations to the financial community by personal communication to its leaders.
Black broadcasters have truly been pioneers, entering a new field over the last decade in spite of many personal and societal obstacles. Your numbers have increased over 500 percent in the last ten years, but I urge you not to rest. There are new horizons to cross and a trail to be blazed for increased minority financial success. Through your record of persistence and innovation, you have served as examples for countless young men and women yet to come. Because of the efforts of the Ragan Henrys and Eugene Jacksons we may truly be entering the era of the free marketplace in telecommunications.

If I, as Chairman of the Federal Communications Commission, am successful in opening further opportunities for you in telecommunications and, if President Reagan is successful in creating a favorable environment for you as businessmen, the world of telecommunications services available to the people of our great nation is almost limitless.

The role of the communications industries themselves in changing this situation should have been obvious. But it wasn't. Stereotypes abounded in movies, radio and television. Opportunities for qualified black performers, journalists, and others were limited by race laws, bigotry, or fear of reprisal from others for doing what was right.

"The FCC and Minority Ownership"
May 23, 1986
Atlanta, Georgia

In 1973, the Commission identified minority group ownership of broadcast facilities as a socially desirable end but did nothing to formulate a policy. It was the D.C. Court of Appeals' decision in the TV9 case that year which gave judicial recognition to minority ownership as a factor in comparative hearings.30

An FCC Minority Ownership Conference was held in 1977. It recommended the Commission adopt a policy to encourage minority ownership. This was manifested in the 1978 Commission Report on Minority Ownership. This led to a succeeding conference in 1981 and a 1982 Minority Opportunities Conference Report. Since then, I have instructed the Office of Congressional and Public Affairs to develop an annual reporting mechanism — be it a conference, a report or other vehicle — to

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keep a public eye on the level of private sector accomplishments.

Let me return to the key finding of the 1982 report. It's one that is the most obvious to anyone considering entering the business: Minorities generally lack the money to finance new stations or purchase existing ones.

Efforts to encourage capital formation has been the hallmark of my administration. BROADCAP, the broadcast industry's own fund, has been a positive force. Other sources, such as MESBIC and NTIA grants for noncommercial facilities, also help.

To really solve the money question, the Commission needs a staff alchemist, somebody who can produce the gold to build new stations or acquire others. Short of this, we need to create a capital pool that minority entrepreneurs can use. This will take the slow, steady process that we've seen demonstrated by the entrepreneurs at this conference.

Is the FCC, then, required to stay on the sidelines and simply hope for the best? No. We have policies that actively seek sales of stations to minorities. Furthermore, we've implemented the TV9 doctrine to comparative hearings and, following the lead of the Congress, in lottery proceedings involving media of mass communications.

Perhaps most significant, we have a strong equal employment opportunity program at the FCC. The program applies to both broadcasting and cable, and its been strengthened, in terms of the reporting tools, since I have been chairman. We have carefully managed that program to avoid it being rendered unconstitutional as an illegal race quota.

As everyone here knows, I favor a market approach to regulation. By letting broadcasters respond to the needs and interests of listeners as they perceive them, the public's interest defines the public interest. Teamed with a strong public broadcasting system to address interests the market doesn't fully address, I think we guarantee the American public the best possible system of broadcasting. While this perspective differs from the starting point of many here, I think that the interplay of our diverging opinions has led to a better reasoned debate than if we agreed on every question.
Speech Before the Congressional Black Caucus Communications Braintrust
June 28, 1984

As a former broadcast attorney and station executive, I can tell you that radio is an excellent place to get started in this business. Stay in touch with our contact representatives at the FCC and every other helpful source — NBMC, NABOB, and NAB, for instance — to be ready to file applications when the stations become available.

The same is true for AM broadcasting, as we will be expanding the number of stations available. This expansion is the result of long and successful negotiations with Mexico, Canada and the Bahamas to make available to the United States clear-channel frequencies that were formerly only available to those countries. And we will be extending the AM band, too, which will mean room for some more stations at the two ends of the dial.

And there will be room for more applicants in low power as well, as we begin to eat away at the backlog of applications. There are other opportunities in common carrier — such as new long distance companies — requiring huge capital investments. Don’t be afraid of the technology — if you have a better idea, you’ll find a place for it in the new communications environment. But for those who want their own company, radio broadcasting is a great place to make a great start.

XI International Communications

Keynote Address by Satellite Before The Third Biennial Communications Law Symposium
March 4, 1983
Marina Del Ray, California

How quickly we’ve moved, from the shock of Sputnik to the tender first efforts of Telstar and Early Bird to the quiet breakthrough of commercially viable geosynchronous satellites. And the technology for wide-ranging implementation of international satellite television has been available for some time.

Apart from my participation in the symposium via satellite, which is in fact not international, there are many examples of international telecasts. Special events such as the Olympics,
WHAT THE CHAIRMAN SAID

the British royal wedding, and the Oscars join the world television audience together as effortlessly, or so it seems, as local station broadcasts do. As the technology continues to progress, both the quality of transmission and available capacity for international satellite television will increase significantly — in short, more and better pictures. Then, too, we’ll see added to primary television transmissions complementary or compatible services such as teletext.

But if we’ve reached a quite acceptable level of technological achievement in satellites, we’ve not really overcome the underlying issue: having something universally useful and desirable to transmit. For aside from special events programs, what does international satellite offer? Basically, U.S. companies transmit from foreign soil back to the U.S. — usually for late news or for sports events. With limited exceptions, we don’t have U.S. television companies transmitting to foreign countries, nor do we have foreign television companies transmitting to our U.S. audiences. In short, we may have international satellites, but we don’t have international television!

And the question of whether we should is widely debated. Development of new international satellite networks can offer viewers more choice. But have we reached a point in world cooperation where the advantages of cross-border video communication, except for royal weddings or the Academy Awards, outweigh the impact of these programs on national identity? Deciding this is best left to councils other than the FCC. But we can make a contribution.

From the Commission’s regulatory perspective, I would like to see maximum flexibility in the regulation of international satellite television. Historically, the Commission has attempted to maintain flexibility as to U.S. domestic satellite operations. Consider our Open Skies policy, which did not restrict entry into voice satellite service; or our deregulation of receive-only earth stations, which allowed the blooming of downlinks nationwide.

