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*Fourth Edition*

# DOCUMENTS OF AMERICAN BROADCASTING

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this Act, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

Nothing in this section shall be construed as authorizing any person now using or operating any apparatus for the transmission of radio energy or radio communications or signals to continue such use except under and in accordance with this Act and with a license granted in accordance with the authority hereinbefore conferred.

*Sec. 40.* This Act shall take effect and be in force upon its passage and approval, except that for and during a period of sixty days after such approval no holder of a license or an extension thereof issued by the Secretary of Commerce under said Act of August 13, 1912, shall be subject to the penalties provided herein for operating a station without the license herein required.

*Sec. 41.* This Act may be referred to and cited as the Radio Act of 1927.

### *MIND PROBES*

1. In what way, if any, does this Act distinguish between the criteria to be employed by the licensing authority in acting on applications for construction permits, initial licenses, and renewals?
2. Can you reconcile § 4(b) with the prohibitions of § 29?
3. Was Congress influenced by a conflict of interest in enacting § 18? If so, what was the nature of the conflict? Did its resolution as found in § 18's provisions favor the interests of Congress, the public, or broadcasters?

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# 10

# FRC Interpretation of the Public Interest

**Statement Made by the Commission on August 23, 1928, Relative to Public Interest, Convenience, or Necessity**

**2 FRC Ann. Rep. 166 (1928)**

Delayed confirmations and appropriations complicated by death and resignation caused the membership of the Federal Radio Commission to remain incomplete until a year after passage of the Act of 1927. At about the same time, on March 28, 1928, the "Davis Amendment" (Public Law 195, 70th Congress) was signed into law. This amendment directed the FRC to provide "equality of radio broadcasting service, both of transmission and of reception" to each of the five zones established by Section 2 of the Radio Act. The amendment was an administrative nightmare for a new commission plagued with the problems of an overcrowded broadcast spectrum. See Document 15.

Before establishing the quotas required by the Davis Amendment, the Commission acted on its own General Order No. 32, holding expedited hearings during two weeks in July, 1928, in which 164 broadcast licensees were given the opportunity to justify their continued status as station operators under the Radio Act's public interest standard. When the dust had settled there were 62 fewer broadcasters; several others had to settle for power reductions, consolidations, or probationary renewals. Fewer than half of the 164 stations emerged unscathed.

The following statement constitutes the FRC's first comprehensive attempt to put the flesh of administrative interpretation on the bare-boned "public interest" standard with which Congress had endowed it. Although many of the specific 1928 guidelines have been modified with the passing years, the broader principles of regulatory philosophy continue to guide contemporary federal supervision of broadcasting.

Federal Radio Commission, *Washington, D.C.*

The Federal Radio Commission announced on August 23, 1928, the basic principles and its interpretation of the public interest, convenience, or necessity clause of the radio act, which were invoked in reaching decisions in cases recently heard of radio broadcasting stations whose public service was challenged. The commission's statement follows:

**Public Interest, Convenience, or Necessity**

The only standard (other than the Davis amendment) which Congress furnished to the commission for its guidance in the determination of the complicated questions which arise in connection with the granting of licenses and the renewal or modification of existing licenses is the rather broad one of "public interest, convenience, or necessity." . . .

. . . No attempt is made anywhere in the act to define the term "public interest, convenience, or necessity," nor is any illustration given of its proper application.

The commission is of the opinion that Congress, in enacting the Davis amendment, did not intend to repeal or do away with this standard. While the primary purpose of the Davis amendment is to bring about equality as between the zones, it does not require the commission to grant any application which does not serve public interest, convenience, or necessity simply because the application happens to proceed from a zone or State that is under its quota. The equality is not to be brought about by sacrificing the standard. On the other hand, where a particular zone or State is over its quota, it is true that the commission may on occasions be forced to deny an application the granting of which might, in its opinion, serve public interest, convenience, or necessity. The Davis amendment may, therefore, be viewed as a partial limitation upon the power of the commission in applying the standard.

