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# The careers and qualifications of members of the Federal Communications Commission, 1961 to 1976.

Mary I. Blue

*University of Nebraska at Omaha*

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THE CAREERS AND QUALIFICATIONS OF MEMBERS OF  
THE FEDERAL COMMUNICATIONS COMMISSION,  
1961 TO 1976

A Thesis  
Presented to the  
Department of Communication  
and the  
Faculty of the Graduate College  
University of Nebraska

In Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts  
University of Nebraska at Omaha

by  
Mary I. Blue  
August 1980

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THESIS ACCEPTANCE

Accepted for the faculty of the Graduate College, University of Nebraska, in partial fulfillment of the requirements for the degree Master of Arts, University of Nebraska at Omaha.

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## CHAPTER I

### INTRODUCTION

In 1957, the House Interstate and Foreign Commerce Committee hired an expert on government administrative agencies to head the investigate staff of its Special Subcommittee on Legislative Oversight. That expert, Bernard Schwartz, New York University Professor, believed the Subcommittee intended to check on the sort of job the independent administrative agencies were doing. When he began to uncover evidence of misconduct in the agencies, however, he learned that the commerce committee had no such intention. Schwartz then realized that he had been hired as a "harmless, academic type" who could be counted on to confine himself to "ivory tower legal theory" without delving into embarrassing practical matters.<sup>1</sup>

Schwartz's investigation lasted seven months before the committee fired him. However, according to Broadcast Scholar Sidney Head, in that short time and despite "harrassment and sabotage from the commerce committee,"<sup>2</sup> Schwartz uncovered enough evidence of

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<sup>1</sup>Bernard Schwartz, The Professor and The Commissions (New York: Alfred A. Knopf, 1959), p. 3.

<sup>2</sup>Sidney W. Head, Broadcasting in America: A Survey of Television and Radio, 3rd ed. (Boston: Houghton Mifflin Company, 1976), p. 413.

misconduct to cause the resignations of two Federal Communications Commission (hereinafter referred to as the FCC) commissioners: Chairman John C. Doerfer and Commissioner Richard Mack; and Sherman Adams, a high-ranking White House official.<sup>3</sup> In the course of his investigation, Schwartz uncovered a comparative television case<sup>4</sup> which particularly illustrates the problems which can arise when a regulatory agency functions without administrative standards or qualified members.

Few areas of regulatory activity have greater impact than the FCC's decisions in comparative television cases. In them the Commission must rule in intense battles over valuable licenses, some worth millions of dollars, and decide who is to own and direct perhaps the most influential mass medium of communication ever developed. The Communication Act of 1934 tells the FCC only that in granting broadcast licenses it must consider "if public convenience, interest, or necessity will be served thereby."<sup>5</sup> As Congress did not, in this language, lay down any criteria to guide the FCC, it is up to the Commission itself to develop criteria.

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<sup>3</sup>Erik Barnouw, The Image Empire: A History of Broadcasting in the United States From 1953 (New York: Oxford University Press, 1970), p. 126.

<sup>4</sup>A comparative television case arises when there are competing applicants for a single license. The FCC must deal with the applicants in the same proceeding and select the applicant best qualified to serve the public interest.

<sup>5</sup>Communications Act. United States Statutes At Large. 48, Sec. 307 (A), 1083 (1934).

Besides demonstrating technical, legal, and financial qualifications to operate a station, Schwartz found the following criteria to be determinative in comparative television cases:

- 1) Local ownership
- 2) Integration of ownership and management
- 3) Past performance
- 4) Broadcast experience
- 5) Proposed programming and policies
- 6) Diversification of control of the media of mass communications.<sup>6</sup>

Schwartz's analysis of some sixty comparative television cases indicated "a most disturbing inconsistency" on the part of the commission in applying its criteria.

Whim and caprice seem to be the guides rather than the application of settled law to the facts of the case. In effect, the Commission juggles its criteria in particular cases so as to reach almost any decision it wishes and then orders its staff to draw up reasons to support the decision.<sup>7</sup>

What this means in practice can be seen from Schwartz's analysis of the Miami Channel 10 case. In the late 1950's, Channel 10 was one of the few remaining VHF channels in a major market. As such, the license was sought by four competitors: WKAT, Inc., owned by A. Frank Katzentine, the owner of a radio station in Miami Beach; L. B. Wilson, Inc.; North Dade Video; and Public Service Television, a wholly owned subsidiary of National Airlines.<sup>8</sup> After lengthy hearings and delays, FCC Hearing Examiner, Herbert Sharfman, awarded Channel 10 to Katzentine, whose company scored highest on the FCC's

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<sup>6</sup>Schwartz, The Professor and the Commissions, p. 150.

<sup>7</sup>Ibid., p. 151.

<sup>8</sup>Ibid., p. 195.

criteria of local ownership, integration of management with ownership, and experience. Yet the Commission reversed the Examiner and awarded the grant to National Airlines, which had been rated lowest of the four contestants by the Examiner.<sup>9</sup>

Katzentine contested the grant alleging that the recently-appointed commissioner from Florida, Richard A. Mack, had pledged his vote in advance to the airline. Schwartz's investigation showed that Florida Attorney Thurman A. Whiteside had been retained by the airline "solely because of his friendship with Commissioner Mack."<sup>10</sup> In return for giving National Airlines "every consideration" in its application for Channel 10, Mack received from Whiteside: checks totaling \$1,650, a one-sixth interest in a profitable Miami insurance firm, and all stock interest in a loan company, from which Mack received several thousand dollars."<sup>11</sup>

It took the FCC eight years to dispose of the Channel 10 case. Finally, on July 14, 1960, the license was granted to L. B. Wilson, Inc. The other three contestants were disqualified for ex parte activities involving a number of prominent senators as well as FCC members.<sup>12</sup>

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<sup>9</sup>Head, Broadcasting in America, p. 414.

<sup>10</sup>Schwartz, The Professor and the Commissions, p. 198.

<sup>11</sup>Ibid., p. 201.

<sup>12</sup>Victor G. Rosenblum, "How to Get Into TV: The Federal Communications Commission and Miami's Channel 10," in The Uses of Power: Seven Cases in American Politics, Ed. Alan F. Westin (New York: Harcourt Brace Jovanovich, 1962), pp. 222-223.

The Channel 10 case is presented here because, as Head has stated, this case in particular "raised the question of the quality of appointments to the Commission."<sup>13</sup> According to Schwartz, that a man such as Mack should be appointed to an agency as important as the FCC may appear unthinkable.

Unfortunately, however, such appointments have become all too common in the regulatory commissions. Far too frequently those agencies are looked on only as political "dumping-grounds." Neither the President nor the Senate has really been interested in the men appointed to the commissions. So a Richard Mack can be appointed without more than a perfunctory scrutiny of his background.<sup>14</sup>

It is possibly the case which promoted James M. Landis to report to President-elect Kennedy:

The prime key to the improvement of the administrative process is the selection of qualified personnel. Good men can make poor laws workable; poor men will wreak havoc with good laws. . .<sup>15</sup>

#### Importance of the Study

Questions concerning the quality of FCC appointments were raised in 1960 not only by Schwartz and Landis, but by Congress, the President-elect, broadcast scholars, the broadcast industry, and the Commission itself. As "independent regulatory agencies," the FCC and other such commissions represent the government's interests in particular portions of the private enterprise. They form what has

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<sup>13</sup>Head, Broadcasting in America, p. 414.

<sup>14</sup>Schwartz, The Professor and the Commissions, p. 203

<sup>15</sup>James M. Landis, "Report on Regulatory Agencies to the President-elect," Printed for the use of the Committee on the Judiciary, 86th Cong., 2d Sess., December 1960, p. 66.

been said to constitute a "headless fourth branch" of government.<sup>16</sup> They are "independent" and outside the jurisdiction of federal agencies which report to the President. The President has no direct control over their activities--although he appoints the members of these commissions. They are the creations of the Congress, and the originating legislation usually forms the basis of their powers and duties.

No government officials are more important to American broadcasting than those on the FCC. The qualifications of commissioners should be a matter of vital concern not only to the government and the industry, but to broadcast consumers in the United States. Commissioners seldom stand individually before the public. They are not asked to answer to any recognized constituency. Their seven-year terms exceed the span of those who appoint them and place them in office. The collective nature of the Commission also provides each member with a cloak of anonymity. Thus, virtually hidden from public view, these commissioners theoretically possess an unmeasured amount of potential power.

The purpose of this study is to test the thesis that: The personal experience, education, occupational background, and personal governmental philosophy of the members of the Federal Communications Commission have directly influenced the direction and emphasis of the agency's policies in 1961-1976.

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<sup>16</sup>Schwartz, *The Professor and the Commissions*, p. 23.

Other corollary questions are:

(1) What is the relative effect and importance of the different background elements; including education, occupation, politics, government experience, prior FCC experience, and prior experience on other commissions?

(2) In the light of the concern over FCC appointments in the early 1960's, what are the similarities and differences between the appointments of 1961-1976 as revealed by this study, and the appointments of 1927-1961 as shown in an earlier study done by Lawrence Lighty?

(3) Considering past experience, are there any "best qualities" or specific qualifications that might be established in order to guarantee that the best possible persons will be chosen to serve on the Commission?

(4) What effect has variation in regulative direction and emphasis on the Commission had on the growth and development of broadcasting in America?

It must be remembered, of course, that the members of the FCC do not make policy in a vacuum. They are constantly buffeted and swayed by politically and economically powerful interests seeking influence by strength of organization and/or logic of argument. Certainly the FCC plays a central role in the regulation of broadcasting, but, according to Krasnow and Longley, "often the crucial decisions in policy-making come about through the action, interaction, or, indeed, the inaction of persons or institutions other than the FCC."



They name six major participants in the regulatory policy-making process: the FCC, the broadcasting industry, citizens groups, the courts, the White House and the Congress.<sup>17</sup>

As a result of these pressures, FCC policy decisions evolve out of a compromise (1) within the Commission, and (2) among outside pressures affecting the Commission. This study is concerned with the compromise that goes on within the Commission as it may be a function of the personal philosophies of the individual Commissioners.

#### Background of the Study

The Communications Act of 1934 created the Federal Communications Commission:

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, and for the purpose of securing a more effective execution of this policy of centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission" which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this act.<sup>18</sup>

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<sup>17</sup>Erwin G. Krasnow and Lawrence D. Longley, The Politics of Broadcast Regulation (New York: St. Martin's Press, 1973), p. 23.

<sup>18</sup>Communications Act. United States Statutes At Large. 48, Sec. 1, 1064 (1934).

Generally, it is not a difficult matter to qualify legally to be a member of the FCC. A commissioner must be a citizen and must not engage in any other business or employment while a member of the Commission. Title I, Section 4A and B contains the only provisions of the Communication Act relating to qualifications of commission members.

Sec. 4 (A) The Federal Communications Commission (in this act referred to as the "Commission") shall be composed of seven commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the president shall designate as chairman.

(B) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio or in radio transmission of energy; in any company furnishing services of such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio, or in any company owning stocks, bonds, or other securities of any such company, nor be in the employ of or hold any official relation to any person subject to any of the provisions of this Act, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this Act. Such commissioners shall not engage in any other business, vocation or employment. Not more than four commissioners shall be members of the same political party.<sup>19</sup>

Lacking broader and more exact provisions, the President is virtually free to appoint, with senatorial approval, whomever he pleases. It seems too much of the time the White House uses its appointive power to the regulatory commissions simply as a means of paying off minor political debts. As Head has indicated, this practice may produce commissioners with inadequate qualifications for their work:

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<sup>19</sup>Ibid., p. 1066.

Despite the tremendous powers commissioners wield over commercially valuable rights and vital aspects of national life, the positions do not rank high in the Washington pecking order, so that few outstanding able and ambitious men would be satisfied with a commissioner career. Yet the underlying theory of the regulatory agencies is precisely that they will be manned by career men especially qualified by virtue of long experience and expertise in the highly technical activities they oversee.<sup>20</sup>

Only one study, conducted by Lawrence W. Lichty, has considered the human element in FCC decision making. Lichty's MA thesis was published in two parts in the Journal of Broadcasting in 1962.<sup>21</sup> The first traced the backgrounds of commissioners of both the Federal Radio Commission (1927 to 1934) and the FCC (1934 to 1961), while the second related this background to respective periods of broadcast regulation history.

Lichty found that from March 2, 1927, when President Calvin Collidge appointed the original five members, until January 1, 1961, 43 men and one woman had served on either the FRC or the FCC. Between March 15, 1927, and July 10, 1934, twelve men served as FRC commissioners, four of whom served, at one time or another, as chairman. Since July 11, 1934, thirteen men had served as chairman of the FCC, seven of whom were also regular members of the Commission. In addition, 28 other persons, including one woman, Frieda B. Hennock, had served as commissioners.<sup>22</sup>

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<sup>20</sup>Head, Broadcasting in America, pp. 414-415.

<sup>21</sup>Lawrence W. Lichty, "Members of the Federal Radio Commission and Federal Communications Commission 1927-1961," Journal of Broadcasting 6 No. 1 (Winter 1961-62): 23-34. And Lawrence W. Lichty, "The Impact of FRC and FCC Commissioners' Backgrounds on the Regulation of Broadcasting," Journal of Broadcasting 6 No. 2 (Spring 1962): 97-110.

<sup>22</sup>Lichty, "Members of the FRC and FCC," p. 24.

Although the term of office is seven years, the length of time served on the commissions varied from 19 years to six months. The average length of service was about four and one-half years (54.4 months). The age of commissioners when appointed also showed a wide range. At the time of their original appointment five members were under 35; 12 were 35 to 44; 15 were 45 to 50; eight were 55 to 60; and four were over 60 years of age.

Twenty-three Democrats, 19 Republicans, and two Independents had been appointed. Most commissioners had some prior political party experience. Nine had been active campaign managers or assistants before their appointments. Four came from high elective jobs.<sup>23</sup>

Five commissioners came from New York, the greatest number from any state. All but 23 states were represented by at least one commissioner.<sup>24</sup>

Lichty found that viewed very broadly, members of the Commissions had been "professional men." The education of commissioners seemed to be representative of various educational facilities; however, more than one-half of the commissioners had some sort of legal training prior to their appointment.<sup>25</sup>

Ten commissioners served with the Commission in some capacity prior to their appointment as members--usually in the legal or engineering departments. Twenty commissioners had some previous experience in state governments. Twenty-nine served the federal government in

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<sup>23</sup>Ibid., pp. 25-26.

<sup>24</sup>Ibid., p. 26.

<sup>25</sup>Ibid., pp. 27-28.

other capacities before coming to the Commissions. In fact, only four commissioners had no previous service with state or federal government before their appointments to the FRC or FCC.<sup>26</sup> Twenty-four commissioners had some previous experience with broadcasting before becoming members of the Commission, but none had come from high-management status.<sup>27</sup>

Following service on the Commission, 14 former members resumed the practice of law; most of these specialized in legal matters involving broadcasting. Six former members later worked in broadcasting. Three former commissioners took jobs in government service and only two others took jobs in business other than broadcasting.<sup>28</sup>

Lichty's study also revealed that the publication of books and articles was sufficiently common among members of the Commission to give a tinge of scholarship to the group. However, he found the average publication of commissioners to be merely a legal explanation or clarification of their position while they were members of the Commission. Rarely did the "wealth of experience and knowledge gained by commissioners find its way into books written by those commissioners."<sup>29</sup>

Finally, Lichty found that none of the members were communications scholars, writers, producers, performers, or directors. Some

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<sup>26</sup>Ibid, pp. 29-30.

<sup>27</sup>Ibid., p. 30.

<sup>28</sup>Ibid., pp. 31-32.

<sup>29</sup>Ibid., p. 33.

commissioners had been questioned as to their impartiality and/or honesty and resigned "under fire," but no such charges were upheld by a court of law.<sup>30</sup>

The second article, which related this background to respective periods of broadcast regulation history, supported the thesis that changes in the direction and emphasis of the Commission's regulation of broadcasting were a function of the members serving on the Commission at those specific times.

Further, the personal experience, education, occupational background, and governmental philosophy of the members of the Federal Radio Commission and the Federal Communications Commission directly influence the direction and emphasis of the agency's policy.<sup>31</sup>

Lichty analyzed distinctive patterns of Commissioners' backgrounds during six periods of FRC and FCC history. His finding showed a definite correlation between Commissioner background patterns and predominant Commission activities. Lichty found that the regulation of broadcasting had been influenced to a measurable degree by the occupational backgrounds and political philosophies of these Commissioners. For example, Lichty found a "technical" period which was dominated by members who had engineering backgrounds and a "trustbusting" era which was characterized by attorneys experienced in governmental regulation.<sup>32</sup>

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<sup>30</sup>Ibid., p. 34.

<sup>31</sup>Lichty, "The Impact of FRC and FCC Commissioners' Backgrounds," pp. 97, 109.

<sup>32</sup>Ibid., p. 108.

### The Scope and Development of the Present Study

This study is an update of Lichty's analysis. It attempts to present the salient biographical facts for every commissioner who served on the FCC between January 1, 1961, and December 31, 1976. It was possible to find essential information for all twenty-two persons who served on the commission during this time. Much information was available in standard biographical reference works such as Who's Who in America. Additional information was obtained from the New York Times, Broadcasting, Broadcasting Yearbook, Sponsor, Annual Reports of the FCC, and nomination hearings for each commissioner.

Information also was obtained directly from the Federal Communications Commission. Policy statements and prepared biographies were obtained for all members of the Commission serving between 1961 and 1976. Speeches were obtained for all relevant commissioners except Charlotte T. Reid (1971-1976), who did not speak publicly during her term of office.

Chapter II presents the selected biographies of the members of the Commission.

Chapter III reports the legislative and administrative history of broadcast appointments and traces some regulatory developments which were relevant to those appointments between 1961 and 1976.

Chapter IV analyzes the careers and qualifications of each commissioner in terms of the type of service on the commission, length of service, age at the time of first appointment, political affiliation, president making the appointment, his/her native geographical area, education, legal training, occupation, prior service in state government,

prior service in the federal government, prior service on the Commission, prior experience in broadcasting, occupation after Commission service, and publications.

Chapter V provides an interpretation of the data given in the preceding chapters and compares the similarities and differences between the appointments of 1961-1976 as revealed by this study, and the appointments of 1927-1961 as shown in Lichty's earlier study.

Conclusions and specific recommendations are in Chapter VI.

The appendices contain several tables upon which many of the specific points and generalizations in the text have been drawn.



CHAPTER II  
FEDERAL COMMUNICATIONS COMMISSIONERS  
1961 - 1976

Twenty men and two women served as FCC commissioners from 1961 to 1976. This chapter formally introduces the commissioners chronologically according to the date of their appointment to the FCC. The following biographical sketches attempt to include the most important aspects of each commissioner's career and life. It is not possible to cover adequately the life of each of these members in such a condensed manner. For most of the commissioners an overwhelming amount of information was available.

Most members made scores of speeches and statements each year. Similarly, there has been a great deal written and said about them. In order to do a completely adequate job of evaluating each commissioner, it would be necessary to review each decision, memo, policy statement, dissent, and report in which he/she had participated. This is not within the scope of this study. Complete studies could be done on nearly every one of these persons and might be more extensive than this entire study.

To reiterate, the purpose of this study is to provide a broad overview. In order to accomplish this objective, it must not get bogged down in details, trivia, and minor contradictions. Therefore, only the

salient aspects, with respect to regulatory qualifications and philosophy, of each commissioner's life will be covered. In addition, published statements which most succinctly express the particular commissioner's regulatory philosophy will be included.

Another failing of the following materials is that it is not always possible to determine the "truth." Frequently, these men and women, as are most people in public life, have been involved in controversial public and court battles, and even scandals. Frequently, one can only surmise what might have actually happened in these cases. Even though both sides of a controversy are presented, it is folly to presume that the truth always falls somewhere in the middle.

Unless otherwise cited, the information to follow comes from Who's Who in America 1961-1977, nomination hearings for each commissioner, and FCC-prepared biographies. A distillation of some of the important information about each commissioner is also provided in Appendix A.

Rosel H. Hyde

Commissioner 1947 - 1969

Chairman 1953-54; 1966-69

Although he listed himself as a Republican, Rosel H. Hyde was one of a few FCC Commissioners who was essentially nonpolitical. He was a career government servant who had worked his way up the staff without taking an active interest in party politics. Because Hyde was associated with communications regulation for more than 40 years, served as a commissioner for 23 years and was named Chairman by three presidents, he figures prominently in the history of the FCC.

Hyde was born in Bannock County, Idaho, on April 12, 1900. He attended the Utah Agricultural College from 1920-1921. In 1924, he moved to Washington, D. C., without a single job prospect. For three months, he took whatever part-time work he could find while looking for a permanent position. Finally, as a result of a competitive examination, he was hired as a typist in the Civil Service Commission. He then began his evening study of the law at George Washington University. On July 23, 1928, Hyde was hired as disbursing officer at the Federal Radio Commission. In his extra time, he did volunteer work with the legal department, and transferred to that division later that year when he was admitted to the bar.

When Franklin D. Roosevelt was elected president, Hyde, a Republican, was informed that his services were no longer needed. After a protest, Hyde was demoted rather than dismissed, but he did not quit, and by 1942, he was Assistant General Counsel of the FCC, responsible for new station applications, increases in power, and supervision of all legal matters. He had a reputation for fairness, industry, and geniality and in 1945 he became the General Counsel of the FCC.

Hyde made two unsuccessful attempts to secure a Commission seat in 1941 and 1944. In 1946, when Commissioner William H. Wills died in office, Hyde was appointed to fill his unexpired term.

In 1952, Hyde was reappointed by President Truman because, at that time, he could not be replaced. He knew as much as any man about the present state of television allocations. On April 18, 1953, he was named FCC Chairman by President Eisenhower for a one

year period. At the end of the year, he was designated acting Chairman by the Commission and served until October 4, 1954. In 1959, Eisenhower appointed Hyde to his third consecutive term as he was celebrating his 30th anniversary in communications.

President Johnson reappointed the 66-year-old Hyde in 1966. Hyde would reach the retirement age of 70 in four years, so instead of a full seven year term, he was appointed to the remaining three years of Chairman Henry's term. At that time, Democratic President Johnson surprised the broadcasting industry by naming Republican Hyde to the Chairmanship, but it was actually a nonpolitical appointment of a man with experience and without political ties to either party. On June 18, 1969, Hyde was designated Chairman for the third time by the third president. This time it was Richard Nixon. Hyde served in this capacity until he left the FCC on October 31, 1969.

While on the FCC, Hyde was considered a mild-mannered, hard-working but cautious traditionalist who was very much concerned about the integrity of the agency. He was considered an expert in all areas of communications regulation, but particularly in television and radio. Hyde was not a "crusader" and did not give any one aspect of regulation priority over another. He said that the FCC was created through the wisdom of Congress, devising a system in which the incentives of private operation and the obligations of public service are combined. But, the "very heart" of such a system is the fairness doctrine. He told the National Association of Broadcasters that their freedom from governmental encroachment is secure under the prohibition against censorship in Section 326 of the Communications Act and in the First

Amendment. But with that freedom, he said, comes responsibility.

Responsibility for a broadcaster must not be an attitude adopted in a fit of benevolence. Rather, its responsibility must be inseparable from its response to the kind of world in which we live. Today's business institutions--especially one endowed with the public interest--cannot exist in modern society without reacting constructively to the goals of society, as well as social and political forces that mold that society. For you this is not only a matter of choice but of an inescapable obligation.

When Rosel Hyde left the FCC on October 31, 1969, he had been regulating the communications industry in one capacity or another for 41 years. He is presently a professor at the University of Detroit School of Law.

Robert T. Bartley

Commissioner 1952 - 1972

Democrat Robert Taylor Bartley was born May 20, 1909, in Ladonia, Texas. He attended the Southern Methodist University School of Business Administration from 1927-1929. He came to the FCC in 1934, the year it was created, after a number of years of government service. He, in fact, supervised the preparation of reports instrumental in the passage of the Communications Act of 1934. Bartley had previously worked on the telephone rate investigation carried on by the Federal Radio Commission between 1932 and 1934. He was later director of what was then the telegraph land lines, cable, and radio carriers for the FCC. After serving with the Securities and Exchange

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<sup>1</sup>Rosel H. Hyde, "Address Before the National Association of Broadcasters," (Washington: FCC Mimeograph #29962, 1969), p. 3.

Commission, he left government service and was assistant to the president of the Yankee Radio Network between 1939 and 1943.

During World War II, Bartley was war programs manager for the National Association of Broadcasters. He was later director of government relations and head of the FM department of the NAB between 1944 and 1947. In 1948 he became administrative assistant to his uncle, then speaker of the House of Representatives Sam Rayburn, an office he held until his appointment to the FCC. He was initially appointed by President Truman in 1952 and reappointed by President Eisenhower in 1958 and by President Johnson in 1965.

In 1960, Commissioner Bartley was a member of the United States delegation to the International Conference on Safety of Life at Sea, held in London, and he served as chairman of the FCC Radio Committee. As FCC Defense Commissioner (1961 - 1965), he coordinated the Commission's national defense activities with the President's office, other government agencies and the communications industry.

Commissioner Bartley was also chairman of the Radio Technical Commission for Marine Services, a joint government-industry organization. He was chairman of the U.S. delegation to the World Administrative Radio Conference for Maritime Mobile Matters at Geneva in 1967. The Marconi Gold Medal of Achievement was awarded to Bartley by the Veteran Wireless Operators Association in 1965 for his contribution in the field of radio regulation.

Commissioner Bartley was one of several members of the Commission who had previous experience in the broadcasting industry

before joining the FCC, although he was not considered to be "truly a broadcaster" by the industry. Frequently, "serving on both sides of the fence" can cause a change of attitude, as Broadcasting pointed out.

One of the most enthusiastic advocates of the FCC's tightened rules regarding commercial announcements is Commissioner Robert T. Bartley.

But only 16 years ago, Mr. Bartley was on the other side of the fence.

At that time, in 1944, Mr. Bartley was director of government affairs for NAB. He and Washington attorney Phillip G. Loucks represented the broadcast industry in conferring with the FCC's law department on proposed revision of sponsor identity rules.

The proposed rules included a controversial section which would have required an announcement that a program was "paid for" if it were furnished free to the station or some other consideration was given to the broadcaster. This section subsequently was deleted from the final rule upon the urging of the industry representatives.<sup>2</sup>

Robert Bartley's regulatory philosophy was generally conservative:

My personal feeling is the least regulation the better. I don't think the government should attempt to spoon-feed or lead. The regulatory agencies were brought about to correct abuses. We should wait for signs of abuses.<sup>3</sup>

But Bartley, on the issue of media concentration, took what might be characterized as a populist position; he consistently favored a full inquiry into proposed mergers and acquisitions. As such, he

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<sup>2</sup>Broadcasting, March 28, 1960, p. 32.

<sup>3</sup>Elizabeth Brenner Drew, "Is the FCC Dead?" Atlantic, July 1967, p. 32.

joined with Henry and Cox in proposals relating to overcommercialization, and later with Commissioners Johnson and Cox in an almost automatic opposition to the acquisition of additional broadcast properties by large group owners.

One area in which he was consistently conservative was in the regulation of programming. In June, 1961, he told the Florida Association of Broadcasters:

First and foremost, I can state categorically that I am a firm believer in self-restraint by the industry and self-regulation in programming practices.<sup>4</sup>

In May, 1968, Bartley told the Illinois Broadcasters Association, "Let's abolish the FCC," in favor of two independent agencies and an administrator for frequency allocations. He said that due to the "vast expansion of the communications facilities and FCC regulatory responsibilities" the job of regulation was too big for one seven-member agency. He advocated a continuation of government regulation of the industry because, "Order, instead of chaos, will still be required," but reorganization was necessary.<sup>5</sup>

When Bartley left the FCC in 1972, he retired from public life and returned to Texas.

Robert E. Lee

Commissioner 1953 -

Commissioner Robert E. Lee is presently serving his fourth consecutive term on the FCC and is that agency's longest serving

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<sup>4</sup>Robert T. Bartley, "Regulation of Programs--How Far? How Good?" (Washington: FCC Mimeograph #6397, 1961), p. 7.

<sup>5</sup>Robert T. Bartley, "Let's Abolish the FCC," (Washington, FCC Mimeograph #17280, 1968), pp. 4, 7.



commissioner, He has served longer than any other commissioner on all federal regulatory agencies, having been initially appointed October 6, 1953, by President Eisenhower. He was reappointed by Eisenhower in 1960, appointed to a third term in 1967 by President Johnson, and then to a fourth in 1974 by President Nixon. Lee's first three appointments were marked by indecision and controversy.

Born in Chicago, Illinois, on March 31, 1912, Commissioner Lee was educated at DePaul University College of Commerce and Law. In 1972, Lee received the honorary degree of Doctor of Laws from St. John's University in Jamaica, New York.

After finishing college, Lee, from 1930 to 1935, served on the management staff of the Congress Hotel and Great Northern Hotel in Chicago, and the Roosevelt Hotel in St. Louis, largely in an auditing capacity. From 1935 to 1938 he was auditor for the American Bond and Mortgage Company Bondholders Protective Committee, which was created by law to handle the defunct properties of that company and involved the reorganization of some 70 properties such as hotels, hospitals, and office buildings.

He first entered Federal Service in 1938 as a Special Agent for the Federal Bureau of Investigation. In 1941, he was made Administrative Assistant to Director J. Edgar Hoover and was charged with the specific responsibility of building the FBI staff for new responsibilities under the threat of war. Subsequently he was made Chief Clerk of the FBI. Under Hoover's sponsorship, Lee moved to the House Appropriations Committee in 1946 where he eventually became Director of Investigations.

In 1947, it was Lee, as a member of the staff of the House Appropriations Committee, who had initially compiled a list of 108 cases of alleged disloyalty in the Truman State Department. Over a period of three years, the list was examined by four congressional committees. By 1950, only a fourth of the persons named were still with the department, and all of those had been fully investigated. This list was later used by Senator Joseph McCarthy, although Lee repeatedly insisted that he had not given it to the Senator. However, Senator McCarthy and Robert E. Lee were close, personal friends. The immediate public reaction to Lee's appointment to the FCC was one of amazement that President Eisenhower would select a man who appeared to be identified with the controversial Wisconsin Senator.

On February 19, 1960, President Eisenhower renominated Lee to a second seven-year term four months before his present term would expire. The renomination was controversial in light of the FCC scandals of the late 1950s. Although Lee had not been charged with any improprieties, he had not done anything to distinguish himself from the majority of the Commission. In other words, he was identified with a situation which many thought was less than healthy.

Lee's 1967 reappointment was again controversial. It came in the middle of the ITT-ABC merger which had caused a bitter split on the commission. His term had expired without a word from the White House, so Lee resigned. If President Johnson had replaced Lee, the new commissioner might be forced to disqualify himself from voting on the merger. So Lee was immediately reappointed.

The Watergate scandal was the controversy which surrounded Lee's reappointment in 1974, but the circumstances had actually been of assistance to the Commissioner. As White House Assistant David Wimer admitted, there was "not unanimity" on Lee within the White House. Presidential advisors Clay Whitehead and Dean Burch would probably have preferred a new face on the FCC, but Lee's strong congressional allies intervened.<sup>6</sup> Later, it was reported that Vice President Ford also interjected his "forceful endorsement" of Lee's reappointment.<sup>7</sup> President Nixon's preoccupation with Watergate and his unwillingness to offend Congressional leadership effected his decision, and Lee was renominated.

While on the FCC, Lee has served as Vice Chairman; FCC Member of the Radio Technical Commission for Aeronautics; FCC Representative to the Interagency Group on International Aviation; Member of the FCC Telephone and Telegraph Committee; Vice Chairman to the World Administrative Radio Conference for Space Telecommunications and the 1973 Plenipotentiary Conference; Chairman of the Interconnection Advisory Committees; and Chairman of the U.S. Delegation to the World Administrative Telephone and Telegraph Conference. He also organized and served as Chairman of the Committee for the Full Development of All-Channel Broadcasting and of the Committee for the Full Development of Instructional Television Fixed Service.

Throughout his FCC career, Lee has generally been known as a nonactivist; however, he has been a strong advocate of the development

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<sup>6</sup>Broadcasting, July 15, 1974, p. 36.

<sup>7</sup>Broadcasting, August 26, 1974, p. 5.

of the UHF spectrum as well as educational television. The majority of Lee's public speech-making has been concerned with educational and instructional telecommunications. In 1962 for example, he favored a shift of all television channels to the UHF band.<sup>8</sup> This, as with many of his proposals, was never seriously considered by the Commission.

Frederick W. Ford

Commissioner 1957 - 1964

Chairman 1960 - 1961

Frederick Ford was a Republican born in Bluefield, West Virginia, on September 17, 1909. He was graduated from West Virginia University with an A.B. degree in 1931, and received his LL.B. degree from that university's law school in 1934. From 1934 to 1939 he engaged in the general practice of law before state and Federal courts as a junior partner of Stathers and Cantrall, a Clarksburg, West Virginia law firm. He resigned to enter Government service in the Office of the General Counsel of the Federal Security Agency. During the War, he was on active duty in the United States with the Air Force. At the end of the war, he became a Hearing Commissioner in the Office of Price Administration.

