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The purposes of this study were: (1) to determine who may have access to air time on television stations in North Carolina, (2) to discover the attitudes of station managers with regard to the governmental regulation of the granting of air time, and (3) to determine the current policies of television stations regarding the granting of air time.

A questionnaire containing three parts was sent to every manager of a commercial television station in North Carolina. Section I of the questionnaire asked questions concerning the granting of free time. Section II asked questions about paid access. Section III dealt with management attitude.

Of the seventeen managers, five fully completed their questionnaires (29.4%); four more answered only Section III, for a total of nine responses to that section (52.9%). In brief, the summary revealed the following:

1. There is no clear, definite policy for granting free access, unless the fairness doctrine specifies what action should be taken on a particular request for time; normally, the granting of free access is subject to the judgment of the manager.

2. There is no definite guarantee that an applicant can buy time. Judgment rests with the manager.

3. The majority of managers do not agree with the fairness doctrine, although they do use it as a standard.

4. The managers are opposed to legislation which would compel access.

THE RIGHT OF PUBLIC ACCESS TO COMMERCIAL TELEVISION STATIONS IN NORTH CAROLINA

by

James Calhoun Cox, Jr.

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APPROVAL PAGE

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BACKGROUND AND METHODOLOGY

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Introduction

During the summer of 1970, President Richard M. Nixon repeatedly spoke via network television to the American people in an effort to build support for his Indochina policies. Most of these speeches were unanswered by the opposition in the United States Senate. Why did the opposition not have the same right of access as the president? The answer is not as simple as it may appear, for it involves not merely fair play, but a legal basis for determining what "fair play" is and who the players are to be.

In this chapter, the nature of broadcasting is examined in relation to the First Amendment. The development of broadcasting is traced from its birth in 1920 to its magnitude in the 1970's. Several theories of the First Amendment are discussed, particularly as they are applicable to broadcasting.

Regulation by the FCC is the key to understanding the situation. Some aspects of regulation covered in this chapter are: regulation of general programming, editorials, controversial issues, and the fairness doctrine. Also discussed is one of the most recent theories concerning freedom of the press: the right of access.

The Beginnings of Broadcast Regulation

Public broadcasting began in 1920, when radio station KDKA in Pittsburgh, Pennsylvania, carried the results of the Harding-Cox election. Between 1920 and 1922, dozens of stations went on the air. They generally chose their frequencies at random, so that listening to the broadcast band at any one point could produce a meaningless cacophony. Obviously, some form of regulation was needed to render the airwaves listenable to the audience. The only applicable jurisdiction came under the Radio Act of 1912.[1]

The Radio Act of 1912 required the licensing of stations by the Department of Commerce, but it made no provision for the allocation of frequencies.[2] In 1922, Secretary of Commerce Herbert Hoover began to license stations and grant different frequencies and powers, and by 1926, the broadcast frequency band was uncluttered. Unfortunately in 1926 some court decisions and a decision by the United States Attorney General deprived Hoover of his authority, and broadcasting lapsed back into the condition in which Hoover had found it.[3]

Congress decided in 1927 that the time had come for strong legislation regarding broadcasting. The Radio Act of 1927 was passed. This act set up a regulatory body, the Federal Radio Commission, to handle the affairs of broadcasting. The Act was amended by the Communications

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[1]Bryce W. Rucker, The First Freedom (Carbondale: Southern Illinois University Press, 1968), p. 80.

[2]Frank J. Kahn, ed., Documents of American Broadcasting (New York: Appleton-Century-Crofts, 1968), pp. 9-16.

[3]Rucker, The First Freedom, p. 81.

Act of 1934, which replaced the FRC with the Federal Communications Commission.[4] This Act is still in effect today, Congress having added some amendments, and the FCC is still the official regulatory board of broadcasting.

Broadcasting and the Press: Alike and Unlike

Broadcasting has several characteristics which distinguish it from the traditional newspaper and magazine press. First, broadcasting uses the publicly-owned frequency spectrum. The public at large is considered the "owner" of the airwaves. This is of great importance, for this ownership implies that all the people are entitled to a broadcasting service.

Second, there are a limited number of channels available in the spectrum. A reasonable distance must be left between channels to eliminate interference; for instance, it is standard practice to leave 40 KH_z[5] between two AM radio stations which supposedly serve the same area. Similar provisions exist for FM radio and television. Although the addition of UHF (ultra-high-frequency) channels to television provides more room for broadcast stations, the space available is still finite; therefore, not everyone who wishes can operate a broadcast station where he wants to. Some basis of choice among applicants is necessary.

Third, the public makes a large investment in the medium itself through the purchase of home radios and televisions. The public, as

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[4] Ibid.

[5] KH_z is the standard abbreviation for kilohertz, a measurement of frequency (formerly kilocycles).

well as the station licensee, has a property interest to be considered.

Finally, because broadcasting is a home medium, it must observe certain restraints not applicable to other media. Broadcasting is the medium most accessible to children; consequently, they must be considered an integral part of the audience when programming decisions are made by networks or stations.[6]

Jerome Barron states that people who manage "newspapers are essentially people who sell white space to advertisers. Broadcasters are essentially people who sell time to advertisers."[7] If the primary interest of station owners is making money, it seems only natural that the government must use the force of law in order to attempt to make the concepts of public interest, access, and fairness part of the broadcaster's mind-set.

First Amendment Theories

The First Amendment to the United States Constitution is a part of the Bill of Rights. As such, it is addressed to the national government. Justice Marshall, in Barron v. Baltimore,[8] held that the Bill of Rights does not limit state governments. With the adoption of the due-process clause of the Fourteenth Amendment in 1868, some citizens attempted to persuade the Supreme Court to interpret the

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[6]Sydney W. Head, Broadcasting in America (Boston: Houghton Mifflin Company, 1956), p. 361.

[7]Jerome A. Barron, Freedom of the Press For Whom? (Bloomington: Indiana University Press, 1973), p. 311.

[8]Barron v. Baltimore, 7 Peters 243 (1833).

clause to mean that the states are bound by the Bill of Rights as tightly as the national government. Finally, in Gitlow v. New York,[9] the Supreme Court decided:

> For present purposes we may and do assume that freedom of speech and of press--which are protected from abridgement by Congress--are among the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states.[10]

Concerning this ruling, Burns and Peltason comment:

> Gitlow v. New York was a decision of major, almost revolutionary, significance. Since that date the Fourteenth Amendment has placed the same restraints in behalf of free speech on states . . . that the First Amendment places on the national government. . . . Although Congress is governed by the absolute language of the First Amendment to pass no law abridging free speech, press, and religion whereas states are limited by the relative language of the Fourteenth not to deprive a person of speech, press, or religious freedom without due process of law, this difference in constitutional language has had no significance. For all practical purposes the Fourteenth imposes on the states the same restrictions that the First Amendment imposes on the national government.[11]

Yet one should remember that it takes both amendments to provide American citizens with the freedoms supposedly provided by the First Amendment. The Fourteenth Amendment is necessary in this federal system which contains national and state governments.

Edward G. Hudon remarks that "from the beginning the story of the law of speech and of the press in this country has been

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[9]Gitlow v. New York, 268 U.S. 652 (1925).