The cases which the commission has considered as a result of General Order No. 32 are all cases in which it has had before it applications for renewals of station licenses. Under section 2 of the act the commission is given full power and authority to follow the procedure adhered to in these cases, when it has been unable to reach a decision that granting a particular application would serve public interest, convenience, or necessity. In fact, the entire radio act of 1927 makes it clear that no renewal of a license is to be granted, unless the commission shall find that public interest, convenience, or necessity will be served. The fact that all of these stations have been licensed by the commission from time to time in the past, and the further fact that most of them were licensed prior to the enactment of the radio act of 1927 by the Secretary of Commerce, do not, in the opinion of the commission, demonstrate that the continued existence of such stations will serve public interest, convenience, or necessity. The issuance of a previous license by the commission is not in any event to be regarded as a finding further than for the duration of the limited period covered by the license (usually 90 days). There have been a variety of considerations to which the commission was entitled to give weight. For example, when the commission first entered upon its duties it found in existence a large number of stations, much larger than could satisfactorily operate simultaneously and permit good radio reception. Nevertheless, in order to avoid injustice and in order to give the commission an opportunity to determine which stations were best serving the public, it was perfectly consistent for the commission to relicense all of these stations for limited periods. It was in the public interest that a fair test should be conducted to determine which stations were rendering the best service. Furthermore, even if the relicensing of a station in the past would be some indication that it met the test, there is no reason why the United States Government, the commission, or the radio-listening public should be bound by a mistake which has been made in the past. There were no hearings preliminary to granting these licenses in the past, and it can hardly be said that the issue has been adjudicated in any of the cases.



The commission has been urged to give a precise definition of the phrase "public interest, convenience, or necessity," and in the course of the hearings has been frequently criticized for not having done so. It has also been urged that the statute itself is unconstitutional because of the alleged uncertainty and indefiniteness of the phrase. So far as the generality of the phrase is concerned, it is no less certain or definite than other phrases which have found their way into Federal statutes and which have been upheld by the Supreme Court of the United States. An example is "unfair methods of competition." To be able to arrive at a precise definition of such a phrase which will foresee all eventualities is manifestly impossible. The phrase will have to be defined by the United States Supreme Court, and this will probably be done by a gradual process of decisions on particular combinations of fact.

It must be remembered that the standard provided by the act applies not only to broadcasting stations but to each type of radio station which must be licensed, including point-to-point communication, experimental, amateur, ship, airplane, and other kinds of stations. Any definition must be broad enough to include all of these and yet must be elastic enough to permit of definite application to each.

It is, however, possible to state a few general principles which have demonstrated themselves in the course of the experience of the commission and which are applicable to the broadcasting band.

In the first place, the commission has no hesitation in stating that it is in the public interest, convenience, and necessity that a substantial band of frequencies be set aside for the exclusive use of broadcasting stations and the radio listening public, and under the present circumstances believes that the band of 550 to 1,500 kilocycles meets that test.

In the second place, the commission is convinced that public interest, convenience, or necessity will be served by such action on the part of the commission as will bring about the best possible broadcasting reception conditions throughout the United States. By good conditions the commission means freedom from interference of various types as well as good quality in the operation of the broadcasting station. So far as possible, the various types of interference, such as heterodyning, cross talk, and blanketing must be avoided. The commission is convinced that the interest

of the broadcast listener is of superior importance to that of the broadcaster and that it is better that there should be a few less broadcasters than that the listening public should suffer from undue interference. It is unfortunate that in the past the most vociferous public expression has been made by broadcasters or by persons speaking in their behalf and the real voice of the listening public has not sufficiently been heard.