In 1947, Ford joined the staff of the FCC where he gained a positive reputation because of his work on two long and arduous cases. He left the FCC to join the Department of Justice in 1953. He initially served there as First Assistant in the Office of the Legal Counsel, then as Acting Assistant Attorney General in charge of that

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<sup>8</sup>Robert E. Lee, "Facing Our Responsibilities," (Washington: FCC Mimeograph #20112, 1962), p. 6.

office and, in January 1957, was promoted to Assistant Deputy Attorney General. On August 29, 1957, Ford was appointed by President Eisenhower to the FCC.

Every once in a while, a regulatory agency appointment is characterized as a "merit selection." Its connotations are only slightly clearer than its precise meaning. "Merit" does not suggest the absence of political considerations. It does imply, however, that the dictates of political necessity were not at the heart of the selection decision. Instead, the predominant factor in a "merit appointment" is that the person is particularly qualified for selection to a position. Ford was a "merit appointment" because he had served as an FCC attorney for six years and he was "familiar with policies, frailties and people."<sup>9</sup>

President Eisenhower designated Ford to serve as FCC Chairman on March 15, 1960, when Chairman John C. Doerfer was asked to resign for accepting favors in return for privileges from Storer Broadcasting, Inc. Ford served in this capacity until March 1, 1961, when President Kennedy named Newton Minow to the chairmanship.

While on the Commission, Ford was FCC liaison with the Office of Civil and Defense Mobilization in long-range frequency allocation planning for Government and civilian radio services. He also served as an alternate Commission member of the Interagency Telecommunications Advisory Board, which advised the Director of Defense Mobilization in

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<sup>9</sup>Broadcasting, July 8, 1957, p. 106.

matters relating to national telecommunications plans; as an FCC alternate Defense Commissioner, and as a member of the Commission's Telephone and Telegraph Committees.

Commissioner Ford was primarily concerned with the content of broadcasting. In addition to the problem of the quality of programming, Ford was concerned with the growth and development of educational broadcasting,<sup>10</sup> fairness doctrine and political broadcasting issues,<sup>11</sup> and the commercial practices of broadcast stations.<sup>12</sup> In a June 1961 speech before advertisers, Ford said:

It is not my purpose to attempt an evaluation of a good commercial employed in broadcasting any more than I would attempt to evaluate what is a good program. Certain practices in both areas are in disrepute, but I would urge you to be ever mindful of your own advertising codes and of those of the broadcasting industry as a means of preserving as much self-regulation as possible. Without the personal discipline that must accompany freedom in this respect, however, restrictive measurements will undoubtedly follow.<sup>13</sup>

Ford was reappointed by President Johnson to a second seven-year term effective July 1, 1964. Six months later, Ford retired on December 31, 1964, to become President of the National Community Television Association. He is also associated with the Washington communications law firm of Pittman, Lovett, Ford, Hennessey, and White.

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<sup>10</sup>Frederick W. Ford, "The Role of the Federal Communications Commission in Educational Broadcasting." (Washington: FCC Mimeograph #4131, 1961), p. 1.

<sup>11</sup>\_\_\_\_\_. "Broadcasting Political and Controversial Issues." (Washington: FCC Mimeograph #27403, 1962), p. 1.

<sup>12</sup>\_\_\_\_\_. "Commercial Practices of Broadcast Stations." (Washington: FCC Mimeograph #6968, 1961), p. 1.

<sup>13</sup>Ibid.,

Newton N. Minow

Chairman 1961 - 1963

Democrat Newton Minow, the first Kennedy appointee, was born on January 17, 1926, in Milwaukee, Wisconsin. He joined the Army and served in the China-India-Burma theater in the closing years of World War II. After the war, Minow attended Northwestern University where he received his bachelor's degree in 1949, and his law degree in 1950. At law school, Minow was editor-in-chief of the law review and received the John Henry Wigmore Award as the outstanding member of his law school class. Following graduation, Minow joined the Chicago law firm of Mayer, Brown & Platt where he practiced corporate law for one year.

In early 1951, Minow was appointed law clerk to Chief Justice Fred M. Vinson of the U.S. Supreme Court, and served in that capacity until the end of the 1951-52 term of the Court. He was appointed as Administrative Assistant to then Governor Adlai E. Stevenson, in Springfield, Illinois. Minow stayed with Stevenson through his unsuccessful campaign for the presidency, then returned to Mayer, Brown & Platt for another two years. In 1955, Governor Stevenson formed a law firm with W. Willard Wirtz and William McC. Blair, and he invited Minow to join the firm as a partner. As a result of a merger two years later, the firm became known as Stevenson, Rifkind & Wirtz of New York and Washington, D. C. Although he had represented clients involved in educational television and had negotiated on behalf of talent with stations and networks, Minow never appeared before the FCC; however, the firm in

which he was a partner had a "great deal of work" in the communications field.<sup>14</sup>

Minow assumed the FCC Chairman post on March 2, 1961. While on the commission he received a number of awards, including: the George Foster Peabody Broadcasting Award, the National Audience Board Award; and the Lee DeForest Award of the National Association for Better Radio and Television. He was named One of Ten Outstanding Young Men in Chicago in 1960, and One of America's 10 Outstanding Young Men of 1961.

The occasions of Minow's articles, testimony, opinions, and speeches are numerous. He is the author of Equal Time: The Private Broadcasters and the Public Interest, 1964; and has co-authored several books, including: Presidential Television, 1973; and Tomorrow's American: Electronics and the Future, 1977. He also contributed to the book As We Knew Adlai.

As a regulator of broadcasting, Minow's primary concern was programming in the public interest. He called the content of television programming a "vast wasteland" and promised to use the FCC's licensing authority to persuade broadcasters to improve programming. He also said:

Broadcasting to serve the public interest, must have a soul and a conscience, a burning desire to excel, as well as to sell; the urge to build the character,

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<sup>14</sup>Newton N. Minow. "Reorganization Plans 1 and 2 of 1961," hearings, Committee on Interstate and Foreign Commerce, House of Representatives, 87th congress, 1st sess., May 16, 1961, p. 92.



citizenship and intellectual stature of people, as well as to expand the gross national product. . . . the public interest. . . . But a much better job can be done, and should be done.<sup>15</sup>

When Minow left the FCC on June 1, 1963, he was only 37 years old and the majority of his career has come since his appointment. He resigned to accept a position as General Counsel for Encyclopedia Britannica, Inc., in Chicago. In 1965 he formed his own law firm where he still works today. In addition he is a trustee and former chairperson of the board of the Rand Corporation, former chairperson of Chicago Educational Television, director and General Counsel for Aetna Casualty and Surety Co., and Aetna Life Insurance Co., and a Professorial Lecturer for the Medill School of Journalism at Northwestern University. He is also on the board of governors of the Public Broadcasting Service and has been serving as chairperson of the board since 1978.

E. William Henry

Commissioner 1962 - 1966

Chairman 1963 - 1966

E. William Henry was a Democrat appointed by President Kennedy. He was designated to the chairmanship upon the resignation of Newton Minow. At 34 years of age at the time of his appointment, Henry was the youngest person ever to head the FCC.

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<sup>15</sup>Newton N. Minow, "Address before the 39th Annual Convention of the National Association of Broadcasters," (Washington: FCC Mimeograph #4427, 1961), pp. 2-3.

Henry was born in Memphis, Tennessee, on March 4, 1929. He attended Yale University where he obtained a B.A. degree in 1951. Following service in the Navy during the Korean campaign, he received his LL.B. degree from Vanderbilt School of Law, Nashville, Tennessee, in 1957. While at Yale he was a member of the student organization which operated WYBC, the "indoor" broadcasting system wired to each dormitory. He served in its continuity department and also was an announcer.

Following his graduation from law school, Henry practiced law in Memphis. In 1959, he became a partner in the Memphis firm of Chandler, Manire & Chandler, where he engaged in general trial and appellate matters.

Prominent in civil rights activities, he held appointment as a member of the Tennessee Advisory Committee to the United States Commission on Civil Rights. In this capacity, he played some role in the desegregation of both local schools and the local bar. Henry was also active in civic organizations and affairs in Memphis, where he was a Director of the local chapter of the American Red Cross, Vice-President of Family Service of Memphis (a United Fund Agency), General Counsel of the Tennessee-Arkansas-Mississippi Girl Scout Council and a Director of the Memphis Cotton Carnival Association.

Henry had been out of law school only five years when he was appointed to the commission, yet he had been part of the Kennedy talent bank for some time. He was associated in Washington with the Kennedy 1960 campaign organization as its representative to the

Nationalities Division of the Democratic National Committee. When he became FCC Chairman he was clearly of the same activist frame of mind as his predecessor, Newton Minow. Henry insisted that the FCC did have a legal responsibility to upgrade programming and more closely regulate overcommercialization.

Henry was Chairman of the FCC for three full years. Each year, as is customary, he addressed the National Association of Broadcasters annual convention. Each year the primary emphasis of Henry's speech was on programming.<sup>16</sup> In 1966 he told the broadcasters,

Responsible self-regulation is far more appealing than the idea of any government official telling you what you can and cannot do. Indeed, the greatest accomplishments of your media have come about through the free exercise of your own initiative.<sup>17</sup>

However, he said that when it came to specific instances, such as self-censorship, cigarette advertising, or local origination of programming, industry self-regulation was not responsible,

How has your industry--long preaching the virtues of self-regulation--reacted? Where are the clearly articulated, the comprehensive, and the meaningful requirements that might have been expected? Where are the standards designed to protect the public? Where, indeed?

The truth is that the broadcast industry has not only failed to pass this test of self-regulation--it hasn't even taken it.<sup>18</sup>

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<sup>16</sup>E. William Henry, "Address before the National Association of Broadcasters." (Washington: FCC Mimeograph #57132, 65470, 81752, 1964, 1965, 1966).

<sup>17</sup>\_\_\_\_\_. "Address before the National Association of Broadcasters." (Washington: FCC Mimeograph #81752, 1966), p. 3.

<sup>18</sup>Ibid., pp. 7-8.

On May 1, 1966, Henry left the FCC to assist in the campaign of John Hooker for Governor of Tennessee. Shortly after the election, Henry became a partner with the Washington law firm of Arnold & Porter, where he spent approximately one year. In 1968, he left the practice of law to become chief executive officer of Management Television Systems, Inc., a New York firm engaged in the production and distribution of closed circuit telecasts. By late 1972, Henry once again returned to the practice of law as a partner in the Washington firm of Ginburg, Feldman and Bress. Today, roughly 50 percent of Henry's law practice is communications oriented. Former Chairman Henry also maintained an active political interest after leaving the agency. He has been involved in campaigns for Robert Kennedy and John Lindsay, among others.

Kenneth A. Cox

Commissioner 1963 - 1970

Democrat Kenneth Cox, a Kennedy appointee, was one of the most educated men ever to serve on the FCC. Born in Topeka, Kansas, on December 7, 1916, Cox lived in Washington state the major portion of his life. He received a B.A. degree from the University of Washington in 1938 and a LL.B. from that university's law school in 1940. He also received a LL.M. from the University of Michigan in 1941 and an LL.D. from the Chicago Theological Seminary in 1969.

Cox was admitted to the Washington Bar in 1941 and served as a law clerk to the Washington Supreme Court from 1941-1942. After serving in the Army (1943-1946), he returned to the Michigan Law School

as an assistant professor. In 1948, Cox joined the Seattle law firm of Little, LeSourd, Palmer, Scott & Clemmons where he was engaged in a general corporate and probate practice. Within five years he had become a partner in that firm. He remained with the firm until April 1961, when--largely through the efforts of Senator Warren Magnuson--Cox was appointed chief of the FCC's Broadcast Bureau.

Magnuson had been supporting Cox for sometime. In 1960, he had worked actively for Cox for the chairmanship of the FCC and had been disappointed when Newton Minow received the appointment instead. Magnuson and Cox had worked together on a very close basis over the previous five years. In January 1956, Cox had taken a leave of absence from his Seattle law firm to join the Senator's staff. For approximately 15 months, Cox headed up the Senate Commerce Committee's investigation on the broadcasting industry and the FCC. In that capacity, Cox had authorized reports which were highly critical of both the industry and the FCC. From 1957 to 1960, Cox served in an off-and-on again fashion on the Senator's staff. Between 1954-1960, he was also a part-time lecturer at the University of Washington Law School. Due primarily to the efforts of Senator Magnuson and FCC Chairman Newton Minow, Cox was promoted from the FCC staff when he was appointed to the commission.

While on the FCC, Cox expressed regulatory views that were in harmony with Chairman Minow and later with Commissioner Johnson. He was, throughout most of his term, considered the commission's toughest regulator. Cox and Johnson, and occasionally Bartley, formed a consistent minority viewpoint. He advocated more FCC involvement in the

regulation of programming.

There are, quite properly, restraints on the power of the commission to require broadcasters to do certain things in the area of programming--though I think our authority is broader than my associates choose to make it.<sup>19</sup>

Near the end of his term, he made a similar comment.

I do not contend that the FCC has or should have plenary powers in these areas or in the programming field generally. But I am convinced that, subject to review by the Courts and the Congress, it should have a significant role with respect to programming if the public is to be reasonably served.<sup>20</sup>

The influence of Commissioner Johnson on Cox is obvious in some of his later statements concerning public involvement in broadcast regulation. In a speech in late December 1968, Cox urged his audience to complain to Congress when the FCC acts "against the public interest--or doesn't act at all." Cox also added, "Take us to court if we improperly dispose of proceedings in which you are involved."<sup>21</sup>

Cox's term expired on June 30, 1970, but he continued to serve until August 31, pending confirmation of his successor. When he left the commission, he joined Microwave Communications of America, Inc., (MCI), as a senior vice president. He is presently working in this capacity. He is also associated, as counsel, with the Washington, D.C. communications law firm of Haley, Bader, and Potts.

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<sup>19</sup>Kenneth A. Cox, "Broadcasters as Revolutionaries," (Washington: FCC Mimeograph, 1966), p. 3.

<sup>20</sup>\_\_\_\_\_. "The FCC's Role in Television Programming Regulation." (Washington: FCC Mimeograph, 1969), p. 16.

<sup>21</sup>Broadcasting, December 16, 1968, p. 67.

Lee Loevinger

Commissioner 1963 - 1968

The final Kennedy appointee, Lee Loevinger, was born on April 24, 1913, in St. Paul, Minnesota. He was graduated from the University of Minnesota with the degree of Bachelor of Arts, summa cum laude, in 1933, and the Bachelor of Laws degree in 1936. While in college he joined with his classmates, including newscaster Eric Sevareid, in various "left-wing" student causes. He was also the captain of the varsity debate team, editor of the undergraduate magazine, president of the Board of Publications, and an editor of the law review. College honors included Phi Beta Kappa, Sigma Xi, Delta Sigma Rho, the Forensic Medal, and a citation as a representative Minnesotan.

After graduating from law school, Loevinger practiced with a firm in Kansas City, Missouri, for one year and then joined the staff of the National Labor Relations Board as a trial attorney. In 1941, he transferred to the antitrust division of the Justice Department. Aside from three years active service with the Navy during the war, he remained with the antitrust division until 1946. In that year he returned to Minneapolis and became a partner in the law firm of Larson, Loevinger, Lindquist, Freeman & Fraser.

From that date up until 1960, Loevinger devoted a large part of his practice to antitrust treble damage suits. He also pursued various scholarly interests, and was the author of the books, The Law of Free Enterprise, 1949, and An Introduction to Legal Logic,

1952. He also contributed articles to various professional journals dealing with the law and other subjects. In March 1960, his former law partner who was then Governor of Minnesota, Orville Freeman, named him to a vacancy on the state supreme court. At that time, one Minneapolis newspaper editorialized:

The appointment (of Loevinger) will bring to the bench a man of superior intelligence, one who has been a good student of the law, who has written widely in his chosen field and who has a reputation as an indefatigable worker.<sup>22</sup>

In addition, he was a lecturer at the University of Minnesota from 1953 to 1960 and a visiting professor of jurisprudence at the University of Minnesota Law School in 1961.

Loevinger had influential friends in the Democratic Party. In addition to Governor Freeman, Senator Hubert Humphrey was a close personal friend. As a result, he became part of the Kennedy "talent bank" from which most federal appointments were made. In February 1961 Loevinger resigned from the state supreme court to become Assistant Attorney General in Charge of the Antitrust Division. He was still in that position in the spring of 1963 when President Kennedy was deciding who to appoint to replace Minow on the FCC.

Loevinger was strongly dedicated to antitrust enforcement. In 1961 he told Attorney General Robert Kennedy: "I believe in anti-trust almost as a secular religion." He had in fact been involved in that area of the law almost his entire professional career. He therefore took the FCC position rather reluctantly.

Loevinger had a lawyer's mind and fiercely held opinions which made him perhaps the most mercurial of all the commissioners.

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<sup>22</sup>Minneapolis Morning Tribune, Mar. 8, 1960, p. 6.



Much of the time Loevinger sounded pro-industry in his well-reasoned if sometimes harsh disagreements with the more activist commissioners. Loevinger had very strong feelings that the First Amendment guaranteed broadcasters an absolute right to control programming content. In light of the fact that he had been selected to replace Minow and preserve a Kennedy majority on the commission, Loevinger's regulatory philosophy was a surprising contrast. For example, he told the Oregon Association of Broadcasters:

. . . .It appears to me that the journalistic function of disseminating information and ideas is the most important social function of broadcasting. The performance of this function is what entitles broadcasters to claim the protection of the first amendment respecting freedom of the press and is the element that makes broadcasting one of the most important institutions of contemporary society.

. . . . because of its relation to the journalistic function, I do not believe that the government should control or attempt to regulate the program content of broadcasting. As a matter of law, program content should be free of government censorship in any form; and as a matter of principle I think it is beyond the proper role of government to establish standards of taste or to dictate the intellectual or cultural level of expression of the mass media.<sup>23</sup>

Loevinger announced his intention to resign from the FCC in September 1967 and left when his term expired on June 30, 1968. He joined the firm of Hogan & Hartson, where his practice has been largely to antitrust and communication law matters. Since leaving the Commission, Loevinger has represented the National Association of Broadcasters,

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<sup>23</sup>Lee Loevinger, "Problems, Procedures and Policies of the FCC." Address before the Oregon Association of Broadcasters." (Washington: FCC Mimeograph #42827, 1963), p. 9.

and has been an occasional consultant to International Telephone & Telegraph. In addition he was a professorial lecturer at American University from 1968 to 1970. He was a delegate to the White House Conference on Inflation in 1974 and the U.S. delegate to the UNESCO Conference on Mass Media in 1975. He wrote another book, published in 1977, entitled Defending Antitrust Lawsuits. He is presently living in Washington, D.C. and practicing law.

James J. Wadsworth

Commissioner 1965 - 1969

James Wadsworth has devoted much of his life to governmental service and international affairs. As the first commissioner appointed by President Johnson, he was a Republican selected to replace Commissioner Ford.

Wadsworth was born on June 12, 1905. He was a blue-blood Republican: his father represented New York in both the House and Senate; his grandfather, John Hays, was President Lincoln's private secretary and later Secretary of State. In keeping with that tradition, Wadsworth had attended St. Mark's Preparatory School before receiving his bachelor's degree from Yale in 1927; he also holds several honorary degrees. Wadsworth had another family connection which helped him move along in his career: his sister was married to Democratic Senator Stuart Symington of Missouri, a close friend of President Johnson.

From 1931 to 1941, Wadsworth served in the New York State Legislature. Rejected from active service due to a leg injury, Wadsworth was an executive in a defense plant during World War II. After the war, he served in several Federal agencies in Washington before

being named to an executive position in the Civil Defense Administration. With the election of Eisenhower, Wadsworth became Deputy Ambassador to the United Nations. When Ambassador Henry Cabot Lodge resigned to run for Vice-President, Eisenhower promoted Wadsworth to the post of permanent Ambassador. In recognition of his work there, he received the Eleanor Roosevelt Peace Award in 1963.

From 1961 until his FCC appointment on May 5, 1965, Wadsworth had remained active in various discussions on international affairs and disarmament. He was a writer, lecturer, and amateur painter. His book, The Price of Peace, was published in 1962. Although he had no prior experience with communication matters, President Johnson considered him to be the perfect candidate for the FCC. He had excellent credentials, he was a distinguished but nonactivist Republican, and he had family connections to a leading Democratic Senator.

Wadsworth had a liberal-to-moderate approach to broadcast regulation,

. . . I believe in free enterprise and in the importance of the profit motive in ultimately achieving public service. I also understand that broadcasters as well as other businesses are not merely interested in the crude maximization of profits in the short run. I know that most broadcasters are dedicated to service in the public interest. I also know that unless broadcasters prosper, none of this public service would be possible in our advertiser-supported broadcast system. I envision government-industry relations more as a cooperative venture, in which each partner expects the other to perform at its best, rather than a tug-of-war or a recurring cycle of crises, recriminations, accusations, or--worst of all--a constant effort to pull each other's legs.<sup>24</sup>

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<sup>24</sup>James J. Wadsworth, "Address before the National Association of Broadcasters." (Washington: FCC Mimeograph #74658, 1965), pp. 5-6.

Wadsworth left the FCC on October 31, 1969, with more than two years of his term remaining. It had been well known for some time that he was "thoroughly disenchanted" with his commission duties.<sup>25</sup> He was appointed as a special member of the U.S. delegation to the International Telecommunications Satellite Consortium (Intelsat), but he spent less than a year in that position before he resigned. Today he is retired and living in New York.

Nicholas Johnson

Commissioner 1966 - 1973

Perhaps the most outspoken crusader and critic of all aspects of broadcasting, including the FCC itself, was Nicholas Johnson, a Democrat who was appointed by President Lydon Johnson. Nicholas Johnson was born in Iowa City, Iowa, on September 23, 1934. He is a Phi Beta Kappa graduate of the University of Texas-Austin, receiving his B.A. degree there in 1956, and is an honor graduate of that university's law school, earning an LL.B. degree in 1958. Following graduation, he served as a law clerk to Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit from 1958 until 1959, and as a clerk to then Supreme Court Justice Hugo L. Black from 1959 until 1960.

In 1960, Johnson accepted a position as acting Associate Professor at the University of California School of Law in Berkeley, California. His principle courses were administrative law and oil and gas regulation. While on the university staff, he was a member of the Chancellor's Committee on Natural Resources, and a consultant and associate to the Center for Study of Law and Society. He went

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<sup>25</sup>Variety, July 12, 1967, p. 29.

to Washington in 1963 and joined the communications law firm of Covington and Burling. President Johnson appointed him Maritime Administrator on March 2, 1964. In 1966, he resigned this position to accept a post on the FCC.

Johnson has been admitted to practice in the U.S. Supreme Court and the District of Columbia and Texas courts, and is a member of the American Bar Association, the Federal Bar Association and the Texas Bar Association. He has served as chairman of the Junior Bar Conference Committee on Continuing Legal Education, as a director and member of the board of editors of the International Society for General Semantics, and is a member of the Jurimetrics Committee of the Association of American Law Schools, which is concerned in part with the use of computers in legal research. He was selected as one of the "Ten Outstanding Young Men of 1967" by the United States Jaycees.

Johnson, the youngest member to serve on the FCC, has estimated the occasions of his articles, testimony, opinions, and speeches concerning communications policy to be in the "thousands." He has also written several books on the subject, including: How To Talk Back to Your Television Set, 1970; Life Before Death in the Corporate State, 1971; Test Pattern For Living, 1972; and Broadcasting in America, 1973. He has contributed to many legal, general, and international publications.

The major consideration which guided Johnson's regulatory philosophy was "the public."

The FCC is a public agency, receiving public funds for the purpose of regulating, "in the public interest," communications industries whose services are crucial

to the continued vitality of a democratic society. Ironically, though the agency keeps the public in the dark, the communications interests learn all the details of Commission actions through information services provided by lawyers, lobbyists, and the trade press.<sup>26</sup>

Commissioner Johnson identified as the "sub-government phenomenon" the domination of an agency's policy-making by a coalescence of lobbyists, specialty lawyers, trade associations, trade press, congressional subcommittee staff members, and commission personnel who cluster around each of the regulated industries. This subgovernment, Johnson maintained, grows around any specialized private interest-government relationship that exists over a long period of time, is self-perpetuating, and endures unaffected by tides of public opinion and efforts for reform.<sup>27</sup>

When Johnson appeared before the industries he regulated, he always spoke as a representative for the public interest. For example, he told the Ohio Cable Television Association:

What are your obligations? What do you owe those of us who have had faith in you for so many years? What do you owe the public?

Well, first of all, regardless of what services you supply, you owe us an obligation of honesty. . . .

You know what cable's potentials are. And because you know this and the rest of the world doesn't you have an obligation to educate.<sup>28</sup>

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<sup>26</sup>Nicholas Johnson and John Jay Dystel, "A Day in the Life: The Federal Communications Commission," The Yale Law Journal 82 (July 1973), p. 1634.

<sup>27</sup>Nicholas Johnson. "A New Fidelity to the Regulatory Ideal," Georgetown Law Journal, LIX (March 1971), pp. 883-884.

<sup>28</sup>\_\_\_\_\_. "Cable Television: The Future as History," (Washington: FCC Mimeograph, 1972), pp. 7-8.

Johnson was also concerned with the quality of programming.

As he told the cable association:

You couldn't possibly have decided to make the kinds of investments you will be called on to make to produce more of the same. People are tired of watching the junk they now get for free; you couldn't possibly plan on giving them more--for a price. They wouldn't buy it. As the fellow said, "Cable television? Not on your life. Out where I live we pay to have the garbage hauled out, not to have it hauled in." It would be bad business to merely offer that fellow more garbage.<sup>29</sup>

He also expressed the viewpoint that programming had not improved over the years as some claimed.

If commercial television was a "vast wasteland" when Newton Minow was the Chairman, it is now a festering swamp. Chairman Minow's analogy of a wasteland argued merely that television was offering us nothing. Today it has dropped below a level of benign worthlessness to a point of affirmative destructiveness. It is selling us a life style we don't necessarily want or need. It is selling violence to our children. It is selling a negative self-image to minorities. It is selling bad health advice. It is selling the belief that all problems can be solved in half hour segments. But most of all it is selling people to advertisers like so many bushels of vegetables. And in doing so, it doesn't give a damn about how it attracts their attention.<sup>30</sup>

On December 5, 1973, Nicholas Johnson resigned from the FCC. On December 17, 1973, Broadcasting published an editorial celebrating his departure entitled "Good Riddance." It charged that while in office he had trained about a hundred young people as "guerrillas against the system" and asserted, "We cannot point to a constructive word or deed bearing his imprimatur."<sup>31</sup>

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<sup>29</sup>Ibid., p. 7.

<sup>30</sup>Ibid., p. 6.

<sup>31</sup>Broadcasting, December 17, 1973, p. 74.

Broadcasting asked the questions, "Did he make a difference?"

The evidence indicates that he did. Upon Johnson's announcement of his departure from the Commission:

. . .the sigh of relief issuing from broadcasters across the country, not to mention his colleagues on the FCC, seemed to have the collective force of a full-blown hurricane. To many, he has been a curmudgeon, a burr, a prod to the conscience, a troublemaker, a wrecker, a phony, a publicity seeker. It is not too much to say that, in some quarters, he was hated.<sup>32</sup>

But it seems Johnson was not concerned with the opinions of his colleagues or of the industry. He said all along that he wanted to reach "the public," and it appears that he did. Former FCC Commissioner Kenneth A. Cox said Johnson succeeded in the tactics he employed. As proof, he cited the hundreds of petitions that have been filed with the commission to deny license-renewal applications. "He didn't go out and file all those petitions," Cox said. "People did who were encouraged by him."<sup>33</sup>

Albert H. Kramer, founder and former director of the public-interest Citizens Communications Center, who filed many of those petitions on behalf of citizens groups, said, "Nick's message to the public has been, 'You can't rely on anyone. Do it yourself.'"<sup>34</sup>

When Johnson left the FCC he returned to Iowa where he was admitted to the Bar in 1974. In June 1974, he was narrowly defeated in a bid for the Democratic nomination for Congress from an Iowa district. He then returned to Washington to become chairman and director

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<sup>32</sup>Broadcasting, December 10, 1973, pp. 20, 25.

<sup>33</sup>Ibid., p. 25.

<sup>34</sup>Ibid.



of the National Citizens Committee for Broadcasting. In 1975 he became director and chairman of the National Citizens Communications Lobby, a position he holds today. Since 1975 he has also been a commentator on National Public Radio and a visiting professor at the University of Illinois School of Law.

H. Rex Lee

Commissioner 1968 - 1973

H. Rex Lee was born in Rigby, Idaho, on April 8, 1910. He received a B.S. degree in Agricultural Economics from the University of Idaho in 1936. In 1964, that university awarded him an honorary law degree. Lee was nominated to the FCC by President Johnson. As a neutral rather than a partisan Democrat, he did not even declare any party affiliation until the 1960s, and was never employed by anyone other than the Federal Government.

Lee began his government career as a U.S. Department of Agriculture economist in Idaho from 1936 to 1937. In 1937-38, he was an extension agent for the University of Idaho and from 1938 to 1942 he was in Berkley, California. As an Agriculture Department economist. From 1942 to 1946 he served with the War Relocation Authority, first as executive assistant to the director and then as chief of the Relocation, and Evacuee Property Divisions. From 1946 to 1950 he was assistant director of the Office of Territories for three months in 1949 he was on loan to the State Department and United Nations for a study of Arab refugee problems. From 1950 until 1961 he was Associate and later deputy Commissioner of the Bureau of Indian Affairs.

In 1961, Lee became the Governor of American Samoa, a position he held until 1967. President Johnson credited him with transforming what has been previously called a "Pacific Slum" into a "showplace" of the South Seas. Among his accomplishments was the establishment of an educational system employing television, not as a supplemental aid, but as the central teaching facility. In 1966 he received "The Award of the President of the United States for Distinguished Federal Civilian Service." He also holds the Department of Interior's highest public service award.

Lee left Samoa in 1967 to become Assistant Administrator of the U.S. foreign aid program of the State Department. A little more than one year later, President Johnson appointed him to a seven-year term on the FCC.

While on the FCC, Lee served as the Commission's Educational Commissioner and was a member of the Telephone and Telegraph Committee. His primary concern was improving the educational system in the United States, which, he said, was not exploiting the full potential of telecommunications.

Communications resources must be used more efficiently--if for no other reason than the fact that frequency spectrum space is now strained beyond its natural capacity. One or two educational channels in each city will not provide sufficient means to deliver the full complement of information and instruction services needed in the future. Education lost the battle for more spectrum space because it was not ready to use it. It must not lose the competitive race for a fair share of the new technologies. But you must begin now. Education is the most important use to which the tools of communication can be applied.<sup>35</sup>

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<sup>35</sup>H. Rex Lee, "As I See It," (Washington: FCC Mimeograph, 1969), p. 9.

When Commissioner Lee resigned from the FCC in 1973, he essentially retired. In 1974, he was a distinguished visiting lecturer at San Diego State University. In 1975, he was Chairman of the Board at the Public Service Satellite Consortium. He is now retired and living in Washington, D.C.

Dean Burch

Chairman 1969 - 1974

Dean Burch was one of the first two commissioners appointed by President Nixon. He has been deeply involved in "right-wing" Republican politics for most of his life. A resident of Arizona, Burch was born in Enid, Oklahoma, on December 30, 1927. He graduated from the University of Arizona and received his LL.B. degree there in 1953. Following his admission to the Bar, in 1953, he was appointed Assistant to the Attorney General of Arizona. After two years, he moved to Washington as administrative assistant to Senator Barry Goldwater, a position he held for four years. In 1959, he returned to Tucson and joined the law firm of Dunseath, Stubbs & Burch, but he remained politically active. During that time, Burch served as regional campaign manager in Paul Fannin's successful campaign for the Arizona governorship. Later Fannin would be elected to the Senate where he was serving when Burch was selected for the FCC.

In 1963, he left his law firm to become deputy director of Barry Goldwater's campaign for the Republican Presidential nomination. When Goldwater won the nomination, Burch became national chairman of the party. After Goldwater lost the election, Burch was forced out

as national chairman in April 1965 and he returned to his Tucson law firm, where he was working when nominated to the Commission. In January 1969 he was named to the Arizona Board of Regents by Governor Jack Williams and in September of that year he was nominated to the FCC.

During his FCC Chairmanship, Burch spoke frequently before the industries he regulated. Always honest and open, he quoted extensively from FCC policy statements, including his personal opinions concerning the policy in question. His general attitude toward regulation was conservative. As he told the American Political Science Association,

Broadcasting in this country until very recently was regarded as a great child, ungainly, immature, full of promise, daily more powerful, but with a future as uncertain as that of most youngsters. Today, we no longer think of it in quite that way. . . . .  
 . . . . .  
 Broadcasting is the most powerful medium of mass communication in the United States today. Its potential for good or evil, although beyond our power to measure, is now beyond doubt. We know what it can do. The task of the Federal Communications Commission, as I see it, is to keep broadcasting an "open" medium of expression, to supply the framework within which the industry can--and must--present a diverse fare of information and views on significant public issues. Beyond this, we can encourage the development of structural diversity through new and competing modes of expression. This is the primary challenge of the 70s. It is also a primary mandate given to the Commission by Congress.<sup>36</sup>

When Burch left the FCC in March 1974, he was the only FCC Commissioner in the history of that agency to go on to higher Federal office. He was appointed Counselor to the President with Cabinet Rank. Initially, he played a leading role as a White House

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<sup>36</sup>Dean Burch, "Informing the Public: The Role and Opportunity of the FCC," (Washington: FCC Mimeograph, 1970), p. 1.

spokesman for President Nixon. In the last weeks of that administration, however, he had a low profile. When Gerald Ford took over the Presidency, he appointed Burch as an advisor on the congressional elections. Burch left the White House in December 1974 to join the Washington communications law firm of Pierson, Ball & Dowd. He is presently practicing with that firm and living in Maryland.