[10]James MacGregor Burns and Jack Walter Peltason, Government By the People, 6th ed. (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1966), p. 128.

[11]Ibid.

one of vacillation."[12] The direction of the vacillation has been largely dependent upon the political bias of the majority of the members of the Supreme Court of the United States, as our laws are based upon their interpretation of the Constitution. As the political bias of the court shifts from left to right or vice versa, so do the rulings of governmental agencies, including the Federal Communications Commission.

Four types of speech generally are dealt with in a discussion of the First Amendment: inflammatory, seditious, obscene, and defamatory. Inflammatory speech may be defined as speech which incites listeners to commit violent acts. Seditious speech is speech used to undermine the government. Obscene speech may loosely be defined as speech offensive to the listener in a moral sense. Defamatory speech accuses a person, group, or organization of perpetrating acts or possessing qualities which are perceived by society as "wrong." Many utterances, however, cut across the lines of these definitions; i.e., speech considered seditious is often inflammatory and defamatory as well. Consequently, many court cases involve more than one kind of speech.

Cases involving freedom of speech invariably revert to the question: "What did the writers of the Constitution actually mean when they wrote the First Amendment?" Zechariah Chafee, Jr. feels that "the words were used in the Constitution in a wide and liberal sense." Chafee quotes part of an address to the inhabitants of Quebec delivered by the Continental Congress on October 26, 1774:

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[12]Edward G. Hudon, Freedom of Speech and Press in America (Washington, D.C.: Public Affairs Press, 1963), p. 172.

> The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiment on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officials are shamed or intimidated into more honorable and just modes of conducting affairs.[13]

Chafee explores the question of why the First Amendment was written at all. He finds that the main reason was to eliminate the law of seditious libel (the English common law of sedition), wherein sedition was defined as "the intentional publication, without lawful excuse or justification, of written blame of any public man, or of the law, or of any institution established by law." Chafee states that:

> For years the government here and in England had substituted for the censorship rigorous and repeated prosecutions for seditious libel, which were directed against political discussion, and for years these prosecutions were opposed by liberal opinion and popular agitation.[14]

The sedition law reflected a conflict of ideas concerning the relation of rulers to the ruled. Under one view, the rulers were superior, and "must not be subjected to any censure that would tend to diminish their authority."[15] According to the other view, the rulers were the servants and agents of the people.

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[13]Zechariah Chafee, Jr., Free Speech in the United States (Cambridge, Massachusetts: Harvard University Press, 1954), pp. 16-17.

[14]Ibid., pp. 18-19.

[15]Ibid., p. 19.

The latter view was the one subscribed to by the writers of the Constitution. James Madison, who drafted the First Amendment, said in 1799 that the amendment was based upon this "essential difference between the British Government and the American constitutions." Chafee explains:

> In the United States the people and not the government possess the absolute sovereignty, and the legislature as well as the executive is under limitations of power. Hence, Congress is not free to punish anything which was criminal at English common law. A government which is "elective, limited and responsible" in all its branches may well be supposed to require "a greater freedom of animadversion" than might be tolerated by one that is composed of an irresponsible hereditary king and upper house, and an omnipotent legislature.[16]

Chafee quotes Sir James Fitzjames Stephen, who concludes:

> To those who hold this view fully and carry it out to all its consequences there can be no such offence as sedition. There may indeed be breaches of the peace which may destroy or endanger life, limb, or property, and there may be incitement to such offences, but no imaginable censure of the government, short of a censure which has an immediate tendency to produce such a breach of the peace, ought to be regarded as criminal.[17]

Most First Amendment theorists make the concession that there are some censorable things, or, as Sydney Head puts it, "some modes of expression are properly subject to penalty, notably obscenity, defamation, and treason."[18] The question then becomes where to draw the line between what is obscene and what isn't, what is defamatory and what isn't, and what is treasonable and

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[16] Ibid.

[17] Ibid., p. 22.

[18] Head, Broadcasting in America, p. 353.

what isn't. Head says that the majority viewpoint is that the benefits of free speech can be realized only in an organized society, so "the use of freedom to destroy the conditions necessary to its enjoyment is self-defeating."[19]

Burns and Peltason think that in discussing governmental regulation of speech, one must distinguish among belief, speech, and action:

> At one extreme is the right to <u>believe</u> as one wishes, a right about as absolute as any can be for men living in organized societies. . . .
>
> At the other extreme from belief is <u>action</u>, which is constantly constrained. We may <u>believe</u> it perfectly all right to go sixty miles an hour through an intersection, but if we do so, we will be punished. . . .
>
> <u>Speech</u> stands somewhere between belief and action, it is not an absolute, or almost absolute, right like belief, but it is not so exposed to governmental restraint as is action.[20]

Alexander Meikeljohn chose to divide speech into two classifications; he made a "distinction between those forms of speech which serve purely personal and selfish purposes and those which serve the needs of a self-governing society." He included only the latter under the First Amendment; the former were placed under the Fifth Amendment. Head summarizes Meikeljohn's theory as follows:

> Meikeljohn contends that speech which serves private ends can be legally censored in accordance with due process; only that speech which serves public ends qualifies for the protection of the First Amendment. The latter is the kind of utterance which has to do with the individual's functions <u>as a citizen</u>.

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[19] Ibid.

[20] Burns and Peltason, <u>Government</u>, pp. 134-135.

> When the First Amendment says "Congress shall make no law abridging the freedom of speech," it means that the government may pass a law abridging some forms of speech but the freedom implied cannot be abridged under any circumstances. In Meikeljohn's view there are two sets of civil liberties, only one of which is abridgeable by due process of law; the other is beyond the reach of the law, belonging to those "unalienable rights" of life, liberty, and the pursuit of happiness of which the Declaration of Independence speaks.[21]

Chafee also mentioned two kinds of interests in free speech: individual interests and social "interest in the attainment of truth." However, he disagrees with Meikeljohn's division:

> The most serious weakness in Mr. Meikeljohn's argument is that it rests on his supposed boundary between public speech and private speech. That line is extremely blurred. . . . The truth is that there are public aspects to practically every subject. The satisfactory operation of self-government requires the individual to develop fairness, sympathy, and an understanding of other men, a comprehension of economic forces, and some basic purpose in life. He can get help from poems and plays and novels. . . . This attitude, however, offers such a wide area for the First Amendment that very little is left for his private speech under the Fifth Amendment. For example, if books and plays are public speech, how can they be penalized for gross obscenity or libels?
>
> On the other hand, if private speech does include scholarship and also art and literature, it is shocking to deprive these vital matters of the protection of the inspiring words of the First Amendment.[22]

Concerning the question of obscenity, the Supreme Court ruled in U.S. v. One Book Called "Ulysses"[23] that a literary work must be judged as a whole, not on the basis of passages of the work taken out of context. The FCC has not yet seen fit to apply this same

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[21]Head, Broadcasting in America, p. 353.

[22]Franklyn S. Haiman, Freedom of Speech: Issues and Cases (New York: Random House, 1965), p. 153.

