

# Forty Years of Wandering in the Wasteland

Nicholas Johnson\*

For the first time in human history we have available to us the ability . . . to furnish entertainment, instruction, widening vision of national problems and national events. An obligation rests on us to see that it is devoted to real service and to develop the material . . . that is really worthwhile.

—Secretary of Commerce Herbert Hoover, 1924<sup>1</sup>

The *Federal Communications Law Journal* (“FCLJ”) editors have asked us to reflect upon the changes in broadcasting’s content since that fateful day, forty-two years ago, when Federal Communications Commission (“FCC”) Chairman Newton Minow challenged station owners to watch twenty-four hours of their own programming.<sup>2</sup>

Over the protests of a staff aide, who insisted the chairman remove the offensive “vast wasteland” phrase from his speech text, Minow persisted, ignored the advice, and is forever remembered for his two-word characterization of television programming in 1961.

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\* Nicholas Johnson served as a Commissioner at the Federal Communications Commission between the years 1966 and 1973. His seven years of writing dissenting opinions was inspired by Newton Minow in general, and the “Vast Wasteland” speech in particular. Out of concern for the possible reaction of Mr. Minow’s clients, Johnson has not previously revealed this fact. The author of *How to Talk Back to Your Television Set*, Johnson now teaches law at the University of Iowa. His books and other writings are available through his Web site at <http://www.nicholasjohnson.org>.

1. Todd Lappin, *Déjà vu All Over Again*, WIREd, May 1996, at 175.

2. Newton N. Minow, *Television and the Public Interest*, Speech Before the National Association of Broadcasters (May 9, 1961) [hereinafter *Vast Wasteland Speech*].

Forty years later, the phrase is still with us.<sup>3</sup> Indeed, like other famous phrases, it has given rise to variations: “Television creates a vast wasteline”; “Today television is only a half-vast wasteland.” But the editors are rightly asking us for more serious reflection.

The phrase aside, what can be said about the role of television in the early twenty-first century compared with forty years ago? A candid appraisal would have to conclude that it is a mixed bag. Some of the complaints about broadcasting in the 1960s are still applicable; if anything, conditions are worse. Other half-century-old complaints are irrelevant in today’s media environment.

In some instances ineffective efforts at government regulation have been replaced with even more inadequate efforts at marketplace non-regulation. Today’s consumers suffer at the hands of largely unregulated oligopolies.

No brief article (or entire *FCLJ* issue) would be long enough to cover the subject thoroughly even if the author were sufficiently informed and wise to know everything that needs to be said. But here are some observations about the changes that have occurred and what still must be done.

#### SHIFTING SANDS IN THE VAST WASTELAND

The “broadcasting” of the 1960s—as a delivery technology, commercial industry structure, and programming source—has either disappeared or assumed a far less prominent role. True, there are still transmitters and antennas sending TV signals through the air, but most Americans who “watch television” today have programming delivered to their homes through a coaxial cable or satellite dish, rather than a rooftop antenna. Viewers have choices of 50 to 100, or more channels—rather than the three networks once characterized as a “two-and-one-half network economy.”<sup>4</sup> Much of the programming is of a kind, and from sources, that

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3. Indeed, as history records no special issue of a publication being devoted to the Sermon on the Mount, or Lincoln’s Gettysburg Address, forty years after *their* delivery, this *FCLJ* issue may constitute an historic first.

4. One of the arguments put forward by International Telephone & Telegraph Corp. (“ITT”) in its effort to acquire ABC was that it could prop up this faltering, one-half network with additional financing. The argument suffered somewhat from an internal ITT memorandum indicating the company intended to *remove* \$100 million from ABC. Applications by ABC, Inc., *Memorandum Opinion and Order*, 7 F.C.C.2d 245, 321-24, 9 Rad. Reg.2d (P & F) 12, 75-78 (1967) (dissenting opinion of Johnson, Comm’r) [hereinafter *ABC Memorandum*]. See also Applications by ABC, Inc., *Opinion and Order on Petition for Reconsideration*, 9 F.C.C.2d 546, 10 Rad. Reg.2d (P & F) 289 (1967) [hereinafter *ABC*

did not exist forty-two years ago, are not FCC licensees, and that distribute their programming to cable systems via satellites.