Domestic commercial television broadcast service has proven itself in the marketplace. I believe that such could also be the case with international satellite television. We at the Commission will continue to be strong advocates for less restrictive and more flexible multilateral, bilateral and private international

telecommunications arrangements. This is consistent with the free flow of commerce, peculiarly American in origins. On this score, I'm particularly pleased to note the decision by the Canadian government this week to allow a greater flow of programming to her country's own cable system.

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On the international level, this enthusiasm for minimum government regulation is not always shared. Many nations view communications, especially through the new technologies, as a vehicle for achieving other national or international goals rather than as a device to meet the needs of individuals as consumers. What are these other goals? Fostering national development or preserving cultural or religious values and, in many cases, encouraging or compelling loyalty to the state.

Because open entry in international satellite television and communications in general can threaten these goals, policymaking in this area is political. Having said that, I hasten to add that the sensitivities of other administrations and international organizations have to be considered as we develop our own policies. While our policy should continue to reflect those values we hold as a nation and as a member of the world community, it also must continue to be flexible to account for technological, social and political realities. The ongoing debates on the principles of the free flow of information within the United Nations Committee on the Peaceful Uses of Outer Space and at UNESCO directly bear on the implementation of international satellite television.

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Now, assuming that these philosophical problems are not insurmountable, what form could distribution of international television programming take? Not long ago, TV reception was generally confined to the over-the-air signal from a local broadcast station, with limited access to some programming from the national networks. The exponential boom in technology has led to more capacity and cost advantages showing up in facilities and equipment at a torrid pace. These mass distribution techniques, with their larger potential audiences, allow larger programming budgets.

Currently, there are many means to deliver international television programming from one country to another, assuming that they are contiguous. As to the United States and its immediate neighbors, these include microwave relay, conventional
telephone cable, fixed satellite service, direct broadcast satellite (DBS), border area broadcast stations, fiber optic cable or a combination of these.

In the case of intercontinental programming there are only two: taping of the program material and sending by means of airline carrier; and international fixed satellite service. Once received, intercontinental programming distribution is accomplished through conventional domestic systems.

With continued research and development of satellite-to-satellite hops, it will eventually become possible to send programming from a foreign country to homes in another country via satellite with hardly any technical coverage restrictions. What DBS does domestically, international satellite TC can do worldwide. With direct domestic distribution via DBS, or traditional terrestrial distribution techniques, creation of a new "international channel" could emerge. In the U.S., the possibility of a new "international broadcast network" is not inconceivable. Most likely, though, domestic distribution of international programming would be accomplished using cable television, at least in the early stages.

As I noted earlier, technological advances in international satellite transmission will increase the quality and capacity for television via satellite. However, other developments may have an enormous impact on international and intercontinental television. On the horizon is the potential for delivery from country A to country B using fiber optic cable and then distribution through established networks or DBS. Large-scale implementation of advances in digital transmissions and fiber optic cables can revolutionize many communications services, including international television.

Fiber optic cable may not prove to be the most advantageous transmission medium for all delivery routes. But its technical characteristics of speed, increased capacity, no time delay variations, low susceptibility to interferences or interception, and freedom from competition for orbital slots — all these qualities — make it a potentially formidable alternative to international satellite television. And, while the cost of satellite usage is declining, so is the cost of fiber optics.

Many countries have indicated that their future networks will be based on fiber optics and steps are already underway to achieve this end — witness the efforts of AT&T and MCI in the United States. The planned use of this technology for intercon-
continental application is underway with the proposed TAT-8 trans-Atlantic fiber optic cable, set for installation in just five years. Trans-Pacific fiber optic cables are also planned for this decade.

Once implemented, intercontinental television transmission using fiber optic cable could not only prove technologically advantageous. It could also possibly alleviate some of the operational and philosophical problems attendant with international satellite television. This is because a country that objected to a transmission could halt the flow through the cable. Shielding out a satellite signal is not that easy.

So international television may arrive through cable, rather than satellite. The development of fiber optics reflects the path of market forces. Wires replaced horseback. Microwave replaced wires. Satellite replaced microwave. Now wire of a sort could replace satellites. It's the FCC's job not to frustrate this march of technology.

But so long as satellites remain the distribution mode of choice, let me turn briefly to one of the major issues posed by signals from outer space — signal reception piracy. I subscribe to the view that the initial responsibility for signal protection rests with those best able to protect against unauthorized interception and use — namely, the signal originators. I consider self-protection entirely appropriate and indeed essential, in light of our policy objective to rely, where at all possible, on marketplace forces rather than government intervention and regulation.

One method of doing this would be to electronically scramble the transmitted signal, making its unauthorized reception and use much more difficult. I understand that this approach is being implemented or planned by several U.S. video distribution companies such as Home Box Office.

The future of international satellite television cannot be easily predicted. Technology will be available for its implementation. But the community of nations may not let it go forth on a wide-ranging basis. I see its development coming more easily on a bilateral or regional basis, where marketplace and cultural interests are compatible. We do not force our deregulatory and competitive market approaches to common carrier activities on unwilling foreign administrations. So, I do not believe that we should force our television programming or our philosophy about television regulation on foreign audiences.
If the demand is there, the market will develop and support international television between countries. The technology and capacity is here. It will become more plentiful in the future. The only barriers to international television will be those man erects himself.

Let's hope that man will forego the temptation to bolt and lock the door to his neighbor, that he will instead keep his mind and, above all, his heart, open to the messages of his fellow man, wherever situated on this planet. In this way, international television can promote "peace on earth, goodwill towards men."

Address Before the Caribbean Basin Telecommunications Conference
May 15, 1983
Ocho Rios, Jamaica

Although nations may disagree about the best means for achieving innovation, certainly we all would agree that technological innovation is a good thing. Every country would like to encourage innovation because it promotes the growth of new products and new markets, generates employment and enhances a country's competitive advantage in the international marketplace. Yet no one firm or country has a monopoly on innovation. Its birthplace is in the creative genius of individuals. We can neither order nor plan it. But we can — and must — create the domestic and international environment in which such genius can be realized.

One of the great successes of our free societies is that we provide opportunity and incentive for those who take advantage of their creative genius. To encourage this in telecommunications, we have been moving away from rigidly-structured telecommunications regulation and progressively toward a more open, competitive system. We have found that innovation frequently comes from the introduction of competitors and from users who move to maximize costly telecommunications facilities through technological improvements. Thus, we have pledged to create, to the maximum extent possible, an unregulated, competitive marketplace environment for the development of telecommunications.

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To enhance and encourage competition in other areas of telecommunications, Congress and the FCC have embarked on ad-
ditional deregulatory trips. Several of these deregulatory actions have direct international implications, including the Record Carrier Competition Act, TAT-4, and the Authorized User decision.