The commission is furthermore convinced that within the band of frequencies devoted to broadcasting, public interest, convenience, or necessity will be best served by a fair distribution of different types of service. Without attempting to determine how many channels should be devoted to the various types of service, the commission feels that a certain number should be devoted to stations so equipped and financed as to permit the giving of a high order of service over as large a territory as possible. This is the only manner in which the distant listener in the rural and sparsely settled portions of the country will be reached. A certain number of other channels should be given over to stations which desire to reach a more limited region and as to which there will be large intermediate areas in which there will be objectionable interference. Finally, there should be a provision for stations which are distinctly local in character and which aim to serve only the smaller towns in the United States without any attempt to reach listeners beyond the immediate vicinity of such towns.

The commission also believes that public interest, convenience, or necessity will be best served by avoiding too much duplication of programs and types of programs. Where one community is undeserved and another community is receiving duplication of the same order of programs, the second community should be restricted in order to benefit the first. Where one type of service is being rendered by several stations in the same region, consideration should be given to a station which renders a type of service which is not such a duplication.

In view of the paucity of channels, the commission is of the opinion that the limited facilities for broadcasting should not be shared with stations which give the sort of service which is readily available to the public in another form. For example, the public in large cities can easily purchase and use phonograph records of the ordinary commercial type. A station which devotes the main portion of its hours of operation to broadcasting such phonograph records is not giving the public anything which it can not readily have without such a station. If, in addition to this, the station is located in a city where there are large resources in program material, the continued operation of the station means that some other station is being kept out of existence which might put to use such original program material. The commission realizes that the situation is not the same in some of the smaller towns and farming communities, where such program resources are not available. Without placing the stamp of approval on the use of phonograph records under such circumstances, the commission will not go so far at present as to state that the practice is at all times and under all conditions a violation of the test provided by the statute. It may be also that the development of special phonograph records will take such a form that the result can be made available by broadcasting only and not available to the public



commercially, and if such proves to be the case the commission will take the fact into consideration. The commission can not close its eyes to the fact that the real purpose of the use of phonograph records in most communities is to provide a cheaper method of advertising for advertisers who are thereby saved the expense of providing an original program.

While it is true that broadcasting stations in this country are for the most part supported or partially supported by advertisers, broadcasting stations are not given these great privileges by the United States Government for the primary benefit of advertisers. Such benefit as is derived by advertisers must be incidental and entirely secondary to the interest of the public.

The same question arises in another connection. Where the station is used for the broadcasting of a considerable amount of what is called "direct advertising," including the quoting of merchandise prices, the advertising is usually offensive to the listening public. Advertising should be only incidental to some real service rendered to the public, and not the main object of a program. The commission realizes that in some communities, particularly in the State of Iowa, there seems to exist a strong sentiment in favor of such advertising on the part of the listening public. At least the broadcasters in that community have succeeded in making an impressive demonstration before the commission on each occasion when the matter has come up for discussion. The commission is not fully convinced that it has heard both sides of the matter, but is willing to concede that in some localities the quoting of direct merchandise prices may serve as a sort of local market, and in that community a service may thus be rendered. That such is not the case generally, however, the commission knows from thousands and thousands of letters which it has had from all over the country complaining of such practices. . . .

The commission is furthermore convinced that in applying the test of public interest, convenience, or necessity, it may consider the character of the licensee or applicant, his financial responsibility, and his past record, in order to determine whether he is more or less likely to fulfill the trust imposed by the license than others who are seeking the same privilege from the same community, State, or zone.

A word of warning must be given to those broadcasting (of which there have been all too many) who consume much of the valuable time allotted to them under their licenses in matters of a distinctly private nature, which are not only uninteresting but also distasteful to the listening public. Such is the case where two rival broadcasters in the same community spend their time in abusing each other over the air.

A station which does not operate on a regular schedule made known to the public through announcements in the press or otherwise is not rendering a service which meets the test of the law. If the radio listener does not know whether or not a particular station is broadcasting, or what its program will be, but must rely on the whim of the broadcaster and on chance in tuning his dial at the proper time, the service is not such as to justify the commission in licensing such a broadcaster as against one who will give a regular service of which the public is properly advised. *A fortiori,* where a licensee does not use his transmitter at all and broadcasts his pro-

grams, if at all, over some other transmitter separately licensed, he is not rendering any service. It is also improper that the zone and State in which his station is located should be charged with a license under such conditions in connection with the quota of that zone and that State under the Davis amendment.