The “wasteland” critics of the 1960s have far less to complain about today in terms of number of formats, and the quantity of news, public affairs, and cultural programming. FCC Chairman Minow’s efforts at increasing consumer choice were, of necessity, primarily limited to the commendable promotion of UHF stations and educational television. Put aside for the moment the issue of program quality. Clearly there are far more choices than forty-two years ago. PBS, Bravo, A&E Television, and numerous movie channels offer a range of choice of drama well beyond the episodic series of old—including a rerun of more feature films every week than Hollywood used to produce in a year. Sports is everywhere, including multiple ESPN channels. Specialty channels, from Animal Planet to the Travel Channel, further splinter while serving the audience. C-SPAN, CNN, FOX, MSNBC and CNBC—even a twenty-four-hour weather channel—offer considerably more than the fifteen minutes of evening news originally made available by the networks.

Nor are cable and satellites the only source of things to watch on TV screens. Broadcast television programming must compete for viewers’ time against videotapes and DVDs. Relatively cheap (for what one gets) digital video cameras and computer video editing programs enable video buffs to make their own. There are numerous video games that can be viewed on a TV. The TV screen can even be used for surfing the Internet.

Ruminations about the implications of the Internet fill books. For now it is enough to note that: (1) time spent watching a computer screen is time not spent watching TV; (2) many of the functions of cable television, such as news, can be delivered as well or better through the Internet; (3) many TV programs (and commercials) offer a blended Internet-television service—television is a gateway to their far more detailed offerings at an Internet address prominently displayed in the TV picture; and (4) apparently a significant proportion of the audience is simultaneously watching both television and Internet-connected computer screens.

Nor is the buzzword “convergence” limited to the fact one can now watch miniature videos from a broadcaster’s Web site on a computer screen or surf the Internet on a TV screen. There is coming to be less and less distinction between the handheld devices variously called cell phones,

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*Opinion and Order*]. See generally KAREN BETH POSSNER, AN HISTORICAL ANALYSIS OF THE ABC-ITT MERGER PROCEEDING BEFORE THE FEDERAL COMMUNICATIONS COMMISSION: 1966-1967 (1975).

paggers, digital cameras, and Personal Data Assistants (“PDA”).<sup>5</sup> TV screens may be as small as a wristwatch, or as large as a living room wall. The time shifting made possible by the VCR ultimately becomes a life-shifting option for families. The programs can be recorded not only on a VCR, but a computer, or a special purpose device, such as TiVo (utilizing a form of computer hard drive that may also enable viewers more easily to skip commercials).

The adverse impacts on the 1960s “broadcasters” from this competition for viewers’ time have been various and dramatic. For starters, the original networks’ share of sets in use is roughly half what it was then—and this for an industry that is in the business of selling the audience, as a product, to advertisers. More competitors, such as FOX, are contributing to bidding up the prices for sports and other programming. And just as newspapers had to adjust their daily product to the more rapid presentation of news, first from radio, and then from television, so yesterday’s broadcasters have had to adjust their “evening news” to today’s competition from cable’s twenty-four-hour/seven-day-a-week news channels.

A viewer with cable reception, and a remote control device, possesses the great equalizer. Local cable access channels, low-power TV, and UHF stations (formerly beyond reception, or with clearly inferior picture quality) are now just as clear as, and only one click away from, the network affiliates—which have, thereby, lost an additional former competitive advantage.

The remote makes possible viewer choice, and program competition, with a vengeance—“entertain me now or I am gone”—in the viewer’s desperate chase, constantly sampling the entirety of cable’s offerings. The fear is that there may some day, on some channel, be something worth watching that the viewer will otherwise miss.

The remote, and gender differences in its use, is the subject of jokes. But its impact is no joke for those in the business who long for the vast wasteland days of a flow-through audience dutifully watching commercials. Then a viewer could be counted on to stay in his or her chair, fixed on the same station, throughout the evening. The remote means the advertiser’s formerly captive audience is free to flee. Those commercials—so expensive to produce and place—may not be watched at all.