Robert Wells

Commissioner 1969 - 1971

The first commissioner who, without prior government experience, came directly to the FCC from the broadcasting industry was Robert Wells. His career was devoted to the media from 1946 on. When he was appointed to the FCC by President Nixon in 1969, Wells was the general manager of the Harris Radio Group, which controlled six AM and three FM stations. Harris, in turn, was principally owned by Publishing Enterprises which held other radio properties as well as newspapers in two states.

Wells was born on a farm near Garden City, Kansas on March 7, 1919. He attended Garden City Junior College. Following initial service in the Kansas National Guard, World War II took Wells to overseas duty with the Army in the Mediterranean. In 1945, he was honorably discharged with the rank of captain, and he returned to Kansas.

In 1948, Wells became general manager of a radio station in Garden City, a position he would hold for 13 years. From 1957-61, he also served as publisher of Garden City's only newspaper. He

relinquished that responsibility when two more radio stations were acquired. At the time of his nomination, Wells, directly or indirectly was associated with a conglomerate, which had radio and newspaper holdings in Kansas, Iowa, Colorado, and Illinois. In addition, he was an officer and stockholder in four radio stations in three states; in Garden City, he owned real estate, a hardware and plumbing supply store, and a variety store. He had twice served as president of the Kansas Association of Broadcasters and was a member of the radio code board of the National Association of Broadcasters.<sup>37</sup> The FCC appointment would mean a considerable financial sacrifice for Wells and his family as he would have to divest himself of all his radio holdings, but he accepted the seat anyway.

Wells said he realized that his appointment to the FCC was like "putting a rustler on the jury," but he was convinced that his practical experience would prove to be a significant addition to the Commission.<sup>38</sup> As a regulator, he often sounded like a broadcaster. For example, he was adamantly opposed to the Commission proposals requiring divestiture of broadcast properties.

I do not agree with just arbitrarily forcing the sale of well run properties that have given service to the public for many years. For years some of these properties that are quite valuable today were not money makers. They have become valuable through a combination of things among which the skill and hard work of the licensee are not the least. I heard very few objections to this terrible monopoly when struggling stations were losing money. In fact, the licensees were heroes to their communities (many still are), as well as to the FCC. Now with practically no

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<sup>37</sup>Broadcasting, September 22, 1969, pp. 19-20.

<sup>38</sup>Broadcasting, September 22, 1969, p. 19.

complaints from the public we are considering enforced divestiture. This is not my idea of fairness. It is not my idea of the public interest.<sup>39</sup>

Wells left the FCC on November 1, 1971, after just under two years on the Commission. He had decided to run as the Republican candidate for governor of Kansas. He returned to Kansas and his former position as general manager of the Harris Radio Group. The same date that he withdrew from the FCC, Wells reportedly repurchased for the amount of \$47,508 shares in four radio stations which he has sold two years earlier for \$43,000. By returning to his company within 24 months, Wells also was continued in the Harris Radio Group's profit-sharing plan at the same level as before since company rules provided that an employee could take a leave of absence for "no more than two years" without effect on profit sharing. If Wells had served another week, that would not have been the case.<sup>40</sup>

Wells never entered the gubernatorial campaign in Kansas, but he has remained with the Harris Group. He has also been very active in Republican politics. In 1974, he served as campaign strategist in the reelection campaign of Senator Robert Dole and he shared credit for the Senator's victory. The next year, Wells appeared to be assured of nomination as director of the White House Office of Telecommunications Policy. At that same time Wells was also under

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<sup>39</sup>Robert Wells, "A Four-Month Expert Looks at the FCC," Address before the Federal Communications Bar Association. (Washington: FCC Mimeograph #20554, 1970), pp. 1-2.

<sup>40</sup>Broadcasting, July 7, 1975, pp. 25-26.

consideration for an executive position with the National Association of Broadcasters. But by November 1975, the OTP appointment had been rejected because of congressional criticism, public interest group opposition, as well as questions over whether he had truly severed his ties to the Harris Radio Group when he had been nominated to the FCC in 1969.<sup>41</sup> He has been promoted to vice-president of the Harris group and manages radio stations in Illinois, Idaho, Kansas, Colorado, and Texas.

Thomas J. Houser

Commissioner January 6, 1971 - October 5, 1971

Thomas J. Houser was a Nixon appointed Republican. He was born in Chicago, Illinois, on June 28, 1929. He spent a year at Michigan State University before graduating from Hanover College in 1951. Houser studied international relations and commerce at the Advance School for International Studies at Johns Hopkins University in 1952. Following service in the United States Army from 1954-1956, he attended Northwestern University Law School, where he received his J.D. degree in 1959.

Houser served as an Attorney with the Association of Western Railways in Chicago from 1959-1961, and as Commerce Counsel with the Chicago, Burlington, and Quincy Railroad in Chicago from 1961-1966. He was manager for Charles H. Percy's campaign for Senator from Illinois in 1966 and served as Special Counsel for Senator Percy in 1966 and

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<sup>41</sup>See Broadcasting, November 11, 1974, p. 5; March 17, 1975, p. 5; July 7, 1975, pp. 25-26; October 13, 1975, p. 19; November 3, 1975, p. 32.



1967. In 1967, he became Counsel to the Chicago firm of Leisman, Williams, Bennett, Baird & Minow. In 1969, he became Deputy Director of the Peace Corps, the position he held at the time of his FCC appointment.

A member of the American and Chicago Bar Associations, Commissioner Houser served on the Fair Trial-Free Press Special Committee of the Chicago Bar Association. He was also Secretary of the Executive Committee of the National Railroad Transportation Institute and is a member of the Executives Club of Chicago, Economic Club of Chicago, Union League Club of Chicago, and the Federal City Club of Washington, D.C.

Houser was the only commissioner in the period of this study who was not reappointed by the President who initially put him in office. He was allowed only to complete the remaining few months of the term of Robert Wells. When he had first been appointed, it was assumed that Houser would follow a cautious, conservative line on the Commission. Instead, Houser tended to be more progressive, much to the irritation of the broadcasting industry.

Houser was a strong supporter of cable television and considered the medium to be "dramatic and innovative." He called CATV an "uncommon carrier" and said that common carrier principles were applicable to the regulation of that industry.

. . . when I refer to "common carrier" regulation the reference is merely shorthand for a "leased channel" concept of operation. Furthermore, as an "uncommon carrier," unnecessary fears should not be raised about standardized pricing policies or elaborate rate regulation. I contemplate no such rate

control in the conceivable future. This is a matter which could be deferred to a time when sufficient data is available and specific complaints are received.<sup>42</sup>

Broadcasting found his record and ideas "anything but favorable" to the interests he represented.<sup>43</sup> Houser later objected to being labeled "pro-cable." He said that, as a commissioner, he had also supported five-year licenses for broadcasters and that although he had voted with a majority of the Commission to ease cable rules, "the majority was not tarred with the same 'pro-cable' brush with which he was."<sup>44</sup>

It was more or less understood that Houser was just "keeping the seat warm" at the FCC for Charlotte Reid, who had been promised a full term by President Nixon, although Houser said he was not aware of that promise when he accepted his appointment.<sup>45</sup> On October 5, 1971, Houser left the FCC to return to Newton Minow's Chicago law firm. He took a leave of absence from the firm in 1972 to head President Nixon's reelection campaign effort in Illinois. In June 1976 President Ford named Houser Director of the Office of Telecommunications Policy, a position Houser accepted even though the chances were good that there would be a new President in January who would want his own OTP director. President Carter did appoint a new director, and Houser again returned to the Chicago law firm where he is presently practicing.

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<sup>42</sup>Thomas J. Houser, "Remarks before the Pennsylvania Community Antenna Association," (Washington: FCC Mimeograph, 1971), p. 3.

<sup>43</sup>Broadcasting, October 25, 1971, p. 60.

<sup>44</sup>Broadcasting, August 2, 1976, p. 81.

<sup>45</sup>Ibid.

Charlotte T. Reid

Commissioner 1971 - 1976

Appointed by President Nixon, Republican Charlotte Reid was the second woman ever to serve on the FCC. Her background was not at all similar to that of the first woman appointee, Frieda Hennock who had come from a top-flight Wall Street law firm in 1948. Reid was not a lawyer, nor did she have a college degree. She had, in fact, spent most of her adult life as a wife and mother, roles which she considered her "most rewarding and fulfilling."

Reid was born September 27, 1913, in Kankakee, Illinois. She attended Illinois College in Jacksonville, Illinois, for two years before economic realities forced her to drop out. She then studied music and voice in Chicago for seven years. During that period, she sang on radio stations in the Chicago area and from 1936 through 1939 was a featured vocalist with the National Broadcasting Company and on Con McNeill's "Breakfast Club," appearing under the professional name of Annette King.

Reid worked closely with her husband Frank R. Reid, Jr. when he ran for nomination to Congress in the 1962 Republican primary. He died suddenly after winning the nomination and Fifteenth District Republicans selected her to continue his campaign. She was elected to Congress in November 1962, and was serving her fifth term when she was nominated to the Commission.

While in Congress, Reid served on the House Committee on Interior and Insular Affairs from 1963 to 1967 and on the Committee on

Public Works from 1965 to 1967. She was named to serve on the House Committee on Appropriations in 1967 and served on two of its Subcommittees, Foreign Operations and Labor-Health, Education and Welfare. She was also a member of the House Republican Policy Committee from 1963 to 1965 and was appointed to the House Committee on Standards of Official Conduct in 1970. From 1963 until 1966, Reid served as one of six Congressional members of the John F. Kennedy Center for the Performing Arts. She has received Honorary Doctor of Laws degrees from John Marshall Law School, Chicago in 1971 and from Illinois College in 1971.

As a commissioner, Reid never spoke publically to express her views on regulation. In one article published in Television/Radio Age she wrote that the FCC should "reverse the trend toward more regulation," but she did not discuss any specific issues.<sup>46</sup> She was criticized throughout her career on the FCC for her lack of interest and ability.<sup>47</sup> However, an ABC network official said:

She's not spectacular, and she's not influential--other than that she has one vote; but I think there is a place on the Commission for simple, sound, commonsense judgment.<sup>48</sup>

Charlotte Reid remarried and resigned from the FCC effective July 1, 1976, two years before the end of her seven-year term. She has now returned to private life and is living in Arlington, Virginia.

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<sup>46</sup>Charlotte T. Reid, "Can FCC Reverse Trend Toward More Regulation?" Television/Radio Age, March 15, 1976, p. 60.

<sup>47</sup>Wall Street Journal, October 25, 1974, p. 1.

<sup>48</sup>Ibid., p. 23.

Richard E. Wiley

Commissioner 1972 - 1977

Chairman 1974 - 1977

Republican Richard Wiley was born in Peoria, Illinois, on July 20, 1934. He graduated with distinction from Northwestern University. He also received a J.D. degree from that university's law school. He then spent three years in the Army's Judge Advocate General Corps and was discharged with the rank of captain. In 1962, he received a master of law degree from Georgetown Law School. He then became associated with the Chicago law firm of Chadwell, Keck, Kayser, Ruggles, & McLaren, where he spent nearly six years. In 1968 and 1969 he was assistant general counsel for Bell & Howell Company in Chicago. In 1970, he left the company to form his own law firm Burditt, Calkins & Wiley and become a commissioner of the Illinois Court of Claims. From 1963 to 1970 Wiley was also a faculty member at John Marshall Law School.

In addition, Wiley was active in Republican party politics. In 1968 he became director of State organizations of the United Citizens for Nixon-Agnew. In the same period he was also extensively involved with bar association activities. An author of various legal articles, Wiley was founding editor-in-chief of "Law Notes," the largest legal quarterly publication in the nation. As a result of his many professional and political activities, Wiley was a part of the talent list of the Nixon administration in 1969.

Wiley was appointed FCC General Counsel on September 29, 1960. On November 30, 1971, President Nixon nominated him to the Commission.

When the nomination was submitted to the Senate it was understood that no action would be taken until a black nomination was made.<sup>49</sup> So on January 5, 1972, Wiley was given a recess appointment. He would serve on the commission five months before the Senate acted on his nomination. Wiley was confirmed with Benhamin Hooks, the first black appointee. On March 8, 1974, President Nixon elevated Wiley to the FCC chairmanship.

As a commissioner Wiley was known for his moderate-to-conservative regulatory philosophy. As he told the National Association of Television Program Executives,

. . . in approaching such sensitive topics as the Fairness Doctrine, the Prime Time Access Rule, Children's Television and, currently, the question of sex and violence on TV--I have tried to follow one guiding principle. And the principle is simply this: programming is primarily your job and the Commission exists, largely, to insure that you do your job in the public interest.<sup>50</sup>

Wiley could also be considered to be "pro-cable," as he often stated a philosophy that recognized its unique potential. For example, he told the Illinois/Indiana Cable Television Association:

. . . it is in the public interest for your industry to grow and to prosper as a medium of multiformity, variety, choice. Consistent with the public interest in maintaining other communications alternatives, our rules and policies should encourage rather than inhibit the legitimate activity of your industry.<sup>51</sup>

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<sup>49</sup>Broadcasting, October 25, 1971, p. 21.

<sup>50</sup>Richard E. Wiley, "Address before the National Association of Television Program Executives," (Washington: FCC Mimeograph #46328, 1975), pp. 2-3.

<sup>51</sup>\_\_\_\_\_. "Address before the Illinois/Indiana Cable Television Association," (Washington: FCC Mimeograph #45566, 1975), p. 2.

Wiley's term expired in June 1977 however he served until October 1977 when his successor was named. He is presently practicing communications law with the Washington, D.C. law firm of Kirkland & Ellis.

Benjamin L. Hooks

Commissioner 1972 - 1977

Benjamin Hooks, appointed to the FCC by President Nixon, was the first black man ever to serve that agency. Born in Memphis, Tennessee, in 1925, Hooks pursued numerous careers over the years, including lawyer, preacher, judge, civil rights activist, politician, television producer and banker.

Following several years of undergraduate education at LeMoyne College in Memphis and Howard University in Washington, D.C., Hooks received a J.D. degree from DePaul University in Chicago in 1948. Within a year, he returned to Memphis and was admitted to the Tennessee bar. His career interests varied greatly during the next 20 years. His official biography devotes an entire page to listing his organizational memberships alone. These include such diverse groups as the American Legion, Baptist Preacher's Alliance, Elks, NAACP, Junior Negro Chamber of Commerce, Southern Christian Leadership Conference, and National Business League.

At one time or another he served on the boards of several small colleges in the Memphis area. He was involved in broadcasting directed to the black community. He was producer and host of a program entitled Conversations in Black and White, co-producer of Forty

Percent Speaks, and a panelist on What is Your Faith? Up until the mid-1950s, Hooks managed to maintain a practice of law amidst these various activities. Hooks was a successful businessman as well as lawyer. In 1955, he became a cofounder and vice-president on the Mutual Savings and Loan Association, remaining on as a director after 1969. Later, he would be named a director of the Tri-State Bank of Memphis and would act as president of Mahalia Jackson Chicken Systems, Inc. for a brief period of time. In 1956, Hooks was ordained and became a pastor of a Baptist church in Memphis.

As an FCC member, Hooks was primarily concerned with minority ownership of broadcast properties and minority employment, especially at decision making levels, in the broadcasting industry. At the Federal Communications Commission's Minority Ownership Conference in April 1977, Hooks said:

I would be less than honest if I did not state that I am particularly concerned about the fate of one of the few Black-owned stations in the country, especially the one serving the premier area of New York City. Given the history of exclusion, the onerous difficulties accompanying the paltry few station acquisitions by minorities, the vaunted hopes and expectations of those scarce licenses, the attention focused on their performance by the caucasian community as well as their own, I would suffer greatly at a failure after all the effort accompanying the realization of many dreams. That Black ownership should fail, awash in the very "floodgate" myth with which Black America is excruciatingly familiar and which forms the singular basis for the instant denial, is anathema to me.<sup>52</sup>

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<sup>52</sup>Benjamin L. Hooks, "Statement before the FCC's Minority Ownership Conference." (Washington: FCC Mimeograph, 1977), p. 3.



Hooks left the FCC in January 1977, to "better serve" the black community in New York City as executive director of the National Association for the Advancement of Colored People. He is working in this capacity today.

James H. Quello

Commissioner 1974 -

James Quello, nominated by President Nixon, was born on April 21, 1914, in Laurium, Michigan. He holds a B.A. degree from Michigan State University. During World War II he served with the Army in the European Theater.

A nominal Democrat, Quello was a veteran Detroit broadcast executive. He joined the staff of WJR, Detroit, in 1947 as promotion manager and subsequently served as program and public affairs manager, general manager and in 1960 vice-president. In late 1965, when the station was acquired by Capital Cities Broadcasting Corporation, Quello became station manager of the corporation's WJR division. From 1969 until he retired in 1972, he was a Capital Cities vice-president.

Long active in Detroit civic and professional affairs, Quello was a member of the city's Housing and Urban Renewal Commission from 1951 to 1972 and served as its president for four different terms. He is a member of the Detroit Adcraft Club and the Detroit and National Press Clubs. He was a member of the greater Detroit Board of Commerce and the Michigan Chamber of Commerce and is a former president and director of the Michigan Association of Broadcasters. He was a member of the Broadcast Pioneers from 1959 to 1972. Quello was also a

member of the National Association of Broadcasters and from 1963 to 1972 served on the NAB National Congressional Liaison Committee and from 1966 to 1974, on its National Radio Code Board. From 1970 to 1972, he taught courses in broadcast management and government relations at the University of Detroit.

The Quello nomination was the most controversial in FCC history, primarily because most interested parties were opposed to the selection of any broadcaster to the Commission at that time. As a result, his nomination stayed in committee for seven months. When the nomination finally got to Senate hearing, it took over eight days and filled over 400 pages of printed record. It was the longest confirmation hearing in the history of the Congress--longer than President Ford's hearing for the Vice-presidency or the confirmation proceedings for Secretary of State Henry Kissinger.<sup>53</sup>

As a commissioner, Quello's regulatory philosophy is generally conservative. He is primarily concerned with six major issues: the fairness doctrine, program access for political candidates, newspaper-broadcasting cross-ownership, prime time access, cable television, and children's programming.<sup>54</sup> The influence of his broadcasting background is particularly evident in his views concerning the fairness doctrine. As he told the Detroit Adcraft Club:

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<sup>53</sup>James H. Quello, "Speech before the Colorado Association of Broadcasters." (Washington: FCC Mimeograph, 1975), p. 1.

<sup>54</sup>\_\_\_\_\_. "Address before the Association of Independent TV Stations." (Washington: FCC Mimeograph #45132, 1975), p. 5.

I admit I can't understand the logic of more and more regulation and controls to guarantee freedom. I admit to some ambivalence regarding a doctrine which causes a government agency to interfere any way with rights guaranteed by the first amendment. The first amendment was written after all, to protect the people from government intrusion into our inherent right to freedom of speech and religion and those rights must be protected. Philosophically, I believe broadcast journalists are entitled to the same freedom as journalists in other media, and that they have demonstrated over the years their ability to act independently and responsibly.<sup>55</sup>

Quello's term expired on June 30, 1980. However, as of July 10, 1980, he was continuing to serve until President Carter either reappointed him or named a successor.

Glen Robinson

Commissioner 1974 - 1976

Glen Robinson was appointed by President Nixon to fill the remaining two years of the term of Dean Burch. Robinson was another "merit selection" because not only were the necessary political considerations present, he was also particularly qualified for the job.

A nominal Democrat, Robinson was born in Salt Lake City, Utah, on June 6, 1936. He attended Utah State University and was graduated magna cum laude from Harvard in 1958. He received his law degree, with honors, from Stanford in 1961. At the time of his nomination Robinson had been involved in the study and practice of communication law for at least a decade. Broadcast matters had been his principal concern as an associate of the Washington law firm of Covington & Burling. He also practiced anti-trust law and renegotiation. From 1967 to 1974 he was a professor at the University of Minnesota Law School where he taught administrative law, torts, regulated

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<sup>55</sup> \_\_\_\_\_. "Address before the Detroit Adcraft Club." (Washington: FCC Mimeograph #32314, 1974), pp. 15-16.

industries and public land management. He has written and lectured extensively on communication law and administrative practice including one book: The Glass House: The United Nations in Action in 1966.

The background that qualified Robinson for the FCC also created problems with his nomination. In testimony before Congress in the 1960s Robinson had taken forceful positions against multi-media ownership and the fairness doctrine.<sup>56</sup> Because of his opinions, there were segments of the industry which were less than enthusiastic about his selection. As a result he was closely questioned concerning his regulatory philosophy at his Senate confirmation hearing. Senator Pastore asked Robinson if, as an FCC Commissioner, he planned to conduct a crusade to do away with the fairness doctrine. Robinson replied that he would not:

I mean in the sense that I firmly believe reasonable men can and do differ about this doctrine. And I am not cut out to abolish it, either by direction or indirection. What I am suggesting is a course of restraint in terms of applying it, so that it does not run away from the commission that has the responsibility for enforcing it. For one thing, I come back to the point that I think the FCC has the prerogative to eliminate it, and if it did have the prerogative, I am not about to launch a campaign to do so. I am not about to launch a campaign one way or the other.<sup>57</sup>

Near the end of his term Robinson wrote in an article in Television/Radio Age that his time spent on the FCC had not changed his ideas.

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<sup>56</sup>Broadcasting, February 25, 1974, p. 5.

<sup>57</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nominations of Robert E. Lee, Glen O. Robinson, and Abbott Washburn, June 24, 1974, p. 33.

He still felt there was a basic conflict between broadcast regulation and the First Amendment.<sup>58</sup>

In 1975 he told the law school graduating class at the University of Arizona: ". . . I still think of law school, not government, as my true home, and professing law, not administering it, as my true vocation."<sup>59</sup> Early in 1976, he let it be known that he was not interested in reappointment when his term expired in June. He returned to teaching law at the Center for Advanced Studies at the University of Virginia in Charlottesville.

Abbott M. Washburn

Commissioner 1974 -

Republican Abbott Washburn, a career bureaucrat, was initially appointed to the FCC by President Nixon to fill the one remaining year of the term of H. Rex Lee. He was reappointed by President Ford to a full seven-year post when that term expired.

Washburn was born on March 1, 1915, in Duluth, Minnesota and was graduated cum laude from Harvard in 1937. He spent 13 years as Director of Public Services with General Mills, Inc., with three years out for service in the U.S. Navy during World War II. He became executive vice-chairman of the Crusade for Freedom, an arm of Radio Free Europe in 1950. In 1952 Washburn worked on the Eisenhower Presidential campaign staff organizing Citizens for Eisenhower clubs. After

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<sup>58</sup>Glen O. Robinson, "The Conflict Between Broadcast Regulation and First Amendment," Television/Radio Age. March 15, 1976, p. 64.

<sup>59</sup>\_\_\_\_\_. "Commencement Address, the University of Arizona School of Law." (Washington: FCC Mimeograph #50561, 1975), p. 1.

only a few months President Eisenhower named him Deputy Director of the newly formed United States Information Agency. In this position, Washburn had played a leading role in the American National Exposition in Moscow in 1959 where then Vice-president Nixon had his famous "kitchen debate" with Soviet Premier Krushchev. He remained at the U.S.I.A. as Acting Director through part of the Kennedy administration until the confirmation of Edward R. Murrow in March 1961. He then became vice-president for international operations of Carl Byoir Associates, Inc. and in 1962 formed his own international public affairs advisory firm of Washburn, Stringer Associates, Inc. From 1969 to 1971, Washburn was chairman of the U.S. delegation to the INTELSAT Conference, and was credited with a major role in bringing about the international telecommunications agreements which resulted from that conference of 79 nations. In 1971, with the signing of the INTELSAT agreement, Washburn left the Department of State and became associated with the White House Office of Telecommunications Policy as special consultant to the director. When Washburn came to the FCC he was an international public affairs specialist with connections in the communications industry that spanned three decades.

As a regulator, Washburn is moderate-to-conservative. He told New York State Broadcasters, ". . . regulation for any industry, including broadcasting, should be no more burdensome than is absolutely necessary."<sup>60</sup> He has no particular appetite for enlarging government's

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<sup>60</sup> Abbott Washburn, "Regulatory Reform and Broadcasting," Address before the New York State Broadcasters. (Washington: FCC Mimeograph, 1975), p. 1.

regulatory role--he supports the commission's program of deregulation. But, he said, ". . .the fact remains that the broadcasting industry has a great social responsibility to use this medium responsibly."<sup>61</sup> He departs from this moderate point of view only to say he believes the fairness doctrine is an example of "good regulation."

Abbott Washburn was serving on the FCC as of July 10, 1980. His term expires in 1982.

Joseph R. Fogarty

Commissioner 1976 -

Joseph R. Fogarty was appointed to the FCC by President Ford. He was born in Newport, Rhode Island, on January 12, 1931. He received an A.B. degree from College of the Holy Cross in 1953, and a J.D. from Boston College Law School in 1959. Fogarty joined the law firm of Enos & McCarthy in Lowell, Massachusetts, in 1959. From 1964 to 1966 he was with the firm of Moore, Vigadamo, Boyle & Lynch, in Newport, Rhode Island. In 1966 he joined the U.S. Senate Committee on Commerce as staff counsel. He was named Communications Counsel for that committee in 1975. In that capacity he said he developed "considerable expertise in areas of telecommunications which come under the regulatory jurisdiction of the Federal Communications Commission." Although most new commissioners spend their first months on the FCC studying the workings of that agency, Fogarty began voting almost immediately. He said his experience with the Senate Committee had equipped him to act on communications matters.

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<sup>61</sup>Broadcasting, August 11, 1975, p. 59.

Democrat Fogarty considered himself to be "a liberal, a traditional liberal;" however his regulatory philosophy was what is traditionally considered to be conservative. His major regulatory concern, he has said, was to ease the regulatory burden on broadcasters, "consistent with the public interest."<sup>62</sup>

As a new regulator, Fogarty was concerned with television programming, but he said he had "no desire to see the FCC impose any program content standard whatsoever." He asked the television industry to deal with "problem programming" itself, and to improve "the variety and the quality of program fare so that viewers are offered real programming alternatives." While he disagreed with government control over programming, he did not believe the FCC should stay out of the issue altogether: ". . .the First Amendment should protect the broadcast industry from improper government censorship, but it cannot provide a broadcaster with camouflage from criticism."<sup>63</sup>

Fogarty was presently serving on the FCC as of July 10, 1980. His term will expire in 1983.

Margita E. White

Commissioner 1976 - 1979

Republican Margita White was born in Sweden on June 27, 1937. She emigrated with her family to California in 1948, and became a U.S.

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<sup>62</sup>Broadcasting, December 6, 1976, p. 89.

<sup>63</sup>Joseph R. Fogarty, "Address before the South Carolina Broadcasters Association." (Washington: FCC Mimeograph #77357, 1977), pp. 4-5.



citizen in 1955. She graduated magna cum laude in Government from the University of Redlands, California, in 1959. In 1960, she received her M.A. in Political Science from Rutgers University. During 1961 and 1962, White was Administrative Assistant for the Honolulu office of Whitaker and Baxter Advertising Agency. She was minority press secretary for the Hawaii House of Representatives in 1963 and from 1963 to 1964 she served as research associate from Senator Barry Goldwater and the Republican National Committee. White held positions as research assistant and writer for the Free Society Association in 1965 and 1966 and for the late syndicated columnist Raymond Moley in 1967 and 1968. Between 1969 and 1973 she was an assistant to Herbert Klein, Director of Communications at the White House. From 1973 to 1975 she was Assistant Director (Public Information) of the United States Information Agency. From 1975 until President Ford appointed her to the FCC, White was serving as Assistant Press Secretary to the President and Director of the White House Office of Communications.

As a new regulator, White was also concerned about television programming. She said that increasingly the viewing public demands that somebody do something about programming, but she told the A.N.A. Television Workshop that the FCC should not be that somebody:

As a member of the Federal Communications Commission, I believe very strongly that government should not involve itself in program content. Fortunately, our power to act in this area is limited both by the First Amendment and by section 326 of the Communications Act which prohibits censorship of broadcast content.

Those who would urge Congress to pass new laws or to give the Commission a broader role in this area must be made aware that government involvement in program content is fraught with danger. Moreover, there are no objective standards that can be applied. Inflexible government rules could never find a balance between the need to protect children from harmful material and the adults' interest in more sensitive, controversial and mature themes.

Self-regulation is far preferable to government regulation.<sup>64</sup>

Margita White left the FCC on March 1, 1979, and has returned to private life. She resides in McLean, Virginia.

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<sup>64</sup>Margita E. White, "Remarks before the A.N.A. Television Workshop." (Washington: FCC Mimeograph #77616, 1977), pp. 6-7.

CHAPTER III  
A BRIEF HISTORY OF FCC APPOINTMENTS  
1961 - 1976

According to Sterling and Kittross, the regulation of American broadcasting became more complicated in the 1960s and early 1970s than ever before. One reason for this was the "changing cast of regulators."<sup>1</sup> It goes without saying that the FCC rises to no higher level than that of the commissioners. For this reason, the circumstances surrounding individual appointments to the Commission are important to the history of broadcasting. This chapter is a brief summary of the changes in the regulatory cast of characters. Although it is not possible to discuss all, or even a majority of the events involved in the selection of FCC Commissioners, those of significance will be covered.

The Kennedy Presidency; Minow Named Chairman

When President John F. Kennedy took office on January 20, 1961, broadcasters had, through trade-press speculation, been led to expect a move toward censorship.<sup>2</sup> As far as any identifiable

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<sup>1</sup>Christopher H. Sterling and John M. Kittross, Stay Tuned: A Concise History of American Broadcasting (Belmont, California: Wadsworth Publishing Company, 1978), p. 422.

<sup>2</sup>Erik Barnouw, The Image Empire: A History of Broadcasting in the United States From 1953 (New York: Oxford University Press, 1970), p. 196.

regulatory philosophy, Kennedy was an enigma to broadcasters. However, the industry could not have been comforted by the report of one of Kennedy's earliest appointments, James M. Landis. The preceding December, Landis had reported to Kennedy:

The Federal Communications Commission presents a somewhat extraordinary spectacle. Despite considerable technical excellence on the part of its staff, the Commission has drifted, vacillated and stalled in almost every major area. . . .(The FCC), more than any other agency, has been susceptible to ex parte presentations and (it) has been subservient, far too subservient, to the subcommittees on communications of the Congress and their members. A strong suspicion also exists that far too great an influence is exercised over the Commission by the networks.

No patent solution for this situation exists other than the incubation of vigor and courage in the Commission by giving it strong and competent leadership, and thereby evolving sensible procedure for the disposition of its business.<sup>3</sup>

Kennedy shed some light on his regulatory plan when he appointed Newton N. Minow chairman of the FCC. Initially few broadcasters knew his name, but Chairman Minow at once made clear his stand. He wanted to strengthen non-commercial television, "for real diversification of program fare," and favored financial help for the purpose.<sup>4</sup>

Kennedy's regulatory picture was clearly painted for the industry at the May 1961 Washington convention of the National Association of Broadcasters. Chief speakers were President Kennedy; Ex-Governor LeRoy Collins of Florida, newly-selected president of the NAB; and new FCC Chairman Newton Minow. The only one who was kind to his audience was Kennedy. When Chairman Minow came to the speaker's

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<sup>3</sup>James M. Landis, "Report on Regulatory Agencies to the President 'Elect'" printed for the use of the Committee on the Judiciary, 86th Cong., 20 sess., December 1960, pp. 53-54.

<sup>4</sup>Barnouw, The Image Empire, p. 196.

stand he began with words of admiration. When television was good, he said, nothing was better.

But when television is bad, nothing is worse. I invite you to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit and loss sheet or rating book to distract you--and keep your eyes glued to that set until the station signs off. I can assure you that you will observe a vast wasteland.

You will see a procession of game shows, violence, audience participation shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, western badmen, western good men, private eyes, gangsters, more violence, and cartoons. And, endlessly, commercials--many screaming, cajoling, and offending. And most of all, boredom. True, you will see a few things you will enjoy. But they will be very, very few. And if you think I exaggerate, try it.

Is there one person in this room who claims that broadcasting can't do better?<sup>5</sup>

Later in the speech, Minow addressed himself to his role as Chairman of the FCC. He clearly stated what he considered to be six guiding principles. First he said, "The people own the air." Second, he advised the industry to forget about the problems of payola, rigged quiz shows, and other mistakes of the recent past, and get on with the future. Third, he expressed belief in the free enterprise system saying, "I want to see broadcasting improved and I want you to do the job." Minow's fourth principle stated, "I will do all I can to help educational television." The fifth and probably most important principle was, "I am unalterably opposed to governmental censorship." And the sixth principle was simply that Minow planned "to take the job of Chairman of the FCC very seriously."<sup>6</sup>

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<sup>5</sup>Newton N. Minow, "Address before the 39th Annual Convention of the National Association of Broadcasters. May 9, 1961. (Washington: FCC Mimeograph #4427, 1961), pp. 3-4.