A broadcaster who is not sufficiently concerned with the public's interest in good radio reception to provide his transmitter with an adequate control or check on its frequency is not entitled to a license. The commission in allowing a latitude of 500 cycles has been very lenient and will necessarily have to reduce this margin in the future. Instability in frequency means that the radio-listening public is subjected to increased interference by heterodyne (and, in some cases, cross-talk) on adjacent channels as well as on the assigned channels.

In conclusion, the commission desires to point out that the test—"public interest, convenience, or necessity"—becomes a matter of a comparative and not an absolute standard when applied to broadcasting stations. Since the number of channels is limited and the number of persons desiring to broadcast is far greater than can be accommodated, the commission must determine from among the applicants before it which of them will, if licensed, best serve the public. In a measure, perhaps, all of them give more or less service. Those who give the least, however, must be sacrificed for those who give the most. The emphasis must be first and foremost on the interest, the convenience, and the necessity of the listening public, and not on the interest, convenience, or necessity of the individual broadcaster or the advertiser.

### *MIND PROBES*

1. In light of what is said about using records as a major source of programming, explain how your favorite music radio station is in the public interest.

2. How has the Supreme Court responded to the challenge to define "public interest, convenience, or necessity"?

# 11

# The Great Lakes Statement

**In the Matter of the Application of Great Lakes Broadcasting Co.**
**FRC Docket No. 4900**
**3 FRC Ann. Rep. 32 (1929)**

The FRC reconstructed its interpretation of the public interest in this early comparative hearing proceeding. The reformulation was unaffected by a court remand [*Great Lakes Broadcasting Company et al.* v. *Federal Radio Commission,* 37 F.2d 993 (D.C. Cir. 1930); *cert. dismissed* 281 U.S. 706].

The 1927 Radio Act's "public interest, convenience, or necessity" phrase was derived from public utility law. The *Great Lakes* statement gives detailed treatment to the contention that although broadcasting was a type of utility, radio stations were not to be thought of as common carriers. This principle was given legislative affirmation in 1934 when Section 3(h) was included in the Communications Act.

The statement is noteworthy for its emphasis on the requirement that radio stations carry diverse and balanced programming to serve the "tastes, needs, and desires" of the general public. This has been an underlying premise of subsequent FCC programming pronouncements, including the 1960 statement (see Document 25). Although the force of this principle has been moderated with respect to the vastly expanded AM and FM radio services, its vigor remains unabated for television broadcasting.

The *Great Lakes* statement also contains the germ of what was promulgated as the "Fairness Doctrine" 20 years later (see Document 23). It is clear that by 1929 the FRC had come to view advertising as the economic backbone of broadcasting and was prepared to accept it as an inevitability, within bounds. The last sentence of the statement

alludes to listeners' councils, which were the forerunners of the citizens groups of today.

. . . Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals. The standard of public interest, convenience, or necessity means nothing if it does not mean this. The only exception that can be made to this rule has to do with advertising; the exception, however, is only apparent because advertising furnishes the economic support for the service and thus makes it possible. As will be pointed out below, the amount and character of advertising must be rigidly confined within the limits consistent with the public service expected of the station.