The wasteland’s shifting sands make today’s media landscape scarcely recognizable to a sleepy Rip Van Winkle who dozed off in front of

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5. My PDA loads each morning the Web pages of CNN and *The New York Times*. Cell phones can be used to surf the Internet. Paggers can send e-mail. Other handheld devices double as digital cameras or radio receivers.

his TV set forty-two years ago. Some things, however, have remained the same.

### THE OBLIGATIONS, AND LIMITS, OF CAPITALISM

My complaints about television were in the 1960s, and remain today, not so much the harm that it continues to do (which is not trivial),<sup>6</sup> but the good that it *fails* to do.

On the one hand, we have a nation approaching 300 million persons whose memory of their education, and obliviousness to basic information, is so shocking Jay Leno has made an entertainment format out of it.<sup>7</sup> Most of our major health problems, and costs, come from behavioral choices wholly within the control of patients.<sup>8</sup> Levels of voter participation range between five and fifty percent in everything from school board to presidential elections.

Our gross ignorance of the countries and cultures of the world results in everything from “ugly American” tourists unnecessarily offending foreigners, to creating the popular apathy, or support, for military and foreign relations policies that actually provoke terrorist attacks in the United States. It impedes our ability to sell exports abroad, and requires the expenditure of billions of dollars and thousands of lives fighting wars in

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6. Here are but three examples from many that could be listed. Thousands of studies support the intuitive common sense that violence on television is more likely to encourage, than reduce, violence in real life. Many advertised foods tend to encourage, rather than reverse, what the Centers for Disease Control and Prevention characterizes as an epidemic of obesity. The televised role of women—representing a nearly impossible combination of extreme thinness and shapes like *Playboy* models—tends to intensify, rather than ease, the stresses young girls confront. On one hand, “anorexia nervosa . . . has increased steadily from 1975 to 1995 in 10- to 14-year-olds.” Rita Melkonian, *Eating Disorders in Adolescents*, S.F. MED., Apr. 2001, available at <http://www.sfms.org/sfms/sfm401o.htm>. “Anorexia . . . is now the third most common chronic disease in young girls between 15 and 19 years of age . . .” *Id.* On the other hand, “[t]he number of women and teenage girls who chose implants to augment their breast size more than doubled between 1997 and 2000”—to 203,310 in 2000 alone (exclusive of reconstruction after mastectomy). Diana Zuckerman, *Are Breast Implants Safe?*, MEDSCAPE GEN. MED., Oct. 24, 2001, at <http://www.center4policy.org/medscape.html>. See generally MARY PIPHER, *REVIVING OPHELIA: SAVING THE SELVES OF ADOLESCENT GIRLS* (1994).

7. Jay Leno, host of NBC’s *The Tonight Show*, has an occasional segment he calls “Jay Walking.” He represents that he is interviewing randomly selected strangers in public places regarding basic information and understanding. The questions require knowledge of what public radio host Michael Feldman calls, during the quiz portion of his weekly radio program, “things you would have learned in school if you had been paying attention.” Both features reveal a disquieting number of former (and current) students who were apparently not paying attention in school.

8. Examples might include use of alcohol and other drugs; smoking and other tobacco use; diets high in fats, calories, and sugar; lack of exercise; the availability of guns; and the failure to use seat belts and take other safety precautions.

countries where we cannot even speak the language.<sup>9</sup> Nor do our television exports help those in other countries get a somewhat more accurate picture of Americans than that provided by *Baywatch* and *Dallas*.

Is television to blame for everything that is wrong in America? Of course not. Does it have the power to cure all our ills? No. Nor is this to say that programmers should provide the public nothing but an unrelieved diet of educational, public-affairs, and cultural programming. They would not stay in business long if they did. It is to say that if neither ratings nor profits need suffer from product placement, there is no reason they need suffer from information and education placement.

So on one hand we have devastating consequences from our massive ignorance and misinformation, and on the other hand we have an industry of television program producers and distributors. They have access to the minds of most American citizens for an average of some three to four hours a day. That is 80,000 to 100,000 hours over a lifetime—at least fifty times the 1800 hours students spend in college classrooms earning a bachelor's degree.