In the past, the U.S. Congress had resolved that Western Union was authorized to provide monopoly telegraph service within the United States but was barred from offering any record services internationally. Last year, in the Record Carrier Competition Act, Congress lifted this ban on the provision of international record service by Western Union and also required Western Union and the other international record carriers to interconnect their facilities.

About six months ago, in the TAT-4 Rulemaking, the Federal Communications Commission removed a restriction limiting AT&T’s offering of record services internationally and at the same time cleared the way for the international record carriers to offer voice services.

The Authorized User decision lifted the restriction on Comsat allowing it to provide satellite circuits only to U.S. communications common carriers. Comsat is now allowed to lease satellite circuits to both carriers and non-carriers at U.S. earth stations. It also is allowed to become an international service carrier providing end-to-end services.

Of course, from an international perspective it is important to note that operating agreements for these services must be obtained. Therefore, although we have changed our policy with respect to Comsat’s role, we are cognizant of the fact that, ultimately, end-to-end service by Comsat and others can only be the product of mutual agreement with foreign telecommunications entities. We all understand that this partnership arrangement is essential.

Under this administration, we have instituted a program of management by objectives. Let me discuss three specific policy objectives we seek to promote in the international arena which reflect the values we hold as a nation and as members of the world community and which provide the flexibility to account for technological and political realities.

First, we aim to promote the principle of free flow of information and ideas. This principle has been a cornerstone of U.S. policy since our country’s birth. On an international level, many short sighted governments ignore the need for the free flow of ideas. These countries are demanding or contemplating
heavy governmental controls internally and are imposing rigid international regulations on the rest of us. These actions hamper the development of international telecommunications.

In my view, the innovations in international communications have great potential to foster more open societies throughout the world, to improve mutual understanding among nations, and to maintain international peace and security. We in government must continue to do our part by extolling the virtues of allowing the free flow of information and ideas on domestic and international levels. It means, in effect, that we must limit, rather than expand, intervention by our governments which unduly encroaches on the international marketplace of ideas and information.

Second, we want to promote equitable access to the radio frequency spectrum. There is a growing reliance on space telecommunications in the world today. In addition, we have experienced the recent emergence of many new nations — all clamoring for a piece of the pie in the sky. These factors have led to increased competition between countries for radio frequency spectrum and orbital positions for satellites. While there may be some short-term fears, I believe that the legitimate interests of all nations in an efficient, interference-free radio frequency spectrum can be achieved. It can — and must — be done without imposing rigid rules which would stifle technological innovation.

Our third policy objective is to broaden opportunities for world-wide competition and investment. All too often, in our international communications policy-making, the United States is met with efforts on behalf of government monopolies or government-favored companies to obstruct the operation of the world market. Instead of competing, some nations prefer restrictive practices or regulatory barriers. These tactics are leveled both by industrialized democracies and by developing countries.

Barriers to free trade run counter to the strategy that has made our domestic communications policy a success. Private enterprise has given us the most reliable and most advanced telecommunications system in the world. Other countries should consider this success. Benefits can be reaped on the international level if we resist erecting barriers to the international communications market, and we work fast to tear down those that exist today. I do not mean to suggest that other
countries must follow our American system and philosophy. But within the framework of their own rules, I believe they will benefit by us all providing the opportunity for open competition in the area of international telecommunications.

International communications is, by its very nature, a complex matter. It sinks or swims on the degree of cooperation between the U.S. government, and services providers and foreign administrators. No one country can assert or exercise sovereign control over the communications pipeline. Indeed, we all must work together to structure an overall system that best meets our needs, and to prevent, to the extent we can, the erection of barriers to global telecommunications operations.

In closing, let me restate my strong belief that the genius of the marketplace is that through cooperative exchange all parties end up better off than they began. I sincerely believe in this proposition and its applicability both to competing domestic U.S. businesses and all international businesses operating in the international arena. All of us benefit from voluntary exchange. Our experience in the past and our forecast for the future indicate that cooperative exchange holds the hope for our international telecommunications future. Let this first regional conference — and my announcement here tonight of our Telecommunications Facilities Planning Process — mark the beginning of our regional cooperation, so that we may continue to foster telecommunications progress and innovation, and thereby achieve a common goal — promotion of the general welfare of our respective peoples.

Speech before the Georgetown University Center for Strategic and International Studies: “U.S. Global Telecommunications: The Popcorn Principle”
February 26, 1985
Washington, D.C.

Today I want to address the goals of the FCC in overseeing U.S. international telecommunications during 1985. They are ambitious goals, for international telecommunications is an increasingly important sector of our economy.

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Our view here in the United States is that free markets are the most efficient way to bring telecommunications goods and services to the public, at least in a developed economy such as our own. It’s the cornerstone of U.S. deregulation philosophy.
As we forge ahead, we can take comfort that by using our free market philosophy we've steered the proper course here at home. Competition policy is benefitting the U.S. public. Deregulation has taken root. It's growing in almost every segment of the domestic telecommunications market.

We've removed entry barriers and deregulated customer premises equipment. We've provided for interconnection of carriers and private communications systems and streamlined rate and service regulation of most carriers.

We've established boundaries between plain old telephone and enhanced computer-based services and implemented divestiture of AT&T's local exchange facilities. To ensure efficiency and universal service, we've adopted an access pricing plan that eliminates massive pricing distortions.

Each of these actions contributes to the vigor of U.S. telecommunications. Their benefits have been shared with foreign manufacturers of terminal equipment, switching systems and fiber optic cable.

Some feared we would jeopardize the integrity of our communications infrastructure. Some thought investment would shy away from so explosive a field.

But the reverse has happened. Our actions have encouraged investment in existing and new telecommunications systems. Teleports, shared tenant services and local area networks and other new technologies are under construction throughout the United States.

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With this experience in deregulating domestic telecommunications behind us, the FCC this year will focus on the international setting. What is the situation in the international telecommunications marketplace? How is it like the domestic scene and how does it differ?

We must carefully acknowledge the differences. Only by applying our deregulation philosophy to the facts of international life can we develop a policy appropriate to that arena. A few facts demonstrate the context in which we'll make decisions this year.

First, unlike the domestic regulatory fishbowl, international telecommunications by definition involves partnerships with other sovereign nations.

Second, we are inhabitants of a diverse world. There are 600
million telephones in the world, but this service is spread very unevenly. There are more telephones in the New York City metropolitan area than on the entire African continent.