<sup>6</sup>Ibid., pp. 6-7.

How did the new Chairman intend to apply these principles?

Clearly, at the heart of the FCC's authority lies its power to license, to renew or fail to renew, or to revoke a license. As you know, when your license comes up for renewal, your performance is compared with your promises. I understand that many people feel that in the past licenses were often renewed pro forma. I say to you now: renewal will not be pro forma in the future. There is nothing permanent or sacred about a broadcast license.<sup>7</sup>

The Minow attack received wide praise from newspapers and showed broadcasters a little of what they could expect from this "unrealistic bureaucrat."<sup>8</sup> Never before had an FCC Chairman made such forceful statements on broadcast regulation, and the industry was alarmed.

Clearly, the era in question began with promises of a change in the direction of the FCC in accordance with the aforementioned criticisms of that agency. However, Minow was the lone Kennedy appointee and could expect to remain so at least until June 1962. He was surrounded by six commissioners all of whom had either been initially selected or reappointed by President Eisenhower. But the Kennedy administration wanted control of the commission and in April 1961, President Kennedy submitted proposals aimed at increasing the powers of the FCC Chairman.<sup>9</sup> Reportedly, there was even some discussion of the idea of increasing the membership of the FCC from seven to nine members.<sup>10</sup>

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<sup>7</sup>Ibid.

<sup>8</sup>Broadcasting, May 15, 1961, p. 37.

<sup>9</sup>"Reorganization Plan No. 2 of 1961," as printed in hearings before the House Interstate and Foreign Commerce Committee, 87th Cong., 1st sess., May 11, 1961, p. 11.

<sup>10</sup>Broadcasting, January 9, 1961, p. 42.

The Kennedy proposal, known as Reorganization Plan No. 2, was to strengthen the FCC Chairman's authority in accord with the recommendation of the Landis Report. Within five weeks of Minow's "vast wasteland" speech, the House of Representatives soundly defeated the President's reorganization bill.<sup>11</sup> At the same time, the House had approved similar proposals for the Federal Trade Commission and the Securities Exchange Commission, so there was no doubt that the Congressional reaction was aimed directly at Newton Minow. A ranking Republican member of the House regulatory agencies subcommittee stated, "If you put that plan together with Minow's speech, you get a frightening picture of how the plan would be implemented."<sup>12</sup>

The defeat of this plan sharpened Minow's need for another Kennedy appointee on the commission. Minow was regarded as the White House man at the FCC, but as long as he was the only Kennedy Commissioner, little could be expected in the way of positive change--along Kennedy lines--at the FCC. He needed some additional votes in order to implement the administration's program.

#### Henry Appointed to the Commission

It was against this background that President Kennedy chose to appoint E. William Henry to replace Commissioner John S. Cross, even though Cross had been a loyal Kennedy supporter. Deliberations over the new appointment were slow, and resulted in Cross being the first FCC member to continue to serve after his term had expired under a recent amendment (adopted in 1960) which allowed a commissioner to

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<sup>11</sup>Broadcasting, June 19, 1961, p. 64.

<sup>12</sup>Broadcasting, May 15, 1961, p. 92.

remain a member of the Commission until a successor was qualified.<sup>13</sup> The problem was that Cross's father-in-law, Claude Fuller, had been instrumental in obtaining important political endorsements which were critical to Kennedy's election in 1960, and expected Cross to be appointed FCC Chairman as a reward for his efforts. Kennedy, however, did not want to reappoint Cross because, "He had not been an active supporter of Minow's program."<sup>14</sup> On the other hand, Henry was described by an "administration spokesman" as a "good, loyal Democrat who worked hard in the (1960) campaign, asking for nothing in return and expecting nothing. . . .He feels passionately about the Kennedy administration."<sup>15</sup> So, even though Henry had no experience in regulation of either broadcasting or public utilities, he was "aggressive, efficient, liberal, and young" which Broadcasting pointed out were "essential ingredients in the New Frontier mix."<sup>16</sup>

Within days after it was announced that Henry would replace Cross on the commission on October 2, 1962, the commissioner-to-be stated that he agreed with Chairman Minow that the FCC had "the broad power to regulate programming."<sup>17</sup> It was generally assumed that the administration had provided Minow with a badly needed vote.

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<sup>13</sup>Victor H. Kramer and James M. Graham, Appointments to the Regulatory Agencies: The Federal Communications Commission and the Federal Trade Commission, 1949-1974. (Washington: Government Printing Office, 1976), p. 190.

<sup>14</sup>Ibid., p. 185.

<sup>15</sup>Broadcasting, September 10, 1962, p. 38.

<sup>16</sup>Ibid., p. 108.

<sup>17</sup>Ibid., p. 38.



According to Broadcasting, the ultimate responsibility for the "tough line" being pursued by the FCC rested with President Kennedy.

It was, after all, the President who appointed Mr. Minow and who, for the past two years, has given no indication of disapproval of Mr. Minow's criticism of the broadcasting industry (or of) his efforts to induce broadcasters to put on more public affairs programs, to reduce violence, and to institute better children's programming.<sup>18</sup>

This statement proved to be true because after only two years the Minow era was coming to an end, but the policies he established were to continue.

#### Cox Appointed; Minow Resigns

In early 1963 President Kennedy again had the opportunity to make an appointment to the FCC. The term of Commissioner Tunis Augustus MacDonough Craven, who had been selected by President Eisenhower in 1956, would expire June 30, 1963. However, Craven would reach the mandatory retirement age of 70 on January 31, 1963. The law was not clear on this point. Federal statutes provided that an employee was automatically separated from Government service upon reaching 70. But that same statute provided that the President, by Executive Order, could exempt an employee from such separation if the "public interest so requires."<sup>19</sup>

There was only a difference of five months between Craven's birthday and the expiration of his term, but the Kennedy administration was anxious to replace him for several reasons.

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<sup>18</sup>Broadcasting, February 18, 1963, p. 80.

<sup>19</sup>United States Code, Sec. 335.

First. . .he was of no help to Chairman Newton Minow: Commissioner Craven held unyielding views against FCC regulation of program content. On other issues, Democrat Craven could usually be found in the conservative majority which prevented Minow from implementing much of his program. Equally important, part of the administration was anxious to appoint Kenneth Cox to the Commission.<sup>20</sup>

Craven agreed to step aside five months early and no one other than Kenneth Cox was given serious consideration for appointment to the Craven seat.

Cox had been interested in an appointment to the FCC for some time. In 1960, he had been a contender for the appointment that went to Newton Minow and instead became Chief of the Commission's Broadcast Bureau. Then, in 1962, he was considered for the seat that went to William Henry.

Although Cox was the only real candidate for the position, there were problems surrounding his selection which could not be ignored. Part of the problem was his personality, the other his politics. Cox was "outspoken and politically aggressive." When to that personality there was added a viewpoint which favored "close regulation," it was not surprising that Cox's selection was "particularly chilling to sensitive broadcasters."<sup>21</sup> For months, the broadcast industry had carefully monitored Cox's political ambition as well as his policies as chief of the Broadcast Bureau. As early as July 1962, Broadcasting called Cox a "sure bet" for appointment to the Craven seat.<sup>22</sup> Since Commissioner Bartley could be counted on to vote with

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<sup>20</sup>Kramer and Graham, Appointments to the Regulatory Agencies, p. 198.

<sup>21</sup>Broadcasting, February 18, 1963, p. 80.

<sup>22</sup>Broadcasting, July 9, 1962, p. 82.

Minow "more often than not," the selection of Cox appeared to guarantee the long-dreaded Minow majority on the FCC.<sup>23</sup> The industry set out to stop the Cox appointment.

The broadcasters' opposition to Cox in late 1962 was intense and well organized. In pursuit of this objective, Broadcasting devoted the lead story of its December 3 issue to disclosing that the FCC Broadcast Bureau was conducting a letterwriting campaign which was designed to force television stations to schedule locally-produced discussion shows of interest to minority groups. According to the magazine, the campaign was being conducted unbeknown to the Commission itself and entirely at the initiative of the Broadcast Bureau. Although the FCC staff reportedly agreed that those programs would not sell to advertisers, the letters insisted that such programming occur during prime time viewing hours, thereby preempting commercially-sponsored network programs. Dozens of stations had received the letters in conjunction with their applications for license renewal however, Broadcasting also pointed out that the letters were received only by those licensees who had not produced such programs in the past license period (three years) and who indicated that they had no intention of doing so in the future. The letters were submitted as proof of at least a subtle form of censorship. So that no one would miss the point, a photograph of Broadcast Bureau Chief Kenneth Cox was placed right in the center of the story. The caption identified Cox as the "principal architect" of the plan who had also

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<sup>23</sup>Broadcasting, December 17, 1962, p. 114

been "prominently mentioned as a candidate for the next commission opening."<sup>24</sup>

The Broadcasting campaign against Cox was balanced by unswerving support for him from FCC Chairman Minow and Senator Warren Magnuson, Chairman of the Senate Commerce Commission. As a result, on December 10, 1962--one week to the day after the Broadcasting article appeared--the White House announced that it was the President's intention to nominate Kenneth Cox to replace retiring Commissioner Craven.<sup>25</sup>

FCC Chairman Minow had much to gain from Cox's selection as it would give him the majority he needed. As Broadcasting pointed out, Cox would "out-Minow Minow" and the FCC Chairman would "have little reason to continue his complaints about inability to rally the necessary majorities to rock, sock, fine, suspend, and revoke."<sup>26</sup> After nearly two years it appeared as though Minow at last would have the votes he needed. President Kennedy had given Minow all the support he could.

However, the selection of Kenneth Cox would be Newton Minow's last major accomplishment as Chairman of the Commission. On February 11, 1963--even before Cox took his seat on the FCC--Broadcasting reported that Minow would resign from the Commission at some unknown future

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<sup>24</sup>Broadcasting, December 3, 1962, p. 29-32.

<sup>25</sup>Broadcasting, December 17, 1962, pp. 114.

<sup>26</sup>Broadcasting, December 17, 1962, pp. 58, 114.

date in order to accept a position as general counsel of Encyclopedia Britannica, Inc.<sup>27</sup> The report was substantially accurate however Minow did not leave office until June 1, 1963. He would serve only 26 months, although in his nomination hearing he told the Senate committee that he would serve "as long as President Kennedy wants me."<sup>28</sup> From February 11, 1963, the date of the first Broadcasting report that Minow would resign, until May 14, 1963, when the White House formally accepted the resignation, the Chairman would neither confirm nor deny the speculation that he was leaving. He would say only that "no decision" had been reached.<sup>29</sup> By April, it was reported that "sources in a position to know" had stated that the real reason for Minow's silence was the administration's desire to announce simultaneously the resignation and the name of the new Chairman.<sup>30</sup>

#### Henry Named Chairman; Loevinger Appointed

Even though he did not want Minow to resign, President Kennedy again had to make appointments to the FCC. This time he had to appoint both a Chairman and a Commissioner. As it turned out, the President never seriously considered anyone but William Henry for

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<sup>27</sup>Broadcasting, February 11, 1963, p. 23.

<sup>28</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of Newton N. Minow, February 8, 1961, p. 14.

<sup>29</sup>Broadcasting, March 4, 1963, p. 56; March 25, 1963, p. 4.

<sup>30</sup>Broadcasting, April 8, 1963, p. 4.

the Chairmanship. Henry's brief tenure on the FCC clearly demonstrated that his regulatory philosophy was quite close to that of Newton Minow; therefore, a continuation of Minow's policies could be expected if Henry was selected as Chairman.<sup>31</sup> On May 14, 1963, the White House formally announced that the President had selected William Henry as the new Chairman of the FCC and Lee Loevinger as the new member. Henry's selection was fully anticipated, but Loevinger was a complete surprise.<sup>32</sup>

Lee Loevinger had been serving since February 1961 as Assistant Attorney General in charge of the Antitrust Division under Attorney General Robert Kennedy. Loevinger, who throughout his career had been particularly involved in antitrust law, was not interested in the FCC job. Years later, in reference to the position, he was quoted as saying, "I never sought it; I never wanted it; I don't want it now."<sup>33</sup>

Attorney General Kennedy had great respect for Loevinger's brilliance and legal competence however he did not like the man personally. Loevinger, who had been described as an "earthy bantam," was never able to "function effectively in the free-wheeling Kennedy orbit" at the Justice Department. He was outspoken, abrasive, and on more than one occasion angered Robert Kennedy because of casual remarks on important subjects.<sup>34</sup>

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<sup>31</sup>Broadcasting, May 20, 1963, p. 28.

<sup>32</sup>Kramer and Graham, Appointments to the Regulatory Agencies, p. 275.

<sup>33</sup>Kramer and Graham, Appointments to the Regulatory Agencies, p. 275.

<sup>34</sup>Broadcasting, May 20, 1963, p. 29.

Loevinger rather reluctantly took the position at the FCC. Broadcasting, which was not certain whether Loevinger's appointment was a "step down, as some lawyers view it, or a step up, as described at the White House," immediately assumed that Loevinger would join Henry, Cox and Bartley to form the new Kennedy majority on the Commission.<sup>35</sup> It appeared as though the "Minow Era" was about to begin in earnest even though its namesake was no longer there. But three days after Minow left the FCC, Loevinger made it clear that he was not going to be just another vote for Chairman Henry and the White House. At his Senate hearing on June 4, the nominee was asked a number of questions concerning his views on FCC regulation of program content. Loevinger replied:

My own golden rule of politics is, "Do not seek for yourself power which you would deny to others." I would not want anyone else controlling the programs, nor would I seek to control programs myself.<sup>36</sup>

This reply obviously shocked the Senate committee, considering the philosophies espoused by the other Kennedy appointees. In fact, Republican committee member Senator Cotton was so surprised that he characterized the nominee as the "antithesis" of Minow, and even stated that Loevinger sounded "a little bit like a Republican."<sup>37</sup>

It was true that Loevinger was a strong believer in competition and he did state that all things being equal, he would favor

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<sup>35</sup>Ibid., pp. 28, 102.

<sup>36</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of Lee Loevinger, June 4, 1963, p. 15.

<sup>37</sup>Ibid., pp. 36-37.

a nonnewspaper applicant for a broadcast license over a newspaper owner.<sup>38</sup> But a Broadcasting editorial expressed relief after Loevinger's hearing. The magazine ventured to predict that the new Commissioner would "not find himself aligned so solidly with a single FCC faction."<sup>39</sup> In other words, there was no Kennedy majority after all.

One final legal problem remained before Loevinger was qualified for confirmation as an FCC member. He and his wife owned two percent of the outstanding shares of a mutual investment company which owned stock in a small corporation which, in turn, held stock in a second corporation which manufactured communications equipment.<sup>40</sup> Both of these seemed to violate the conflict-of-interest provisions of the Communication Act of 1934.<sup>41</sup> Loevinger, who did not want the position in the first place, refused to sell the stock, and instead suggested that he transfer absolutely and unconditionally all of his interest in these corporations to his wife.<sup>42</sup>

Also, a new conflict-of-interest statute had been adopted by Congress which seemed to limit the scope of the provisions of the Communications Act. The statute prohibited any government officer from participating in a matter in which he and/or his spouse had a financial interest. The prohibition, however, could be waived by

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<sup>38</sup>Ibid., p. 24.

<sup>39</sup>Broadcasting, June 10, 1963, p. 106.

<sup>40</sup>Loevinger Nomination, pp. 6-8.

<sup>41</sup>Communications Act. United States Statutes at Large 48, sec. 4(b), 1066 (1934).

<sup>42</sup>Loevinger Nomination, pp. 7-8.



the President if the interest was "not so substantial as to be deemed likely to affect the integrity" of the officeholder.<sup>43</sup> Both the Justice Department and the FCC agreed that the interests involved were insubstantial, and a waiver to Loevinger was granted.<sup>44</sup> He was then unanimously confirmed by the Senate, and took his seat on June 11, 1963. By then, Henry had assumed the Chairmanship, and Kenneth Cox had become the first FCC Commissioner to be directly promoted from the staff since 1948. After Craven was replaced by Cox, the Commission was composed of five lawyers, an accountant, and one person who was a former broadcaster and congressional staff member. For the first time in its history, the FCC did not have an engineer as part of its membership.

#### The Johnson Presidency

On November 22, 1963, at 12:30 P.M., the shots were fired in Dallas which ended the Kennedy presidency. When Lyndon Baines Johnson became President, the FCC continued to function with its Truman-Eisenhower-Kennedy components. Kennedy had clearly dented, but not transformed the Commission which he had inherited from Eisenhower. Within six months of taking office President Johnson would have to make an appointment to the FCC, and for reasons of his own, he did not want to court controversy at the Commission.

Lyndon Johnson was one of the wealthiest men ever to occupy the White House. Earned, not inherited, his fortune was the result

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<sup>43</sup>18 United States Code, sec. 208(b).

<sup>44</sup>Loevinger Nomination, pp. 8-11.

of his two major career interests: politics and broadcasting, with broadcasting being the principle source of his income. How politics nurtured and protected his broadcast properties, or how his radio and television stations advanced his political career, may never be precisely known: but it seems likely that the two are inseparable. As Louis Kohlmeier has written: "Like two young oaks springing up side by side, the LBJ careers in government and business grew mightily, their trunks rising parallel and branches intertwining."<sup>45</sup>

Johnson's career in broadcasting began in 1942 when he and his wife bought Austin, Texas radio station KTBC for \$17,500. Shortly after the station was purchased, Mrs. Johnson petitioned the FCC to do what it had refused to do for the previous owners: grant KTBC unlimited broadcasting hours and quadruple its transmitting power. The FCC promptly granted both requests. With increased power and unlimited broadcast time, network affiliation was much easier to secure, and KTBC became an affiliate of CBS. In 1943, the station returned its first profit of \$18. In 1948, Lyndon Johnson took his seat in the Senate with an assignment to the Commerce Committee, which held general jurisdiction over the FCC; by 1951, he was the Democratic whip.<sup>46</sup>

Johnson seemed always to be in the right place at the right time. After nearly four years, the FCC lifted the freeze on television allocations in early 1952, and announced that Austin would be granted

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<sup>45</sup>Louis M. Kohlmeier, The Regulators: Watchdog Agencies and the Public Interest (New York: Harper & Row, 1969), pp. 219-228.

<sup>46</sup>Broadcasting, January 29, 1973, p. 84.

one VHF station and two UHF stations. Claudia T. Johnson, wife of Lyndon, was the only applicant for the sole VHF channel in Austin. In every respect, it appeared as though Mrs. Johnson was qualified to operate one of the new licenses. On July 1, 1952, the FCC began processing the massive backlog of some 700 applicants for television stations across the country. The process would continue for years in many cases, but within only ten days, the Commission granted the VHF license to Mrs. Johnson, and by October the station was on the air. Throughout the 1950s, KTBC-AM-FM-TV expanded: other stations were acquired by the Johnsons, then maintained or sold at huge profits. Large holdings in land and livestock added to the Johnson fortune. By 1964, the assets of the Johnson-owned Texas Broadcasting Co. were variously estimated between \$3.5 and 14 million.<sup>47</sup>

Johnson's holdings in broadcasting, from the very beginning, were to be a facilitator toward political advancement and not as an end in themselves. When he was a Senator and Vice-president, Johnson kept his distance from the FCC. As Kohlmeier has pointed out:

Senator Johnson did not participate in floor debate in the many instances when the Senate considered broadcasting legislation. The same is true with public hearings on FCC nominees. Although a member of the Commerce Committee from 1949 to 1954, Johnson rarely appeared at those confirmation sessions, and there is no recorded instance of him ever having asked questions of an FCC nominee.<sup>48</sup>

Clearly, Lyndon Johnson was hypersensitive about the source of his wealth, and the possible embarrassment it might cause him

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<sup>47</sup>Broadcasting, November 9, 1964, p. 30.

<sup>48</sup>Kohlmeier, The Regulators, p. 225.

politically. It had not been an easy matter to handle as a Senator and as a Vice-president. As the President--with the responsibility for appointing the membership of the agency which regulated his stations--it would be even more complex. When Johnson entered the White House, however, he did not sell his broadcasting holdings even though he was advised to do so. Instead, the entire corporation was placed in trust and Mrs. Johnson resigned as chairperson of the board. But the problem was not really solved. President Johnson made a total of seven appointments which affected the FCC. What Johnson did when he had to appoint or reappoint commissioners illustrated the sometimes very subtle and often very complex effect of the fact that his wife was a multiple licensee of that agency.

#### Johnson Reappoints Ford

The difficulties inherent in such a situation became apparent almost immediately. In March 1964 Johnson was confronted with his first vacancy at the FCC when the term of Commissioner Frederick W. Ford expired and he was ready to leave the Commission. The National Community Television Association had already offered its presidency to Ford, but he waited to leave until the close of his term to avoid an FCC prohibition which prevented practice before the Commission for two years by any Commissioner who resigned before the expiration of the term.<sup>49</sup>

At the same time as the expiration of Ford's term there was widespread publicity on the Johnson family holdings, and with a Presidential election only months away, the President did not want to

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<sup>49</sup>Broadcasting, April 20, 1964, p. 5.

make an appointment to the FCC. Instead, Ford was asked to reconsider. Broadcasting reported that Ford was "under intensifying pressure from influential broadcasters, from powerful members of Congress and from the White House to stay on."<sup>50</sup> Finally Ford withdrew his resignation and on May 12, 1964, President Johnson re-nominated him. At his relatively short hearing on June 17, 1964, the nominee assured the Senate panel that he intended to serve the entire term.<sup>51</sup>

Almost no one expected that to happen. As soon as Johnson won the Presidency in November, Ford again submitted his resignation which was accepted without question. Before leaving the FCC, Ford recommended that the White House seriously consider naming an engineer to the Commission. Even though such expert advice was available from the staff, Ford said that a voting member with an engineering background added an important viewpoint to deliberations.<sup>52</sup> On December 31, 1964--after having served six months of a seven year term--Ford left the Commission to become President of the cable television association.

#### Wadsworth Appointed; Bartley Reappointed

In early 1965 President Johnson had to select a Republican to fill the Ford vacancy. As is true with most off-party appointments,

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<sup>50</sup>Broadcasting, May 18, 1964, p. 60.

<sup>51</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of Frederick W. Ford, June 17, 1964, p. 45.

<sup>52</sup>Frederick W. Ford, "Television: Divided or United--Some Problems in Television Growth" (Washington: FCC Mimeograph #53017, 1964), p. 15.

he wanted to choose someone who was acceptable to the Republican leadership in Congress without being a strict partisan. But in this case, partisanship was not really important. Technically, after Ford left, in 1965 the FCC had four Democrats and two Republicans, but that fact is misleading. Rosel Hyde was a Republican only in the most nominal sense; Robert Bartley and Robert E. Lee were quickly becoming career commissioners, and shedding their partisan identification. Neither Cox nor Loevinger had ever really been active in Democratic politics to any considerable extent. Essentially, Chairman Henry was the only commissioner who retained strong, identifiable party ties.<sup>53</sup> Therefore the partisan identification of the new commissioner was hardly consequential compared to his or her feeling on regulation. Due to the composition of the FCC, there was more than ordinary interest in who Johnson would choose.<sup>54</sup> Although Ford left the commission in December, Johnson did not make an appointment until late March.

On March 26, 1965, the White House announced that the President had nominated James J. Wadsworth. Broadcasting seemed pleased to report that Wadsworth was described by friends as: a "Republican moderate" with "no desire to reform the world"; "friendly, easy to deal with, fluent and efficient in negotiations"; a man who "generally tries to work out solutions to problems satisfactory to all concerned--he's not a fanatic." In an interview with that magazine,

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<sup>53</sup>Kramer and Graham, Appointments to the Regulatory Agencies, p. 246.

<sup>54</sup>Broadcasting, March 29, 1965, p. 35.

Wadsworth declined to present any views on substantive questions. He did, however, wonder "why they have so many commercials" on television, but he added that he had "no preconceived notions about trying to make it better."<sup>55</sup>

Prior to his nomination hearing, Wadsworth disposed of stocks he held in companies which held industrial licenses from the FCC, even though he was not required to do so by the Justice Department.<sup>56</sup> Parts of the broadcasting industry appeared to be delighted at the selection of Wadsworth, although they had no idea how he would vote.

Just a few weeks after Wadsworth took his seat, the term of Commissioner Robert Bartley expired in June 1965. It was assumed that the President would grant Bartley a third seven-year term rather than create a vacancy which he would have to fill. As Broadcasting had observed months earlier; "As long as the Johnson family owns stations subject to FCC licensing, it is generally thought that Mr. Johnson won't be disposed to molest the status quo at the Commission, except to fill vacancies."<sup>57</sup> Bartley was interested in reappointment, but his term expired without any word from the White House.

By August, Bartley still had not been renominated and speculation was mounting. It was known that several broadcasting

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<sup>55</sup>Ibid., pp. 35-36.

<sup>56</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of James J. Wadsworth, April 13, 1965, p. 32.

<sup>57</sup>Broadcasting, November 9, 1964, p. 30.

representatives had expressed misgivings about Bartley due to "his almost automatic opposition to the acquisition of additional broadcast properties by large group owners." Reportedly, the FBI in its background check was asking "rather unroutine" questions of how Bartley was regarded by licensees.<sup>58</sup> Bartley began to become a little concerned even though there were no other candidates for the position and it was said he had informal assurances from persons close to the President that he would be renominated.<sup>59</sup>

Then very suddenly on August 19, 1965--seven weeks after his term expired--it was announced that Bartley would be renominated. It seems the date was important. That morning, the Gemini 5 space flight was launched and monopolized the headlines.<sup>60</sup> Kramer and Graham have asked:

Had Lyndon Johnson just been waiting for the right time to make the announcement? Was the President sensitive about naming a commissioner, even one who had served for 13 years. . . . Did the President have second thoughts? Was Bartley controversial due to his positions on media concentration? Or, had the President been quietly waiting to see what he could get politically in exchange for the renomination? It is impossible to say. But the fact remains that Johnson waited, apparently without considering any other person for the seat, when--in many people's opinion--he could simply have announced the selection weeks earlier without any controversy.<sup>61</sup>

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<sup>58</sup>Broadcasting, August 16, 1965, p. 9; August 23, 1965, p. 47.

<sup>59</sup>Broadcasting, July 10, 1967, p. 32.

<sup>60</sup>Broadcasting, August 30, 1965, p. 5.

<sup>61</sup>Kramer and Graham, Appointments to the Regulatory Agencies, p. 250.



Once announced, there was no controversy over the selection. A prompt hearing was held which was not marked by any substantive questioning of the nominee. Shortly thereafter, Bartley was unanimously confirmed. At the same time Bartley was reappointed, Broadcasting ran one of its "reports persist" notes to the effect that the administration would like to see Henry resign as FCC Chairman. That was surely the sentiment of the magazine's editors, if not the President.<sup>62</sup>

It is probably true that Johnson would have preferred someone as FCC Chairman whose views were more compatible with his own, but if Johnson exercised his presidential powers and replaced Henry, there would most likely be criticism that he was interfering with the agency in some way to benefit his own private interest. It did not seem likely that Henry was sufficient threat to warrant the political risk inherent in his removal.

Meanwhile, Commissioner Wadsworth had voted on some critical issues demonstrating that by nominating him the President actually gave power to Henry rather than took it away. On more than one occasion, including important proposals on overcommercialization, Wadsworth provided Henry with a much-needed fourth vote. After a few months, Broadcasting was characterizing the moderate Wadsworth as the "swing vote for the hard line."<sup>63</sup>

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<sup>62</sup>Broadcasting, August 23, 1965, p. 46.

<sup>63</sup>Broadcasting, February 21, 1966, p. 52.

Henry Resigns; Hyde Named Chairman;

Nicholas Johnson Appointed

By the beginning of 1966, Chairman Henry was ready to leave the FCC. Three years earlier, Broadcasting had announced that Minow was leaving the FCC chairmanship months before he actually did, but no such advance notice occurred with Henry's departure. In April, Broadcasting finally got word of the decision reached in February and announced, "Out of the Blue: Henry Goes." Henry reacted with some levity to the speculation concerning his departure. In answer to his colleagues' questioning, Henry reportedly said, "Why should I quit now? With Loevinger in Geneva, I've never had more fun."<sup>64</sup> But Henry's resignation had not yet been officially announced and, as Broadcasting reminded its readers, it was "hazardous" to speculate on Johnson selections.<sup>65</sup>

In this instance, more was at stake than the selection of the first Johnson chairman of the FCC. Republican Commissioner Rosel H. Hyde's term was due to expire in June. Although Hyde was 66 years old, it was certain that Johnson would not force him into retirement since, as the senior member of the FCC, he had been a commissioner for 20 years and had served continually with the agency since 1928.<sup>66</sup> When Henry left the Commission on May 1, 1966, to

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<sup>64</sup>Broadcasting, April 11, 1966, p. 33.

<sup>65</sup>Broadcasting, April 18, 1966, p. 84.

<sup>66</sup>Biographical Sketch of Rosel H. Hyde, (Washington: FCC Mimeograph #86177, 1966).

assist in the campaign of John Hooker for the Governor of Tennessee, Hyde temporarily assumed the chairmanship. Almost immediately rumors began to circulate that President Johnson would change Hyde's status from acting to permanent Chairman.<sup>67</sup> But such speculation seemed incredulous. Hyde was a Republican. Even so, on June 27, 1966, he was designated Chairman by President Johnson.<sup>68</sup> Now the President had to pick a new Commissioner.

He chose the youngest man ever to serve on the commission, Nicholas Johnson, a Democrat from Iowa. Johnson was to receive a "lateral promotion" from Maritime Administrator to the FCC. When the selections of Hyde and Johnson were announced there was no visible alarm in the communications industries. Broadcasting, which noted that he had been "far from docile" at Maritime, also declared that Johnson was a "brilliant lawyer with good credentials" and reiterated assurances the editors had received that the new commissioner would be "no 'crackdown artist'." For the most part, attention centered on the designation of Hyde as Chairman, which was well received by the magazine. The selection of Hyde, according to Broadcasting, was a "clear manifestation of the Chief Executive's desire to have (the FCC) assert its independence in what is the most vital period in the history of mass communications."<sup>69</sup>

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<sup>67</sup>Broadcasting, May 23, 1966, p. 5; June 13, 1965, p. 5.

<sup>68</sup>Biographical Sketch of Rosel H. Hyde.

<sup>69</sup>Broadcasting, June 27, 1966, p. 122.

With a "familiar skipper at the helm" the days of the New Frontier appeared to be ended.<sup>70</sup>

The joint confirmation hearing on Hyde and Johnson was relatively short and not marked by any substantive questioning. Nominee Johnson was the subject of high praise by several Senators. Pastore, for example, declared that what the FCC needed was a "fellow who will stand up and be counted, and who thinks as he likes and says what he thinks in the public interest."<sup>71</sup> When asked if he had any familiarity or personal knowledge of certain regulatory issues, Johnson replied, "I must say in all candor. . . .I really do not. I am aware of the fact that the Federal Communications Commission has many responsibilities in addition to those connected with commercial broadcasting. I certainly intend to familiarize myself with all of them."<sup>72</sup> When questioned about FCC regulation over program content, Johnson simply remarked that it was a "most sophisticated and involved matter" upon which he was "hesitant" to express his views.<sup>73</sup> Both men were subsequently confirmed without objection by the Senate.

Lyndon Johnson made only one other FCC appointment during his presidency. But he renominated Republican Robert E. Lee to a third seven-year term in July 1967. That appointment came in the midst of Commission action which had begun months earlier.

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<sup>70</sup>Broadcasting, June 27, 1966, p. 29.

<sup>71</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nominations of Nicholas Johnson and Rosel H. Hyde, June 23, 1966, p. 80.

<sup>72</sup>Ibid., p. 81.

<sup>73</sup>Ibid.

Lee Reappointed During the ABC-ITT Merger

The action was a merger of two great corporate entities. In April 1966--before Hyde was chairman and Johnson a commissioner--the stockholders of the American Broadcasting Co. voted to allow the corporation's acquisition by International Telephone & Telegraph for the reported sum of \$400 million. It was an attractive merger for all concerned, but particularly for ITT, which, in a single stroke, carved itself into a large share of the communications industry.<sup>74</sup> ABC offered ITT vast broadcasting properties, which included: 399 theaters in 34 states; five VHF licenses and 12 radio stations, all in the top 10 broadcasting markets; and, most importantly, network affiliations which reached fully 93 percent of the 50 million homes which then had television sets.<sup>75</sup> ABC, which had come into existence only after the FCC had forced RCA to part with one of its two networks in 1941, had returned a profit every year since 1953, and generated 27 percent of all television network revenues. The ITT-ABC merger was, in the words of Commissioner Kenneth Cox, "perhaps the most important in the agency's history."<sup>76</sup>

Backed by lawyers and economists who would argue and demonstrate that competition was improved through centralization, the

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<sup>74</sup>Nicholas Johnson, "The Media Barons and the Public Interest," Atlantic, June 1968, p. 44.

<sup>75</sup>Ibid.