[23]U.S. v. One Book Called Ulysses, 5 F. Supp. 182 (S.D.N.Y. 1933).

standard to programs broadcast over the airwaves. Lying beneath the question of obscenity is the question of who is to be the judge of what is or is not obscene. Jefferson, in his preamble to the Virginia Act of Religious Freedom in 1779, addressed himself to the dangers of the arbitrary judgment of an official:

> . . . to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own.[24]

Defamation is a more complicated issue. Many argue that defamation should be legally preventable because of the lasting harm it can cause to an individual: the loss of a job or the loss of social standing. When applied to government, "seditious utterances could precipitate riots and revolution" if the state cannot protect itself. So perhaps the question hinges upon whether or not speech will cause harm to others. This criterion, however, is an oversimplification of the issues involved, for the freedom to openly criticize those in power is one of the most effective ways to judge if freedom of speech really does exist. Head states: "Even if the accusations are false, there should at least be an opportunity to bring them into the light and test them." He adds that the first act of a dictator usually is the suppression of the opposition's freedom to criticize the new regime. This

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[24]Adrienne Koch, ed., Jefferson (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1971), p. 21.

freedom to defame the government can be called the "Right to Defame."[25]

In 1919, in the case of Schenck v. U.S., Justices Holmes and Brandeis formulated the "clear and present danger" test. This test implies that in order for speech to be labeled "seditious," it must present a clear and present danger to the government of the United States. In the terms of Burns and Peltason, the government has no authority to suppress speech "unless the connection between the speech and illegal action is so close that the speech itself takes on the character of the action." Judge Brandeis reiterated the doctrine in Whitney v. California, when he stated:

> no danger flowing from speech can be deemed clear and present . . . unless the incidence of the evil is so imminent that it may befall before there is opportunity for full discussion.[26]

In 1951, in Dennis v. U.S.,[27] the Supreme Court broadened the label to include indirect and relatively remote danger. This particular case saw the court uphold the Smith Act, which stated that one could be found to be an enemy of the U.S. by virtue of association with the leaders of the Communist Party, thus making membership in the party a crime. In 1957, however, the scope of Dennis v. U.S. was restricted by Yates v. U.S.,[28] and in Scales v. U.S.,[29] the court ruled that the

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[25]Head, Broadcasting in America, p. 353.

[26]Whitney v. California, 274 U.S. 357 (1927).

[27]Dennis v. U.S., 341 U.S. 494 (1951).

[28]Yates v. U.S., 354 U.S. 298 (1957).

[29]Scales v. U.S., 367 U.S. 203 (1961).

membership clause applies only if there is clear evidence that the accused "specifically intended to accomplish the aims of the organization by resort to violence." Burns and Peltason add:

> So construed, the membership provision of the Smith Act is even more limited in coverage than the advocacy provision and in essence can be applied only against those who are attempting to overthrow the government by force, activity that was made criminal long before the passage of the Smith Act.[30]

The FCC and Freedom of Speech

As mentioned earlier, the legal document behind the FCC is the Communications Act of 1934 and its amendments. The Communications Act is written in general terms, and the FCC makes specific applications; in fact, the FCC was created by the Act for that very purpose. The FCC is the agent through which the government controls radio and television communications. Broadcasters encounter the law in the form of the FCC Rules and Regulations. Since each regulation must be derived from the Communications Act, which is an Act of Congress, the FCC "Rules and Regulations have the full force of federal law, even though not directly enacted by Congress."[31]

General Programming

Congress emphasized in Section 326 of the Communications Act that broadcasting was to have protection against governmental interference with freedom of the press under the First Amendment:

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[30]Burns and Peltason, Government, p. 153.

[31]Head, Broadcasting in America, p. 310.

> Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.[32]

However, Section 326 does not prohibit station censorship; i.e., the broadcaster is not prohibited from controlling program content. As Head states: "To prohibit the licensee from controlling program content would transform broadcasting into a common carrier,"[33] and that was not the intention of the Communications Act.

Nothing else in the Act refers directly to programs, but the FCC does consider overall programming when renewing licenses. Technically, then, there is no "prior restraint" involved; however, the broadcaster is aware of the reasons why the FCC has failed to renew the licenses of other stations. The FCC assumes that the station manager will avoid certain policies in order for his station to keep its license. In other words, a policy of post facto punishment exists.

Editorials and Controversial Programs

The area of editorializing is another area where vacillation exists. In the Mayflower decision in 1941 the FCC deplored editorializing.[34] WAAB in Boston, owned by the Yankee Network, had its license up for renewal and was challenged by the Mayflower Broadcasting Corporation. The

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[32]Kahn, Documents, p. 83.

[33]Head, Broadcasting in America, p. 363.

[34]In re The Yankee Network, Inc., 8 FCC 333 (1941).

Mayflower Corporation was turned down when the FCC found that they had falsified some documents. However, during the course of the investigation, the FCC found that WAAB had been editorializing for a period of approximately two years. The Yankee Network was granted renewal after promising not to editorialize any more.[35]

Another Boston station, WHDH, lost its license on January 22, 1969, for reasons exactly opposite to those in the WAAB case. WHDH, owned by the Boston Herald-Traveler newspaper, did no editorializing whatever, and the FCC gave its license to another company, saying that a station should editorialize.[36]

A requirement exists, unknown to many, that a licensee affirmatively seek out the discussion of controversial public issues. This requirement played a prominent role in Johnston Broadcasting Co. v. F.C.C., in which the Johnston Broadcasting Company and another applicant vied for a channel in Birmingham, Alabama, in 1949. The other applicant stated that he planned to encourage controversy; he was granted the license.[37]

In view of these last two decisions it seems strange to note in a study of 150 network affiliates in fall, 1970, that 60 of them failed to carry any public affairs at all.[38] Perhaps the implications of the

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[35]Barron, Freedom of the Press For Whom?, pp. 130-131.

[36]Ibid., pp. 132-133.

[37]Johnston Broadcasting Co. v. FCC, 175 F. 2d 351 (1949).

[38]Barron, Freedom of the Press For Whom?, p. 136.

WHDH case had not been realized at the time, but the Johnston case from 1949 seems to have had far less impact than it should.

The Fairness Doctrine

Head suggests that "perhaps the most vital function of broadcasting is as an instrument of information and persuasion in connection with the election of public officials."[39] In order that broadcasting facilities should not be used by one candidate and denied to another, the FCC introduced the "fairness doctrine" in a document in 1949. It was not until 1959, however, that the doctrine was officially placed in the Communications Act as an amendment. This is the familiar Section 315, the amendment which makes stations provide equal time for all candidates if any time is given to one; this time must be made available at the same rates as normal commercials. (Note that the doctrine does not require the broadcaster to offer time to any candidate but applies only if he does offer time to one.) The doctrine, as Barron puts it, "requires broadcasters to provide reasonable opportunity for the presentation of conflicting viewpoints on controversial issues of public importance."[40]

The fairness doctrine has resulted in the loss of at least one license and figured in a court case involving another. The first incident was the loss of the license of WXUR in Media, Pennsylvania.

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[39]Head, Broadcasting in America, p. 321.

[40]Barron, Freedom of the Press For Whom?, p. 127.