The service to be rendered by a station may be viewed from two angles, (1) as an instrument for the communication of intelligence of various kinds to the general public by persons wishing to transmit such intelligence, or (2) as an instrument for the purveying of intangible commodities consisting of entertainment, instruction, education, and information to a listening public. As an instrument for the communication of intelligence, a broadcasting station has frequently been compared to other forms of communication, such as wire telegraphy or telephony, or point-to-point wireless telephony or telegraphy, with the obvious distinction that the messages from a broadcasting station are addressed to and received by the general public, whereas toll messages in point-to-point service are addressed to single persons and attended by safeguards to preserve their confidential nature. If the analogy were pursued with the usual legal incidents, a broadcasting station would have to accept and transmit for all persons on an equal basis without discrimination in charge, and according to rates fixed by a governmental body; this obligation would extend to anything and everything any member of the public might desire to communicate to the listening public, whether it consist of music, propaganda, reading, advertising, or what-not. The public would be deprived of the advantage of the self-imposed censorship exercised by the program directors of broadcasting stations who, for the sake of the popularity and standing of their stations, will select entertainment and educational features according to the needs and desires of their invisible audiences. In the present state of the art there is no way of increasing the number of stations without great injury to the listening public, and yet thousands of stations might be necessary to accommodate all the individuals who insist on airing their views through the microphone. If there are many such persons, as there undoubtedly are, the results would be, first, to crowd most or all of the better programs off the air, and second, to create an almost insoluble problem, *i.e.,* how to choose from among an excess of applicants who shall be given time to address the public and who shall exercise the power to make such a choice.

To pursue the analogy of telephone and telegraph public utilities is, therefore, to emphasize the right of the sender of messages to the detriment of the listening public. The commission believes that such an analogy is a mistaken one when ap-



plied to broadcasting stations; the emphasis should be on the receiving of service and the standard of public interest, convenience or necessity should be construed accordingly. This point of view does not take broadcasting stations out of the category of public utilities or relieve them of corresponding obligations; it simply assimilates them to a different group of public utilities, *i.e.,* those engaged in purveying commodities to the general public, such, for example, as heat, water, light, and power companies, whose duties are to consumers, just as the duties of broadcasting stations are to listeners. The commodity may be intangible but so is electric light; the broadcast program has become a vital part of daily life. Just as heat, water, light, and power companies use franchises obtained from city or State to bring their commodities through pipes, conduits, or wires over public highways to the home, so a broadcasting station uses a franchise from the Federal Government to bring its commodity over a channel through the ether to the home. The Government does not try to tell a public utility such as an electric-light company that it must obtain its materials such as coal or wire, from all comers on equal terms; it is not interested so long as the service rendered in the form of light is good. Similarly, the commission believes that the Government is interested mainly in seeing to it that the program service of broadcasting stations is good, *i.e.,* in accordance with the standard of public interest, convenience, or necessity.

It may be said that the law has already written an exception into the foregoing viewpoint in that, by section 18 of the radio act of 1927, a broadcasting station is required to afford equal opportunities for use of the station to all candidates for a public office if it permits any of the candidates to use the station. It will be noticed, however, that in the same section it is provided that "no obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate." This is not only not inconsistent with, but on the contrary it supports, the commission's viewpoint. Again the emphasis is on the listening public, not on the sender of the message. It would not be fair, indeed it would not be good service to the public to allow a one-sided presentation of the political issues of a campaign. In so far as a program consists of discussion of public questions, public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies not only to addresses by political candidates but to all discussions of issues of importance to the public. The great majority of broadcasting stations are, the commission is glad to say, already tacitly recognizing a broader duty than the law imposes upon them. . . .

An indispensable condition to good service by any station is, of course, modern efficient apparatus, equipped with all devices necessary to insure fidelity in the transmission of voice and music and to avoid frequency instability or other causes of interference. . . .

There are a few negative guides to the evaluation of broadcasting stations. First of these in importance are the injunctions of the statute itself, such, for example, as the requirement for nondiscrimination between political candidates and the prohibition against the utterance of "any obscene, indecent, or profane language" (sec. 29). In the same connection may be mentioned rules and regulations of

the commission, including the requirements as to the announcing of call letters and as to the accurate description of mechanical reproductions (such as phonograph records) in announcements. . . .

For more positive guides the commission again finds itself persuaded of the applicability of doctrines analogous to those governing the group of public utilities to which reference has already been made. If the viewpoint is found that the service to the listening public is what must be kept in contemplation in construing the legal standard with reference to broadcasting stations, the service must first of all be continuous during hours when the public usually listens, and must be on a schedule upon which the public may rely. . . .