<sup>76</sup>Ibid.

presidents of ITT and ABC applied to the FCC for the necessary approval of the proposed merger. Commissioner Johnson, who spent his first month at the FCC observing and reading, recalled an initial meeting where a rather unchallenging letter was addressed to the companies asking for a "statement specifying in further detail" the ways in which the merger would improve program service and thereby advance the public interest. It did not appear as though the FCC would pose any serious obstacle to the desires of the corporations. It was only after months of pressure from Commissioner Bartley that the commission finally ordered a one-day hearing on the matter; questioning by Bartley, Cox and Johnson extended the session to a full two days in September 1966. Three months later, after the Antitrust Division of the Justice Department advised the FCC that no action opposing the merger was then being contemplated, the commission voted 4 to 3 to approve the merger. Hyde, Loevinger, Wadsworth and Robert E. Lee formed the majority; Cox, Bartley and Johnson filed a lengthy dissent.<sup>77</sup>

At that point, public pressure caused the Justice Department to intervene and petition the Commission to reopen the matter on the grounds that "crucial facts" had not been considered, and that the September hearing was far too brief. The Justice Department called for full hearing on the proposed merger, and the commission finally scheduled such hearings for April 1967. They lasted full 16 days and resulted in over 3,000 pages of testimony and 550 exhibits.

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<sup>77</sup>Ibid., p. 45.

They also resulted in the same decision, by a vote of 4 to 3, in June 1967. Once again, Commissioner Lee provided the fourth vote; the three dissenters--Cox, Bartley, and Johnson--were equally adamant in opposing the merger.<sup>78</sup>

A month later the Justice Department appealed the matter to the Courts. Faced with this further delay, ITT announced in January 1968 that it was cancelling the merger agreement and would look elsewhere for acquisitions.<sup>79</sup> Commissioner Johnson would later write that had this merger gone through, ABC would have become part of a conglomerate of over 400 boards of directors with holdings worth \$2.5 billion in some 40 foreign countries, and interests in consumer finance, life insurance, investment funds, loan companies, car rentals, book publishing, and U.S. defense and space contracts. "The mere awareness" of these high-level involvements, Johnson contended, would have made it impossible for news staffs to cover stories objectively that affected those subjects.<sup>80</sup>

Only a few weeks after the commission's second vote on the ABC-ITT merger in June 1967 the term of Commissioner Lee expired without a word from the White House as to whether he would be reappointed or whether someone else had been nominated for the position. Lee wanted reappointment and in an attempt to force President Johnson's

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<sup>78</sup>Ibid., p. 46.

<sup>79</sup>Sterling and Kittross, Stay Tuned, p. 385.

<sup>80</sup>Nicholas Johnson, How to Talk Back to Your Television Set (Boston: Little & Brown, 1970), p. 53.

hand, he submitted his resignation on July 3, 1967. Lee also stopped voting on the commission.<sup>81</sup>

From the LBJ ranch came word that the President would confer with Lee on July 11, but within hours that meeting was abruptly canceled. No new time was set. Lee was convinced that the President had decided to accept his resignation and still declined to participate in Commission business.<sup>82</sup> On July 13 Lee met with the President and within days he was renominated. By early August, he had a 17-minute hearing; within 24 hours of committee approval, he was confirmed unanimously by the Senate for a third seven-year term.<sup>83</sup>

Lee's renomination was probably never in jeopardy since no one else was considered for the position. Chairman Hyde viewed the Lee reappointment as a Presidential reaffirmation of his directions for the FCC, but Broadcasting magazine went even further:

As a member of the majority that stuck by its original approval of the ABC-ITT arrangement, Mr. Lee would have been hardly beseeched to renounce his intention to resign if the President had felt the ABC-ITT merger was against the public interest.<sup>84</sup>

It was never reported if President Johnson approved the merger or not, but Variety was probably close to the truth when it reported that the Lee reappointment had "definite implications upon the Longrunning Wall Street serial," the merger of ITT and ABC, because "if it

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<sup>81</sup>Broadcasting, July 10, 1967, p. 31.

<sup>82</sup>Broadcasting, July 17, 1967, p. 31.

<sup>83</sup>Broadcasting, August 7, 1967, p. 53; August 14, 1967, p. 9.

<sup>84</sup>Broadcasting, July 17, 1967, p. 96.



had become necessary for LBJ to appoint a successor to Lee--the sympathies of his new appointee would have had life-or-death relevance to the melding of the corporations."<sup>85</sup> It was not difficult to imagine the problems Lee's replacement might have caused if the courts had remanded the merger to the commission. A new commissioner might be forced to disqualify himself. Cox, Bartley, and Johnson were not likely to change their votes so the merger would be blocked on a 3-3 tie. Minimally, with the ABC-ITT merger in the background, a new nomination would have been very controversial, and as was earlier stated, Johnson did not court controversy at the FCC.

#### H. Rex Lee Replaces Loevinger

Year after year, it was reported that Lee Loevinger would leave the FCC before the expiration of his term in June 1968.<sup>86</sup> Finally, in September 1967, he announced at an impromptu news conference in Los Angeles, "I don't want to continue." He would leave the agency at the conclusion of his term.<sup>87</sup> Although he left the President nine full months to find a replacement, there was no successor ready when Loevinger left the agency at the end of June 1968.

To the contrary, the FCC would function as a six-member commission for nearly five months. For various reasons, this was a particularly difficult appointment for the president. One problem was the number of people who wanted the job. Because of the early

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<sup>85</sup>Variety, July 19, 1967, p. 9.

<sup>86</sup>Broadcasting, May 9, 1966, p. 5; July 10, 1967, p. 32.

<sup>87</sup>Broadcasting, September 18, 1967, p. 54.

announcement of Loevinger's departure, there were many candidates campaigning for his seat. Also, on March 31, 1968, President Johnson announced that he would not run for office again. He was, therefore, a lameduck president and not subject to the political pressures which might have occurred if he had been seeking reelection. For these reasons it was difficult to predict who would get the nomination. Broadcasting called the FCC appointment decision a "puzzle wrapped in an enigma." Two weeks before the Loevinger term expired, the magazine listed six persons who appeared to be under consideration for appointment, none of whom were ever selected.<sup>88</sup>

For the FCC, the appointment meant the balance of power. The departure of Loevinger was the loss of a "strong prop" to Chairman Hyde. With Loevinger gone, the commission was evenly divided on several important matters, leaving no clear majority behind the chairman.<sup>89</sup> The consistent minority, composed of Cox and Johnson, could also occasionally count on Commissioner Bartley for a third vote, particularly on matters of media concentration. If the President selected someone who sympathized with Nicholas Johnson's viewpoints, it could mean a considerable loss of stability at the agency.

The vacant seat also meant a great deal to the industries which the FCC regulated. Many months before the Loevinger resignation, Nicholas Johnson had riled them in much the same way as he had aroused the anger of the maritime interests several years earlier. When President Johnson was considering Loevinger's successor,

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<sup>88</sup>Broadcasting, June 17, 1968, pp. 24-25.

<sup>89</sup>Broadcasting, June 24, 1968, p. 49.

Broadcasting continued to run its editorials against Commissioner Johnson. In August 1968, the editors noted that the "arrogant young man" with the "fetish" for publicity had passed the two-year point in his Commission service. It had only taken that long for the maritime interests to rid themselves of his services as maritime administrator; why, the magazine wondered, was the communications industry--"with all its vaunted muscle"--not able to do the same thing?<sup>90</sup> It can be safely assumed that there was steady pressure on the White House to steer clear of any person who might add to the Cox-Johnson minority on the FCC.

Finally, only one month before the Senate would recess for the November elections, Johnson nominated H. Rex Lee, who had been serving as Assistant Administrator for the agency for International Development since 1967. On Friday, September 13, 1968--within 36 hours of the submission of the nomination--the Commerce Committee met to consider Lee. Only four senators appeared for the purpose of endorsing the nominee. Senator Hartke asked Lee questions concerning the issues of license allocations, pay-TV, cigarette advertising, equal time, television violence, and communications satellites.<sup>91</sup> To all of these questions the nominee "with coolness and calmness" admitted a lack of specific knowledge or opinion. Yet the following Monday, Lee was confirmed unanimously by the Senate.

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<sup>90</sup>Broadcasting, August 5, 1968, p. 82.

<sup>91</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of H. Rex Lee, September 13, 1968, pp. 52-56.

## The Emergence of Citizen Groups

### In Broadcast Regulation

The political appointive process to the regulatory agencies had always been the exclusive domain of those who governed and those organized entities which were most directly affected--the regulated industries and the political parties. But the rise of a self-appointed third force--distinct from government, party, and industry--intervening on behalf of the public interest on appointment matters was a new phenomenon, which coincided with the ascendancy of Richard M. Nixon to the Presidency in 1969. Before, a typical Senate hearing--reflecting the processes of selection--included the nominee, the politicians, and, on rare occasion, testimony from a trade industry group. In 1969 all of that would change. Citizen groups began to take serious interest in the workings of the regulatory agencies.

Before 1969 the FCC regulated the medium which was the principle communicative device for the vast majority of Americans. Television, in the most literal sense, had brought the turmoil of the 1960s home. But had the coverage, national and local, been fair and accurate, recognizing the needs of non-white, non-middle America? Broadcasting quoted Ben Kubasic of the National Citizens Committee for Broadcasting as asking if television was talking "to an America that doesn't exist; about an America that doesn't exist?"<sup>92</sup> What was the FCC doing about it?

Demand for a role in the appointive process was a later stage of citizen group action. Initially, the focus of the struggle

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<sup>92</sup>Broadcasting, May 5, 1969, p. 52.

was to establish a legal right for such organizations to intervene, on behalf of consumers, on substantive issues in government proceedings. Though not limited to the regulatory agencies, some of the most significant and earliest citizen group intervention concerned the FCC.

In a formal sense, there was no independent consumer voice until 1964. In April of that year the Office of Communications of the United Church of Christ petitioned the FCC requesting an opportunity to oppose the renewal of several Mississippi stations, charging racial discrimination by those licensees against black viewers. After some consideration of the petitioner's complaints and after a delay of over one year, the FCC granted short-term renewals. But, not only were the petitioners denied an opportunity to be heard, but no hearing was held at all. Upon appeal, the U.S. Court of Appeals for the District of Columbia firmly disagreed with the Commission. In December 1965, it ordered the FCC to hold a hearing and allow the petitioner to enter those proceedings as a party. At the heart of the decision was the notion that the airwaves belonged to the people, and that groups representative of listeners should be allowed a vote in the allocations of licenses. "After nearly five decades of operation," then Judge Warren Burger noted, "the broadcasting industry does not seem to have grasped the simple fact that a broadcast license is a public trust subject to termination for breach of duty."<sup>93</sup> Recognizing the limited FCC staff resources for

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<sup>93</sup>Office of Communication of the United Church of Christ v. Federal Communications Commission, 359 F. 2d 994, 1001 (1966).

monitoring the community service of licensees, the Court concluded that "some mechanism must be developed so that the legitimate interests of listeners can be made part of the record which the Commission evaluates."<sup>94</sup> This was the beginning.

New groups were formed, and many were local in origin. In 1969, Broadcasting reported that community-based organizations had challenged, in a single year, the license renewals of stations in more than a dozen cities. John Banzhaf's Action for Smoking and Health (ASH) had filed numerous petitions demanding free air time to counter cigarette advertising, and denial of licenses of those stations which failed to provide such time. In May 1967, what later became known as the National Citizens Committee for Broadcasting (NCCB) was established with far broader, media over-commercialization, and the development of public television.<sup>95</sup>

Meanwhile, there was encouragement for citizen group action coming from the FCC itself--or, at least from part of it. Commissioner Johnson did everything conceivable to rally public attention. He made hundreds of speeches, wrote articles and books, issued countless press releases, and granted interviews to such unlikely magazines as Penthouse. He became the most publicized commissioner in the history of the regulatory agencies. But he was not alone. Commissioner Cox, to a somewhat lesser degree and with a different style, was advocating the same thing. In a speech in late December 1968, Cox urged his

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<sup>94</sup>Ibid., p. 1005.

<sup>95</sup>Broadcasting, May 5, 1969, p. 42+.

audience to complain to Congress when the FCC acts "against the public interest--or doesn't act at all." Cox also added: "Take us to court if we improperly dispose of proceedings in which you are involved."<sup>96</sup>

The communications industries were accustomed to fighting among themselves and the politicians, but were unaccustomed to a third force claiming to represent the public interest. As Washington attorney Paul Porter, a frequent representative of the broadcasting industry before the FCC, stated, "In a democracy, obviously, everyone had the right to bellyache, bally-hoo, and be heard. But citizens' groups tend to be careless and irresponsible about it."<sup>97</sup> However, citizen groups wanted more than the right to bellyache. They wanted to be part of the process which forged policy, and, eventually, a role in the process which selected the men and women who would determine those policies.

Citizen groups sought but did not receive an initial role in the selection process when President Nixon made his first appointments to the FCC. The term of Chairman Hyde would expire in June, 1969, and in addition to pressure from the NCCB, Nixon had to content with pressure from the industry as well concerning the appointment.

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<sup>96</sup>Broadcasting, December 16, 1968, p. 67.

<sup>97</sup>Broadcasting, May 5, 1969, p. 52.

Nixon Appoints Burch and Wells

For years, broadcasters had requested that one of their own be appointed to the FCC. Commissioner Robert Bartley, who had initially been appointed by Truman, had experience in broadcasting, but he was not truly a broadcaster. More accurately, he was a lobbyist-congressional staffer and nephew of influential Senator Sam Rayburn.<sup>98</sup> Presidents Eisenhower, Kennedy, and Johnson had declined to select a broadcaster for the FCC. However, in September 1968, during the campaign, candidate Nixon had promised to put a broadcaster on the FCC with the words: "I think somebody who knows something about the business ought to be on the FCC."<sup>99</sup> Hubert Humphrey had said about the same thing in response to the same question: "I wouldn't have any objection to that at all. . . . I think that the best people to put on the commission are people who have been in the business. I am not much for these theoreticians on some of these things."<sup>100</sup> Nixon won the Presidency and it was therefore up to him to deliver the promise made by both candidates.

Initially, it appeared as though there would be only one opening on the Commission. Unless the President selected a sitting commissioner as Chairman, that seat would have to be reserved for

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<sup>98</sup>Biographical Sketch of Robert T. Bartley. (Washington: FCC Mimeograph #47188, 1970).

<sup>99</sup>Broadcasting, October 7, 1968, p. 27.

<sup>100</sup>Ibid.



the person Nixon chose to head the agency. Although there was some speculation that Republican Robert E. Lee would be named chairman, he was not.<sup>101</sup> Moreover, with only one vacancy, it can safely be assumed that the White House did not seriously consider naming a broadcaster as FCC Chairman. But it had been well-known for some time that Commissioner Wadsworth, with two years of his term remaining, was "thoroughly disenchanted" with his job.<sup>102</sup> As early as 1967 he stated:

I don't understand the technical jargon, the communicator's language. I hate to read a long memorandum. Anything over two or three pages, I can't handle.<sup>103</sup>

Then in December 1968, Broadcasting suggested that Wadsworth would "prefer" a diplomatic assignment, which would then open a second seat for the administration to fill.<sup>104</sup> In mid-June, Wadsworth confirmed reports that he had been asked to join the American team negotiating a permanent charter for the International Telecommunications Satellite Consortium (INTELSAT).<sup>105</sup> Wadsworth then resigned, giving Nixon the unusual opportunity of naming two members of his own party to the FCC within months of his inauguration.

But by June, a decision on replacements had not been reached. A White House aide was quoted as saying:

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<sup>101</sup>Broadcasting, October 7, 1968, p. 5; December 2, 1968, p. 5.

<sup>102</sup>Variety, July 12, 1967, p. 29.

<sup>103</sup>Elizabeth Brenner Drew, "Is the FCC Dead?" Atlantic, July 1967, p. 32.

<sup>104</sup>Broadcasting, December 2, 1968, p. 5.

<sup>105</sup>New York Times, June 18, 1969, p. 172.

Finding a new chairman is really hard. We need someone who is concerned about television, who's aware of the new technological advances, who's not totally unacceptable to the industry.<sup>106</sup>

The industry's views then were being given serious consideration at the White House. Broadcasting reported that one strong contender for the FCC chairmanship had "collided with strong broadcasting opposition."<sup>107</sup> As the magazine later pointed out, it was difficult to get qualified persons to accept the position because it was not "enticing" due to the "well-published turmoil within its ranks and because of the unconscionable browbeating some of its members take from congressional committees."<sup>108</sup>

By June 1, 1969, Chairman Hyde was ready to leave the FCC, but President Nixon was not ready to name his successor. So, on June 18, 1969, Nixon reappointed Hyde to the chairmanship. Finally, by mid-August, the names of the men who would replace Hyde and Wadsworth were reported in the trade press. By September 1, the decisions were firm and the reaction to the prospective nominees was swift and negative. Indeed, when the nominations were sent to Congress, the "official silence was deafening."<sup>109</sup>

For FCC Chairman, Nixon named Dean Burch of Arizona. Burch was no stranger to Washington politicians. As Broadcasting reported,

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<sup>106</sup>Broadcasting, June 9, 1969, p. 84.

<sup>107</sup>Broadcasting, August 4, 1969, p. 74.

<sup>108</sup>Broadcasting, August 4, 1969, p. 74.

<sup>109</sup>Broadcasting, September 22, 1969, p. 19.

Burch was "one of the most politically experienced men ever to be named" to that position.<sup>110</sup> To fill the other vacancy, Nixon honored his campaign pledge by naming a commercial broadcaster. Robert Wells of Kansas would serve the remaining two years of the Wadsworth term. Wells' career had been devoted to the media from 1946 on.<sup>111</sup>

Broadcasting was delighted with the selection of a "tough-minded old Washington hand from out of the West" for Chairman and a "booster-type broadcaster from the prairies" for commissioner.<sup>112</sup> Others were not so excited. The New York Times, in an editorial entitled "Wrong Men for the FCC," noted that Burch was "totally identified with the party's conservative wing" and pointed out that there was "nothing" in Burch's record to show that he would "encourage the stations and networks to improve the quality of broadcasting."<sup>113</sup> Wells, on the other hand, had too much in his background in that area as a member of the NAB radio code review board. Wells was "very much a part of the system the FCC reformers desire to change." On more than one issue, he was already on the record. The Washington Post was equally uncertain of Burch's qualifications to become the chief regulator of the nation's communications systems. The Post editorially declared that it would be "most unfortunate" if the complex

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<sup>110</sup>Ibid., p. 20.

<sup>111</sup>Biographical Sketch of Robert Wells. (Washington: FCC Mimeograph #FS-4, 1971).

<sup>112</sup>Broadcasting, September 22, 1969, p. 19.

<sup>113</sup>New York Times, September 2, 1969, p. 172.

issues facing the FCC were "approached in a partisan spirit or with little regard for the great role that television and other means of communication have come to play in our lives."<sup>114</sup> Other eastern newspapers labeled Burch's selection as "politically contrived" and Wells as a "beneficiary of the patronage system."<sup>115</sup>

#### Citizen Groups Intervene

Nixon's first two appointees to the FCC were selected because of their strong sponsorship in the Senate. They were Republicans facing a Senate which was controlled by Democrats and therefore needed inside support. The Senate hearings were not scheduled until a month after the nominations were announced. President Johnson was able to order the hearings to be held within 24 hours when he wanted a nominee confirmed. Also, under the Johnson administration the hearings themselves lasted only minutes or hours. While the hearings on Nixon appointees would take weeks, and in one case, months.

According to Broadcasting, the hearings was "marked by gentle questions, punctuated with praise, from the several Senators who attended."<sup>116</sup> This may have been true; however, the hearing was also marked by the increased number of questions asked of the nominees and, for the first time since 1961, Senators who were not able to be present at the hearing submitted questions, to which the nominees were

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<sup>114</sup>Washington Post, August 30, 1969, p. A16.

<sup>115</sup>Broadcasting, October 26, 1969, p. 60.

<sup>116</sup>Broadcasting, October 26, 1969, p. 60.

required to supply written responses.<sup>117</sup> Such as it was, in 1961 or 1965 that would have been the end of it. But it was 1969, and there was a witness who came to oppose both confirmations.

Senator Pastore, Chairman of the Communications Subcommittee, instructed the two nominees to remain in the chamber to hear the "soft-spoken but slashing indictment" of television's treatment of black Americans.<sup>118</sup> Absalom Jordan, Jr., national chairman of Black Efforts for Soul in Television (BEST) had come to block the confirmation of the two nominees. It was the first, but not the last time that BEST, which claimed membership in seven major cities, would appear at a Senate confirmation hearing on an FCC nominee. Jordan began by describing the reality of black participation in the media.

Since its inception television had depicted a one-dimensional society, lily white, middle class, and anti-black. Wherever blacks have been granted permission to appear on television it had been in the capacity of 20th century minstrels, singing, dancing, shuffling and carrying the water pails for golf pros. Instead of 'The Lone Ranger' and Tonto we have had 'I Spy.' Instead of 'Amos n' Andy,' we now have 'Julia.'

Television has simply updated the vicious racism endemic in American life. It has given it a carefully modulated veneer of respectability and the result has been nauseous to blacks.<sup>119</sup>

Jordan's testimony was not limited to generalities. After noting that both nominees were white, older than the national average, and rich, Jordan turned on Burch specifically:

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<sup>117</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nominations of Dean Burch and Robert Wells, October 15, 1969, pp. 21-27.

<sup>118</sup>Broadcasting, October 26, 1969, p. 29.

<sup>119</sup>Dean Burch and Robert Wells Nomination Hearing, p. 29.

We can think of no man in America who is more openly opposed and antagonistic to the interests of the black community. No man by his past actions and by his previous political involvements has fought harder to disembowel the black community of its integrity, its dignity, and its freedom. No man by his stated political philosophy has been more aggressively opposed to the empowerment of the black community.

Search Dean Burch's record and find one--we challenge you--find just one instance where he has indicated he even believes in racial equality, much less have done anything to implement it. Under Dean Burch it is not inconceivable that the FCC will become more racist, more antithetical to black progress and more opposed to integrated programming.<sup>120</sup>

When Jordan finished, Senator Pastore allowed Burch an opportunity to respond. Obviously angered, Burch declared that he took "great personal umbrage" at Jordan's allegations that he was a racist. Burch added, ". . . I am sorry that you have decided to put the wall down between yourself and the Commission. . . I don't feel that your approach is going to further your cause if you are going to put me completely outside the sphere of your interest."<sup>121</sup>

The citizen group effort was far too little, far too late. However, the questioning during the hearing did bring out the fact that the media group with which Wells was associated did have at least one community where they owned the only newspaper and the only radio station. Also, the questioning uncovered the fact, according to Wells, that in his entire organization there were no minority group employees or any affirmative plan to attract such persons.<sup>122</sup> It was equally true that Burch had played a leading role in Senator

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<sup>120</sup>Ibid., p. 31.

<sup>121</sup>Ibid., p. 34.

<sup>122</sup>Ibid., p. 72.

Goldwater's 1964 presidential campaign, and presumably was identified with the conservative wing of the republican party.<sup>123</sup> But this information was hardly enough to reject the nominees. As Senator Pastore stated, "Do you think we ought to reject these two white men, and others who might be nominated, because the President might eventually get the bright idea to send up a black man?"<sup>124</sup> Even so, an important precedent had been set. Citizen groups had finally intervened in an FCC confirmation hearing and they were heard. They would appear again.

Then on November 30, 1969, the House Interstate and Foreign Commerce Committee voted to recommend that Chairman Hyde be cited for contempt for his and the Commission's refusal to supply certain confidential records which had been requested.<sup>125</sup> On the same day as the contempt recommendation, the Senate considered the confirmation of Burch and Wells. Senator Hart of Michigan pointed out that neither man had any "previous leadership" in opening employment opportunities for minorities. Further, he said that he would watch their action in that and other regards once they assumed their positions.<sup>126</sup> Following Hart's comments, both men were confirmed unanimously.

#### Wells Replaces Cox; Houser Appointed

As it turned out, filling FCC seats must have been very tedious for the Nixon White House. Richard Nixon would have the

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<sup>123</sup>Ibid., p. 70.

<sup>124</sup>Broadcasting, November 3, 1969, p. 32.

<sup>125</sup>Broadcasting, October 27, 1969, p. 10; November 3, 1969, p. 26.

<sup>126</sup>Broadcasting, December 8, 1969, p. 5.

opportunity to appoint at least one commissioner each year of his presidency, but because of problems, external pressures, and Nixon's mysterious strategies, making these appointments was an unusually difficult task.

First, in June 1970, the term of Democratic Commissioner Kenneth Cox would expire. His departure and replacement would give the republicans their first FCC majority in nearly a decade. A year later, the short-term vacancy to which President Nixon had appointed Republican Robert Wells would also come to a close. Commissioner Wells, "The broadcaster from Kansas who had made such a hit" with the industry, had been serving only six months when the administration wanted to know if he would be interested in receiving the Cox term instead. If so, the White House would then name someone to the remaining one year of his term. Regardless of which term Wells picked, a new commissioner had to be named.

Between May and September 1970, Nixon considered three persons for the position. The first was John Snyder, republican candidate for senator from Indiana.<sup>127</sup> There was vigorous opposition to Snyder from many different groups.<sup>128</sup> By July, it was clear that he was out of contention.

Meanwhile, Wells agreed to replace Cox and on July 24, 1970, President Nixon nominated him to a full seven-year term. To fill the 11 months of the Wells term, the President named Sherman Unger, the

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<sup>127</sup> Broadcasting, June 8, 1970, p. 23.

<sup>128</sup> New York Times, June 15, 1970, p. 35; Broadcasting June 12, 1970, p. 84; July 6, 1970, p. 30.



General Counsel of the Department of Housing and Urban Development.<sup>129</sup> At the time of his selection, Unger had not informed the White House that the IRS had contacted him in April 1970 concerning an audit. The audit lasted nearly four months until on December 10, 1970, Unger requested the President to withdraw his nomination.<sup>130</sup>

In Unger's place Nixon nominated Thomas Houser, Deputy Director of the Peace Corps, to what would be only a six-month term.<sup>131</sup> By early January, the Senate had not acted on either nomination and both Wells and Houser were given recess appointments to the commission.

BEST was hardly pleased with the nomination of two more white males. The black campaign for a black commissioner, which began in 1969, was intensified in 1970. When the Senate hearing on Wells and Houser was finally held in February 1971, BEST again appeared, but this time took a somewhat softer line. William Wright, the national coordinator for BEST, stated that he wanted to make "no personal attack" on the nominees, but "as presently constituted," he said, the FCC is "a blind watch-dog, incapable of seeing from the perspective of the significant minority."<sup>132</sup> Wright stated:

. . . The black community on all levels, insists on speaking for itself. This means real involvement in matters which

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<sup>129</sup>Broadcasting, July 27, 1970, p. 22.

<sup>130</sup>New York Times, December 12, 1970, p. 63.

<sup>131</sup>Broadcasting, July 27, 1970, p. 22.

<sup>132</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nominations of Robert Wells and Thomas Houser, February 23, 1971, p. 27.

concern us--at a level where policies are conceived and made. Until a black man, committed to a sensible and knowledgeable representation of blacks--as well as white--is appointed to the FCC, justice will not be served.<sup>133</sup>

The Communications Subcommittee had heard all of this before. But by the time of the Houser appointment, Chairman Pastore was convinced that President Nixon must appoint a black to the FCC. Other Senators agreed. Senator Percy, who appeared at the hearing to introduce Houser, stated that the claims of the black community for representation were "beyond dispute." Pastore suggested that he and Percy go to the White House "to see if we cannot persuade the President in the immediate future to make appointment of a responsible black man." Once again, however, Pastore declined to block the pending nominations simply because the appointees were not black.

The argument will be made here today--and it has been made before--that if we refuse confirmation of these gentlemen because they are white, there may be a black man appointed. Of course, that is not the way to play the ballgame.

I can no more reject a qualified man because he is white than I could reject a qualified man because he is black. Discrimination is discrimination and it works on both sides of the street.

Pastore was convinced that "something ought to be done," and for the moment, BEST would have to wait.<sup>134</sup>

Black representation on the FCC was not the only matter discussed at the Wells/Houser hearing. The unusual shifting of terms had not gone unnoticed. Chariman Pastore wanted to know why Wells was being allowed to resign a term that he already had in order to take a

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<sup>133</sup>Ibid., p. 29.

<sup>134</sup>Ibid., p. 5.

seven-year term, and why Houser was getting such a short, inconsequential appointment:

Is there some strategy behind this? What is essentially the situation on this? This has puzzled me. I am not going to make a Federal case out of this, but the fact remains that it is rather odd.<sup>135</sup>

No one at the hearing could answer Pastore's questions because at that time, only the President had the answer.

#### Reid Named to the Commission

The politically-complex answer to the question was Charlotte Reid, a five-term Republican Congresswoman from Illinois. President Nixon had personally given Reid a firm commitment that he would appoint her to the FCC. But Reid could not have been nominated in 1970, the year the Cox term expired, because of a constitutional provision which read:

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time. . . .<sup>136</sup>

In 1970, Congress had raised the salaries of FCC Commissioners, therefore disqualifying her for appointment to the Cox seat during that year. The next scheduled opening was not until 1972. At that time, it would be a Democratic vacancy which would be available. As a Republican, Reid could not be appointed to that seat either. That left 1971. The President's manipulation of appointments was to accommodate Wells and Reid. Houser, on the other hand, was simply filling the seat until Reid was able to take it over.

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<sup>135</sup>Ibid., p. 6.

<sup>136</sup>U.S. Constitution. Article I, Sec. 6.

This strategy had been accurately anticipated by the press as early as May 1970, but the press was unable to state why the White House was engaged in this strange maneuver.<sup>137</sup> Broadcasting was mystified concerning another aspect of this arrangement:

It is not clear why the White House has centered its plans to name a woman to the FCC on Mrs. Reid--other women would appear to be available. . . .<sup>138</sup>

What was it about Congresswoman Reid which compelled this long-term strategy to place her on the FCC? No one has ever said. She was not a lawyer, nor did she have a college degree. In Congress, she had significant committee assignments, but as Broadcasting reported, she did not leave "lasting impact" on Congress.<sup>139</sup> Chairman Burch was not involved in the decision to nominate her, even though he had an understanding with the White House that he was to be consulted on all FCC appointments. Charlotte Reid was selected by Richard Nixon, and it is the only instance of Nixon's personal involvement in an FCC appointment. After Nixon made the commitment, it was just a matter of working out the necessary details.

Commissioner Houser was, of course, cognizant of the widespread speculation that he was merely keeping the seat warm for Reid. All the same, he proved to be a diligent commissioner. At the time of his appointment, Broadcasting had expressed the hope that the new commissioner would "learn swiftly and follow the GOP party line at the FCC."<sup>140</sup> But by July, the magazine concluded that although the

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<sup>137</sup> Washington Star, May 3, 1970, p. H4.

<sup>138</sup> Broadcasting, May 11, 1970, p. 22.

<sup>139</sup> Broadcasting, January 29, 1973, p. 83.

<sup>140</sup> Broadcasting, March 1, 1971, p. 28.

"affable and hard-working" Houser "meant well," he had been "too often misled" by the "young activists" on his staff.<sup>141</sup>

On July 2, 1971, President Nixon nominated Charlotte Reid to a full seven-year term on the FCC, and simultaneously issued a letter thanking Houser for his services and asking him to remain on as a commissioner until October 1. Congresswoman Reid would be unable to take the seat until that time due to unfinished business with the Appropriations Committee. The White House did not release Houser's letter of resignation, but he issued a statement to the effect that he had seen "fully cognizant" of the fact that he had been appointed only to an "interim term," but he also noted that he would have accepted the "challenge" of reappointment had it been offered. He also agreed to serve the extra months until Reid could take over.<sup>142</sup>

In light of the persistent efforts for a black commissioner, it is difficult to say what the senatorial reaction would have been if the President had named another white male to the FCC. But Senator Pastore was still very concerned that there was no black FCC Commissioner. Prior to Reid's appointment, Pastore and Republican Senator Howard Baker of Tennessee had, as promised, visited the White House and made a "very strong appeal" for a black nominee. As a result, a commitment of sorts had been made during that visit. Pastore revealed these facts at Reid's nomination hearing. He said that the two Senators had received an "attentive ear" at the White House and he expressed

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<sup>141</sup>Broadcasting, July 12, 1971, p. 66.

<sup>142</sup>Broadcasting, July 12, 1971, pp. 38, 39.

the hope that "next time the President . . . would give very, very serious thought to appointing a black person, male or female, to the FCC."<sup>143</sup> Reid took her seat on the FCC on October 8, 1971, just as Commissioner Wells was submitting his resignation.

#### Nixon Appoints Wiley and Hooks

From the time Wells took his seat on the FCC in 1969, it was well-known that he would someday return to Kansas to run for Governor.<sup>144</sup> The Commissioner spent most of July 1971 in Kansas taking political soundings and talking to friends about the gubernatorial race. When his legal assistant at the FCC resigned in that month, Wells took no steps to replace him. He would, instead, rely on part-time assistance from the general counsel's office. Those who were watching said it looked like Wells was ready to move back to Kansas.<sup>145</sup>

Many were interested in taking the Wells term, including FCC General Counsel Richard Wiley. As it became more apparent that Wells would leave the FCC, talk of Wiley as his successor increased. On November 1, 1971, after just under two years service, Wells returned to Kansas. The White House officially stated that no decision had been made on his replacement.<sup>146</sup>

On November 30, Wiley was nominated, and then in January 1972, he was given a recess appointment to the FCC. Considering Senator

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<sup>143</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of Charlotte T. Reid, July 22, 1971, p. 6.