WXUR was owned by fundamentalist preacher Rev. Carl McIntire. He lost the license in 1970 because of the onesidedness of his broadcasts.[41]

The other case is a landmark in the annals of the Supreme Court and is referred to as the Red Lion Case.[42] In 1964, an election year, WGCB/WGCB-FM in Red Lion, Pennsylvania, broadcast a program by Rev. Billy James Hargis. The fifteen-minute program, part of "The Christian Crusade" series, attacked author Fred Cook, who had written a book attacking Senator Goldwater. Cook asked for time to reply, and WGCB attempted to charge him. Cook filed suit, and the FCC ruled in his favor. WGCB appealed to the Court of Appeals in Washington, D.C., and was turned down; however, a second appeal to the Court of Appeals in Chicago was upheld, leaving the score tied 1-1. The matter went before the Supreme Court, which sided with the FCC and the fairness doctrine.[43]

The Supreme Court gave three reasons for finding the fairness doctrine and personal attack rules constitutional:

(1) the scarcity of frequencies,
(2) public ownership of broadcast frequencies, and
(3) "the legitimate claims of those unable to gain access to those frequencies for expression of their views."[44]

This last reason is the most important, for it opened the door to a derivation from the fairness doctrine: the Right of Access.

The Right of Access

Sydney Head makes the following statement concerning access: "Since freedom is for action, and action is for an end, the positive

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[41]Ibid., p. 136.

[42]Red Lion Broadcasting Co. v. FCC; U.S. v. Radio Television News Directors Association, 395 U.S. 367 (1969).

[43]Barron, Freedom of the Press For Whom?, pp. 137-141.

[44]Ibid., p. 146.

kernel of freedom lies in the ability to achieve the end; to be free means to be free for some accomplishment. This implies command of the means to achieve the end."[45] Freedom of speech can be denied just as effectively by denying access to the public means of making expression effective as by legal restraints or punishing the speaker.

This means opening up radio and television channels to citizens who wish to express their views. Some argue that since nobody makes a newspaper editor open his editorial columns to those who don't have a newspaper of their own, then broadcasters should have the same privilege. But broadcasting differs from the press: The public does own the airwaves; therefore, it is the public's editorial space.

However, the limited nature of broadcast space and time applies to the individual citizen as well as to the broadcaster. Just as the FCC must select licensees from among many applicants, so must the licensee be selective in choosing those to whom he gives air time:

> In making a selection with fairness, the licensee must, of course, consider the extent of the interest of the people in his service area in a particular subject to be discussed, as well as the qualifications of the person selected to discuss it. Every idea does not rise to the dignity of a "public controversy," and every organization, regardless of membership or the seriousness of its purpose, is not per se entitled to time on the air. But an organization or idea may be projected into the realm of controversy by virtue of being attacked. The holders of a belief should not be denied the right to answer attacks upon them or their belief solely because they are few in numbers.[46]

The above statement obviously leaves the burden of responsibility on the broadcaster.

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[45]Head, Broadcasting in America, p. 381.

[46]Ibid., p. 382.

In any discussion of access theory, it is necessary to consider the role of the major television networks. Although the number of stations they directly control is small, the major networks actually control the prime-time programming of almost every commercial television station in the United States. Barron regards the decision to give a half-hour of prime time back to the individual stations as "a step in the struggle to open up the media, to free it from the tyranny of lowest common denominator programming, and to make a start toward the decentralization of television."[47]

Although networks may have de facto monopolies on broadcast programming, some companies have de jure monopolies. Bryce W. Rucker discusses the ownership of several broadcast stations and/or newspapers by the same party. He argues:

> Clearly, who owns the mass media is of vital concern to all of us. Those persons can and do determine what information and interpretations the American people receive. . . . The problem is compounded when individuals or groups amass large chains, thereby dangerously extending their power to persuade. The nearer we approach communications monopoly in any given area, the more restricted our freedom.[48]

Rucker feels that monopolies could be dispersed by a stronger, more autonomous FCC:

> . . . regulatory control must be vested in a body which can regulate; one armed with sufficient autonomy, authority, administrative procedures which simplify rather than complicate decision-making, and one protected from politics.[49]

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[47]Barron, Freedom of the Press For Whom?, p. 172.

[48]Rucker, The First Freedom, pp. 221-222.

[49]Ibid., p. 223.

As an example of such an agency, Rucker uses the Independent Television Authority, the regulatory body of commercial television in Great Britain, where "members perform tasks in a day which embroil the FCC in red tape for months if not years."[50]

Barron discusses the Democratic-Republican fight over television time in July, 1970, as an example of the "Access for Whom?" question.[51] The networks denied fourteen senators the right to go on the air to reply to President Nixon's statement on bombing in Southeast Asia. CBS finally decided to give Democratic National Chairman Lawrence O'Brien twenty-five minutes to reply, but their action pleased no one. The FCC said that someone should have the right to reply to the President but left it up to the networks to decide who that person should be. Barron says, The FCC tried to obscure the fact that the necessary remedy lay in a shift from fairness to access theory."[52]

Barron feels that the right of access is a logical extension of liberal humanism. He states that access should be given even to those who preach hatred of other people and their ideas. He thinks that the positive results of the Right of Access will outweigh the negative ones.

CBS v. Democratic National Committee

The "Right of Access" movement received a severe blow on May 29, 1973, when the Supreme Court voted 7-2 that stations cannot be forced

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[50] Ibid., p. 224.

[51] Barron, Freedom of the Press For Whom?, pp. 160-163.

[52] Ibid.

to accept paid political advertising. The decision involved four related cases: (1) Columbia Broadcasting System, Inc. v. Democratic National Committee; (2) Federal Communications Commission et al. v. Business Executives' Move for Vietnam Peace et al.; (3) Post-Newsweek Stations, Capitol Area, Inc. v. Business Executives' Move for Vietnam Peace; and (4) American Broadcasting Companies, Inc. v. Democratic National Committee.[53] These four cases grew from an attempt by an antiwar group to buy time on a Washington, D.C., radio station and a Democratic National Committee petition asking the commission "to issue a declaratory ruling that the Communications Act or the First Amendment precluded broadcasters from enforcing a general ban on the sale of time to 'responsible entities' to present their views on public issues."[54]

The antiwar group, the Business Executives' Move for Vietnam Peace (BEM), had attempted to buy time on WTOP(AM) in Washington, an all-news station. According to BEM, WTOP had not expressed the views that BEM believed should be expressed concerning the war.[55]

The BEM-DNC decision was applauded not only by broadcasters, but also by the FCC, which had ruled that "broadcasters may impose a flat ban on the sale of time for editorial comment." The decision followed the points that the FCC had made in its argument:

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[53]No. 71-863, 864 - 866; joint decision May 29, 1973.

[54]"Broadcasters Win One at the High Court," Broadcasting, June 4, 1973, p. 22.

[55]Ibid.

> the reliance on the fairness doctrine, the concept of broadcasters as public trustees, the Communication Act's assertion that broadcasters are not common carriers, the risk that a right-of-access system would be monopolized by those who would and could pay the costs.[56]

Thus, Mr. Barron's view has been partially defeated for the present; however, given the vacillation of the Supreme Court over a period of time, it would not be surprising to see a reversal of this decision sometime in the future.