Furthermore, the service rendered by broadcasting stations must be without discrimination as between its listeners. Obviously, in a strictly physical sense, a station can not discriminate so as to furnish its programs to one listener and not to another; in this respect it is a public utility by virtue of the laws of nature. Even were it technically possible, as it may easily be as the art progresses, so to design both transmitters and receiving sets that the signals emitted by a particular transmitter can be received only by a particular kind of receiving set not available to the general public, the commission would not allow channels in the broadcast band to be used in such fashion. By the same token, it is proceeding very cautiously in permitting television in the broadcast band because, during the hours of such transmission, the great majority of the public audience in the service area of the station, not being equipped to receive television signals, are deprived of the use of the channel.

There is, however, a deeper significance to the principle of nondiscrimination which the commission believes may well furnish the basic formula for the evaluation of broadcasting stations. The entire listening public within the service area of a station, or of a group of stations in one community, is entitled to service from that station or stations. If, therefore, all the programs transmitted are intended for, and interesting or valuable to, only a small portion of that public, the rest of the listeners are being discriminated against. This does not mean that every individual is entitled to his exact preference in program items. It does mean, in the opinion of the commission, that the tastes, needs, and desires of all substantial groups among the listening public should be met, in some fair proportion, by a well-rounded program, in which entertainment, consisting of music of both classical and lighter grades, religion, education and instruction, important public events, discussions of public questions, weather, market reports, and news, and matters of interest to all members of the family find a place. With so few channels in the spectrum and so few hours in the day, there are obvious limitations on the emphasis which can appropriately be placed on any portion of the program. There are parts of the day and of the evening when one type of service is more appropriate than another. There are differences between communities as to the need for one type as against another. The commission does not propose to erect a rigid schedule specifying the hours or minutes that may be devoted to one kind of program or another. What it wishes to emphasize is the general character which it believes must be conformed to by a station in order to best serve the public. . . .



In such a scheme there is no room for the operation of broadcasting stations exclusively by or in the private interests of individuals or groups so far as the nature of the programs is concerned. There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some it gives them an unfair advantage over others, and results in a corresponding cutting down of general public-service stations. It favors the interests and desires of a portion of the listening public at the expense of the rest. Propaganda stations (a term which is here used for the sake of convenience and not in a derogatory sense) are not consistent with the most beneficial sort of discussion of public questions. As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience, or necessity, particular doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public-service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well-founded complaint will receive the careful consideration of the commission in its future action with reference to the station complained of.

The contention may be made that propaganda stations are as well able as other stations to accompany their messages with entertainment and other program features of interest to the public. Even if this were true, the fact remains that the station is used for what is essentially a private purpose for a substantial portion of the time and in addition, is constantly subject to the very human temptation not to be fair to opposing schools of thought and their representatives. By and large, furthermore, propaganda stations do not have the financial resources nor do they have the standing and popularity with the public necessary to obtain the best results in programs of general interest. The contention may also be made that to follow out the commission's viewpoint is to make unjustifiable concessions to what is popular at the expense of what is important and serious. This bears on a consideration which the commission realizes must always be kept carefully in mind and in so far as it has power under the law it will do so in its reviews of the records of particular stations. A defect, if there is any, however, would not be remedied by a one-sided presentation of a controversial subject, no matter how serious. The commission has great confidence in the sound judgment of the listening public, however, as to what types of programs are in its own best interest.