Third, advances in digital optical fiber, data processing and satellite technology are proceeding at a breakneck pace — and in directions that no one planner, governmental or otherwise, on this or any other planet, can predict.

Fourth, the international telecommunications needs of the American public are more and more complex. In the old days, planners could tally up voice telephony requirements, measure demand for a finite number of record services, and forecast demand. Planning in the U.S. was easy because voice traffic was the exclusive province of AT&T; a small coterie of record carriers did the rest. Today's demands for high speed data, hard copy and teleconferencing services illustrate how dramatically the situation has changed over the last few years.

Then, too, telecommunications traffic into and out of the United States is growing at a rate in excess even of our remarkable domestic traffic growth. Revenues for overseas traffic into and out of the U.S. have almost quadrupled in the last decade.

Developing a global telecommunications strategy, then, entails sorting through these facts, guided by our free market compass. What broad conclusions can we reach through this process?

First, we can only develop plans that work for us, in the United States, given that we are operating in partnership with other sovereign nations. But we are reasonably certain that the results of deregulation will prove to other nations the wisdom of our course.

To quote an African proverb: “Goodness sold itself; badness flaunted itself about.” We are confident that our approach is working and that, where it is good, it will be emulated elsewhere. Thus, in our dealings with others, we shouldn't brashly seek to impose our approach. We don't think this is necessary.

Indeed, in some instances, foreign governments have begun to join us in responding to technology-induced pressures through less government intervention. Witness British Telecom going private and the arrival of Mercury in the United Kingdom. Later this year, Japan will privatize NTT. Belgium has opened its telecommunications procurement to outside bidders and entered into operating agreements with new American car-
riers. Many nations are deregulating terminal equipment. Some are moving away from regulation of value-added services.

Now, being a sovereign nation ourselves, we expect that no foreign nation will treat us unequally. Do not expect us to stand by as our interests are jeopardized. Deregulation at home does not mean that we will give up that minimal control needed to protect against whipsawing or other monopoly abuses. And, if necessary, the FCC will, perhaps this year, test the limits of reciprocity powers to ensure that nations who enjoy the benefits of our free market do not keep theirs closed to U.S. competitors.

Further, given the pace of technological development, U.S. policymakers can, at best, hope to harness its power to serve the consumer. We can't stop its growth. We can't prevent innovators from bringing technology and services to market. Nor should we.

Policymakers should seek to make telecommunications services as widely available as possible. Our domestic experience is that competition can coexist with universal service. At home we have a universal service fund to which competitors contribute. This fund is targeted to subsidize service to remote areas of the domestic market. I hope that as men and women of good will, we can work together to narrowly target subsidies internationally where a compelling showing is demonstrated that these are needed.

And by the same token, the people of the United States have a right to universal service. In this industrialized society, that means a range of needs that no single entity can discern, let alone meet.

Moving from broad conclusions to specifics, let me say that we have pursued a strategy that favors competition on the U.S. end of international communications. Gone are the voice-recorded service distinctions that kept AT&T and the IRCs out of some international markets. Gone is the cookie cutter that limited IRC domestic operations on the one hand and barred international offerings by Western Union on the other.

Even so, our carriers remain subject to the interconnection policies of other governments. Although most nations continue to limit operating agreements, we've seen some liberalization of these policies. MCI, SBS, Sprint, and others, are slowly winning permission to provide service abroad.

Despite PTT concerns about working with numerous carri-
ers, the international welcome mat will grow larger, and for a simple reason. As U.S. outbound traffic flows from a larger array of carriers, the share of traffic handled by established carriers will decline. To maintain their revenues, PTTs will find it in their interests to do business with new qualified entities.

We’ve also changed our way of regulating COMSAT and international satellite service. When COMSAT was created, the risks of satellite manufacture, launch and operation seemed to justify an exclusive franchise to one carrier. For bearing significant risk, COMSAT got an exclusive right to the fruits of U.S. international satellite traffic. And, in 1966, the FCC decided that ownership of U.S. earth stations should be a joint venture by COMSAT. By 1984, change was needed. Satellite construction, launch, and operation had become less risky. Market forces could be relied upon more to regulate the industry.

We also decided to split COMSAT’s activities into monopoly and competitive services to enable COMSAT to bring the benefits of its acknowledged technological capabilities to new markets. We directed COMSAT to unbundle its space segment and earth station charges. We’ve also revised our earth station ownership policies to allow diversity in meeting market needs.

Our policies to date, then, reflect the fundamental reality facing telecommunications policymakers throughout the world. Technological innovation has sharply reduced the shelf life of regulatory policies. “State of the art” technologies require that our regulatory policies be “state of the art.”

It is in this context that we are reevaluating our cable and satellite loading policy. This policy rested on the belief that COMSAT, as a carrier’s carrier, could not promote the objectives of the Communications Satellite Act unless its carrier customers made adequate use of the satellite system. As COMSAT and competitive carriers move into the retail market, the rationale for preserving the satellite market share will gradually weaken.

In addition, pending before the FCC are applications to permit private systems to provide international transmission capacity by fiber optic cables and satellite. These matters await decision so I won’t delve into the merits. But they do dramatically demonstrate interest in diverse communications outlets. Any private system has to be consistent with U.S. obligations to other nations. But, I believe that we must move away from re-
strictive policies toward those that contribute flexibility and choice to the marketplace.

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I've tried this morning to explain how we, at the FCC and in the U.S., are trying to apply free market principles in developing our course of action for 1985. We've made our share of mistakes in this country; I would venture so far as to say that we've made some in the course of domestic telecommunications deregulation.

But 1985 is a year that will record us as turning the corner domestically. Competition flourishes in our telecommunications terminal equipment, satellite, network equipment, and related data processing industries. Users, large and small, are getting telecommunications services wherever in this vast county they want them, whenever they want them, and however they need them. And despite complaints, telecommunications rates in the U.S. remain among the lowest, if not the lowest, on earth.

Benjamin Disraeli once said: "A precedent embalms a principle." When we look at the circumstances of worldwide telecommunications developments, and how to address them, we should bear this in mind.

Our political tradition confirms that the United States is a nation "conceived in liberty." We are at our strongest when we permit ourselves to question conventional wisdom in the search for ways to advance our peoples' well-being. We must do so in developing telecommunications policy — because 1985 finds us facing the unconventional circumstances of worldwide technological revolution.