<sup>144</sup>Broadcasting, September 22, 1969, p. 20.

<sup>145</sup>Broadcasting, August 23, 1971, p. 33.

<sup>146</sup>Broadcasting, October 25, 1971, p. 21.

Pastore's position on nominating a black person to the commission and the "commitment" he had gotten from the President following the Wells/Houser nomination, the reason for the recess appointment seems obvious. Wiley would serve five months as a commissioner before the Senate acted on his nomination.

Since 1969, there had been pressures on the White House and the Senate Communications Subcommittee for a black FCC commissioner. The seat of Commissioner Bartley would be available in June 1972, and only black non-republicans were being considered. For three years, BEST had led the fight for a black commissioner. Now that it was about to occur, they were also deeply concerned about the sort of black person who would be named. As one BEST spokesman put it, "We don't want a dud, a guy who is shallow. Anyone who doesn't know broadcasting is useless to us."<sup>147</sup> Although the organization took no formal position, it was generally thought that BEST favored the selection of a black candidate who was a Washington communications lawyer and who had the support of Senator Brooke of Massachusetts.<sup>148</sup> It appeared as though Benjamin L. Hooks, another black candidate, had the nomination by early March, due largely to the support of Senator Baker from Tennessee. But no announcement came from the White House.

One possible reason for the delay in appointing Hooks was the fact that Nicholas Johnson was thinking about running for the Senate from Iowa, and resigning from the FCC. Broadcasting seemed delighted

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<sup>147</sup> Broadcasting, April 17, 1972, p. 23.

<sup>148</sup> Broadcasting, March 6, 1972, p. 17.

by the prospect of an early Johnson departure, which could "only elevate the agency's standards of responsibility and performance." To the magazine, it was "inconceivable" that a successor could be found with a "larger ego and more blinding prejudices."<sup>149</sup> Obviously, the industry's attitude toward Johnson had not mellowed over the years. Few regulatory commissioners have gone on to win elective office, and Johnson carefully considered his decision. After much thought, he decided to remain on the FCC, due largely to financial reasons.<sup>150</sup>

On April 12, 1972, President Nixon named Benjamin Hooks to the FCC. Hooks became the first black man ever to serve on that commission. Wiley and Hooks had a joint confirmation hearing, where representatives of BEST expressed their support of nominee Hooks. William Wright, BEST national coordinator, noted the important role which had been played by the subcommittee chairman: "It was your strong support, Senator Pastore, for the need for a minority commissioner which made it a political reality."<sup>151</sup>

#### The Impact of Watergate on FCC Appointments

The largest electoral majority in the nation's history put Richard M. Nixon into his second term of office. Confronted by such an overwhelming mandate, the influence of the Democratic-controlled Congress was low. As late as May 1973, an article in The New York

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<sup>149</sup>Broadcasting, March 13, 1972, p. 74.

<sup>150</sup>Broadcasting, March 27, 1972, p. 38.

<sup>151</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nominations of Richard E. Wiley and Benjamin L. Hooks, May 23, 1972, p. 104.



Times characterized the Senate's role in agency appointments as "diminishing."<sup>152</sup> The commissions were all fast becoming the strongholds of Nixon Republicanism which many had feared and anticipated. Nixon's first appointments after the election gave every indication that the administration was determined to exercise more vigorous control over the regulatory agencies.

Since the beginning of the Nixon Presidency in 1969, the Senate had confirmed the President's regulatory appointments provided there was no evidence of unfitness, moral flaws, or conflicts of interest in the nominee's background--in other words, unless the nominee was clearly unqualified. The Senate, with some exceptions, had assumed a comparatively passive role, reflecting the belief that the President was entitled to the widest possible latitude in selecting members of the commissions. Events in March, April, and May 1973 changed that attitude for the duration of the Nixon Administration.

According to Kramer and Graham, a regulatory agency appointment rarely commands the close personal attention of the President:

. . . even in the best of times, the Chief Executive typically becomes involved only when the final decision is made to nominate one person from a list of several possibilities. On these matters, staff judgments are of critical importance.<sup>153</sup>

In 1973 and 1974, Nixon governed in the worst of times. His attention and energy were diverted again and again by the scandals which would eventually result in his downfall. By all indications, Nixon had never taken a major interest in selections for the independent commissions. In the last 18 months of his presidency, events

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<sup>152</sup>New York Times, May 6, 1973, p. 1.

<sup>153</sup>Kramer and Graham, Appointments to the Regulatory Agencies, p. 315.

diminished even that comparatively marginal commitment. Indecision, delay, and confusion marked the last appointments of President Nixon. It is known that White House Chief of Staff Alexander Haig played an inordinately-important role in domestic matters, including appointments to agencies such as the FCC.<sup>154</sup> Secretary of State Henry Kissinger was also heard to remark that Nixon "barely" was able to govern during that time,<sup>155</sup> and, "Watergate pervaded everything."<sup>156</sup>

It cannot be doubted that Watergate was the principal factor which accounted for an historic reassertion by the Senate of its role in the appointive process. In the period of this study, no President was subjected to a more thorough scrutiny of his agency appointments. The change in the Senate's attitude paralleled the events concerning Watergate.

Against a background of increasingly alarming and incredible Watergate disclosures, Senate Commerce Committee Chairman Warren Magnuson addressed the Consumer Federation of America on May 7, 1973. After nearly 20 years as chairman of the committee which reviewed nominees to most of the regulatory agencies, no person was more qualified to speak on the quality of regulators than Warren Magnuson. In his speech, Magnuson announced the policy that would govern his committee's future action on regulatory appointments:

We have always given the President--without regard to party--the benefit of the doubt on commission appointments. We have

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<sup>154</sup> Broadcasting, July 15, 1974, p. 32.

<sup>155</sup> Washington Post, October 16, 1975, p. 1.

<sup>156</sup> Broadcasting, August 26, 1974, p. 17.

always believed that the President, elected by a mandate of the people, is entitled to have serve him the men and women he chooses--unless they are clearly disqualified. But I must tell you that we have swallowed nominees by this administration who have left a bitter aftertaste and our tolerance for mediocrity and lack of independence from economic interests is rapidly coming to an end.<sup>157</sup>

Because of Watergate then, the Senate began to play a new role in the appointive process. It demonstrated not only a willingness to reject a nominee it found unacceptable, but also an insistence upon being involved in the criteria which governed a particular selection. As a result of both actions, the process of selection began to open up for Senate as well as public participation. Broadcasting noted that development in reference to an upcoming vacancy on the FCC.

From the days of the old Federal Radio Commission right up to the most recent past, participation in the Presidential selection of members of the body regulating the Nation's communications industries was regarded as limited to a very few. White House aides, key members of Congress, perhaps influential industry leaders would offer their suggestions to the President. And that was it. Everyone else just waited. But no more.<sup>158</sup>

#### The Quello Controversy Begins

During this period there was a large number of candidates working to secure the Democratic vacancy on the FCC which would be available when the term of Nicholas Johnson expired in June 1973. There was no doubt that Johnson would not be reappointed. The campaigns for that seat were not only vigorous, they were also unusually

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<sup>157</sup> Warren G. Magnuson, "Remarks Before the Consumer Federation of America Dinner," May 7, 1973, p. 3.

<sup>158</sup> Broadcasting, May 14, 1973, p. 21.

above-board and public. One particularly forceful candidate even went so far as to openly announce his candidacy in early January with news releases prepared, at no cost, by a friend who was a public relations specialist. This had never been done before. To many observers, James Quello damaged his own chances for selection by such overt actions. Broadcasting scoffed at his chances and lightheartedly reported the details of his campaign under the headline, "The Selling of Quello."<sup>159</sup> Six months later no one would be laughing.

Quello, a commercial broadcaster from Detroit, was a relative unknown on the national scene. He began his campaign for the FCC by severing his ties with the broadcasting industry. In September 1972, he took an early retirement as vice-president and station manager of WJR-TV in Detroit. In the same year, he resigned his various positions in both state and national associations of broadcasters. A nominal Democrat seeking a non-Republican seat, Quello then contributed \$1,100 to the reelection campaign of Richard Nixon. By the end of 1972, Quello was a part-time consultant for Capacities and Storer Broadcasting in their Washington, D.C. offices. He severed that final connection in March 1973. His FCC campaign was in full swing by January 1973. By that time, he had obtained the support of most of the Michigan congressional delegation, including Senator Robert Griffin and House Republican leader Gerald Ford.

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<sup>159</sup>Broadcasting, January 8, 1973, p. 34.

Ford--who later as Vice-President would be in a critical position to assist Quello--had been enthusiastically supporting the Detroit broadcaster for "some months" prior to January. Finally, Quello managed to secure the support of Democratic Senator Phillip Hart of Michigan, an endorsement which would later be of enormous significance.<sup>160</sup>

It can be safely assumed that Quello did not neglect to contact his influential friends in broadcasting, but his candidacy does not appear to have been initiated by the industry. Rather, it seems to have been largely self-motivated. Quello wanted the FCC seat to top off a career of 28 years in broadcasting: "I'm not using the appointment as a steppingstone to a high paying job in the industry and I'm not a lawyer who's going to use it to obtain high paying clients from industry."<sup>161</sup> After months of effort, Quello was still not one of the leading candidates identified by Broadcasting in May 1973, although his chances had noticeably improved by mid-June.<sup>162</sup>

In early July, an "administration spokesman" was quoted as saying that broadcasters as a group had been eliminated from consideration for the FCC seat.<sup>163</sup> There were also persistent reports that

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<sup>160</sup>Broadcasting, June 30, 1973, p. 9; January 28, 1974, p. 6; Washington Star, August 27, 1973, p. A12.

<sup>161</sup>Washington Star, August 27, 1973, p. A12.

<sup>162</sup>Broadcasting, May 14, 1973, p. 21; June 11, 1973.

<sup>163</sup>Broadcasting, July 2, 1973, p. 24.

both FCC Chairman Dean Burch and Office of Telecommunications Policy Director Clay Whitehead opposed the selection of any broadcaster for the Commission.<sup>164</sup> But this did not stop Quello, and by late July, published reports listed him as the frontrunner and his nomination was considered likely. The actual facts of what had happened behind the scenes to get Quello nominated are not now known. According to Broadcasting, executives of the American Broadcasting Co. and other influential industry spokesmen intervened forcefully on Quello's behalf. But the key was Congressman Gerald Ford, the House Minority Leader. By all accounts Ford put himself on the line for Quello and insisted that the Detroit broadcaster be promptly named to the FCC. There was every reason to believe that Ford took Quello's case directly to the President.<sup>165</sup>

When it became clear that President Nixon did intend to send Quello's name to the Senate, the reaction was one of stunned disbelief in consumer group circles. Under most circumstances, the nomination of life-long broadcaster to the FCC would arouse opposition from those groups. But in this particular instance, the selection was aggravated by the fact that Quello would replace Nicholas Johnson, one of the most outspoken champions of the public interest ever to sit on that commission. For almost all of his term, conservative broadcasters had done everything they could to discredit Commissioner Johnson and encourage or force his early departure from the agency. Johnson

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<sup>164</sup>Broadcasting, August 13, 1973, p. 60.

<sup>165</sup>Broadcasting, November 12, 1973, p. 101; April 15, 1974, p. 16.

naturally did not expect reappointment from the Nixon administration, and he was ready to vacate his offices on June 30, the day his term expired, if his successor had been qualified. When it became apparent that the President was not yet prepared to name a replacement on that date, Johnson found the situation "just hilarious."<sup>166</sup> Under the law, Johnson could continue to serve until his successor was confirmed and took his seat. Throughout the summer, there was no announced decision from the White House, and Johnson remained on the FCC.

By mid-August, public interest activists decided that it was time to act, and for the first time in FCC history, a public effort by consumer groups was launched against a would-be commissioner who had not yet been nominated. It was an organized effort, generating a number of letters from various citizen groups opposing Quello. Familiar names in public interest circles such as Ralph Nader, Tracy Westen, Robert B. Choate and, on FCC stationery, Nicholas Johnson, committed themselves against Quello. His adversaries emphasized four arguments: the FCC was already very responsive to the broadcast industry and, with the departure of Johnson, it would lose its sole consumer activist. Quello would be unlikely to have a consumer orientation after 28 years in broadcasting; with its powerful trade association, journals, and legal talent, the broadcast industry had every resource at its command and the selection of a

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<sup>166</sup> Washington Post, July 2, 1973, p. B3.

broadcaster would be "overkill"; the would-be nominee had not demonstrated a record of either interest or commitment to consumer concerns; and, other than being a station manager who had shown he could produce profits, what were Quello's qualifications for the FCC?<sup>167</sup>

Public interest activists also investigated Quello's background and uncovered a potentially-embarrassing memorandum written three years earlier. In February 1971, a vice-president of Capital Cities Broadcasting Corp. visited station WJR in Detroit in connection with the company's equal employment opportunity program to review the station's progress in minority hiring. During that visit he spoke with station manager Quello, and thereafter reported that Quello was "unfortunately out of contact with minority problems" and had little, if any "perception of the problem."<sup>168</sup>

Quello was reluctant to comment on the memorandum. He did promise to rebut the contention that he was insensitive to minority needs at his Senate hearing providing, of course, the President chose to nominate him. Quello also had friends in Detroit's black community. He had been active in various civic endeavors for many years, including 20 years of service on that city's housing and urban renewal commission. Those friends now demonstrated their support, and the White House received many endorsements for Quello from Detroit's black community.<sup>169</sup>

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<sup>167</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearings on nomination of James H. Quello, January 28, 1974, pp. 115-134.

<sup>168</sup>Broadcasting, September 3, 1973, p. 18.

<sup>169</sup>Broadcasting, September 3, 1973, pp. 18-19.



Several weeks after the disclosure of the memorandum, columnist Jack Anderson reported that executives of Capital Cities Broadcasting Corp. had poured at least \$120,000 into the Nixon reelection campaign, and that Quello had himself donated \$2,200. But further investigation lessened the impact of the Anderson report. Quello had contributed \$1,100, not \$2,200, to the Nixon campaign and some of the other donors had little or only marginal association with Capcities.<sup>170</sup> The implication that Quello and his associates had bought a seat on the FCC was not substantiated.

Broadcasting, which had become one of Quello's strongest allies, was not impressed by the opposition and did all it could to minimize its effect: "The Nick Johnson clique of foundation-supported activists is being rallied. . . recruiting those little bands of citizens to action." The magazine's editors could not agree with the notion of the "pro-Johnson gaggle" that FCC seats should be "parceled out according to constituencies."<sup>171</sup>

There had been so much public controversy over Quello that it was almost anticlimatic when, on September 21, 1973, the White House announced his nomination to the FCC. Even so, the initial reaction from Congress was chilling. Senate Communications Subcommittee Chairman Pastore was in no rush to act on the nomination. According to a "committee source," the confirmation hearing would "probably be later than sooner."<sup>172</sup> Several days later, Senator Moss formally requested

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<sup>170</sup>Broadcasting, September 24, 1973, p. 3.

<sup>171</sup>Broadcasting, September 3, 1973, p. 3.

<sup>172</sup>Washington Post, September 21, 1973, p. B-8.

that no action be taken until the nominee responded in writing to a set of questions.<sup>173</sup> It was apparent that the confirmation of Quello as an FCC member was a long way away.

October and November were months of uncertainty for both the candidate and the FCC. In those months, discussions occurred with the White House staff over the nomination and, at one point, Senator Pastore attempted without success to convince the White House to nominate Quello to the Civil Aeronautics Board rather than the FCC.<sup>174</sup> A committee staff member was quoted as saying that the nomination would "hang twisting in the wind for a long time to come."<sup>175</sup> Meanwhile, Quello was pressing for a hearing date with his many supporters in Congress and Broadcasting editorials asked the Senate leadership to overcome its "excessive regard for legislative privilege."<sup>176</sup>

December 1973 proved to be an eventful month, not only for Quello, but for the FCC as well. First, perhaps through the efforts of Senator Hart,<sup>177</sup> a confirmation hearing was finally scheduled for late January. About the same time, however, the possibility of appointing Quello to the FCC once Congress recessed was ruled out due to commitments to Senatore. There would be no "backdoor appointment" for

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<sup>173</sup>Broadcasting, October 1, 1973, p. 4.

<sup>174</sup> Quello Senate Hearing, p. 199.

<sup>175</sup>Advertising Age, November 12, 1973, p. 101.

<sup>176</sup>Broadcasting, October 1, 1973, p. 58; October 15, 1973, p. 5.

<sup>177</sup>Broadcasting, April 15, 1974, p. 16.

Quello.<sup>178</sup> Meanwhile, Commissioner Johnson had decided that he did not want to continue serving indefinitely while awaiting the confirmation of his successor and on December 5, 1973, he resigned from the FCC.

Quello Finally Confirmed; Robert E. Lee Renominated;

Robinson and Washburn Appointed

The hold-up on the Quello nomination and the departure of Johnson had a direct effect on FCC Chairman Dean Burch. For many months, there had been widespread speculation that Chairman Burch was anxious to resign, and his denials to the contrary were not convincing.<sup>179</sup> With Johnson gone, Burch's resignation would have left the agency with only five commissioners, and the Chairman confirmed that his plans were very much affected by that fact.

I have an obligation to the Commission to leave it in as good shape as I can. And leaving it with two vacancies is not a good idea. So we're back to where I was, the key is the Quello seat.<sup>180</sup>

Burch said he would wait until the Senate acted and, whether Quello was confirmed or not, he would depart thereafter.

Burch's plans were further complicated a few days after he made that statement when Commissioner H. Rex Lee suddenly announced his resignation. Lee, who had been serving since President Johnson

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<sup>178</sup> Broadcasting, December 10, 1973, pp. 19-20.

<sup>179</sup> Broadcasting, May 14, 1973, p. 9; July 9, 1973, p. 58; September 3, 1973, p. 17; October 8, 1973, p. 5; October 15, 1973, p. 5.

<sup>180</sup> Broadcasting, December 10, 1973, p. 19.

had appointed him in 1968, was the second Democrat to quit in ten days. After 38 years of Government service, the 63-year-old Lee may have been influenced by a Government plan to induce officials with long years of service to retire early and gain additional benefits prior to January 1, 1974.<sup>181</sup> Lee's resignation seemed to foreclose any possibility of Burch leaving the FCC until replacements were named.

Quello eventually got his Senate hearing in January and February 1974. Stretching over eight days and filling more than 400 pages of printed record, it was undoubtedly the most intensive hearing ever conducted on a regulatory nominee. The exhausting nature of the lengthy sessions moved one Senator to say, "We've spent more time on this hearing than on the hearing to confirm the Secretary of Defense."<sup>182</sup> Seven Congressmen or Senators, an ex-mayor of Detroit, a Federal judge and former FCC Commissioner Nicholas Johnson testified on the nomination. More than a dozen public interest or consumer groups appeared and voiced either their support or opposition. When the hearings were adjourned on February 6, 1974, no decision on the nomination had been reached.

Meanwhile FCC Chairman Burch was ready to leave the commission. Burch had been asked to remain in government, not with the FCC but at the White House as a presidential advisor. In March 1974,

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<sup>181</sup>New York Times, December 14, 1973, p. 87; Broadcasting, December 17, 1973, p. 20-21.

<sup>182</sup>Broadcasting, February 4, 1974, p. 6.

Burch left the FCC to become Counselor to the President with Cabinet rank in the crumbling Nixon administration.<sup>183</sup>

The FCC was left with four members and no chairman. Of the four remaining FCC members, Richard Wiley seemed to be the logical choice for chairman. He had been a commissioner since January 1972. Several days after the chairman's departure was announced, President Nixon elevated Wiley to the chairmanship effective on the date of Burch's departure.

The Wiley selection was well received in industry circles. For example, Broadcasting felt certain that its constituency would be comfortable with the hard-working Wiley and that his appointment represented the "beginning of a less turbulent period of regulation."<sup>184</sup> With so much uncertainty over the makeup of the FCC, Senator Pastore and others were reluctant to take any final action on the Quello confirmation until there was an indication of administration plans for the remaining vacancies.

President Nixon's FCC appointment decisions had never been marked with promptness. During his first term of office, only one of his appointees to that agency was qualified to assume the seat when the vacancy occurred. Often the result of complex political maneuverings, delays were a major characteristic of Nixon's appointments to the FCC from 1969 to 1973. FCC nominations, which never appeared to receive the close, personal attention of the President, were hardly

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<sup>183</sup> Washington Post, February 16, 1974, p. A1.

<sup>184</sup> Broadcasting, January 21, 1974, p. 5; June 17, 1974, pp. 28-29.

priority matters as the Watergate crisis deepened in 1974. For the first half of that year, it is not unfair to state that the Commission barely functioned. Important issues had to be set aside until vacancies were filled, and there were times when it was uncertain whether there would be a quorum to conduct any business at all.<sup>185</sup>

There was now a need for prompt action on Quello since Commissioner Robert E. Lee was in Geneva attending an international conference and the FCC had only three members, one short of a quorum. Quello was confirmed a few days later, culminating one of the longest ordeals experienced by any regulatory agency nominee. About a year and a half had passed since he first declared his candidacy for the FCC. Quello had overcome the opposition of men such as Dean Burch and Nicholas Johnson, the organized assault by consumer groups. An embarrassing memo charging insensitivity to minority needs, and the most extensive inquiry ever conducted by the Senate into a regulatory agency nomination.

On May 21, 1974, the White House announced that Robert E. Lee would be renominated to a fourth term; Glen O. Robinson, a law professor from the University of Minnesota, was nominated to the Democratic opening; and Abbott Washburn, a Nixon loyalist with years of experience in both the private and public sector in international communications, was picked for the Republican seat. As expected, the appointments did not prove to be controversial, partially because of the backgrounds of the appointees and partially because Washburn had

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<sup>185</sup>Washington Post, March 25, 1974, pp. B1-2.

been appointed for only one year, and Robinson for only two years. Judgment could therefore be made on their performance before they received full terms.

For the first time since 1969, representatives from citizen groups were not present at an FCC nomination hearing. Confirmation followed without incident, and the FCC--after months of disruption--again had seven members. When Lee, Robinson and Washburn were sworn in on July 10, 1974, it was, at last, a Nixon commission with every member having been appointed or reappointed by the Republican President. That event preceded the end of the Nixon administration by only a matter of weeks.

#### The Ford Presidency; White and Fogarty Appointed

On August 8, 1974, President Richard M. Nixon resigned from office in disgrace. The next day, Gerald Ford became President. Ford made no new FCC appointments in 1974 or 1975. The short term Abbott Washburn had received the year before expired on June 30, 1975, and he was interested in reappointment. Although there was some speculation that the Ford administration might use the Washburn seat to name its own FCC Chairman to replace Wiley, Washburn was quickly re-nominated. That action was taken as a reaffirmation of the leadership of Chairman Wiley.<sup>186</sup> The FCC had reached a level of stability that had not been experienced before in the period of this study.

Early in 1976, Commissioner Robinson let it be known that he was not interested in reappointment when his term expired June 30, 1976.

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<sup>186</sup>Broadcasting, April 7, 1975, p. 6; June 2, 1975, p. 21; June 23, 1975, p. 19.

As early as March, Broadcasting was speculating who would be President Ford's first selection for the FCC.<sup>187</sup> By the middle of May, there was still no decision at the White House on Robinson's successor. Joseph Fogarty, counsel to the Senate Communications Subcommittee, was regarded as the front runner because of his Congressional support, although the administration insisted that other candidates remained in the running. There were reports that a "deal" had been made with Senator Baker on Fogarty's behalf, which the President firmly denied.<sup>188</sup>

Before the month was out the commission was faced with another vacancy. Commissioner Charlotte Reid provided a "double-barreled surprise" when she got married and announced her resignation from the FCC effective July 1, two years before the end of her seven-year term.<sup>189</sup> The announcement came as a complete surprise to the FCC as well as to the President, who now had two appointments to make instead of one.

President Ford surprised the industry by naming Margita White, assistant news secretary and director of the White House Office of Communications, to a full seven-year term on the FCC. Fogarty, who had long been expected to be named, was not even mentioned to fill Reid's unexpired term.<sup>190</sup> One factor that possibly caused the delay

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<sup>187</sup> Broadcasting, March 1, 1976, p. 7.

<sup>188</sup> Broadcasting, May 17, 1976, p. 7.

<sup>189</sup> Broadcasting, May 31, 1976, p. 24.

<sup>190</sup> Broadcasting, July 19, 1976, p. 30.



in the expected nomination of Fogarty was the quiet but insistent campaign of Dr. Paul Stevens, President of the Radio Television Commission of the Southern Baptist Convention. Dr. Stevens had acquired a following among broadcasters who were pushing for his appointment.<sup>191</sup> Congressional support won out and a week later, Fogarty was nominated to the two-year term.

According to Broadcasting, the expectation was that White, a Republican, would receive the two-year term, and Fogarty, a Democrat, would be named to the full seven-year term. That seemed to be the most a Republican President could expect from a Democratic Senate four months before an election which could place a Democrat in the White House. It was commonly thought that the Senate might refuse confirmation to a Republican for any term and thus make it possible for a Democratic President, if one took office in January, to name another Democrat to the agency and give it a four-member Democratic majority. This, on top of the fact that Senate Communications Subcommittee Chairman Pastore was one of Fogarty's principal supporters, seemed to assure the denial of confirmation of White's FCC nomination. Nevertheless, President Ford chose to name White to the full term. The reason, White House sources said, was simply that Ford, as a Republican, wanted to name a Republican to the longer term.<sup>192</sup>

As soon as the Fogarty nomination was announced, the White nomination ran into trouble. Mrs. White's husband was a lawyer

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<sup>191</sup>Broadcasting, July 5, 1976, p. 5.

<sup>192</sup>Broadcasting, July 19, 1976, p. 31.

specializing in tax law, but his firm, Hamel, Park, McCabe & Saunders, had some communications clients, including AT&T and some broadcast stations. Senator Pastore voiced concern that a possible conflict of interest problem might arise. He said his staff was "looking into" the problem and that the Fogarty and White nomination hearings would have to await the outcome of the investigation. Pastore's remarks surprised the White House, which evidently believed the problem had already been resolved. The subcommittee had been told of the possible conflict and that White's husband had "taken every possible effort to make sure there would be no conflict of interest" at some "financial sacrifice" before the White nomination was finalized. Some White supporters accused Pastore of attempting to sidetrack her nomination to move Fogarty's. Pastore denied these accusations.<sup>193</sup>

The joint nomination hearing for Fogarty and White was held on August 24, 1976. During that proceeding, it became apparent that Senate confirmation of Fogarty was virtually assured and that confirmation of White was in trouble. At the hearing, Fogarty met no opposition from committee members. He read a prepared statement, the content of which was primarily in praise of his mentor, Senator Pastore, who would be retiring at the end of the Congressional session. He was asked no substantive questions.<sup>194</sup>

White's appearance before the committee lasted considerably longer. Both candidates had been required to submit written answers

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<sup>193</sup>Broadcasting, July 26, 1976, p. 22.

<sup>194</sup>U.S. Senate, Committee on Commerce, Sundry Nominations. Hearing on nominations of Joseph R. Fogarty and Margita White, August 24, 1976, pp. 26-28.

to questions concerning regulatory philosophy. While Fogarty's answers were simply made part of the record, White was intensively questioned concerning her responses.<sup>195</sup> Representatives from citizen groups, including former FCC Commissioner Nicholas Johnson from the National Citizens Communications Lobby, were again present at this hearing. Six groups were represented, though their arguments opposing White were essentially the same. They had nothing against White personally and in fact found her to be a "well educated and bright woman." But, as Nicholas Johnson said,

My concerns with Mrs. White's nomination are, in brief, as follows: (1) Mrs. White brings to this position no outstanding qualifications for the position that would warrant extraordinary treatment of her nomination. . . . There is really nothing in her background that demonstrates any preparation or inclination for this type of policy making position. (2) The process by which President Ford selected her shows absolutely no sensitivity on his part to the procedures necessary to insure that the best candidate is chosen. (3) There is no reason to believe, and some reason to doubt that Mrs. White will use her position on the Commission to fight for the rights of citizens or to protect the consumer. (4) As this committee well knows, serious questions of conflict of interest have arisen which, at the very least, would create an awkward situation at the commission that could seriously hamper its effectiveness. (5) With a Presidential election a couple months away, there is clearly no reason to rush and some merit in waiting for the outcome.<sup>196</sup>

While Johnson, speaking for NCCL, endorsed the nomination of Fogarty, he questioned any nominations made by President Ford.

We are being governed by a President who has been elected as neither President nor Vice-president and has only narrowly just received the nomination of his own party. We have coming up, in two short months, an opportunity to hear from the

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<sup>195</sup>Ibid., pp. 43-49.

<sup>196</sup>Ibid., pp. 77-78.

people. We are dealing here with a seven year appointment, a term that will last well through that of whoever is elected President in November. There is good reason to wait. . . .<sup>197</sup>

Speaking in her own defense, White promised to disqualify herself from any proceeding in which her husband's firm participated, which, she said, would amount to a "very small" proportion of the FCC's business. Even so, she said she was surprised at the conflict of interest issue with respect to her FCC nomination.

It still is inconceivable to me that anyone would think that my husband's law firm associates, whom I see only rarely on social occasions, would influence my thinking or that the assumption prevails that a husband makes his wife's decisions for her.<sup>198</sup>

No decision was reached on the appointments and the committee planned to meet again on August 31 in executive session to consider both nominations.

Acting on advice which came from that August 31 meeting, President Ford, in another surprise move, switched the terms of his two nominees. The seven-year term granted to White was withdrawn, and she was instead nominated to the remaining two years in the unexpired term of Charlotte Reid. Fogarty was renominated to the seven-year term. Senator Pastore approved the switch and said that giving White the two-year term alleviated the conflict of interest difficulty because it gave Congress "an opportunity to monitor her." Although Pastore again denied that he engineered this move on Fogarty's behalf, the nominations

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<sup>197</sup> Ibid., p. 80.

<sup>198</sup> Ibid., p. 46.

were now the way he wanted them.<sup>199</sup> Following the exchange of terms, both White and Fogarty were confirmed by the Senate with no further problems.<sup>200</sup> Fogarty took his seat on September 17, 1976, and White took hers on September 23, 1976.

Because 1976 was a presidential election year, there was much speculation concerning what effect the election would have on the FCC. Ford could have selected a new FCC Chairman when he took office, but chose not to do so, possibly because of the unusual circumstances surrounding his rise to the presidency. If Ford won in November, Broadcasting predicted he would name Robert E. Lee to the chairmanship.<sup>201</sup>

As early as March 1976, before it was even known who the Democratic candidate for president would be, there was speculation that a Democratic victory would put Commissioner Hooks in the Chairman's seat. When Jimmy Carter became the party's candidate, it was almost certain that Hooks would be his choice for FCC Chairman.<sup>202</sup>

Even though Carter was elected President of the United States in November, Hooks never became FCC Chairman. On November 6, 1976, Hooks announced that he would resign from the FCC to become executive director of the National Association for the Advancement of Colored People.<sup>203</sup> Hooks agreed to stay on at the FCC until January, thereby

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<sup>199</sup>Broadcasting, September 6, 1976, p. 31.

<sup>200</sup>Broadcasting, September 13, 1976, p. 23.

<sup>201</sup>Broadcasting, September 20, 1976, p. 9.

<sup>202</sup>Broadcasting, March 22, 1976, p. 9; May 3, 1976, p. 7; August 16, 1976, pp. 22-23.

<sup>203</sup>Broadcasting, November 15, 1976, p. 26.

insuring that the new President would be making the appointment to fill his seat.

#### A Proposed New Communications Act?

By the end of 1976, the total number of broadcasting stations operating in the United States exceeded 9,000. The areas over which the FCC regulated had expanded to the point that the agency was ruling on everything from "television reruns" to "data processing." In light of this regulatory overload, probably the most significant development in the regulation of broadcasting came, not from the FCC, but from Congress. In August 1976, House Communications Subcommittee Chairman Lionel Van Deerlin proposed a "basement-to-penthouse" revision of the Communications Act of 1934.<sup>204</sup>

A Broadcasting editorial pointed out that the 1934 Act was written "before FM broadcasting, before television broadcasting, before computers, before communications satellites, before lasers, before fiber optics."<sup>205</sup> The serviceability of an act that so predates the devices and systems it was supposed to regulate would naturally be open to question. As 1976 drew to a close, the project was "just an embryo" which would be several years in the writing.<sup>206</sup>

The regulatory scene became increasingly more complicated between 1961 and 1976 for several reasons. First, there were many more participants involved: new broadcasting stations, new media,

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<sup>204</sup> Broadcasting, August 9, 1976, p. 19.

<sup>205</sup> Broadcasting, August 16, 1976, p. 66.

<sup>206</sup> Broadcasting, November 22, 1976, p. 20.

and groups familiar with and interested in the regulatory process. Second, the roles these participants played were constantly changing. Third, increasing numbers of participants and changing roles had forced new ways of viewing problems. Fourth, the proliferation of stations and services produced greater competition within the industry. At the close of 1976, there was at least some reason for industry optimism concerning broadcasting regulation. There was a new President, two new FCC Commissioners, and plans for a new Communications Act.