What a travesty—to be given so much access to such a huge audience, an audience with such serious needs, only to fritter it away with what Walter Lippmann once called “sideshows and three legged calves.”<sup>10</sup> It is the difference between malfeasance and nonfeasance. It is television's having been given the power and opportunity to do such enormous good, and then failing to do it. That is the charge; that is the crime.

I continue to believe, and try to live by, the old sayings: “with great power goes great responsibility”;<sup>11</sup> “from those to whom much has been

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9. Indeed, we are fighting countries we cannot even find on a map. The latest international test of students, reported while this paper was being written, involved thousands of students' knowledge of geography. The United States scored eighth of nine countries. Press Release, National Geographic Society, *Young Americans Still In Dark on Geography, Survey Shows* (Nov. 20, 2002) at <http://www.nationalgeographic.com/events/releases/pr021120.html>. The Swedes averaged a score of 40; the Germans and Italians, 38; the Americans, 23. Associated Press, *Young Americans Flunk Geography, According to National Geographic Quiz Survey* (Nov. 20, 2002), available at <http://www.utsandiego.com/news/nation/20021120-1228-geographyquiz.html>. Consistent with Jay Leno's results, the media's failures are confirmed both by our students' lack of general knowledge and their abundance of knowledge of television program trivia. More could locate the South Pacific island featured in the prior season's TV series *Survivor* than could find New Jersey on a map. One in ten could not even find the United States. Only fourteen percent of those of potential draft age could find Iraq, a country where they may be sent into battle. *Id.*

10. WALTER LIPPMANN, PUBLIC OPINION 365 (1922).

11. Harry Truman, Remarks in Independence at the Liberty Bell Luncheon, Independence, Missouri (Nov. 6, 1950), at <http://www.trumanlibrary.org/trumanpapers/ppus/1950/280.htm>.

given much is expected”;<sup>12</sup> and “ask not what your country can do for you—ask what you can do for your country.”<sup>13</sup>

Entrepreneurs, capitalism, advertising, profit-maximizing—and yes, “greed”—have made their contribution to our economy and lives. Some may argue that it gets a little out of hand when campaign contributors want the 1000-to-one returns on their multi-million-dollar contributions.<sup>14</sup> Universities now name buildings after wealthy contributors rather than revered scholars. Teens pay to wear corporate logos (rather than being paid, as was once the case, for walking the streets with advertising boards).<sup>15</sup> But none can question that jobs, innovations, and other benefits result when business sticks to business.

However, turning formerly non-commercial institutions over to business is one thing. Turning over the minds of America’s citizens is quite another.

Cultures are shaped by their stories, their myths; self-governing societies by their ideas and information. Rather than rely on folk music, stories, and a true marketplace of the people’s ideas, we have turned this public responsibility over to commerce. And commerce naturally selects those myths, ideas, and information that will provide the best media environment for commercials—and their ability to maximize hedonism, conspicuous consumption, stock prices, and the profits of an advertising-dependent media. By offering the ideas of the marketplace rather than a marketplace of ideas, we are, in effect, rotting our seed corn.<sup>16</sup>

That is why at broadcasting’s birth there were many, in this country and elsewhere, who believed that anything with the power and potential of broadcasting should be maintained as a noncommercial enterprise.<sup>17</sup> At a

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12. With origins in the New Testament, *Luke* 12:48, Google.com indicates the phrase as quoted has been used in at least 1.4 million Web documents.

13. President John F. Kennedy, Inaugural Address (Jan. 20, 1961), available at <http://www.cs.umb.edu/jfklibrary/j012061.htm>.

14. For the thesis, and examples, of the 1000-to-one (or greater) payback for campaign contributions, see Nicholas Johnson, *Campaigns: You Pay \$4 or \$4000*, DES MOINES REG., July 21, 1996, at 2C, available at <http://www.uiowa.edu/~cyberlaw/rcntpubl/campaign.html>. The Web version contains notes to sources that were not included in the print edition.