Of course, we will honor our treaty commitments and we will live up to our statutory charter. But all of us must recognize the dynamism of the world telecommunications market in 1985. Old ways of regulation and existing institutions have to be flexible. There is no binding so firm that it can keep the lid on this dynamic telecommunications environment.

By the same token, we can't rubber stamp "free market" and hope by so many impressions to challenge ways of regulating telecommunications in other countries and at home. We must as a government be flexible enough to step in when government is needed — to target subsidy help to the neediest and to protect against market abuse.
Remarks Before the European-USA Consultation on the Future of Audiovisual Industries: “Competition: We Can Run, But We Can’t Hide”
March 18, 1987

Today's international trade is competition of a different breed, a contest that enables man without putting him into peril. Instead of a nation divided, we are a vast community of nations linking ourselves ever closer together. As members of a common family, we all stand to win from free and fair trade. To choose the alternative — to slam our doors and shut out new products and ideas — guarantees nothing but our mutual defeat. As our people and our nations race together into the future, let history never judge ours as the generation that, having tasted the rewards of freedom, ran from competition instead of with it.

November 18, 1985
Paris, France

[T]he practice in the United States of relying on decentralized decisionmaking and experimentation is not new and is certainly not unique to telecommunications. It has been a major contributor to prosperity.

Economic freedom goes hand in hand with the other great freedoms our democracies enjoy — freedom to assemble, to speak and to pray. Our citizens have the opportunity to vote in the marketplace. A top United States executive writing in the Wall Street Journal, Walter Wriston, commented on how information technology now had created a global marketplace. Armed with information communicated instantaneously from around the world, people make monetary and other marketplace decisions on a global basis. As great democracies we should applaud and nourish this broadening of freedom for our people.

Therefore, let us all welcome those who would provide new ways to serve all the people of all the nations. There are entrepreneurs in my country who want to provide these services to whoever will use them. But the United States has no monopoly on talent. Let your entrepreneurs join ours in this endeavor.
The result will be better, lower cost communications services for all nations, and a more international system that produces goods and services to benefit everyone.

To close, I would like to thank you for the opportunity to be with you this morning. The philosopher, Voltaire, observed that we must tend our own gardens. Indeed that is true. But just as cross-pollination works in gardening, it works in human discourse. I know that more robust and diverse breeds of telecommunications services, benefiting our citizens and our economies, will be the fruits of our labor.

As one friendly gardener to others, tending to your own gardens, may I offer you all good wishes for a hopeful autumn, mild winter, and an early spring.

XII
Copyright Fees For Cable Television

Speech Before the Association of Independent Television Stations, Inc.
January 26, 1982
Washington, D.C.

One example of how Congress and the Commission must run on parallel philosophical tracks is an area with which you are quite familiar — the issue of cable copyright liability. Twenty years of debate produced the current compulsory license. It is at best a pragmatic compromise struck to guarantee the availability of a broad array of programming to cable subscribers.

Congress is currently debating whether the compulsory license should be changed in light of the Malrite decision. There is a sense of déjà vu in watching the debate unfold and in seeing the spotlight thrown once more on the myths, facts, and fears that populate the cable copyright arena. What disturbs me about the unfolding compromise is that it assumes that retaining the compulsory license is worth reimposing a raft of regulatory programs designed, however imprecisely, to balance against each other. It's beginning to look as though old exclusivity rules never die — they just switch forums.

I believe that the proposed cable copyright compromise is not a marketplace solution. I realize the complexity of the issues

being debated by the industries concerned. I understand that each participant wants to come away with at least a few crumbs, if not half a loaf. And I realize that Congress, not the Commission, has authority over copyright matters.

But I believe the debate should focus around two concepts that seem to have been obscured. First, a marketplace approach should be followed unless there is some reason that the market cannot, in fact, function efficiently. Second, we ought to judge whether the market will function efficiently in light of the situation in 1982, and not 1976.

I am inclined to favor the imposition of full copyright liability on cable television systems. I foresee definite benefits flowing from it, benefits not attainable under the current compulsory licensing system.

A compulsory copyright fee does not establish a market clearing price for broadcast programming. In failing to do this, the compulsory license fails to reflect its true value to the industries involved and, most important, to the cable subscriber. Full copyright liability will enable subscribers to express the intensity of their desire for different program types more directly. A compulsory license system allows subscriber preferences to be reflected about as accurately as a fun house mirror. The compulsory license serves to perpetuate the current mix of programming typically offered by cable systems. Full copyright liability, on the other hand, should prompt the development of new types of diverse programming.

To me the issue is not whether full copyright liability is better from a public policy perspective. Clearly it is. No, the real issue is, can we go from compulsory copyright system to full copyright liability without sudden and severe disruption to existing cable service? And I think we can.

The problems involved in the transition are the same today as they were in 1976 — no industry structures to handle copyright negotiations and the extended program exclusivity contracts that are currently in force. However, the critical factor that makes our evaluation of these problems different today from 1976 is the dynamism of the video marketplace.

Today, the cable television industry is strong and aggressively competitive. The video marketplace is responsive and adaptive to new developments. Under these circumstances, I believe that the industry structures needed to make full copyright liability workable will develop. A reasonable transition
period, perhaps of five years, would probably be the only governmental intrusion necessary to moderate the changeover from compulsory licensing to full copyright liability.

Yes, the marketplace may bring about change in the complement of programming that cable systems offer. But we stand at a point now when cable systems can offer many multiples of channels and increasingly sophisticated tiers of service. We can foresee the day when half the homes in this country will have cable service available to them. Under these circumstances, it cannot be sound communications policy to dally with a non-marketplace copyright licensing system that distorts consumer program preferences and limits the program choices available.

Full copyright liability will also demand other fundamental policy reassessments. The Commission stands ready to reexamine its own policies in light of changing circumstances, from exclusivity requirements that yet linger on the books to the "must carry" rules. None of these questions will be easy to answer and developing a cohesive policy will take time as well as Congressional, judicial, and public consensus. But I am convinced that full copyright liability for cable is an idea that demands consideration.

XIII
Cable Television

Address Before The National Cable Television Association:
"Of Cities, Sonnets and Software"
June 14, 1983
Houston, Texas

It's fitting that you're convening in Houston, Texas. If you're familiar with the history of zoning in the United States, you know Houston is one city that's been a haven for free zoning enthusiasts. It's a place where the free market has replaced the traditional regulatory approach to decide where buildings should be built. While the results have not been absolutely perfect, we're meeting in a city where much has been accomplished in a short time, where citizens have evident pride in living and working here.