## CHAPTER IV

### AN ANALYSIS OF COMMISSIONERS CAREERS AND QUALIFICATIONS

This chapter will analyze the collective backgrounds and careers of the 20 men and two women who served on the FCC from January 1, 1961 to December 31, 1976. The analysis which follows is an update of an earlier study done by Lawrence Lichty.<sup>1</sup> As such, the data will be presented and then compared to the results of Lichty's study.

#### I. THE COMMISSION

From January 1, 1961, to December 31, 1976, 22 persons served on the FCC. Six men were appointed Chairman. Of these, Dean Burch served only as chairman. The other five were regular members of the commission as well.

#### Length of Service

The length of time various commissioners have served on the FCC varies a great deal, but this can be misleading. The extremes run from Commissioner Robert E. Lee, who had served more than 23 years when the period of this study ended and is still on the commission,

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<sup>1</sup>Lawrence W. Lichty, "Members of the Federal Radio Commission and Federal Communications Commission 1927-1961," Journal of Broadcasting 6 No. 1. (Winter 1961-62): 23-24. and Lawrence W. Lichty, "The Impact of FRC and FCC Commissioners' Backgrounds on the Regulation of Broadcasting," Journal of Broadcasting 6 No. 2 (Spring 1962): 97-110.



to Commissioner Houser, who served only 10 months (See Table 1). A regular term of office on the FCC is seven years. However, Commissioners such as Houser are appointed on a temporary basis to complete the terms of regular members who retire prior to the expiration of their appointment. Others such as Lee are reappointed for successive terms.

Considering the 22 commissioners who served during this period, six served at least one complete term, five served at least four years, and five served at least two years. The mean length of service was 6.4 years, almost two years longer than the 4.5 years found by Lichty. However, this figure is confusing because three commissioners served unusually long terms. The median, 4.5 years might be a more accurate representation of the average length of time served.

TABLE 1  
LENGTH OF SERVICE OF COMMISSIONERS

Term of Service	Number
Less than 12 months	3
13-59 months	10
60-119 months	6
Over 120 months	3
Mean length of service	6.4 years
Median length of service	4.5 years

Age at Appointment

The mean age at appointment to the commission was approximately 46 years. However, when the four Kennedy appointees (Cox, Henry, Loevinger, and Minow) were compared to the remaining 18 commissioners, the mean age of the Kennedy appointees was 41 with the remaining members averaging 47 years of age. When age of commissioners at appointment is summarized, two were under 35, eight were under 45, seven were under 55 and five were 60 and under; see Table II. This finding is consistent with Lichty, although the average age is two years younger than the 48 years old he found.

TABLE II

AGE AT TIME OF FIRST APPOINTMENT  
TO THE COMMISSION

Age	Number
Under 35	2
35-44	8
45-54	7
55-60	5
61 and over	0

II. POLITICS AND THE COMMISSION

The Communications Act of 1934 requires that not more than four commissioners shall be members of the same political party. Eleven Republicans and 11 Democrats served on the FCC between 1961 and 1976.

Presidents Making Appointments to the Commission

Four presidents of the United States made appointments to the FCC between 1961 and 1976. However two Truman appointees and two Eisenhower appointees were considered as well because of the length of their commission service. President Nixon made nine appointments to the FCC, the most of any President in this period (See Table III).

TABLE III

PRESIDENT MAKING ORIGINAL APPOINTMENT FOR  
COMMISSIONERS BY POLITICAL AFFILIATION

	Democrats	Republicans	Total
Truman	1	1	2
Eisenhower	0	2	2
Kennedy	4	0	4
Johnson	2	1	3
Nixon	3	6	9
Ford	1	1	2

Party affiliation has not been a reliable predictor of voting on the FCC. In an attempt to quantify the relationship between party and voting, Cannon applied bloc<sup>2</sup> and Gutman scaling techniques to the analysis of the voting behavior of the nine commissioners serving between 1963 and 1967. Cannon concluded that party affiliation was related to voting only for broad issues such as programing regulation and licensing criteria. In addition, the Kennedy appointees when considered as a

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<sup>2</sup>Bloc scaling technique, developed by Schubert and Sprague, attempts to explain the occurrence of varying patterns of voting behavior. It examines the dissent pattern and level of interagreement within the voting body.

group tended to have similar philosophies toward broadcast regulation.<sup>3</sup> The tendency of the four Kennedy commissioners to vote as a block on many issues suggests that they were selected for their similarity of philosophy to strengthen broadcast regulation. Cannon found that Cox voted to strengthen federal regulation on all issues between 1963 and 1967, while Henry voted for selected issues such as licensing criteria.<sup>4</sup> One exception to the trend of Kennedy appointees was Lee Loevinger. Although he was a Democrat, Loevinger rarely voted with the other Democrats appointed by Kennedy. Again Lichty's findings were supported as political party was found to be a poor predictor of regulatory philosophies.<sup>5</sup>

#### Politics and Chairmen

The politics of the chairman of the FCC have generally followed party lines. All chairmen under Kennedy were Democrats and all chairmen under Nixon and Ford were Republicans. When President Johnson named Hyde to the chairmanship, it was the first time in history of the FCC that a president appointed a chairman from the opposing political party. Republicans dominated the chairmanship during this period. The only Democrats appointed to chair the FCC were Minow and Henry. Republicans were Ford, Hyde, Burch and Wiley.

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<sup>3</sup>Bradley, C. Cannon, "Voting Behavior on the FCC," Midwest Journal of Political Science 13: 587-612 (November 1969).

<sup>4</sup>Ibid., p. 600.

<sup>5</sup>Ibid.; Lichty, "Background," pp. 25-26.

### III. GEOGRAPHICAL DISTRIBUTION OF COMMISSIONERS

If the states are classified into the geographical regions devised by the Bureau of Census, the table of sectional distribution for the commissioners can be shown most clearly (See Table IV). More commissioners, five, have come from Illinois than any other of the states. Three have been residents of Minnesota, and Washington, D.C. and Tennessee have had two members each. The states of Rhode Island, New York, Michigan, Iowa, Kansas, West Virginia, Texas, Arizona, Idaho, and Washington have each contributed one commissioner. Thirty-seven of the fifty states did not have a resident on the FCC during this period. Lichty found that most commissioners during the period of his study came from New York, Texas, Washington, D.C., and Ohio. In Lichty's study, the eastern states were overrepresented. In the present study, the majority of the commissioners come from the midwest.

But the above does not automatically, or necessarily, give a clear picture of the geographical representation of the Commission. Legal residence can be confusing. Commissioner Rosel Hyde, for example, was legally a resident of Idaho and thus represents (at least in Table IV) that state; but Hyde has, in fact, been living in the District of Columbia since 1924. Another example was Commissioner Nicholas Johnson, whose state of legal residence is Iowa. Johnson left Iowa when he went to college and has never returned for any length of time, yet he still represents Iowa in any geographic distribution.

TABLE IV  
GEOGRAPHICAL DISTRIBUTION OF COMMISSIONERS  
BY AREA AND STATES\*

Region	No.	State	No.
NEW ENGLAND	1	Rhode Island	1
MIDDLE ATLANTIC	1	New York	1
EAST NORTH CENTRAL	6	Illinois	5
		Michigan	1
WEST NORTH CENTRAL	5	Iowa	1
		Minnesota	1
		Kansas	3
SOUTH ATLANTIC	3	West Virginia	1
		Washington, D.C.	2
EAST SOUTH CENTRAL	2	Tennessee	2
WEST SOUTH CENTRAL	2	Texas	1
		Arizona	1
MOUNTAIN	1	Idaho	1
PACIFIC	1	Washington	1

\*The geographical areas used are the standard regions as used by the United States Census Department.

#### IV. EDUCATIONAL BACKGROUNDS OF COMMISSIONERS

Very broadly viewed, members of the commission are, for the most part, professional men and women. Their training has been academic and legal rather than technical, supporting Lichty's findings. Most outstanding is the variety of educational experiences, ranging from two years at a Community College to several doctoral degrees (See Table V).

TABLE V  
EDUCATIONAL BACKGROUND OF COMMISSIONERS

	Number
College or University Experience	3
A.B., B.A., or B.S.	18
GRADUATE STUDY	
M.A.	1
LL.D. (Theology)	1
LEGAL TRAINING	
J.D.	8
LL.B.	5
LL.M.	1
LL.D.	4

Only three schools can claim more than one graduate. Commissioners Robinson and Washburn graduated from Harvard, Henry and Wadsworth received Bachelor's degrees from Yale, and Minow and Wiley received both Bachelor and Law degrees and Hooks received a law degree from Northwestern. Large as well as small schools are represented and private as well as public.

#### College or University Training

Four FCC commissioners attended a college or university but did not graduate. One of these, Charlotte Reid, received two Honorary Doctor of Laws degrees from John Marshall Law School and Illinois College. For a complete listing of the colleges and universities attended by commissioners, see Appendix A.

### Graduate Study

The combined membership of the commission earned two Master's degrees and nine Doctorates. Commissioner White received an M.A. degree in political science from Rutgers University. Commissioner Cox received the other Master's degree in law from the University of Michigan and two of the Doctorates: an LL.B. in law from the University of Washington and an LL.D. from the Chicago Theological Seminary. The remainder of the doctorate degrees, all in law, were: Burch, LL.B. from the University of Arizona; Ford, LL.D. from West Virginia University; Henry, LL.B. from Vanderbilt University; Hyde, an LL.D. from George Washington University; Johnson, LL.B. from the University of Texas; Loevinger, LL.D. from Minnesota University; Minow, LL.D. from Northwestern; and Robinson, LL.D. from Stanford University.

### Legal Training

Thirteen of the 22 commissioners hold law degrees. Only one school, Northwestern, graduated more than one commissioner from its law school. For a complete listing of the commissioners' legal training, see Appendix A.

This review of the educational backgrounds of the commissioners presents a group of men and women all of whom received some college education. A few were rather scholarly; several taught in universities. Their education, to a large degree, seems to be representative of the various educational facilities available in the United States--state and private, large and small, well-known and obscure. Many attended their local colleges. Some sought more well-known institutions



for graduate or legal training. These findings on educational background are very similar to those of Lichty.

#### V. OCCUPATIONS OF COMMISSIONERS

FCC Commissioners show as much variety in their careers as they do in their educational preparations--but some generalizations can be made. The "typical" commissioner had prior experience in law or government service before joining the commission. It is also probable that he had participated in politics, but not usually as a candidate for public office. Six commissioners worked for national political campaigns prior to their appointments. Another six also had important contacts with politicians or the President. For these commissioners, prior positions were probably an important consideration leading to their appointments.

##### Primary Occupation

Thirteen of the 22 commissioners were lawyers or had obtained law degrees. Commissioners of this period came from only two other occupational backgrounds: government service and broadcasting (See Table VI). It should be noted that a classification such as this can be confusing and is only one view of the commissioners' backgrounds. For example, Commissioner Hooks' primary occupation before coming to the commission was a lawyer. However, he was also an ordained minister, a television talk show host and producer, and was serving as a Tennessee judge when appointed to the FCC. It is clear, then, that in reporting only a primary occupation, much of the depth of these persons has been lost.

TABLE VI

## PRIMARY OCCUPATIONS OF FCC COMMISSIONERS

Occupation	Number
Law	12
Government Service	8
Broadcasting	2

It should also be noted that the occupation "lawyer" is a very ambiguous definition of what a person does. There is a great deal of difference among types of lawyers. Loevinger was an antitrust lawyer and Robert E. Lee was an FBI agent and accountant. Minow and Houser were corporate lawyers and Robinson taught administrative law at the University of Minnesota. With this in mind, then, more occupational information about the commissioners is necessary for a proper understanding of their backgrounds.

Prior Service on the Commission

Five commissioners had some prior service with the FCC. This finding is also consistent with Lichty. Bartley was Director of the Telegraph Division (1934-1937) prior to becoming a commissioner and Kenneth Cox was Chief of the Broadcast Bureau (1961-1963). Hyde, Ford, and Wiley also served as General Counsel prior to their appointments. Most of the commissioners with previous FCC service had little experience outside of the government. Hyde, for example, was a career government servant who was associated with the FRC and FCC for more than 40 years.

### Prior Experience in State Governments

Lichty found that almost half of the commissioners in the period of his study had some previous experience in state governments. In the present study, only five of the 22 commissioners had state government experience. Minow was administrative assistant to Governor Adlai Stevenson of Illinois and Loevinger was a Minnesota State Supreme Court Justice. Wadsworth was a New York Legislator, Burch was on the Arizona Board of Regents, and Hooks was a Tennessee Judge.

### Prior Service in the Federal Government

Thirteen commissioners served the Federal government in other capacities before they came to the commission. The more important positions including Johnson's appointment to head the U.S. Maritime Administration, Reid's congressional seat, Washburn's consultancy for the Office of Telecommunications Policy, and H. Rex Lee's appointment as governor of American Samoa.

A total of 14 commissioners held some type of prior position in state or Federal government or both before coming to the FCC. In Lichty's study, government service was even more common. In fact, only four out of 44 commissioners had no previous record of public service.

### Prior Experience in Broadcasting

Five commissioners had some prior broadcasting experience before coming to the FCC. Bartley was an executive of the Yankee Network and an administrator in the National Association of Broadcasters; Wells was the general manager of the Harris Radio Group; Reid was employed by NBC;

Hooks produced programs in Memphis; and Quello was manager of WJR (Detroit) and vice-president of Capital Cities Broadcasting. However, only Wells and Quello have been considered professional broadcasters.

None of the commissioners in the period of this study had any broadcast engineering experience. This suggests that commission composition has shifted from members with practical experience, who dominated the FRC and FCC during the time of Lichty's study, to those with administrative and government experience. Since much of a commissioner's time is now occupied by public appearances, administrative tasks, and dealing with Congress, the change is not very surprising. There has been a corresponding change in the power structure of the FCC.<sup>6</sup> As Loevinger has noted, most of the policy decisions are now made in the middle and lower staff positions, with top management functioning mainly as liaisons between the commission, the industry, Congress, and the public.<sup>7</sup> Since the commissioners come and go more rapidly than the professional staff, this finding is not very surprising.

#### Occupation After Commission Service

In order to obtain a more complete picture of the careers of FCC Commissioners, it is also necessary to look at their careers after

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<sup>6</sup>Erwin G. Krasnow and Lawrence D. Longley, The Politics of Broadcast Regulation, Second Ed. (New York: St. Martin's Press, 1978), pp. 32-36.

<sup>7</sup>Lee Loevinger, "The Sociology of Bureaucracy," Business Lawyer 24: 7-18 (November 1968).

they left the commission. It should be remembered that some of the commissioners were relatively young men when they left the FCC and have pursued several careers (See Table VII).

TABLE VII

## OCCUPATION AFTER SERVICE ON THE COMMISSION\*

Occupation	Number
Communications Law	8
Education	6
Broadcasting	4
Retired	4
Presently Serving	4
Public Service	2
Government Service	2

\*This total is more than 22 because several commissioners have pursued more than one career.

Lichty reported that most commissioners eventually entered broadcasting or related fields after leaving the FCC. A similar trend was found in the 1961-1976 period. Eight of the lawyers returned to private practice eventually representing broadcasters. Four of the commissioners entered the media after resigning. Ford became president of the National Community Television Association, Henry became chief executive officer of Management Television Systems, Cox joined Microwave Communications of America as a senior vice-president, and Robert Wells returned to Kansas in his former position as general manager of the Harris Radio Group.

Only one commissioner in Lichty's study left the commission to go into education. In this study, six commissioners--Minow,

Johnson, Robinson, Hyde, Loevinger, and H. Rex Lee--have all taught in law schools since leaving the commission.

After leaving the FCC, Burch became special counsel for Presidents Nixon and Ford; Houser was Director of the Office of Telecommunications Policy for about six months in 1976 before returning to the practice of law; Hooks became president of the NAACP; and Johnson entered and lost an Iowa congressional primary election and then became the president of the National Citizens Committee for Broadcasting.

#### Publications

Lichty found the publications of books and articles to be sufficiently common among members of the commission to give a tinge of scholarship to the group, but rarely did the wealth of FCC experience and knowledge gained by commissioners find its way into books written by those commissioners. In the present study, at least six commissioners have published books, but only two, Johnson and Minow, have written about their FCC experiences.

The commissioners also have a large number of popular and scholarly articles to their credit. Most common are articles for law journals or reviews. In general, the publications of these commissioners show evidence of their competence to deal with their responsibilities as commissioners. But nonetheless, while scholarship might be considered an important qualification for appointment to the commission, the writing done by these members is not relevant to their selection for the commission.

## CHAPTER V

### AN INTERPRETATION OF THE DATA

The thesis of this study is that the action of the FCC has been, at least in part, a result of the composition of the commission at particular times. This chapter tests that thesis. Additionally, a corollary question set forth in the introduction will be considered:

What is the relative effect and importance of the different background elements, including education, occupation, politics, government experience, prior FCC experience, and prior experience on other commissions?

During the 15 years of this study the FCC has taken a number of different courses. Commissioners have faced a wide variety of problems and offered an equally wide variety of solutions. Any attempt to simplify these problems, or to analyze trends and effects, must necessarily face difficulty. Oversimplification can result. Again, it must be pointed out that the FCC has never operated in a political or regulatory vacuum. It is, and indeed must be, influenced by the Congress, the executive branch of government, the broadcasting industry, and public opinion.

#### I. THE ROLE OF THE COMMISSIONERS' BACKGROUND

Sterling and Kittross have referred to the years 1961 to 1976 as a "well-defined period of broadcasting's development." They have labeled the years 1961 to 1977 as years of "accommodation and

adjustment."<sup>1</sup> They say the major issues during this period were:

Financing of public broadcasting, the amount of advertising on both radio and television, the content of ads specifically aimed at children, violent program content, bias or suspected bias in broadcast journalism, responsibility for regulating broadcasting, political influence in the regulatory process, the increasing potential of cable television, all the issues surrounding the Fairness Doctrine, economic--and political and social class--concentration of ownership in broadcasting and other media, and a gnawing concern that broadcasting would serve the public's needs better if the public would express some interest.<sup>2</sup>

Although few of these issues were clearly resolved by the end of 1976, the number of "players" in the broadcast issues arena and the economic stakes kept increasing. Krasnow and Longley divide the era into three separate periods: 1) 1960-1965, a period of "increasing emphasis on programming and competition;" 2) 1965-1969, years of "moderate regulation;" and 3) 1970-1977, which focused on "cleaning-up, clarification of existing law, and adoption of a comprehensive cable television policy."<sup>3</sup>

Utilizing the periods established by Krasnow and Longley, a logical method to study commissioner interests would be to relate them to trends in decisions promulgated by the FCC. Realizing that a variety of inputs from the political and industrial environment are considered in FCC decisions, both commissioner backgrounds and regulatory philosophies of successive presidents influence the direction of the FCC and therefore the various commissions could be categorized over time.

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<sup>1</sup>Christopher H. Sterling and John M. Kittross, Stay Tuned: A Concise History of American Broadcasting (Belmont, California: Wadsworth Publishing Company, 1978), p. 372.

<sup>2</sup>Ibid., pp. 439-440.

<sup>3</sup>Erwin G. Krasnow and Lawrence D. Longley, The Politics of Broadcast Regulation, second edition (New York: St. Martin's Press, 1978), p. 29.



The trends in commissioners' backgrounds noted by Lichty and supported in this study indicate that the role of the FCC has changed drastically since its creation. Basically, FCC membership has evolved from commissions composed primarily of technicians to one of "government professionals." Until approximately 1953, many crucial decisions were related to such technical problems as limiting interference. As time passed, these problems were eventually solved and the ability of the FCC to deal with Congress and the public became more important to the smooth operation of the commission. As a result, many FCC policy decisions seem to have been shifted from the commissioners (who once had professional experience) to middle level staff members. The staff became the de facto policy makers while commissioners were only policy enactors.

The usual lack of broadcast or engineering experience in the changing "visible commission" has had an impact on the operation of the FCC. Upon appointment, commissioners are forced to spend many hours attempting to understand the complex regulatory issues. Even members with broadcast experience do not have the knowledge necessary to make rational decisions concerning various other issues.<sup>4</sup> One result of commissioners' minimal expertise is the FCC's inability to make timely, logical decisions, and another result is the focusing of individual commissioners on specific issues in many regulatory decisions, rather than taking an informed overview. Two examples are Commissioner

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<sup>4</sup>James Quello, "Address Before the Federal Communications Bar Association," (Washington: FCC Mimeograph, 1974), p. 2.

Robert E. Lee's preoccupation with UHF and Commissioner Johnson's overwhelming concern with consumer interest. With this in mind, the periods established by Krasnow and Longley will be considered separately.

Increasing Emphasis on Programing and Competition, 1960-1965

The impact of presidential philosophies and commissioner backgrounds is fairly evident during this period. Kennedy's philosophy towards independent agencies was often characterized as one advocating stronger regulations.<sup>5</sup> As his predecessors did, Kennedy influenced the FCC through his appointment of a chairman and the replacement of commissioners not supporting his approach. Kennedy's first appointment to the commission was a loyal follower and campaign worker, Newton Minow. Minow set the tone for his tenure as chairman in his 1961 "vast wasteland" speech. Kennedy soon replaced conservatives Cross and Craven with liberal Democrats Henry and Cox. Loevinger was also a Kennedy appointee, although he did not quite fit the Kennedy mold. Teaming Henry, Minow, and Cox with Truman appointee Robert Bartley, Democrats were in the majority establishing the Kennedy commission whose impact on the broadcast industry can be viewed in two areas: competition and programing.

The commission increased competition in television by making UHF stations economically equal to their VHF counterparts. Two solutions to this equalization problem were suggested: either (1) de-intermix UHF and VHF stations or (2) make all television receivers capable of

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<sup>5</sup>John Braeman (ed.), American Politics in the Twentieth Century (New York: Thomas Crowell and Co., 1969), pp. 201-209.

receiving UHF signals (the All Channel Receiver Bill). The de-intermixture solution was vigorously opposed by both Congress and the industry. Since Minow and Robert Lee (a conservative Republican except on UHF) strongly desired to equalize UHF and VHF stations, the de-intermixture alternative was dropped in favor of the All Channel Receiver Bill.<sup>6</sup> The eventual success of this approach was attributed to Lee's interest in UHF.<sup>7</sup> In 1963 Lee formed the Full Development of the All Channel Broadcasting Committee to study the impact of various mass media and make specific recommendations to the FCC.<sup>8</sup>

The FCC claimed regulatory jurisdiction over cable television in the 1962 Carter Mountain decision<sup>9</sup> claiming that increased cable service could have serious economic repercussions for the local television stations. After being upheld in the courts, the FCC began a series of rulemaking proceedings concerning cable television microwaves. This renewed interest in cable television can be attributed to a change in commissioners rather than a change in basic regulatory philosophy by the commission.<sup>10</sup>

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<sup>6</sup>Les Brown, Televi\$ion: The Business Behind the Box (New York: Harcourt, Brace, Jovanovich, 1971), pp. 233-255; Broadcasting, January 15, 1962, pp. 27-30.

<sup>7</sup>Docket 15084, 29 FR 9492, (July 10, 1964).

<sup>8</sup>U.S. Senate, Committee on Commerce, Nominations, 93rd Cong., 2nd Sess. (June-October 1974), p. 21; FCC, 32nd Annual Report for Fiscal Year 1966 (Washington: Government Printing Office, 1967), p. 103.

<sup>9</sup>321 F.2D 359 (May 23, 1963); Don R. LeDuc, Cable Television and the FCC: A Crisis in Media Control (Philadelphia: Temple University Press, 1973), pp. 120-121.

<sup>10</sup>LeDuc, Cable Television, 120-121.

A third rulemaking designed to increase competition was the AM-FM non-duplication rule. Realizing that program duplication by AM and FM stations was retarding the growth of FM radio as an independent medium, the FCC promulgated rules forbidding the repetition of programs by these stations.<sup>11</sup> The nonduplication ruling was fairly effective, affecting almost 60 percent of FM stations. By the end of 1967, a majority of FM stations were broadcasting their own programs. Consequently, the non-duplication rule contributed to achieving the desired goals of the Kennedy commission to increase competition, end the waste of available stations, and increase program diversity.<sup>12</sup>

One last action of the Kennedy commission designed to increase competition was the issuance of the 1965 Policy statement on Comparative Broadcast Hearings. The focus of the statement was to maximize service to the public and to increase diversification of control. The following criteria were to be used when awarding licenses to competing applicants: diversification of control, full time participation by owners, proposed program service, past broadcast record, efficient use of frequency, licensee character, and other factors. Two commissioners dissented: Hyde wrote that the criteria established in the statement were too simplistic and could not be

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<sup>11</sup>32nd Report, p. 103; Nominations, p. 21.

<sup>12</sup>Harrison Boyd Summers; Robert E. Summers; and John H. Penney-backer, Broadcasting and the Public (Belmont, California: Wadsworth, 1978), pp. 133-134.

applied to diverse circumstances of individual cases; and Bartley felt the policy statement was too static.<sup>13</sup> Reasons for the dissents can be traced to regulatory philosophies: Hyde has often been characterized as a "hands-off" commissioner, while Bartley deviated on a few issues from his usual somewhat liberal stance.<sup>14</sup>

The FCC also moved to strengthen regulation of programing in the areas of public responsibility, promise versus performance, and ascertainment of community needs. Hearings were held in 1962 in both Chicago and later in Omaha to determine if local television stations were meeting the needs of their respective communities. The primary concern of these hearings was to determine the success of ascertainment procedures outlined in the 1960 en banc inquiry.<sup>15</sup> FCC program actions in 1962 included stiffening of reactions to stations not fulfilling promises in license applications, use of fines as penalties for technical problems, refusing renewal for the failure of a station to meet program promises, making station records public, and rejection of a broadcast application for failure to ascertain community needs.<sup>16</sup>

The increased emphasis on strengthening FCC regulatory powers may be related to the backgrounds of appointed commissioners. Both chairmen of the period, Minow and Henry, were young lawyers who

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<sup>13</sup><sub>1</sub> FCC 2D 393 (July 28, 1965).

<sup>14</sup> Sidney W. Head, Broadcasting in America: A Survey of Television and Radio, 3rd edition, (Boston: Houghton Mifflin Company, 1976), p. 416.

<sup>15</sup> Broadcasting, January 22, 1962, pp. 56-57; February 28, 1962, p. 34; 25 FR 7297 (July 29, 1960).

<sup>16</sup> Broadcasting, December 31, 1962, p. 32.

helped in Kennedy's presidential campaign. Consequently, their regulatory decisions were probably influenced by the president. Lee had always been concerned with UHF as one solution to the limited competition among broadcast licensees. Liberal Democrats became a majority with the appointment of Kenneth Cox in 1963. Voting on issues was normally along party lines with Democrats for more regulation opposed by conservative Republicans.<sup>17</sup> A last Kennedy appointee, Lee Loevinger, was generally more conservative than his predecessor, Newton Minow. The impact of Loevinger's vote became apparent near the end of 1963. With Loevinger typically voting with conservative Republicans Ford and Hyde, the FCC was divided on programming issues. Loevinger voted with the other Kennedy appointees on issues of competition, probably because of his experience in anti-trust litigation while an assistant attorney general.<sup>18</sup>

The assassination of President Kennedy in 1963 marked the beginning of the transition from the strong regulatory Kennedy commission to the more laissez faire approach of President Johnson's commission. President Johnson's seemingly apathetic view toward the FCC may be attributed to his family's interests in broadcasting in Texas.<sup>19</sup>

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<sup>17</sup>Brown, Televi\$ion, labels Cox and Bartley as liberals, p. 258; Nick Johnson is labeled a liberal by many scholars; Johnson called both Bartley and Cox his allies in How to Talk Back to Your Television Set (Boston: Little, Brown, 1970), p. 43.

<sup>18</sup>Bradley C. Cannon, "Voting Behavior on the FCC," Midwest Journal of Political Science 13: pp. 602-609 (Nov. 1969). See also, John H. Penneybacker and Waldo W. Braden (eds.) Broadcasting in the Public Interest (New York: Random House, 1969), pp. 89-102.

<sup>19</sup>Krasnow and Longley, pp. 45-46.

James Wadsworth, President Johnson's first appointee, exemplified the regulatory philosophy of his forthcoming commission. Wadsworth's liberal to moderate approach to broadcast regulation was documented in Cannon's voting analysis study when initial FCC cable television rules were considered.<sup>20</sup> The FCC's failure to publish final cable television rules until 1972 may be one result of President Johnson's conservatism. The departure of liberal Chairman E. William Henry in April 1966 marked the end of the Kennedy commission, giving conservatives more impact on forthcoming decisions. The FCC was now to enter a period of moderate regulation.

#### Period of Moderate Regulation, 1965-1969

President Johnson strengthened the conservatism of the FCC with the appointment of Republican Rosel Hyde as chairman. Normally, a Democratic president would not name a Republican to chair the FCC. However, inspection of FCC membership in 1966 reveals the rationale for the President's decision. Three of the Democrats--Bartley, Cox, and Nicholas Johnson--were fairly liberal, corresponding to Kennedy's regulatory philosophy. One Republican, Wadsworth, was primarily a diplomat with little legal experience. Robert Lee, the other Republican, was fairly vocal when issues dealing with increased competition such as UHF were considered. The remaining commissioner, Rosel Hyde, had served the FRC and the FCC for thirty-seven years in various capacities and advocated a "hands-off" regulatory stance. Hyde was the only logical choice for President Johnson if he wanted the FCC moved toward a moderate regulatory posture.

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<sup>20</sup>Broadcasting, March 29, 1965, pp. 36-37; Cannon, p. 607.

The only appointee to contradict the President's conservative regulation philosophy was Nicholas Johnson, known for his approach to regulation while maritime administrator. Johnson was moved from his maritime position because of his innate ability to polarize himself from the shippers and other administrators. As an FCC Commissioner he continued to manifest his zeal by writing scathing, dissenting opinions and recommending drastic revisions in FCC structure. However, President Johnson may have felt that Nicholas Johnson as a loyal Democrat would cause the fewest problems surrounded by conservatives on the FCC. Commissioner Johnson did have at least one and possibly two allies supporting many of his convictions--Cox, the remaining Kennedy appointee, and occasionally Bartley. The division between the conservatives and liberals was to continue until 1972 when Bartley retired.<sup>21</sup>

The conservative influence on President Johnson's commission was evidenced in many decisions. First, the ABC-ITT merger was approved in 1966 with liberal Democrats Cox, Bartley, and Nicholas Johnson dissenting. The FCC was forced to reconsider their decision under

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<sup>21</sup>Broadcasting, June 27, 1966, p. 29; Brown, Television, p. 255; see for example, Nicholas Johnson's dissent on Cable Television in Steven R. Rivkin, Cable Television: A Guide to Federal Regulations (Santa Monica, California: Rand Corporation, 1973), pp. 209-230; and Nicholas Johnson, "Electric Media: Increasing and Protecting Access," in Michael C. Emery and Ted C. Smythe (eds.), Readings in Mass Communication (Dubuque, Iowa: William C. Brown, 1972), pp. 30-31; Head, Broadcasting in America, p. 453; Johnson, How To, p. 43.



pressure from the Department of Justice. The Commission eventually reapproved the opinion. Only an early withdrawal by ITT precluded a court case which would have had the FCC and the Justice Department as key opponents.<sup>22</sup>

The multiple-ownership, duopoly, and concentration of control rules comprised a second concern of President Johnson's commission. An interim policy was issued in April 1968 to consider changes in the 1964 rules. During the interim period, license applications pertaining to the rules issued in April were to be decided only after issuance of new rules. However, the commission decided to hear these applications to avoid a backlog of cases. Loevinger, an advocate of increased competition, was absent for the 1968 decision establishing the interim policy. The new rules were eventually issued in March 1970 and extended the duopoly rules to overlapping stations in different services (AM, FM, and TV). However, the new rules were substantially more lenient towards the multiple owner in the definition of overlap necessary to invoke the duopoly clause, and in the failure to require divestiture. Commissioners Robert Lee and Wells dissented; Lee desired more development of UHF and Wells represented the broadcaster's interest.<sup>23</sup>

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<sup>22</sup>Broadcasting, March 20, 1967, p. 56; June 26, 1967, pp. 29-30; 9 FCC 2D 546 (June 22, 1967); 34th Report, p. 27; FCC 33rd Annual Report for Fiscal Year 1967 (Washington: Government Printing Office, 1968), p. 32.

<sup>23</sup>In the Matter of Amendment of Sections 73.35, 73.240 and 73.686 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, 22 FCC 2nd 307 (March 25, 1970); Standard, FM and Television Broadcast Stations 33 FR 5315 (April 3, 1968); Seaborn Rudolph Hubbard Et. Al. 15 FCC 2D 690 (December 12, 1968); In the Matter of Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, 13 FCC 2D 357 (June 12, 1968).