Conclusion

Governmental dilemmas have changed since broadcasting began, from the question of editorializing to the theory of freedom of access. Issues involving First Amendment freedoms become even more complicated when applied to broadcasting than when discussed in cases involving printed matter.

Even though stations have been given a half-hour of prime time for local programs, it is unlikely that many of them will use it for anything but reruns of comedy series, since these are financially profitable, whereas public service broadcasts are not. As Rucker states, "It is an unusual person who disseminates information detrimental to his economic interests."[57]

Although the FCC did require the networks to give equal time to the opponents of the Administration at various (but not all) times during the Indochina War, it generally has left such decisions to the

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[56] Ibid., p. 23.

[57] Rucker, The First Freedom, p. 221.

networks or stations involved. The recent Supreme Court action in CBS v. DNC indicates that this policy is not likely to change anytime in the near future.

Methodology

This study is a descriptive one which employs the survey method. The author has attempted to discover the practices of television stations in North Carolina regarding access and the attitudes of station managers concerning access and governmental regulation. The survey method is the best method for obtaining information about current practices.

A questionnaire was sent to the general manager of each of the seventeen commercial television stations in the state. The questionnaire is divided into three parts. Part I asks questions dealing with the granting of free time to individuals and groups. Part II asks questions dealing with paid time. Part III is concerned with management attitude toward time-granting and governmental regulation. This part consists of a series of sixteen statements; the respondent is asked to indicate his reaction to each on a semantic differential ranging from "strongly agree" to "strongly disagree." The instructions in Part III state that the answers to this part will be kept confidential. Finally, each respondent is asked to state what in his view the ideal station policy concerning access should be.

The questionnaires were mailed to the stations along with a stamped, self-addressed envelope in which they could be mailed to the author. A cover letter was enclosed which stated the author's identity and purpose and asked for the respondent's cooperation. Two weeks after

the stations should have received the questionnaires, the author telephoned each station which had not responded and again asked the manager of each one to complete the questionnaire. Approximately four weeks after these telephone calls were made, the author sent the stations who still had not responded another copy of the questionnaire with a different cover letter.

The author was able to secure five totally completed questionnaires and four partially completed questionnaires, for a total of nine cooperative responses. Three stations refused outright to respond, and the other five never responded.

The number of incomplete questionnaires returned made analysis difficult, and some sections of the questionnaire are based on more responses than others; for example, Question II-B received only five responses, whereas most of Section III was answered by all nine respondents.

The following chapter discusses in detail the responses to the questionnaire. Chapter III contains a summary and several conclusions.

CHAPTER II

RESULTS OF THE STUDY

The Granting of Free Access

Introduction

The first page of the questionnaire asked six questions concerning the granting of free time. The responses to each question are discussed below.

The Circumstances

The first question reads: "Under what circumstances is someone granted free access to the facilities of your station?" Station WWAY in Wilmington responded by saying:

> First, by requesting the time. We then determine the merit of the request based on viewer interest and the service to the community. If, in our judgment, it would be worthwhile and enlightening, the time is granted.

WITN-TV in Washington and WLOS-TV in Asheville emphasized the obligation of stations to comply with the Fairness Doctrine of the FCC. WLOS-TV added that they comply with the NAB Television code of Good Practice (See Appendix C.) and try "to be objective in our judgments." WITN-TV commented that, in addition to complying with the Fairness Doctrine:

> there are many other instances whereby we grant free time. This would cover national, state, and local governmental units that have messages of import to the general public; disaster units, law enforcement agencies, etc.

Two Charlotte stations, WBTV and WRET-TV, and WCTI-TV in New Bern, echoed the Washington Station's granting of free time for "messages of import to the general public" (generally referred to as "public service" announcements). WCTI-TV grants free time to all political candidates for statewide office. WRET-TV grants free time to political candidates "in some cases."

WBTV listed three other specific instances when free time is granted: news interviews, editorial responses, and a feature entitled "On the Square," described as "publicized access by film in various locations."

WFMY-TV in Greensboro stated that they did not grant free time, since they try through the objective reporting of their news department to cover every issue facing the community.

Means of Acquisition

Question B asks: "How does this person go about acquiring this time?" WWAY covered this question in their response to the preceding question. WBTV accepts "any reasonable form of request." WRET-TV prefers a written request and wishes to know the "nature of the discussion in advance," and WITN-TV asks the applicant to state the "full details of [the] request." WCTI-TV invites candidates and "others" to appear; the station also grants free time "by request."

Group Affiliation

Question C reads: "Must the person be a representative of an organization?" WITN-TV replied: "Yes, unless it is under the Fairness Doctrine." WRET-TV answered simply, "Yes," while WBTV responded, "In

some cases." WWAY said that a person need "not necessarily" represent an organization; WCTI-TV answered, "No."

Amount of Time

The fourth question asks: "What is the maximum amount of free time which may be allotted?" Only two stations had definite limits: WRET-TV allows a maximum of 60 seconds, and WCTI-TV has a limit of fifteen to twenty minutes. WWAY normally allows a maximum of thirty minutes, but it "depends on the subject."

WBTV has "no specific policy" concerning a time limit, and WITN-TV said that it "depends upon the situation."

Prime Time?

Question C asks: "Is the allotted time in prime time?" Answers to this question were similar to answers to the preceding one. WRET-TV answered, "not necessarily," and WWAY responded that "it depends on the topic and whether or not it has area or community interest." WCTI-TV said, "No," while WBTV again had no specific policy. WITN-TV responded, "It could be."

Response to Network Programs

The final question in Section I reads: "Is free time allotted for response to network programs, or is it limited to programs which are originated locally?" WRET-TV is not affiliated with a network, so the question did not apply to this station. WBTV allots time to respond to the network only "in the case of political candidates or editorial responses."

WCTI-TV allots time for responses both to network and to local programs, while WWAY and WITN-TV limit responses to those aimed at programs originated locally. WWAY added that they felt "the network has that obligation."

The Granting of Paid Access

Introduction

Section II of the questionnaire asks five questions concerning the grant of paid time. The responses to each question are discussed in the following paragraphs.

Question A asks: "Under what circumstances is someone granted paid access to the facilities of your station?" WITN-TV in Washington gave the most comprehensive answer:

> When we have available commercial time for sale, it is made available to all who seek it. We do have the right of refusal on any business we do not feel we want to air on our facilities. We endeavor to maintain NAB Code standards.

WWAY and WLOS-TV reiterated their policy concerning free access. WCTI-TV grants paid access to "anyone meeting NAB advertising requirements." WRET-TV and WBTV grant paid time to regular commercial sponsors; WRET-TV grants paid time for political programs "in some cases" and WBTV grants paid access for "paid political announcements or programs for candidates."

WFMY-TV did not answer the question.

Means of Acquisition

The second question asks: "How does this person go about acquiring this time?" WITN-TV answered, "By simply requesting availabilities." WRET-TV said the time should be bought "at least two weeks in advance" through the General Manager, Operations Manager, or an account executive.

WCTI-TV and WBTV said that the prospective purchaser should apply to their sales departments. WWAY answered that the buyer begins by "contacting the sales department. [The] Matter is then brought to attention of management. We then make determination whether or not to accept program."