15. As Rose Goldsen put it, “We all join in to do the work of the advertisers. We *put each other in mind* of their products, we *call them to mind*, ourselves—the greatest force of unpaid labor since the pyramids were built.” ROSE K. GOLDSSEN, *THE SHOW AND TELL MACHINE: HOW TELEVISION WORKS AND WORKS YOU OVER* 135 (1977).

16. For but one of dozens of adverse consequences from the commercialization of information, the impact of stock option compensation on editorial judgment, see GILBERT CRANBERG ET AL., *TAKING STOCK: JOURNALISM AND THE PUBLICLY TRADED NEWSPAPER COMPANY* (2001).

17. Then-Secretary of Commerce Herbert Hoover’s oft-quoted objection was, “It is inconceivable that we should allow so great a possibility for service [for news, for

minimum, if we are to turn our minds over to profit-maximizing capitalists, as we have, it puts an enormous burden of proof on those owners to demonstrate that capitalism, and advertising, are worthy of this most sacred trust. Am I advocating the abolition of commercial television, its nationalization, or a regulatory scheme even more detailed than that in place during the first half-century following the Radio Act of 1927?<sup>18</sup> No. Truth be told, even were it desirable there is very little that could be done given the political and economic power of today's media behemoths. But that does not detract from the fact that those present at the creation of American radio were right to be fearful of commercial influence in the medium, and that we have ignored their warnings to our peril.<sup>19</sup>

### SOME MODEST PROPOSALS

There is no single, innovative proposal or activity that can cure all of the media's ills. Neither is the cause hopeless. Thousands of individuals making modest progress can add up to a difference.<sup>20</sup>

Education in general, and media education in particular, from kindergarten through college, may be one of the best long-term solutions.

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entertainment, for education] to be drowned in advertising chatter." HERBERT HOOVER, *THE MEMOIRS OF HERBERT HOOVER: THE CABINET AND THE PRESIDENCY* 140 (1952), *quoted in* ERIK BARNOUW, *A TOWER IN BABEL: A HISTORY OF BROADCASTING IN THE UNITED STATES* 96 (1966). Apparently the broadcasters and other members of the first Radio Conference agreed. Their Recommendation III.E. provided, "It is recommended that direct advertising in radio broadcasting service be absolutely prohibited . . ." *Report of Department of Commerce Conference on Radio Telephony*, RAD. SERV. BULL., May 1, 1922, *available at* <http://www.angelfire.com/nc/whitetho/1922conf.htm>. More generally, they "[r]esolved, [t]hat it is the sense of the conference that radio communication is a public utility and as such should be regulated and controlled by the Federal Government in the public interest." *Id.* Even "NBC visionary David Sarnoff initially thought of radio as a public service medium that should be 'untainted,' as his biographer put it, 'by money making.'" Posting of Thomas Forbes, TqDqZbjs@computerauthor.com, to x15LIN6@computerauthor.com, *at* <http://www.i-m.com/archives/9409/0301.html> (Sept. 28, 1994) (copy on file with Journal). The Westinghouse Department of Publicity Manager came to similar conclusions. J.C. McQuiston, *Advertising by Radio: Can It and Should It Be Done?*, RAD. NEWS, Aug. 1922, 232, 332-34, *available at* <http://angelfire.com/nc/whitetho/1922ads.htm> (last visited Feb. 26, 2003). *See generally* ERIK BARNOUW, *THE SPONSOR: NOTES ON A MODERN POTENTATE* (1978), *available at* <http://social.chass.ncsu.edu/~wiley/courses/comtech/sponsor.html> (last visited Mar. 10, 2003).

18. Ch. 169, 44 Stat. 1162, Pub. L. No. 69-632.

19. *See* McQuiston, *supra* note 17.

20. The Author was involved with one such effort during the late 1970s—the National Citizens Committee for Broadcasting. Its strategies actually brought about a reduction in the levels of televised violence while it was active. *See* Beth Caron Fratkin, *The National Citizens Committee for Broadcasting: A Forgotten Chapter of the Media Reform Movement of the 1960s and 1970s* 133-49 (2002) (unpublished M.S. thesis, University of Utah) (on file with Journal).