The next decision exemplifying the moderate regulatory philosophy of President Johnson's commission concerns the renewal application of Boston's WHDH, Inc. WHDH had been operating Channel 5 in Boston since 1957 under temporary, short-term licenses.<sup>24</sup> The FCC continued to issue these license renewals despite some formidable competing applicants. Voting for established licensees had become the rule by this time as Hyde advocated his "hands-off" philosophy. Despite Hyde's influence in many decisions, the FCC would not issue WHDH a regular three-year license. Some of this hesitancy to issue a final decision was due to Department of Justice pressures concerning possible ex parte violations involving the licensee and former FCC Chairman George McConnaughey. Possibly considering these pressures, and certainly advocating diversification, the FCC finally revoked the WHDH license in favor of a competing applicant. The voting Commission consisted of Nicholas Johnson, Bartley, Wadsworth, and Robert Lee. Loevinger and Cox disqualified themselves because they had participated in the case at earlier stages while serving in other government positions. Rex Lee was attending a conference. And, in an unexpected move, Hyde refused to participate in the final deliberations claiming he could not make a decision. Johnson and Bartley voted as expected--against the licensee, WHDH. Lee also voted as expected--for the licensee. Wadsworth's vote, somewhat of a surprise, was against WHDH.<sup>25</sup> However, Wadsworth voted inconsistently in many other situations despite his political ties to the Johnson Administration.

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<sup>24</sup>Robert R. Smith and Paul T. Prince, "WHDH: The Unconscionable Delay," Journal of Broadcasting 18 (Winter 1973-1974): 85.

<sup>25</sup>16 FCC 2D 1 (1969); Krasnow and Longley, pp. 112-114.

While WHDH never regained the Boston license, the wider effect of the decision was temporarily negated in 1970 with the issuance of the Policy Statement on Comparative Hearings Involving Regular Renewal Applicants,<sup>26</sup> which was later overturned in the courts.

Another FCC decision in which the conservative influence of Hyde and his supporters was obvious involved cable television. The Kennedy commission had already established regulatory authority over the relatively new communication medium in the first (1965) and second (1966) reports.<sup>27</sup> Naturally, the cable industry was not happy with these rules. Consequently, several cable firms decided to contest the broad regulatory powers assumed (without congressional legislation) by the FCC in the Second Report and Order. Specifically, the FCC had intervened in the dispute between Southwestern Cable and Midwest Television concerning the importation of Los Angeles Television signals into the San Diego market. Based on the authority over cable television established in Fortnightly v. U.S.,<sup>28</sup> the FCC decided in favor of the broadcaster's interests. UHF supporter Robert Lee naturally voted for Midwest, supported by regulatory liberals Johnson and Cox. Surprisingly, Hyde also voted for the majority. Loevinger, Bartley, and Wadsworth dissented. The end result was that FCC jurisdiction over cable television expressed in the Second Report and Order was firmly established.<sup>29</sup>

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<sup>26</sup>22 FCC 2D 424 (January 15, 1970).

<sup>27</sup>2 RR 2D 1677 (April 25, 1965); 6 RR 2D 1717 (March 8, 1966).

<sup>28</sup>392 U.S. 390 (June 17, 1968).

<sup>29</sup>392 U.S. 157 (June 10, 1968); LeDuc, Cable Television. pp. 170-174.

In general, the conservative influence of then President Johnson, through his selection of Chairman Hyde and later Commissioner Wadsworth, had a tremendous impact on the decisions promulgated by the FCC. Naturally, all decisions of President Johnson's commission were not totally conservative in nature as evidenced by the Southwestern case. Liberal Commissioners Johnson, Cox, and Bartley were occasionally joined by a conservative like Robert Lee. The result was usually an increase in regulatory jurisdiction. The fairly divisive split between the liberal and conservative commissioners ended soon after Johnson was replaced by Richard Nixon in 1968. Hyde and Wadsworth left the commission and were replaced by Burch and Wells. Burch was then appointed to the chair, marking the beginning of the Nixon commission.

Cleaning-up, Clarification of Existing Law, and Adoption  
of a Comprehensive Cable Television Policy, 1970-1977

Nixon opinions of television make categorization of the Nixon commission very difficult. Commissioners appointed by Nixon were instrumental in making decisions both for and against the broadcast media. Pro-industry decisions included the 1970 Policy Statement on Comparative Hearings and the 1972 cable television decision. A major decision opposed by many in the broadcast industry was the Prime Time Access Rule. Despite varying degrees of industry support, two of these decisions have attempted to increase access to the media by the consumers (cable report) and independent program producers (prime-time access).

Despite the delegation of authority to White House officials and charges of executive retribution against the journalistic media, the early Nixon commission had to contend with liberal holdovers Nicholas Johnson, Bartley, and Cox. These three commissioners were able to balance the conservatives on some issues. For examples, Nicholas Johnson, Bartley, and Rex Lee voted against the Corinthian merger while Burch, Robert Lee, and Wells were for it.<sup>30</sup> Another concern of the liberal block was ascertainment and fulfillment of community needs. Nicholas Johnson and Cox conducted hearings in Oklahoma, New York, and Washington, D.C. to determine how broadcast stations were meeting these needs.<sup>31</sup>

Despite some liberal victories, the conservative commissioners prevailed in many FCC decisions during the early Nixon years, e.g., the 1970 Policy Statement on Comparative Hearings. This statement, supported by the broadcast industry, was in response to proposed action in Congress to pass a bill giving licensees who had served community needs the benefit in comparative hearings.<sup>32</sup> These legislative and subsequent FCC actions evolved in response to the tremendous increase in strike applications after the WHDH decision. The vote on the Policy Statement was 6-1 with Nicholas Johnson, in a dissenting opinion, claiming that the rules abridged consumer rights and that the statement was written with White House assistance.<sup>33</sup> The result of the statement

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<sup>30</sup>Broadcasting, November 30, 1970, pp. 19-20; 28 FCC 2D 736 (April 14, 1971).

<sup>31</sup>Broadcasting in America and the FCC's License Renewal Process: An Oklahoma Case Study, 14 FCC 2D 1 (May 29, 1968).

<sup>32</sup>22 FCC 2D 424 (January 15, 1970); House Bill S-2004.

<sup>33</sup>Krasnow and Longley, Politics, pp. 112-114.

probably would have been to reduce the number of competing and strike applicants for existing stations--a definite advantage to the licensed broadcaster. However, the rules were almost immediately overturned by the Court of Appeals.<sup>34</sup>

The Prime Time Access Rule (PTAR) was a liberal victory for commissioners Cox, Johnson, and Bartley. Only Burch, a conservative, and Wells, a broadcaster, voted against the rule. Robert Lee voted for the access rule believing it would make UHF stations more competitive in intermixed markets.<sup>35</sup> The intent of the decision was to diversify program sources by limiting the number of hours used by affiliates to broadcast network programs during prime-time hours in the top fifty markets. Believing that local stations would fill these access hours with inexpensive, syndicated programs, the FCC prohibited reruns. The FCC also prohibited the syndication of domestic television programs by the three commercial networks. Despite FCC attempts to increase program diversity and to increase access for independent program producers, PTAR has been a dismal failure due to its many loopholes.

The impact of the liberal Democrats was significantly reduced when Cox completed his term in 1970. By this time, Nixon was receiving pressure from consumer groups interested in representation on the FCC. Then in 1971, he appointed Charlotte Reid to the FCC. Reid was clearly a conservative, once receiving a 93 percent rating by the Americans for Constitutional Action. However, like many of her peers,

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<sup>34</sup>Citizen's Communication Center v. FCC, 477 F. 2D 1201 (June 11, 1971).

<sup>35</sup>23 FCC 2D 383 (May 4, 1970), petitions by networks can be found at 25 FCC 2D 318 (August 7, 1970); see also 35 FR 7417; Brown, Televi\$ion, pp. 207-358.

Reid had few qualifications necessary to regulate the communications industries. Further, according to Television/Radio Age, she was not even interested in her work on the FCC. Supporting this conclusion, Reid was missing from FCC activities more than any other commissioner. Consequently, she relied on her legal assistant or Chairman Wiley for many of her voting decisions.<sup>36</sup>

One significant ruling after the appointment of Reid, the need to ascertain community needs for license applications and renewals, indicates the continuing focus of the Nixon commission on access. Basically, this regulation required radio and television stations to measure community needs and to show how they were being met by the station's programming in each license application. The aim was to better attune local broadcasters to the needs of their audiences.<sup>37</sup>

The first black appointment to the FCC came in 1972 when Benjamin Hooks replaced Bartley. Again, Nixon presumably reacted in response to pressures levied by several citizen groups. Hook's special interests included minority hiring and programming. Otherwise, he favored fair profits for broadcasters. Hooks was fairly consistent in these views. For example, he dissented from the memorandum issued by

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<sup>36</sup>Broadcasting, July 12, 1971, pp. 38-39; Mal Oettinger, "New Look and an Unaccustomed Role: Broadcasters' Friend," Radio/Television Age (March 19, 1973), pp. 34-35; Broadcasting, December 14, 1970, pp. 22-24; Karen Elliot, "The Regulators: Mrs. Reid Wanted Only to Sing, But She Ended up on the FCC," Wall Street Journal (October 25, 1974), p. 1.

<sup>37</sup>FCC, Primer on Ascertainment of Community Problems, (Washington: FCC Mimeograph #710176 (February 23, 1971)).

the FCC in response for equal time requested by the Black Caucus.<sup>38</sup>

With Bartley gone, the conservatives had a distinct advantage after 1972. One result of this conservative influence was the Cable Television Report and Order.<sup>39</sup> Prior to 1972, the FCC had established jurisdiction over cable television in the Carter Mountain and Southwestern cases.<sup>40</sup> The composition of the FCC during the early Nixon commission precluded further rulemaking in this area. Cox had been an advocate of cable licensing since working for the Senate Commerce Committee and later as the chief of the FCC Broadcast Bureau. He was able to attract the support of Robert Lee because of cable television's potential threat to UHF independents; and the support of Rex Lee, an advocate of public television. However, when Cox retired in 1970, Burch was able to negotiate majority support for new cable television rules. Burch added protective provisions for UHF and public television stations to attract the support of both Robert Lee and Rex Lee. The result of the Burch maneuvers was the "dividend plan." Although the plan was too unwieldy for the FCC to administer, it did force negotiations between cable and broadcast interests in 1971. Hearings were held by the FCC and later by the Senate Subcommittee on

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<sup>38</sup> Oettinger, "New Look," p. 34; Benjamin Hooks, "Undertones of Racism," Educational Broadcasting Review 6: 386-389 (December 1972); Complaint of the Black Caucus of the U.S. House of Representatives, (Washington: FCC Mimeograph #72-1193 (February 6, 1973)).

<sup>39</sup> Cable Television Report and Order, 37 FR 3252 (February 12, 1972); 37 FR 23104 (October 24, 1972).

<sup>40</sup> 32 FCC 459 (February 14, 1962); 392 U.S. 157 (June 10, 1968).



Communications concerning cable television regulations. The result of these hearings was Burch's August 1971 letter to Congress which contained the framework of the Cable Television Report and Order. In essence, the rules required various access and origination channels for cable systems serving over 3500 subscribers. The commission's lone dissenter on the Burch letter was broadcaster Robert Wells. The broadcast industry was also dissatisfied with many of the proposed new cable television rules. The only likely recourse for broadcasters seemed to be the Office of Telecommunications Policy (OTP) headed by Clay Whitehead. However, the National Cable Television Association (NCTA) refused to negotiate until the OTP eventually issued an ultimatum requiring talks between the cable and broadcast industries in the face of likely congressional action. Shortly afterwards, both the NAB and the NCTA accepted a proposed OTP compromise. Only Robert Lee and Nicholas Johnson finally opposed the new rules.<sup>41</sup>

The process resulting in the 1972 cable report was important for three reasons. First, the importance of the chairman's ability to influence commission decisions was shown. Burch first waited for the proper composition of commissioners; he then included provisions for the special interest of enough commissioners to assure passage of the desired rules. Second, the process was important because it illustrated the influence of commissioner backgrounds in regulatory decisions. Third, the process was important because it shows the influence of the OTP.

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<sup>41</sup>LeDuc, Cable Television, pp. 189-203.

The OTP had been responsible for much consternation in both the communications industries and the FCC. This concern actually allowed both the NAB and the NCTA to reach a compromise decision. The influence of the OTP was also evident on many other fronts. First, the OTP proposed an amendment to the 1972 cable rules which would have decreased FCC regulatory powers. Second, an OTP study found that many new television stations could be "dropped-in" in selected markets. The result of drop-ins would have been to increase competition for the existing network stations. Third, the Nixon administration proposed a license-renewal bill which would have increased local station autonomy from the FCC and the networks by lengthening license periods. Either way, OTP was fairly unsuccessful in many of these attempts to influence the regulation of the communications industries. In an interview, Whitehead stated that his purpose as head of OTP was to inform the public about communications policy and to spur debate on crucial issues. Whitehead concluded that, despite some accomplishments such as government financing of the Corporation for Public Broadcasting and the Cabinet Committee on Cable Television report, OTP was not as successful as first hoped. Just after Gerald Ford became President, Whitehead left the OTP for a fellowship at Harvard Institute of Politics.<sup>42</sup>

An analysis of Nixon's last appointments, Quello, Washburn, and Robinson, suggests that Nixon was unsuccessful in his attempt to influence the broadcast industry. One possible explanation for this was the watchful eye of the Senate Committee on Commerce which carefully

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<sup>42</sup>Broadcasting, August 26, 1974, pp. 17-18.

screened all appointees to the FCC, especially after the events surrounding Watergate became public. The divergence of opinions in the 1974 Children's Television Report and Policy Statement exemplifies Nixon's failure to appoint pro-administration commissioners.

The Report was issued in response to pleadings of Action for Children's Television (ACT) and was based on an inquiry begun in January 1971. The concurring statements of Washburn and Robinson were indicative of their actions as FCC Commissioners. Essentially, Robinson supported the Report. However, he did not agree with the provision stipulating the possibility for future rulemaking, proclaiming to be a strict interpreter and supporter of the Constitution. Robinson believed that the FCC should not interfere, beyond the policy statement, in programming decisions, contrary to many speculations of his somewhat "radical" approach to independent regulatory agencies.<sup>43</sup> Conversely, Washburn suggested that the Report should have established restrictions on programming and advertising directed at school age children. Washburn also intimated a concern for televised violence and promised to recommend regulatory control of portrayals of violence. Commissioner Washburn reiterated his concern about a need for rules concerning the regulation of televised violence in a Texas speech. Assuming that violent programs have a detrimental effect on most television viewers,

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<sup>43</sup>Articles appearing in various trade magazines suggested that Robinson's advocacy of FCC reorganization would lead to Senate disapproval of his appointment. However, an inspection of his articles such as, "Radio Spectrum Regulation: The Administrative Process and the Problems of Institutional Reform," Minnesota Law Review 53: 1179-1268 (1969), suggests that Robinson is no more radical than Bartley or Minow; Children's Television Report and Policy Statement, Docket 19142, FCC 74-1174 (October 31, 1974).

especially children, Washburn advocated some regulation of the time and types of violence broadcast during prime time hours.<sup>44</sup>

James Quello, the other Nixon appointee, approached regulation like a broadcaster, favoring equal treatment of broadcast and newspaper journalists and opposing the Fairness Doctrine.<sup>45</sup> It is not possible to talk about a Ford commission since President Ford made only two appointments in late September 1976 and by November he was a lame-duck president. However, the commissioners he appointed, Fogarty and White, had similar regulatory philosophies to the Nixon commission: a conservative attitude toward regulation.

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<sup>44</sup>Abbott Washburn, "Luncheon Address by Abbott Washburn Before the Texas Association of Broadcasters" (Washington: FCC Mimeograph #74-1174, 1974), 3.

<sup>45</sup>James Quello, "Address Before the California Community Television Association," (Washington: FCC Mimeograph, 1974), p. 2.

## CHAPTER VI

### CONCLUSIONS AND RECOMMENDATIONS

Before specific conclusions and recommendations are discussed, it may be helpful to briefly summarize the characteristics of the 22 commissioners studied herein. The results of this study suggest that political experience is the best predictor of appointment to the FCC. Qualifications seem to be secondary. Almost all commissioners serving between 1961 and 1976 have had some contact with the appointing president, either through national political parties or through influential government officials. Unfortunately, few commissioners have had the necessary qualifications for regulating the communications industries. The regulators have failed, in significant part, because their role calls for talents radically different from those possessed by the majority of men and women who have been appointed. The process by which the White House, under Presidents of both major parties, has selected the regulators tends to eliminate the person with talents for imaginative, aggressive regulation. Knowing how we have appointed regulators for the past 15 years shows that we cannot expect better appointments without fundamental changes in the appointive process.

In light of the numerous criticisms of the FCC voiced in the early 1960, it was hoped that there would be many improvements in the quality of appointments from 1961 to 1976 compared to those reported by Lichty from 1934 to 1961. However, the current results generally

support Lichty's findings. Only a few differences were found, and the FCC is still being referred to as "a political dumping ground."<sup>1</sup>

According to Head, "No serious investigator of the FCC has offered a favorable diagnosis; all agree on the need for drastic reforms."<sup>2</sup> With monotonous regularity, most studies of the FCC have concluded with the not-very-startling admonition that the President should nominate, and the Senate should confirm, more able commissioners. Yet little has been done toward making improvements. Taking the politics and industry influence out of broadcasting regulation is clearly impossible. But it should be possible to get better insulation from special interests, more representation for the public, and generally more effective regulation. All critics agree that one key to reform lies in somehow restructuring the FCC. Keeping this in mind, the writer makes the following recommendations. Each recommendation is based on the conclusions that follow it.

#### 1. A White House Office on Appointments

The President should create within the White House an office on regulatory agency appointments which would be responsible for recruitment of regulators. The director of that office, who would be confirmed by the Senate and report directly to the President, should have extensive, prior experience and knowledge of the independent

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<sup>1</sup>Barry Cole and Mal Oettinger, Reluctant Regulators: The FCC and the Broadcast Audience, Revised Edition (Reading, Mass.: Addison-Wesley, 1978), p. 5.

<sup>2</sup>Sidney W. Head, Broadcasting in America: A Survey of Television and Radio 3rd Edition (Boston: Houghton Mifflin Company, 1976), p. 429.

commissions. This office would compile and maintain a list of qualified individuals for agency appointment, and issue to the public a statement of the general criteria for such selections. The duties of this office would include only Presidential appointments to the independent regulatory agencies. Whenever possible, upcoming vacancies should be announced at least six months in advance of their anticipated occurrence and suggestions for nominations should be solicited from a wide variety of sources, other than political friends.

## 2. A Mandatory Waiting Period Before Industry Employment

The Communications Act of 1934 prohibits commissioners who resign before their terms expire from practicing before the agency for one year. However, a longer delay between the termination of service as commissioners and their appearance before the commission representing clients they recently regulated seems essential to lessen the temptation to start forming industry alliances while still in government service. Cole and Oettinger cite an instance when communications lawyers approached then FCC Chairman Richard Wiley attempting to induce him to vote in their favor with reminders that, "You're going to be out here practicing yourself before too long, Dick. You ought to keep it in mind that these hearings can be mighty lucrative, and they last for years."<sup>3</sup>

Henry Geller, a former FCC General Counsel, has suggested reducing the number of commissioners to five, appointing them for 15

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<sup>3</sup>Cole and Oettinger, Reluctant Regulators, pp. 8-9.

years, and forbidding employment in communications-related industries for 10 years following separation from the commission.<sup>4</sup> This arrangement, he believes, would go a long way not only toward improving the quality of commissioners but also toward ameliorating other problems, such as the commission's hypersensitivity to congressional and presidential pressures. As an inducement, Geller would give a generous pension--amounting to as much as 80 percent of the salary--upon retirement to those commissioners who had completed the full term. Commissioners would take the job with the clear understanding that a long-range commitment had been made, and the regulator's energies would be centered on the job at hand rather than on future employment. It is a worthy idea which merits close consideration. Yet there are, as Geller has indicated, problems with the proposal. The most obvious is that the agencies would be even further insulated from change. There would be less latitude for error in appointment decisions; mediocre appointees could dominate a commission for many years, and a subsequent administration would be powerless to correct the situation.

President Carter moved to improve the situation in 1977 when he announced that he would expect regulatory appointees to sign a pledge of their intention to complete the term to which they were about to be named. He later recommended that the time limit barring a previous appointee's participation in any matter before the agency be extended and that it apply to all commissioners, whether they

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<sup>4</sup>Henry Geller, A Modest Proposal to Reform the Federal Communications Commission. (Santa Monica, California: The Rand Corporation, 1974), p. 55-57.



complete their terms or not.<sup>5</sup> Legislation was introduced to "close the revolving door" at all federal regulatory agencies, but Carter's suggestions have not, as yet, been acted on.

### 3. More Consumer Input Into Appointments

Both FCC Commissioners and those making the appointments should be more sensitive to consumer needs. Theoretically, the FCC acts for the people on behalf of Congress. Since most commissioners lack any demonstrated interest in the consumer, it is not surprising to learn that citizens have had little voice in selecting the commissioners. Actions taken in the late 1960s and early 1970s by groups such as BEST and ACT were positive steps toward a louder consumer voice in commission appointments. However, citizen's groups should be restricted so as not to turn a nomination proceeding into a battleground by tying up hearings with expensive litigation in order to bargain for whatever or whoever the group wants.

### 4. Commissioners' Rewards Should Be Increased

Service on the FCC should warrant high social and personal rewards so that qualified and experienced commissioners will remain on the commission. Although commissioners are staying on the FCC for longer periods of time than they did in Lichty's study, most still leave before they have really learned the regulatory process or at the very peak of their usefulness. A solution is not easy. The government cannot hope to pay wages high enough to compete effectively with

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<sup>5</sup>Cole and Oettinger, Reluctant Regulators, p. 8.

private industry, yet one major reason why commissioners and staff have left the FCC is because they can make more money outside. It may be that prestige, challenge, and the spirit of public service can, in part, make up this wage difference. Study is needed as to how this can best be implemented. One frequent suggestion has been to lengthen terms for the commissioners.

#### 5. Specific Qualities of Appointees Should Be Established

A nominee's performance as a commissioner can never be predicted with anything like certainty. Nevertheless, a judgement must be made on the nominee, and that judgement should be based on the prospective commissioner's background, experience, and philosophy. With that in mind, the following qualities are suggested for prospective nominees.

First, the commissioner should be independent in his/her actions, guided solely by the recognition that he/she must act primarily in the public interest. Commissioners are needed who have the fortitude to reach their own judgements and the courage to stand by them. Second, a commissioner must have a demonstrated sensitivity to consumer and minority needs. Third, a commissioner should be able to demonstrate by his/her past performance some concrete interest in the work of the commission. Too many commissioners have been selected with only some vague notion that they would like to be regulators and some have resigned literally out of disinterest. Fourth, a commissioner should have a high standard of personal integrity, and a clear understanding of the responsibilities of office. Finally, at least some

members should have specific knowledge of, and experience in, the work of the FCC prior to appointment. This knowledge could come from the agency staff, the academic community, or even the broadcast industry.

#### 6. A Separation of Functions

Since the FCC regulates everything from "data processing to television reruns," few commissioners are able to achieve the degree of expertise required to function equally well in all regulatory areas. It might be helpful to divide the commission into subgroups, each with special responsibilities. For example, one would handle broadcasting, another cable, one the common carrier, and another nonbroadcast services.

#### 7. Commissioners' Roles Should Be Further Studied

This study, as an overview, includes only those questions with which it began. It would be fruitful to ascertain why some commissioners have been more influential than others. The results of this study only hint at a definite answer. However, the groundwork has been laid for separate studies of the more influential commissioners. Such studies might consider the following questions.

First, are engineers, lawyers, broadcasters, or public servants the best qualified persons to serve as commissioners? Second, commissioners have not come from "all walks of life." Neither have they been representative of the educational or socio-economic distribution of the general public. Should commissioners be appointed more in proportion to the career, educational, and socio-economic distribution of the general population? Third, should the so-called "creative"

or "artistic" area of broadcasting be represented on the Commission, as well as the business, legal, and engineering fields? Finally, what does the voting record--in every decision made by the commission--reveal about individual commissioners?

#### 8. A New Regulatory System--Professional Self-Regulation

It is possible that the commission system itself is unworkable for the regulation of broadcasting. That is the conclusion of economist R. H. Coase:

We cannot expect a regulatory commission to act in the public interest, particularly if we have regard to its actions over a long period. . . . However fluid an organization may be in its beginning, it must inevitably adopt certain policies and organizational forms which condition its thinking and limit the range of its policies. Within limits, the regulatory commission may search for what is in the public interest, but it is not likely to find acceptable any solutions which imply fundamental changes in its settled policies. The observation that a regulatory commission tends to be captured by the industry it regulates is I think a reflection of this, rather than, in general, the result of sinister influences. It is difficult to operate closely with an industry without coming to look at its problems in industry terms. . . .<sup>6</sup>

If regulation by commission is not the answer, perhaps self-regulation is.

Professionalism implies individual self-regulation--the voluntary adoption of high standards of ethical personal conduct in the pursuit of an occupation fraught with social responsibility. The state may administer and enforce standards, but they originate within the profession itself. Only the practitioners are presumed to have the necessary specialized training and knowledge to set appropriate

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<sup>6</sup>R. H. Coase, "The Economics of Broadcasting and Government Policy," American Economic Review 56 (May 1966): 440-447.

standards for licensing.<sup>7</sup> Documents such as the NAB Code or the Radio and Television News Directors Association Code of Broadcast News Ethics are steps toward professionalism, however they should be made mandatory.

Despite the number of complaints throughout the years, the quality of FCC appointments has not been improved. Although the direction of the FCC has changed several times throughout the period of this study, the basic problem is still there.

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<sup>7</sup>Head, Broadcasting in America, pp. 436-437.

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APPENDIX A

CAREER INFORMATION FOR FCC COMMISSIONERS

TENURE OF OFFICE

	Date of Appointment	Service Terminated	Months of Service
Robert Bartley	3/6/52	5/30/72	245
Dean Burch	10/31/69	3/8/74	66
Kenneth A. Cox	3/26/63	8/31/70	90
Joseph R. Fogarty	9/17/76	*	4
Frederick W. Ford	8/22/57	12/31/64	90
E. William Henry	10/2/62	5/1/66	43
Benjamin L. Hooks	1/5/72	1/1/77	54
Thomas J. Houser	1/6/71	10/5/71	10
Rosel H. Hyde	4/17/46	10/31/69	282
Nicholas Johnson	1/1/66	12/5/73	89
H. Rex Lee	10/28/68	12/31/73	62
Robert E. Lee	10/6/53	*	278
Lee Loevinger	5/5/65	10/31/69	61
Newton N. Minow	3/2/61	5/1/63	28
James H. Quello	4/30/74	*	32
Charlotte T. Reid	10/8/71	1/1/76	57
Glen O. Robinson	1/10/74	5/30/76	23
James T. Wadsworth	5/5/65	10/31/69	54
Abbott Washburn	1/1/74	*	30
Robert Wells	11/6/65	11/1/71	36
Margita White	9/23/76	3/1/79	4
Richard E. Wiley	1/5/72	10/31/77	48

\*Serving on the Commission as of August 1, 1980. Months in service are for the period of study. January 1, 1961 - December 31, 1976.

APPENDIX A (continued)

POLITICAL PARTY AFFILIATION AND APPOINTMENT  
RECORD OF COMMISSIONERS

	Political Affiliation	Originally Appointed by President
Bartley	Democrat	Truman
Burch	Republican	Nixon
Cox	Democrat	Kennedy
Fogarty	Democrat	Ford
Ford	Republican	Eisenhower
Henry	Democrat	Kennedy
Hooks	Democrat	Nixon
Houser	Republican	Nixon
Hyde	Republican	Truman
Johnson	Democrat	Johnson
H. R. Lee	Democrat	Johnson
R. E. Lee	Republican	Eisenhower
Loevinger	Democrat	Kennedy
Minow	Democrat	Kennedy
Quello	Democrat	Nixon
Reid	Republican	Nixon
Robinson	Democrat	Nixon
Wadsworth	Republican	Johnson
Washburn	Republican	Nixon
Wells	Republican	Nixon
White	Republican	Ford
Wiley	Republican	Nixon

## APPENDIX A (continued)

GEOGRAPHICAL DISTRIBUTION AND AGE OF COMMISSIONERS  
AT TIME OF APPOINTMENT

	Legal Residence at Appointment	Age at First Appointment
Bartley	Texas	40
Burch	Arizona	42
Cox	Washington	47
Fogarty	Rhode Island	45
Ford	West Virginia	47
Henry	Tennessee	34
Hooks	Tennessee	47
Houser	Illinois	42
Hyde	Idaho	46
Johnson	Iowa	33
H. R. Lee	Washington, D.C.	58
R. E. Lee	Illinois	41
Loevinger	Minnesota	50
Minow	Illinois	35
Quello	Michigan	60
Reid	Illinois	58
Robinson	Minnesota	38
Wadsworth	New York	60
Washburn	Minnesota	59
Wells	Kansas	50
White	Washington, D.C.	39
Wiley	Illinois	38

APPENDIX A (continued)

OCCUPATIONAL BACKGROUND

	Primary Occupation
Bartley	Government Service
Burch	Lawyer
Cox	Government Service
Fogarty	Government Service
Ford	Government Service
Henry	Lawyer
Hooks	Government Service
Houser	Government Service
Hyde	Government Service
Johnson	Government Service
H. R. Lee	Government Service
R. E. Lee	Government Service
Loevinger	Lawyer
Minow	Lawyer
Quello	Broadcaster
Reid	Government Service
Robinson	Lawyer - Educator
Wadsworth	Government Service
Washburn	Government Service
Wells	Broadcaster
White	Government Service
Wiley	Government Service

## APPENDIX A (continued)

## EDUCATIONAL TRAINING OF COMMISSIONERS

	Degree	Institution
Bartley	Attended	Southern Methodist Univ.
Burch	B.A.	Univ. of Arizona
Cox	B.A.	Univ. of Washington
Fogarty	A.B.	Holy Cross
Ford	A.B.	West Virginia Univ.
Henry	B.A.	Yale
Hooks	Undergraduate	LeMoyne College-Memphis
Houser	B.A.	Hanover College
Hyde	B.A.	Utah Agricultural College
Johnson	B.A.	Univ. of Texas-Austin
H. R. Lee	B.S.	Univ. of Idaho
R. E. Lee	B.A.	DePaul University
Loevinger	B.A.	Univ. of Minnesota
Minow	B.A.	Northwestern
Quello	B.A.	Michigan State University
Reid	Attended	Illinois College
Robinson	B.A.	Harvard
Wadsworth	B.A.	Yale
Washburn	B.A.	Harvard
Wells	Attended	Garden City Junior College
White	B.A.	University of Redlands
Wiley	B.A.	Northwestern

APPENDIX A (continued)

ADVANCED EDUCATIONAL TRAINING OF COMMISSIONERS

	Degree	Institution
Bartley		
Burch	L.L.B.	Univ. of Arizona
Cox	L.L.B.	University of Washington
	L.L.M.	University of Michigan
	L.L.D.	Chicago Theological Seminary
Fogarty	J.D.	Boston College
Ford	L.L.D.	West Virginia University
Henry	L.L.B.	Vanderbilt University
Hooks	J.D.	DePaul University
Houser	J.D.	Northwestern
Hyde	L.L.D.	George Washington University
Johnson	L.L.B.	University of Texas-Austin
H. R. Lee	Hon. Law Degree	University of Idaho
R. E. Lee	Hon. Doctor of Laws	St. Johns University
Loevinger	L.L.D.	Minnesota University
Minow	L.L.D.	Northwestern
Quello		
Reid	Hon. Doctor of Laws	John Marshall Law School
Robinson	L.L.D.	Stanford University
Wadsworth	Holds Several Honorary Degrees	
Washburn		
Wells		
White	M.A.	Rutgers University
Wiley	J.D.	Northwestern

APPENDIX A (continued)

OCCUPATIONAL BACKGROUND

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Occupation at Time of Appointment

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Bartley	Government Service
Burch	Lawyer
Cox	Chief of FCC Broadcast Bureau
Fogarty	Communication Counsel-U.S. Senate Committee on Commerce
Ford	Assistant Attorney General
Henry	Lawyer
Hooks	Federal District Judge
Houser	Deputy Director of the Peace Corps
Hyde	FCC Assistant General Counsel
Johnson	Maritime Administrator
H. R. Lee	U.S.D.A. Economist
R. E. Lee	Federal Bureau of Investigation
Loevinger	Assistant Attorney General
Minow	Lawyer
Quello	Broadcaster
Reid	Congresswoman
Robinson	Law School Professor
Wadsworth	Government Service
Washburn	Office of Telecommunication Policy
Wells	Broadcaster
White	Assistant Press Secretary to Pres. Ford
Wiley	FCC General Counsel

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APPENDIX A (continued)

OCCUPATION AFTER COMMISSION SERVICE

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	Occupation
Bartley	Retired
Burch	Communications Lawyer
Cox	Broadcasting-Communications Law
Fogarty	Serving as of August 1, 1980
Ford	Communications Lawyer
Henry	Communications Lawyer
Hooks	Public Service
Houser	Lawyer
Hyde	Educator
Johnson	Public Service
H. R. Lee	Retired
R. E. Lee	Serving as of August 1, 1980
Loevinger	Communications Lawyer
Minow	Communications Lawyer-Educator
Quello	Serving as of August 1, 1980
Reid	Retired
Robinson	Educator-Lawyer
Wadsworth	Retired
Washburn	Serving as of August 1, 1980
Wells	Broadcaster
White	Retired
Wiley	Communications Lawyer

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