Group Affiliation

Question C reads: "Must the person be a representative of an organization?" WWAY, WITN-TV, and WCTI-TV answered, "No." WRET-TV said, "preferably," and WBTV responded that the answer "varies."

Prime Time?

The fourth question asks: "Is the allotted time in prime time?" WCTI-TV said, "Yes," while WITN-TV answered, "Yes, if available." WWAY stated that the answer "depends on [the] request," and WRET-TV responded that the answer "depends on their budget." WBTV again responded that it "varies."

Response to Network Programs

The final question in Section II asks: "Is paid time allotted for response to network programs, or is it limited to programs which are originated locally?" WBTV referred the author to their response to Question F in Section I. WCTI-TV answered, "No,"

while WITN-TV said, "not normally. Situation would dictate policy." WRET-TV, since it is not a national affiliate, did not respond. WWAY answered:

> Have never had request. Chances are we would refer to network. If fairness doctrine came into play, we would give serious consideration to request.

Management Attitude

Introduction

This section was included in the questionnaire to determine the attitude of managers toward governmental regulation of time-granting. Four statements were made about each of four categories of situations which might be encountered by a station granting time: (1) the granting of free time to an individual, (2) the granting of free time to a group, (3) the granting of paid time to an individual, and (4) the granting of paid time to a group. The questionnaire used a semantic differential for responses to the sixteen statements. The differential ranged from "strongly agree" to "strongly disagree."

The managers also were asked to give their conception of the ideal policy for a station to have concerning the granting of access. Those who responded to this final question will be quoted at the end of the chapter.

Free Time--Individual

The first statement reads: "A television station should be required by law to grant <u>free</u> time to an individual who has been verbally criticized on that station." Of the nine responding stations, three strongly disagreed, four disagreed, one agreed, and one strongly agreed.

Statement 2 says: "A television station should be required by law to grant free time for any individual in the community to speak on issues raised in station editorials." Three strongly disagreed, three disagreed, two agreed, and one strongly agreed.

The third statement says: "A television station should be required by law to grant free time to any individual in the community to respond to any program run on that station." Six strongly disagreed, two disagreed, and one strongly agreed.

The final statement reads: "Any decision concerning the granting of free time to individuals should be left up to the station rather than being required by law." Five strongly agreed, and four agreed.

Free Time--Group

The first statement says: "A television station should be required by law to grant free time to a group which has been verbally criticized on that station." Three strongly disagreed, four disagreed, and two agreed.

The second statement reads: "A television station should be required by law to grant free time for any group in the community to respond to issues raised in station editorials." Three strongly disagreed, three disagreed, two agreed, and one strongly agreed.

Statement 3 says: "A television station should be required by law to grant free time to any group in the community to respond to any program run on that station." Five strongly disagreed, three disagreed, and one strongly agreed.

The fourth statement reads: "Any decision concerning the granting of free time to groups should be left up to the station rather than being required by law." Seven strongly agreed, and two agreed.

Paid Time--Individual

Statement 1 says: "A television station should be required by law to grant paid time to an individual who has been criticized on that station." Three strongly disagreed, four disagreed, one agreed, and one strongly agreed.

The second statement reads: "A television station should be required by law to grant paid time for any individual in the community to respond to any program run on that station." Three strongly disagreed, three disagreed, and three strongly agreed.

The third statement reads: "A television station should be required by law to grant paid time for any individual in the community to speak on issues raised in station editorials." Three strongly disagreed, three disagreed, one agreed, and two strongly agreed.

The final statement says: "Any decision concerning the granting of paid time to individuals should be left up to the station rather than being required by law." Seven strongly agreed, and two agreed.

Paid Time--Group

The first statement reads: "A television station should be required by law to grant paid time to a group which has been criticized on that station." Three strongly disagreed, four disagreed, and two agreed.

Statement 2 says: "A television station should be required by law to grant paid time for any group in the community to respond to issues raised in station editorials." Three strongly disagreed, four disagreed, and two agreed.

The third statement says: "A television station should be required by law to grant paid time to any group in the community to respond to any program run on that station." Three strongly disagreed, three disagreed, two agreed, and one strongly agreed.

The final statement reads: "Any decision concerning the granting of paid time to groups should be left up to the station." Six strongly agreed, two agreed, and one disagreed.

Management's Ideal Policy

The fifth part of Section III asks: "What, in your personal opinion, would be the ideal policy for a station to have concerning the granting of access?" Five stations responded to this question. One manager replied:

> Any client should be able to buy time for any legal, non-pornographic purpose. When a station provides time for a person to be criticized on editorials or commentaries, free time for rebuttal should be granted.

Another manager stressed the fact that an "ideal" may be hard to realize because of changing attitudes and conditions:

> The station licensee is currently under FCC rules and regulations that clearly (well, not always that CLEAR) define what procedure should be followed, i.e., the Fairness Doctrine and Section 315.
>
> It's simple. A licensee knows what his license is worth and he will, if he is a responsible broadcaster, do what is necessary to maintain all conditions under which his license was granted . . . and under which he hopes will be renewed.
>
> I doubt that you could ever define an "ideal" policy. Times and conditions, as well as people, change all too rapidly. What appears to be right now might not be that way 12 months from now.

The third responding manager felt that the granting of access should be based upon the "merit" of the request.

> I feel strongly that a station must become involved in the community. And this necessarily means controversial subjects. In such cases, persons, organizations or groups which have an interest in a particular topic should be heard. Not everyone! Otherwise, the station will refrain from involvement. However, in most cases it seems to me the topic can be explored from both sides to the mutual satisfaction of the station and the public. Errors in judgment are certain but in the long run I believe there would be less trouble for all concerned.

One manager stated that broadcasting is as entitled to freedom of the press as is the printed media.

> . . . I believe a television station should have the same privileges and obligations to the public that any other medium has, principally those guaranteed to the people in the First Amendment to the Constitution.
>
> Any requirement by law that time must be granted to any person or group requesting it will destroy this medium for the mass of the people and reduce it to a soap-box for every splinter group in the country.
>
> The owners and managers I know, for the most part, are fully capable of determining how and to whom to grant time. The general public will soon discover and oust those who are not capable. The American system works best when it is left alone.
>
> . . . I say a station should be fair and honest with its audience and all segments of it, and with itself. It's as simple as that.

The final response agreed in principle with the preceding one:

> A station should be required to serve the community to which it is licensed--which includes providing information on all sides of all issues. If a station fails to do this, its license should be lifted. A station should <u>not</u> be required to provide access to individuals or organizations to do the station's job--as described above.
>
> The idea of "access" is unsound--and always has been. Pass a law requiring access, and the airwaves will be filled with fruitcakes expounding real or imagined positions on "issues," and television will cease to serve the <u>public</u>.

Instead--to repeat--make the station identify the issues--and make it expose the position--just as is now the case.

CHAPTER III

SUMMARY AND CONCLUSIONS

Introduction

In the preceding chapter the actual answers to the questions on the questionnaire were given. This chapter summarizes those findings and attempts to derive some conclusions from the responses.