This city of Houston, and the way it has approached its development, provided me with inspiration about what I should say here today. Unlike Houston, the development of the cable industry has not been without regulation. But it has succeeded,
and succeeded rather well, in spite of the regulatory hoops you've had to jump through during the last twenty years. Some of these hoops have been held up by federal regulators. Most of them have disappeared. But others have been propped up by states and cities. These don't seem to want to go away at all.

In the last couple of years, it seems that some of these municipal hoops have been doused in kerosene and set afire. The cable tiger can't jump through them without getting scorched a bit. And the natural fear of fire makes some of cable's more cautious cats avoid the hoop altogether.

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Let's assume that cities do have a right to regulate cable; even some laudable reason to regulate. Assuming this, cities must ask each time they develop a franchising ordinance or consider a renewal, what interests are we trying to protect? In their haste to demonstrate a regulatory prowess, some cities have blundered into misguided regulations that don't work. If the Commission's experience is a guide, some regulations probably can't work.

For example, why do cities insist on trying to regulate basic rates? If the last 20 years in public utility law has demonstrated anything, it's that rate regulation is a Pandora's box just waiting to be tapped. Yet few cities have opted for progressive forms of rate regulation. Even the "common tariff procedure" adopted by the New Jersey Board of Public Utilities has yet to be widely endorsed.

Subjecting cable companies and cable regulators to exhausting and expensive rate proceedings may accomplish little for the consumers they're supposed to serve and protect. In the meantime, it creates great costs for cable systems. Moreover, since pay services are preempted from municipal rate regulation, struggling over basic rates is largely futile in determining what subscribers pay.

And then there's the matter of cities choosing to run their own systems or reclaim them at renewal time. In principle, I imagine that cities always should be able to consider this option. But I doubt most cities can efficiently run a top notch cable operation. The private enterprise system has shown it can do the job in communities large and small. If there isn't a good reason for cities to own or run a cable operation, I'd keep it out of city hall.
Another disturbing trend I see in cable — a trend that the past experience of the FCC warns against — is the effort by cities to obtain gold plated cable systems. Cities seem to be demanding Cadillacs when the market may be ready only for Chevrolets. Municipal authorities, not wanting to look like they are sleeping on the job, ask for the most and best from the cable system. At the franchising stage, cable systems go along with this stroll down Santa Clause Lane. Everybody tries to promise the most, and the municipal authority tries to obtain the most.

What happens, sometimes, is that high quality, low cost services can’t be sustained in the marketplace. Municipal regulators must realize that they have to do good, not simply look good. Too often, a “gimme gimme” attitude leads to a reluctance of cable systems to bid or disappointment later when pie-in-the-sky proposals fall flat on their faces.

I can’t blame municipal regulators for trying to do the best for their communities. Oftentimes they feel captive of swank cable systems, adrift amidst all of the fibers and footnotes hurtling past. The development of franchising consultants, in this regard, is welcome.

Consultants have an important responsibility in the process: to report accurately to their client what their market will bear in the way of new or upgraded cable systems; not what they might like to create if we all could be king. Sometimes, though, consultants can be as unrealistic as the cities they’re supposed to help. It’s as if the city is the kid in the candy store and the consultant is standing there, in a dentist’s outfit, saying, “Go on, take as much as you like, it’s good for your teeth.”

The fact is, cable isn’t the only sweet shop in the neighborhood any more.

This leads me to the second observation I’d like to make about cable. More than ever, cable must be viewed as one of many competing video and non-video technologies. For many years, cable had a hard time convincing Washington that it deserved to compete, to be more than a supplementary service to conventional broadcasting. Well, you succeeded.

Now you’re a full competitor. But the field of competitors is growing. Just last month, we at the Commission have authorized an entirely new mode of video distribution — multichannel multi-point distribution service (MDS). As we speak, the fate of broadcast DBS is being considered in Geneva. It’s likely
that some form of DBS will enter the marketplace before too long. Subscription television (STV) and satellite master antenna television (SMATV), along with single channel MDS, are mature competitive industries in selected markets. And, of course, conventional broadcasting continues to be a vigorous competitor for the eyes and ears of the American viewing public.

Municipal regulators must comprehend and consider this environment. Cable possesses features that make it unique in the marketplace. These qualities of broadband technology escape no one in this room, I'm sure. But you must be allowed an opportunity to have those qualities put before the public, not have them nullified by onerous regulations. This is especially true when those regulations have no purpose other than to showcase a "get-tough" mentality by regulators. Cable no longer can afford the luxury of overregulation.

What cable needs, what American needs, is a limited form of regulation that allows the market to operate. It's a simple notion and one that this Administration has strongly supported. But in the desire of cities to flex their regulatory muscles, it could get lost.

The cities got a bit of a scare in the Boulder decision, when the absence of expressed authority for franchise activity led to the specter of antitrust liability. Cities probably can get themselves out from under the ramifications of the Boulder decision. But the principal that cities have to consider the competitive impact of regulations — and of their regulatory processes — is going to be with us for a long time, I think.

That principle is really a corollary of a simpler one: don't regulate if you don't have to. This broader concept may prove quite helpful as cities begin to fathom the implications of two-way cable communication. I don't want to say too much about what could happen if common carrier-like regulation is considered for cable. Let me just say this: the world may be a better place if cable entrepreneurs are left alone and are not subjected to the panoply of public utility rate regulation.

Regulators should consider an unregulated competitive environment to be as viable as one that brings the weight of those cobwebbed volumes of tariffs, counter-filings, and decisions

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down on the head of a feisty new entrepreneur. It's never too late to regulate. But sometimes, it's far too early.

Having dropped a few dainty hints in an area that is, to say the least, controversial and a little murky, let me turn to my third observation about cable regulation in the 1980s. It's this: to borrow a phrase from another beleaguered profession, that of medicine: cable system operator, wire thyself! By this, I mean get yourselves wired into the communities you live in and serve.

One reason regulators find citizen cheerleading squads whenever they come onto the playing field is that operators are too often seen as bad guys. Perception, as they say in Washington, is everything. Cable systems sometimes are perceived not as good citizens in their communities, but as fast buck operators with few community roots. This is a peculiar image for your industry. So many of you started as small businesses — TV repairmen, really — helping viewers get a better picture on their sets. These "good neighbor" companies still exist in many communities.