Students given an opportunity for a civic education,<sup>21</sup> with a resulting genuine interest and participation in public affairs, may be at least a little less likely to spend hours watching “all Monica all the time” talking heads. Students accomplished in music, theater or the arts will be less likely to watch tasteless, boring, low-budget televised dreck. Those who understand manipulative advertising techniques may be somewhat less taken in by them.<sup>22</sup>

Citizens’ media reform organizations will not win every issue. But they make a difference in keeping alive—before the agencies and in the media itself—the notion that the congressionally mandated “public interest” in broadcasting and other media means something more than mere profit maximization.<sup>23</sup> What are some of those issues, or proposals for reform? Here is a small sampling.

### *Content, Conduit, and the First Amendment*

The First Amendment grants rights only to owners, not editors, not reporters, and certainly not the public. The Supreme Court makes clear that with the First Amendment right to speak goes an owner’s First Amendment right to silence all others.<sup>24</sup> In an age when oligopolistic conduits of mass

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21. For an explanation of “civic education” in social studies, see the Web sites of the National Council for Social Studies (“NCSS”), <http://www.socialstudies.org>, (especially the *NCSS Position Statements; Standards, Expectations of Excellence: Curriculum Standards for Social Studies, Ten Thematic Strands in Social Studies* and its reference to “Civic Ideals and Practices,” “Essential Characteristics of a Citizenship Education Program,” and “civic participation”); and the Center for Civic Education, <http://www.civiced.org>, in its entirety (both last visited Mar. 2, 2003).

22. The latest organization of media educators was announced as this paper was being written. See Action Coalition for Media Education, at <http://www.acmecoalition.org> (last visited Mar. 2, 2003). However media-savvy one may be, a search of cupboards and cabinets may provide illustrations of an insight Rose Goldsen once shared with the Author: “Even though we know we are being taken, we are still being taken.”

23. Here are but three illustrations from the numerous national, regional, and local organizations that could be mentioned: Center for Digital Democracy, at <http://www.democraticmedia.org>; Center for Media Education, at <http://www.cme.org>; and Media Access Project, at <http://www.mediaaccess.org> (all last visited Mar. 2, 2003). Each Web site contains much useful information, descriptions of the organization’s “issues,” and links to other resources.

24. For constitutional or other reasons, the Court says this is the result for newspapers (*Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241 (1974)), radio and television (*CBS v. Democratic Nat’l Comm.*, 412 U.S. 94 (1973)), cable television (*FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979)), public utilities’ billing envelopes (*Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1 (1986)), and even St. Patrick’s Day parades (*Hurley v. Irish-Am. Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557 (1995)). However, the Court has recognized that the scarcity of channels for broadcast stations justifies some minimal opportunities for access, such as the Fairness Doctrine and the FCC’s personal attack and political editorializing rules. *Red Lion Brdcast. Co., Inc. v. FCC*, 395 U.S. 367

media have displaced broadsides and soapbox orators, the Court's decisions deprive more than ninety-nine percent of Americans of any right of *effective* speech.<sup>25</sup> The anti-competitive conflict of interest when a single owner controls both content and conduit—for example, cable programming sources and cable distribution systems—only makes it worse. If a proposal to totally separate content and conduit is not politically and legally viable, Congress and the FCC should at least consider restoring such minimalist requirements as the Fairness Doctrine and public service announcement requirements. Community groups' public service announcements could be selected by lottery, giving them at least a content-neutral chance to exercise their right of access to all broadcast and cable channels.<sup>26</sup>

### *Political Broadcasting Reforms*

Campaign contributions are like a cancer, eating away at the vital organs of the body politic.<sup>27</sup> Although there are many proposals for "campaign finance reform," in one sense there is no *campaign* finance problem, there is only a *political broadcasting* finance problem. Time buys can represent anything from fifty to ninety percent of a campaign's cost. Solve that one problem and the corrupting influence of money in politics evaporates like the morning dew. No single proposal could do more to restore the faith of a cynical citizenry than a requirement of either free time or public financing of campaigns.<sup>28</sup>

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(1969). Consistent congressional provisions provide all candidates an "equal opportunity" for time on any station on which their opponents have appeared (subject to numerous exceptions). 47 U.S.C. § 315 (2000). Candidates for federal office also receive a "reasonable" opportunity to buy time on stations whether their opponents have used the station or not. 47 U.S.C. § 312 (2000).