Free Access

Table 1 presents the responses to Section I of the questionnaire in a summarized form. Of the stations responding, all but one (WFMY-TV) said they granted free time sometimes; they granted it, as WLOS-TV put it, "under varying circumstances." The procedure for acquiring free time, when specified, was simply by asking for it. About half the stations said that the applicant must represent an organization. Most stations had no limit set on the amount of free time which could be granted; those which did had varying maximums of from sixty seconds to thirty minutes. Most stations grant time in prime time under certain circumstances. Approximately half allowed response to network programs.

These answers reveal that there is no set policy for granting free access, unless the fairness doctrine comes into play. The manager usually is the final judge, and his evaluation of the need for an individual to obtain access determines whether that individual obtains free access. The decision is arbitrary, depending on the judgment of the manager. In other words one man, the television station manager,

TABLE 1

RESPONSES TO SECTION I

A. Under what circumstances is free access granted?

WWAY	WITN-TV	WBTV
when the subject matter would be worthwhile and enlightening to the comunity	compliance with fairness doctrine; public service announcements	public service, interviews, editorial responses, "On the Square"

WRET-TV	WCTI-TV	WLOS-TV
public service; political candidates (sometimes)	public service; political candidates for statewide offices	compliance with fairness doctrine & NAB Code

WFMY-TV
none given

B. How does person acquire time?

WWAY	WITN-TV	WBTV
requesting it	detailed request	any reasonable form of request

WRET-TV	WCTI-TV
written detailed request	invitation or request

C. Must applicant represent an organization

WWAY	WBTV	WITN-TV	WRET-TV	WCTI-TV
sometimes	sometimes	yes	yes	no

D. Maximum amount of free time

WWAY	WBTV	WITN-TV	WRET-TV	WCTI-TV
30 minutes usually	no set limit	no set limit	60 sec.	15-20 min.

E. Is allotted time prime time?

WWAY	WBTV	WITN-TV	WRET-TV	WCTI-TV
sometimes	sometimes	sometimes	sometimes	no

F. Response to network programs?

WWAY	WBTV	WITN-TV	WRET-TV	WCTI-TV
no	only ed. responses or pol. candidates	no	no network affiliation	yes

may decide without consulting anyone else that the viewers of his station do not need to know about some subject or hear some viewpoint which actually needs to be brought to the attention of the public. For instance, the desirability of a drug rehabilitation center for the community may need to be presented to the community via television. However, if the manager thinks that drug users should be jailed rather than rehabilitated, he has the legal right to refuse to air the subject. The decision of whether such a facility is desired thus becomes his, rather than the community's.

Paid Access

As Table 2 indicates, all the responding stations granted paid access. Two respondents stressed compliance with NAB guidelines. Most stated that the applicant should contact their sales departments. Only one preferred the applicant to be a representative of an organization. All the stations allow paid access in prime time, but three said this depends on the nature of the request. Normally, most do not allow paid response to network programming.

If one examines the responses to Sections I and II, one finds the answer "sometimes" given more often than any other. Some more vague answers include "preferably" and "depends on situation." This type of answer is evasive and actually avoids answering the question. The statement "I'll do what I please about it" would be equally informative. The managers evidently realize that they alone have the legal right to decide the matter of access (unless a particular issue comes under the fairness doctrine), and they jealously guard this privilege.

TABLE 2

RESPONSES TO SECTION II

A. Under what circumstances is paid access granted?	WWAY		WITN-TV		WBTV
	when the subject matter would be worthwhile and enlightening to the community		commercial time made available to all; station reserves right of refusal; compliance with NAB Code		regular commercial sponsors; paid political announcements
	WRET-TV		WCTI-TV		WLOS-TV
	regular commercial sponsors; some political programs		compliance with NAB Code		compliance with fairness doctrine & NAB Code
B. How does person acquire time?	WWAY		WITN-TV		WBTV
	contacting sales department		requesting it		contacting sales dept.
	WRET-TV		WCTI-TV		
	buying from station 2 weeks in advance		contacting sales dept.		
C. Must applicant represent an organization?	WWAY	WITN-TV	WBTV	WRET-TV	WCTI-TV
	no	no	sometimes	preferably	no
D. Is allotted time prime time?	WWAY	WITN-TV	WBTV	WRET-TV	WCTI-TV
	depends on request	yes	sometimes	depends on budget or buyer	yes
E. Response to network pro-	WWAY	WITN-TV	WBTV	WRET-TV	WCTI-TV
	only if fair doctrine involved	depends on situation; normally, no	only ed. responses or pol. candidates	no network affiliation	no

Management Attitude

The responding managers have a distinct aversion to legislation which would require the granting of access. They prefer working under the fairness doctrine and reserving the decisions concerning access for themselves.

Table 3 shows the responses to the questions in Section III which employed a semantic differential through which the respondent could answer in one of five ways: strongly agree, agree, no opinion, disagree, and strongly disagree. Four statements were listed in each of four categories: free time for individuals, free time for groups, paid time for individuals, and paid time for groups. The four statements read:

> 1. A television station should be required by law to grant free/paid time to an individual/group who has been verbally criticized on that station.
>
> 2. A television station should be required by law to grant free/paid time for any individual/group to speak on issues raised in station editorials.
>
> 3. A television station should be required by law to grant free/paid time to any individual/group in the community to respond to any program run on that station.
>
> 4. Any decision concerning the granting of free/paid time to individuals/groups should be left up to the station rather than being required by law.

The first three statements support governmental regulation; the last statement is against it. The majority of responding managers disagreed with the first three statements and agreed with the fourth, regardless of whether the statements mentioned free or paid time, individuals or groups.

TABLE 3

ANSWERS TO SEMANTIC DIFFERENTIAL

	Station A	B	C	D	E	F	G	H	I
Granting of Free Time to an Individual for:									
response to verbal criticism	SD	SD	D	A	D	SD	SA	D	D
response to editorial	SD	SD	A	A	D	SD	SA	D	D
response to any program	SD	SD	SA	SD	SD	SD	SD	D	D
No legislation needed	SA	SA	SA	SA	A	SA	A	A	A
Granting of Free Time to a Group for:									
response to verbal criticism	SD	SD	D	A	D	SD	A	D	D
response to editorial	SD	SD	SA	A	D	SD	A	D	D
response to any program	SD	SD	SA	SD	D	SD	SD	D	D
No legislation needed	SA	SA	SA	SA	A	SA	SA	A	A
Granting of Paid Time to an Individual for:									
response to verbal criticism	SD	SD	D	A	D	SD	SA	D	D
response to editorial	SD	SD	A	SA	D	SD	SA	D	D
response to any program	SD	SD	SA	A	D	SD	SA	D	D
No legislation needed	SA	SA	SA	SA	A	SA	SA	A	A
Granting of Paid Time to a Group for:									
response to verbal criticism	SD	SD	D	A	D	SD	A	D	D
response to editorial	SD	SD	A	A	D	SD	A	D	D
response to any program	SD	SD	A	SA	D	SD	A	D	D
No legislation needed	SA	SA	SA	SA	A	SA	SA	D	A

Key to symbols:
SA--strongly agree
A--agree
NO--no opinion
D--disagree
SD--strongly disagree

The response to the last question, dealing with management's concept of an "ideal" policy, indicated that managers do not seem to mind working under the fairness doctrine; however, the majority of the respondents disagreed with the first two statements in the semantic differential section. These two statements are covered by the fairness doctrine; consequently, the managers, while working under the fairness doctrine, actually would prefer not being encumbered by it. The response to the last question also revealed that the managers feel the responsibility for presenting all sides of an issue rests with the broadcaster, and no further legislation is needed.