If the question were now raised for the first time, after the commission has given careful study to it, the commission would not license any propaganda station, at least, to an exclusive position on a cleared channel. Unfortunately, under the law in force prior to the radio act of 1927 (see particularly *Hoover* v. *Intercity Radio Co.*, 286 Fed. 1003), the Secretary of Commerce had no power to distinguish between kinds of applicants and it was not possible to foresee the present situation and its problems. Consequently there are and have been for a long time in existence a number of stations operated by religious or similar organizations. Certain enterprising organizations, quick to see the possibilities of radio and anxious to present their creeds to the public, availed themselves of license privileges from the earlier days of broadcasting, and now have good records and a certain degree of popularity

among listeners. The commission feels that the situation must be dealt with on a common-sense basis. It does not seem just to deprive such stations of all right to operation and the question must be solved on a comparative basis. While the commission is of the opinion that a broadcasting station engaged in general public service has, ordinarily, a claim to preference over a propaganda station, it will apply this principle as to existing stations by giving preferential facilities to the former and assigning less desirable positions to the latter to the extent that engineering principles permit. In rare cases it is possible to combine a general public-service station and a high-class religious station in a division of time which will approximate a well-rounded program. In other cases religious stations must accept part time on inferior channels or on daylight assignments where they are still able to transmit during the hours when religious services are usually expected by the listening public.

It may be urged that the same reasoning applies to advertising. In a sense this is true. The commission must, however, recognize that, without advertising, broadcasting would not exist, and must confine itself to limiting this advertising in amount and in character so as to preserve the largest possible amount of service for the public. The advertising must, of course, be presented as such and not under the guise of other forms on the same principle that the newspaper must not present advertising as news. It will be recognized and accepted for what it is on such a basis, whereas propaganda is difficult to recognize. If a rule against advertising were enforced, the public would be deprived of millions of dollars worth of programs which are being given out entirely by concerns simply for the resultant good will which is believed to accrue to the broadcaster or the advertiser by the announcement of his name and business in connection with programs. Advertising must be accepted for the present as the sole means of support for broadcasting, and regulation must be relied upon to prevent the abuse and overuse of the privilege.

It may be urged that if what has heretofore been said is law, the listening public is left at the mercy of the broadcaster. Even if this were so, the commission doubts that any improvement would be effected by placing the public at the mercy of each individual in turn who desired to communicate his hobby, his theory, or his grievance over the microphone, or at the mercy of every advertiser without regard to the standing either of himself or his product. That it is not so, however, is demonstrable from two considerations. In the first place, the listener has a complete power of censorship by turning his dial away from a program which he does not like; this results in a keen appreciation by the broadcaster of the necessity of pleasing a large portion of his listeners if he is to hold his audience, and of not displeasing, annoying, or offending the sensibilities of any substantial portion of the public. His failure or success is immediately reflected on the telephone and in the mail, and he knows that the same reaction to his programs will reach the licensing authority. In the second place, the licensing authority will have occasion, both in connection with renewals of his license and in connection with applications of others for his privileges, to review his past performances and to determine whether he has met with the standard. A safeguard which some of the leading stations employ, and which appeals to the commission as a wise precaution, is the association with the



station of an advisory board made up of men and women whose character, standing, and occupations will insure a well-rounded program best calculated to serve the greatest portion of the population in the region to be served.

## MIND PROBES

1. Heat, water, light, and power companies are paid directly by the consumers they serve, but nonsubscription broadcast stations are not. How does this affect the FRC's utility analogy?

2. The First Amendment is even clearer about governmental noninterference with religion than it is about free speech and press. Yet, the FRC indicates that religious stations will be assigned "less desirable positions" than "general public service" stations. Is the Commission's position constitutionally tenable?

3. Familiarize yourself with the Fairness Doctrine (Document 23). Then identify the portions of the *Great Lakes* statement that lay the foundations of the Fairness Doctrine. Can you find a statutory basis for the FRC's extension of § 18 to "all discussions of issues of importance to the public" in the Radio Act of 1927?

## RELATED READING

KAHN, FRANK J., "The Quasi-Utility Basis for Broadcast Regulation," *Journal of Broadcasting,* 18:3 (Summer 1974), 259–76.

LOEVINGER, LEE, "Religious Liberty and Broadcasting," *George Washington Law Review,* 33:3 (March 1965), 631–59.