25. The distinction here is between matters of grace and matters of right. Owners may, of course, choose to publish a letter to the editor, or invite guests onto a talk show as a matter of grace. The point is that a citizen has no constitutional or other legal right to enter a mass communications conduit with a message the conduit owner wishes to censor. "Effective" is emphasized in the text because posters, handbills, doorknob hangers, telephone trees, and other options for what might be called "folk speech"—while theoretically available as alternatives—so pale in comparison with the power and reach of a message entered into a conduit of a dominant mass medium as to be almost irrelevant.

26. This would be in addition to the public, educational, and governmental (PEG) access channels on cable. Such channels serve an extraordinarily valuable purpose but do not need, and do not have, the numbers of viewers of the other channels. For a brief description of Charles Firestone's "access is fairness" proposal (i.e., broadcast stations granting this type of public access could, thereby, opt out of compliance with the Fairness Doctrine), see Nicholas Johnson, *Georgia's Media Future: A Personal View of Options and Opportunities*, at <http://www.uiowa.edu/~cyberlaw/georgia/njtgpers.html> (Mar. 12, 1998).

27. See Johnson, *supra* note 14.

28. That the Democratic and Republican parties are permitted to control the access of third-party candidates to the presidential debates (primarily by excluding them all, even the

*Ownership Limits and Diversity of Views*

Congress and the FCC need to revisit, and reinstate, limits on media ownership. Problems from present ownership patterns are numerous. Media owned by conglomerates, whether local or global, may distort their output to serve the economic interests of the parent or its subsidiaries.<sup>29</sup> Multiple station ownership reduces the diversity of voices. Regional concentration, or overlapping signals, creates a dangerous concentration of political power in one owner. Multiple media ownership (*e.g.*, one owner that combines control of books and magazines, *and* movie studios and theaters, *and* television stations and networks, *and* cable systems and programming) not only drives out economic competition, it also motivates a firm to use its subsidiaries in a self-serving, global, integrated hype of its products. This tends to promote invented superstars over the introduction of fresh and genuine talent.<sup>30</sup> One need not speculate as to the motives of those promoting and approving these accumulations of media power to conclude—as did members of Congress seventy-five years ago—that stricter standards are called for.<sup>31</sup>

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top one or two), through their Commission on Presidential Debates, only exacerbates the problem given those parties' limited financial resources and the crucial role of an appearance in that venue. See COMMISSION ON PRESIDENTIAL DEBATES, CANDIDATE SELECTION PROCESS, at <http://www.debates.org/pages/candysel.html> (last visited Mar. 2, 2003).

29. See *ABC Memorandum*, *supra* note 5; *ABC Opinion and Order*, *supra* note 5.

30. Nothing that has occurred since the "Vast Wasteland" speech lessens the concerns which the Author first published as Nicholas Johnson, *The Media Barons and the Public Interest: An FCC Commissioner's Warning*, ATLANTIC MONTHLY, June 1968, at 43, available at <http://www.theatlantic.com/unbound/flashbks/media/johnsonf.htm> (last visited Mar. 2, 2003). As explained earlier in this Essay, concerns about diversity and rights of entry are not relieved by the number of outlets or owners. The sole issue involves the rules regarding rights of entry by non-owners. The predivestiture AT&T was about as monopolistic as any communications industry could be: a single owner. The reason this raised no First Amendment issues turned on the legal rights of entry: (1) anyone who wanted a phone with access to the national network had a legal right to have one installed, and (2) could then say anything they wanted over that phone without AT&T's review of content.

31. Nearly seventy-five years ago, when the Radio Act was debated in Congress, and the miracle of radio was only barely understood, Congressman Luther Johnson of Texas was so remarkably prescient to foresee:

American thought and American politics will be largely at the mercy of those who operate these stations. For publicity is the most powerful weapon that can be wielded in a Republic, and when such a weapon is placed in the hands of one, or a single selfish group is permitted to either tacitly or otherwise acquire ownership and dominate these broadcasting stations throughout the country, then woe be to those who dare to differ with them. It will be impossible to compete with them in reaching the ears of the American people.