Findings

Questionnaires were mailed to the managers of each of the seventeen commercial television stations in North Carolina. Five managers completed all sections of their questionnaires (29.4%); four managers responded only to Section III of the questionnaire, for a total of nine responses to that section (52.9%). In brief, the study reveals the following:

1. There is no clear, definite policy for granting free access (unless the fairness doctrine specifies what action should be taken on a particular request for time); normally, the granting of free access is subject to the judgment of the manager.

2. There is no guarantee that an applicant can buy time. Three respondents mentioned that they complied with the NAB Television Code; however, that code is not binding. Consequently, judgment still rests with the manager.

3. The negative responses to the two questions in Section III which supported the fairness doctrine indicate that the majority of managers do not agree with that doctrine, although they do use it as a standard as required by the FCC.

4. The managers are opposed to any legislation which would compel access.

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APPENDIX A

LETTER SENT TO MANAGERS

P.O. Box 542
Tabor City, N.C.
March 14, 1974

Mr. _____, General Manager
(Name of Station)
(Address)

Dear Mr. _____:

I am a candidate for the M.A. degree in speech from the University of North Carolina at Greensboro. My thesis, on the right of access to commercial television stations in North Carolina, will be based upon the responses I receive from the enclosed questionnaire. I am sending a copy to every general manager of a commercial television station in the state. If you wish, I will send you a summary of my findings upon the completion of this survey.

With your cooperation it will be possible for me to complete my thesis within a few months and receive my degree. Please fill out this short questionnaire and return it to me in the enclosed stamped, self-addressed envelope. Thank you in advance for your help.

Very truly yours,

James C. Cox, Jr.

P.S. Your name will not be used in the thesis, and the questions in Section III will be reported anonymously.

APPENDIX B

QUESTIONNAIRE

James C. Cox, Jr.
Box 542
Tabor City, N.C. 28463

Your name:
Address:

Station:

Please enclose a copy of the printed, official policy of your station concerning the granting of free or paid time to groups or individuals in your coverage area (if available).

I. Free Access.

A. Under what circumstances is someone granted free access to the facilities of your station?

B. How does this person go about acquiring this time?

C. Must the person be a representative of an organization?

D. What is the maximum amount of free time which he may be allotted?

E. Is the allotted time in prime time?

F. Is free time allotted for response to network programs, or is it limited to programs which are originated locally?

James C. Cox, Jr.
Box 542
Tabor City, N.C. 28463

II. Paid Access.

A. Under what circumstances is someone granted paid access to the facilities of your station?

B. How does this person go about acquiring this time?

C. Must the person be a representative of an organization?

D. Is the allotted time in prime time?

E. Is paid time allotted for response to network programs, or is it limited to programs which are originated locally?

James C. Cox, Jr.
Box 542
Tabor City, N.C. 28463

III. Management Attitude. The results of this section will be reported so that no individual station will be named. Please check the appropriate blank which comes closest to your opinion.

A. Free time--individual

1. A television station should be required by law to grant free time to an individual who has been verbally criticized on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

2. A television station should be required by law to grant free time for any individual in the community to speak on issues raised in station editorials.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

3. A television station should be required by law to grant free time to any individual in the community to respond to any program run on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

4. Any decision concerning the granting of free time to individuals should be left up to the station rather than being required by law.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

B. Free time--group.

1. A television station should be required by law to grant free time to a group which has been verbally criticized on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

2. A television station should be required by law to grant free time for any group in the community to respond to issues raised in station editorials.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

3. A television station should be required by law to grant free time to any group in the community to respond to any program run on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

4. Any decision concerning the granting of free time to groups should be left up to the station rather than being required by law.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

C. Paid time--individual.

1. A television station should be required by law to grant paid time to an individual who has been verbally criticized on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

2. A television station should be required by law to grant paid time for any individual in the community to respond to any program run on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

3. A television station should be required by law to grant paid for any individual in the community to speak on issues raised in station editorials.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

4. Any decision concerning the granting of paid time to individuals should be left up to the station rather than being required by law.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

D. Paid time--groups.

1. A television station should be required by law to grant paid time to a group which has been verbally criticized on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

2. A television station should be required by law to grant paid time for any group in the community to respond to issues raised in station editorials.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

3. A television station should be required by law to grant paid time to any group in the community to respond to any program run on that station.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

4. Any decision concerning the granting of paid time to groups should be left up to the station rather than being required by law.

strongly agree ( ) no opinion ( ) strongly disagree ( )
agree ( ) disagree ( )

E. What, in your personal opinion, would be the ideal policy for a station to have concerning the granting of access?

If you wish to receive a summary of the findings of this study, please place a check mark in the following blank. ____

Name:
Station:

APPENDIX C

SELECTED SECTIONS OF NAB TELEVISION CODE

III. Community Responsibility

1. A television broadcaster and his staff occupy a position of responsibility in the community and should conscientiously endeavor to be acquainted fully with its needs and characteristics in order better to serve the welfare of its citizens.

2. Requests for time for the placement of public service announcements or programs should be carefully reviewed with respect to the character and reputation of the group, campaign or organization involved, the public interest content of the message, and the manner of its presentation.

IV. Controversial Public Issues

1. Television provides a valuable forum for the expression of responsible views on public issues of a controversial nature. The television broadcaster should seek out and develop with accountable individuals, groups and organizations, programs relating to controversial issues of public import to his fellow citizens; and to give fair representation to opposing sides of issues which materially affect the life or welfare of a substantial segment of the public.

2. Requests by individuals, groups or organizations for time to discuss their views on controversial public issues, should be considered on the basis of their individual merits, and in the light of the contribution which the use requested would make to the public interest, and to a well-balanced program structure.

IX. General Advertising Standards

2. A commercial television broadcaster makes his facilities available for the advertising of products and services and accepts commercial presentations for such advertising. However, a television broadcaster should, in recognition of his responsibility to the public, refuse the facilities of his station to an advertiser where he has good reason to doubt the integrity of the advertiser, the truth of the advertising representations, or the compliance of the advertiser with the spirit and purpose of all applicable legal requirements.

The complete code is available from: Code Authority
National Association of Broadcasters
1771 N St., N.W.
Washington, D.C. 20036

APPENDIX D

COMMERCIAL TELEVISION STATIONS IN NORTH CAROLINA

Station	Location
WBTV	Charlotte
WCCB-TV	Charlotte
WCTI	New Bern
WECT	Wilmington
WFMY-TV	Greensboro
WGHP-TV	High Point
WHKY-TV	Hickory
WITN-TV	Washington
WLOS-TV	Asheville
WNCT-TV	Greenville
WRAL	Raleigh
WRDU-TV	Durham
WRET-TV	Charlotte
WSOC-TV	Charlotte
WTVD	Durham
WWAY	Wilmington