But in others, takeovers by multi-system operators (MSOs) have created an impression of impersonal service. The company comes off as trying every possible way to squeeze an additional fee out of a subscriber without adding service. So local regulators run to consultants for information and to city attorneys for ordinances to protect against what they perceive to be 21st century medicine men.

Again, this is an ironic result. Cable has probably spent more dollars than any other municipally regulated business in promises of services and revenues. But has cable done a good enough job? The volume in your complaint departments, and your subscriber churn rates, are pretty good indices of how well you are doing.

In this regard, it's interesting to note that your possible rival down the ways a bit — I'm speaking of the local phone companies — has managed to do a pretty fair job of identifying with their communities. The same can be said of many supermarket chains or local broadcast stations that operate as local outlets for national companies. It's not the size of MSO operations or their national affiliations. It's that cable systems have a hard time convincing local regulators they are sincere when they use the words, "trust me." Other words seem to come to mind.

Based on my perceptions of the situation, I'm convinced,
more than ever, of the wisdom behind Senator Barry Goldwater's efforts to provide a comprehensive federal statute to address cable. It's not because I believe in regulation, or in federal regulation particularly. It's because I think we have reached the point that cable soon may become overregulated, unable to compete in the overall video marketplace of the 1980s. In a cable world, increasingly, if not overwhelmingly, interstate in nature, a federal approach is necessary and desirable.

This is not to say that states and cities should not regulate. And it's not to say that cable regulation should not be tied to the local community; it surely ought to be. But cities ought to consider how best to inject competition into the overall regulatory scheme. Some cities find that exclusive franchises make the most sense. I would not want to strip this power away from a city. But cities ought to know that you can have competitive intracity cable operations, too.

I'd like to see a world where cable operators know what regulations they will be subject to. And I would like to see a world in which, especially for the benefit of consumers, those regulations are kept to the absolute minimum necessary.

So there is a job for all of us to do. We need a national cable law. We need enlightened local regulation that emphasizes regulatory restraint and thoughtful demands. And we need cable industry that can be trusted to fulfill the promises it makes.

These are difficult objectives, but they are by no means impossible. Ten years ago, we were at the high water mark of federal cable regulation in this country. Today the waters have receded. We find a growing, prosperous cable industry. Despite some stumbling along the way, cable today is stronger than ever, providing more services to more Americans, insuring the freedom of choice that has always been the promise of broadband technology. Promoting individualism in a free society has been a goal of the Reagan Administration. A vigorous cable industry is consistent with that goal.

It's a time to pat yourselves on the back. But it's a time for "patting" yourselves somewhat harder and somewhat lower on the back as well. Get yourselves in gear for the challenges, in both regulation and technology, that the rest of this decade will surely present.
That brings me to the larger question of must-carry. I'm not going to dwell on it, because I don't think it would be appropriate or, for that matter, very useful at this point. When Washington isn't watching reaction to President Reagan's tax plan, it's keeping its eyes on the D.C. Court of Appeals awaiting the outcome of the must-carry appeals.

I'm concerned, and broadcasters are too, by some of the must-carry horrors that have cropped up in places like San Francisco. The FCC looks at three or four duplicate network signals all on the same system and says "Must carry." But reasonable people can look at this and ask "Must you carry?" Sometimes enough is too much.

I'm also concerned about changes that may worsen the situation. I hope the Copyright Office won't slam distant signal payments for local signals created by new hyphenated markets. And, I'm also concerned that the overall copyright burden may be too great. I've refused expansion of must-carry by voting against mandatory TV stereo carriage, and against entrenched interests inside — and outside — the FCC, some of whom, sunshine patriots that they are, now say they are all for repeal of must-carry.

My position on must-carry has been consistent, and I believe, logical. I believe there's a connection between the compulsory copyright licensing scheme and must-carry. Making fundamental changes to one side of the bargain without changes to the other side just doesn't make sense. If the ideal — with open market negotiations for carriage and compensation — can be accomplished, so be it. But I don't like my eggs half scrambled, half poached.

Let me give you a couple of words . . . about the future of any must-carry rules at the FCC. As you know, an industry compromise has been struck. I suspect that once it is formally filed, we will place it out for public comment. After that, we'll sort
through the comments and take into account the many meet-
ing s we’ve had with broadcasters and cable interests on this
question. I don’t have anything especially new to add to this
point.

I will repeat my willingness to consider the compromise. But
I cannot, and will not, sign off on a set of rules that does not
take account of the first amendment difficulties present in the
former rules. I refuse to sell out our long term goal of full first
amendment protection for all the electronic press for the lux-
ury of a short term solution to difficulties broadcasters might
face in this deregulation environment.

There have been some that have criticized the FCC for not
appealing the Quincy decision to the U.S. Supreme Court. We
did look long and hard at that question. Many meetings were
held with broadcasters and others on this question.

In the end, we decided that the ruling was legally sound. As I
told NAB leadership when they visited us on this question, I
never on my own motion sought to undo the must-carry rules.
And the Commission resisted efforts at the petition-for-
rulemaking stage to do so. But when confronted with that
sound, unanimous decision by the appeals court, the Commis-
sion did not feel it could go forward to prop up these rules.

Moreover, I feel that with all the progress we have made on
the deregulatory front, I would urge you to consider what bar-
gain you would make to get those rules reinstated, lock, stock
and barrel. Don’t make the unholy bargain of trading your
gains of editorial freedom and independence from government
for a quick-fix that may be nullified in court.

Johnson & Johnson decided to stop selling Tylenol capsules;
it wasn’t that there was anything wrong with their product.
But they kept trying to put a good product in a container that
just wasn’t safe. Broadcasters have a great product, and it’s
time they consider whether they’re worrying about trying to
save a delivery mode that may be out-moded and from a broad-
cast first amendment perspective, ultimately harmful. And
ponder the words of Abraham Lincoln, who said “those who
deny freedom to others deserve it not for themselves.”

35. Quincy Cable TV v. FCC, 768 F.2d 1434 (D.C. Cir. 1985), cert. denied, 106 S. Ct.
2889 (1986).
Speech Before The National Association of Broadcasters
March 31, 1987
Dallas, Texas

It's a pleasure to be here, for this, my farewell appearance before this great convention.

What a time it's been to be Chairman of the FCC! When I came aboard in 1981, I knew that regulation was ready for a shake-up. You, the broadcaster, had suffered under years of error by trial regulation. That's right, error by trial. The FCC tried to pretend you were second class citizens about your first amendment rights. It made a mountain of paperwork to feed a mole hill of bureaucracy. You were ruled by fear and fiat. When we came in 1981, we looked at every single broadcasting regulation on the books. And we asked, "Who does this help? Does this make sense?"