### *Adequacy of American Journalism*

No one can deny that both print and broadcast journalism can point with pride to much of quality. There are insightful portrayals of conditions both foreign and domestic, hard hitting investigative pieces, even an occasional item exposing major advertisers. But neither can we deny that such journalism is all too rare.

Most viewers, most of the time, are at best being provided moving pictures of the headline snippets from the three or four lead stories on Reuters or the AP that day. At worst, they are watching talking (or, more likely, shouting) heads discussing ad nauseam the single, ongoing, story designed to maximize ratings<sup>32</sup>—if, indeed, they are watching “news” at all.

News budgets are cut to the point that the more costly coverage of foreign news is limited to easily available blockbuster items—if that.<sup>33</sup> There is little more money for, or interest in, investigative reporting than when Walter Cronkite was complaining about its absence.<sup>34</sup> The range of acceptable viewpoint is extremely narrow.<sup>35</sup> It goes somewhere from Sam Donaldson on the “far left” to an unrelieved drumbeat of right wing conservative Republican commentators and talk show hosts on the right.

As the wall between advertising and journalism disintegrates, and editors are compensated in stock options, there is increasing pressure to

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67 CONG. REC. 5558 (1926). Today it does not require prescience—only a sense of history and awareness of the evidence at hand—to know that he was right and that something must be done.

32. Examples from the past few years might include the O.J. Simpson trial, President Clinton’s Monica Lewinsky affair, or the Washington D.C.-area sniper story from late 2002.

33. During the Author’s term as an FCC Commissioner (1966-1973) he did a study of news programming on Japan’s public network, NHK. During the sampled twenty-four-hour periods NHK not only devoted more time to news about the United States than could be found on NBC, it also provided full coverage of news from Asia, Europe—and, of course, Japan. Today many Americans seriously interested in what is going on outside their borders have abandoned American media and simply turn to the British Broadcasting Co.’s World Service, at <http://www.bbc.co.uk/worldservice> (last visited Mar. 2, 2003). The Author’s Web page offers a link to the Web pages of numerous foreign newspapers as “a global alternative to American media.” Nicholas Johnson, at <http://www.nicholasjohnson.org> (last visited Mar. 2, 2003). See Nicholas Johnson, *The Global Press*, at <http://www.uiowa.edu/~cyberlaw/writing/glomedia.html> (Nov. 12, 2002).

34. “[A]ll of them [the television networks] have third-rate news-gathering organizations. We are still basically dependent on the wire services. We have barely dipped our toe into investigative reporting.” Walter Cronkite, *quoted in Television: The Most Intimate Medium*, TIME, Oct. 14, 1966, at 57.

35. As the bumper sticker puts it, “The ‘liberal media’ are only as liberal as their conservative owners permit them to be.”

provide content for none but the audience for which advertisers are willing to pay top dollar.<sup>36</sup>

The remedy for this national disaster of journalism in a self-governing society is not obvious. But public humiliation and shame may be a start.

### CONCLUSION

The past near half-century has brought forth an amazing array of changes in broadcasting. Some of them, by any measure, have been positive. And yet Newton Minow had it right; and yesteryear's "vast wasteland" remains—certainly when compared to the flower garden television has the power, and refuses, to plant, irrigate and cultivate. Our "thousand points of light" have become nothing more than the glow from television sets.

Hopeless? No. But there are limits to the possible reform of the system of information and mind control we call mass media. It drives our multi-trillion-dollar consumer economy to the enormous profit of a few, and to the loss of the many. It enables the government to mobilize popular support for its wars for oil. Moreover, just as George Orwell's Winston Smith finally came to realize that, "He loved Big Brother,"<sup>37</sup> we have become a nation of video addicts largely beyond the power or inclination to resist.

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36. See CRANBERG ET AL., *supra* note 16.

37. This line is the concluding sentence in GEORGE ORWELL, 1984, 226 (1949).