What happened? The paperwork burden, long considered an unavoidable yoke on the neck of the broadcaster, was lifted.

The renewal application? The one, that made the W-4 Form look like "Fun with Dick and Jane?" We simplified it. The three year rule - the FCC's version of the college bed check - was undone.

Since I'm leaving office soon, I can't announce any bold initiatives for the coming year. I thought it might be useful, for those of you who might be considering becoming an FCC Commissioner, to give you the best pointers I can. So here are Fowler's principles of being a good Commish.

The first is a mathematical rule that really applies if you plan to be Chairman. Rule one states: Divide by two, add one and round off.

What I'm referring to is getting a majority vote through the Commission. You see, we have five Commissioners. Divide by two, that's two and a half; add one, that's three and a half; round off, and presto, you win!

There's nothing like a majority of three to turn misguided gobbledy-gook into sound, dynamic policy. Five is always a better number than three when it comes to Commission votes.
But if you can just convince two of your colleagues to go along, you'll do just fine.

Well, what about the other two who won't? You get Fowler principle number two: *Whatever can be leaked, will be leaked.* Some people criticize Washington as a sewer. It's actually more like a sieve. I got steamed when I learned that tentative decisions and brainstormings in progress were leaked. After six years of living with this, I'm still shocked when I find that quiet decisions made in the sanctum sanctorum of the Chairman's office get out to the public before the last person has left the meeting.

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[M]y third principle [is]: *Park your car in the same spot every day.* By this I mean, know what you stand for and stick with it. . . . If you know what you *stand for* — other than longevity in office — you can *stand* almost anything.

I had, and have, a simple, straightforward idea. I envision a print model for broadcasting. I want to see broadcasters as free as newspapers and magazines to write, report, and editorialize: No special rules, like the Fairness Doctrine, to second guess you; no so-called "Equal Time" law, no lowest unit charge. In fact, no content rules beyond those for obscenity, indecency, defamation and the like. . . . In short, I want your freedom.

* * * * *

[R]emember, Madison and the Founding Fathers had to win their independence from England by fighting for it. They couldn't go to Drexel, Burnham, do a leveraged buy out of the thirteen colonies, and spin off Delaware to the tea traders.

More recently, Newton Minow, the FCC Chairman of the Kennedy administration, referred to the equal time laws as the "no time" laws. Why? Because they tend to reduced all candidates' access rather than encourage more. And who does this help? Why, of course, the better known incumbent.

And I don't have to tell you what I think of the lowest unit charge rule. Let's call the lowest unit charge what it is — a flat-out, politician-ordered broadcaster subsidy for politicians. It's a little like the bank president pulling a stick-up on the bank's own tellers.

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I've got to admit, taking this position publicly has gotten me into a lot of trouble from time to time. But I haven't been afraid to speak my mind and call things what they are. Take the public trustee concept. It's based upon two of the phoniest
assumptions around: One, even though there's a first amendment, a broadcaster should be told what to broadcast by a politically appointed board in Washington. Two, this system results in better service to the public than a free system of broadcasting would. These are both false, and you and I know it.

The trusteeship system probably does remind broadcasters to air programs that may not be the biggest ratings getter but are nevertheless important. If that's all it was — a little fib to give the public spirited in your industry a louder voice — I don't think I'd be upset. . . .

But as a government official, who took an oath to uphold and defend the Constitution, I must repudiate it. Because the trustee notion is more than our little "fib." It's not just a carrot for those who hunger to do good. It's a stick that can beat your editorial freedom to a mealy pulp and run you out of business. And it has.

In this last decade, from Berlin, New Hampshire, to San Diego, California, and points in between, the FCC pulled the switch. Can any of us say that broadcasting is better off thanks to these selective instances of capital punishment?

Have we deterred bad behavior? Have we encouraged good behavior? Or have we simply donned our pajamas and concocted little bedtime stories about licensee behavior? Behavior that everyone knows will be, in any event, much more a response to the market than government policy?

The more we let government poke around a program director's office or a newsroom, the more we stand to lose as a democracy. My friends, that's the difference between good old radio . . . and good old Radio Moscow.

My point is this: If you have a principled way of looking at the world, and you stick to it, you can go about doing your job with sincerity and conviction.

Which leads to principle number four: Remember that you're not a lobster. No offense to our friends from New England; just remember that you were born a vertebrate. That means you were given a backbone. Don't be afraid to honor it by using it.

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What will happen to the Dallas Morning News when it is sent electronically and delivered to the home over spectrum? Will there be a Federal Newspaper Commission with "equal
space” laws? When will someone propose a Federal Video Cassette Recorder Commission based upon the impact of the medium, or the scarcity of blank tape? Or when the next generation’s Johnny Carson comes out to do a monologue, will there be an announcement that goes, “And now, in response to the foregoing satire, we present an opposing viewpoint by a government spokesman.”

I don’t know if these can occur. I know that they won’t occur if here and now, once and for all, we get radio and television on the right side of the first amendment line. Backbone, my friends, backbone. It’s going to be needed to make this happen. You’ve got the leadership right here in this room. Use it. You’ve got the political clout. Wield it.

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You know, looking back over these six years, you and I have traveled a long way. Maybe you will remember me as the Chairman who threw a little cinnamon into your Monday morning coffee — to spice things up — and made you think not just about your responsibility as broadcasters, but also about your responsibility to broadcasting. Standing before you, I look at this microphone. I am reminded that it was about twenty years ago, on a spring day like today that I was before another mike, a radio mike, spinning platters with blasts from what was not quite yet then past. Sometimes, I’d have the night shift. And I’d be there all alone, surrounded by the night.

But never really alone. But that was the magic, then and now, of your great industry. From the first crackling codes from ships at sea to the color photos from ships in space, we are a nation bound together by broadcasting.

Bound, yes, but not bounded. As the miracle of radio and television came into our homes and our cars, our work and our play, we changed. Where once was silence and darkness came Chopin, and Caruso, the Saint Louis Cardinals. And the sound of hoof beats, and Huntley and Brinkley, Cronkite, and Kovaks and Clarabell, Nat King Cole and Denver Carrington. The magic of radio! The miracle of television!

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Let me say to every one of you in this room: Thanks so much for letting me serve these past years, thanks for working with me, and even sometimes against me, but always in a spirit [of] good fellowship as we struggled together.