

■ GIVEAWAY OR BREAKTHROUGH

A Debate On TV Licensing

Giveaway to the networks or a new life for broadcasting? That argument, raised by the controversial Van Deerlin bill now before Congress, is debated below by Nicholas Johnson and Karl E. Meyer. The form employed is the usual one: each participant makes an opening statement, and these are followed by brief rebuttals. Nicholas Johnson, who chairs the National Citizens' Communications Lobby in Washington, served as an FCC Commissioner from 1966 to 1973. Karl Meyer is television critic for the *Saturday Review*.

The Communications Act of 1978 (H.R. 13015), named for Lionel Van Deerlin, chairman of the Subcommittee on Communications, where the legislation was written, provides for a number of adjustments in the relationship between public authority and the broadcasting monopolies. However, the source of contention is in two provisions: (a) licenses to transmit will be granted in perpetuity; and (b) commercial networks will be "taxed" to provide a fund for the use of Public Broadcasting and to support minority stations and extend facilities into rural areas. Who stands to gain, who to lose, in this quid pro quo? Is H.R. 13015 in the public interest? That is the subject of hearings on the bill that began on September 12 and the subject of our debate.

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A"giveaway"? I think that a modest characterization. The broadcasting industry's profits average about 100 percent a year on depreciated capital investment. Its net profit, as a proportion of gross, is four times that of the oil industry. These profits are made possible by the government-created and -protected monopoly that comes with an FCC license. Any attempt at "marketplace competition" on a broadcaster's channel is flirtation with the federal penitentiary. The only inhibition on the broadcaster's "license to print money" is the FCC's renewal process every three years—and the public rights attendant to this monopoly.

H.R. 13015, the Van Deerlin bill, now proposes to keep the monopoly, keep the government protection, but remove all the public's rights and broadcasters' obligations. It grants licenses in perpetuity. If it seems a little outrageous that \$600,000 worth of studios, cameras and transmitters can be worth \$75 million today because of a three-year license, consider the joy in executive suites at the prospect of doubling or trebling that value.

It is hard to imagine the arguments in favor of the bill. Needless to say, network television has not given the American people much analysis of it. So *The Nation* has scheduled this exchange, and a subsequent rebuttal, to see if Karl Meyer can find any justification for the bill. At this point, not having seen his piece for this issue, I will start with fundamentals.

In a democratic society it is essential that the mass media be open, diverse, responsive and legally accountable to the public. Why? The answers seem obvious; it's like trying to explain why the right to vote in elections is thought important, or the presumption of innocence in criminal trials. And yet, extraordinary as it may seem, those are the kinds of fundamental issues raised by the Van Deerlin bill.

The current law provides that broadcasters are public trustees with no right of property in their frequencies or channels. They must provide news and public affairs programs regardless of profitability. They have special fair-employment responsibilities to minorities and women. They cannot use their awesome political power to silence candidates, or views on controversial issues, with which they disagree. The law does not permit the federal government to dictate specific program content (as distinguished from program categories) and the FCC has shown no inclination to do so.

The law gives the public legal rights. Broadcasters must make their public files available at all times. They must conduct a "community ascertainment" of their audience. Candidates can insist on "equal time." Anybody can file a "fairness complaint" with the FCC. And all can participate in the license renewal process every three years—and, therefore, conduct a *meaningful* dialogue with stations' management at any time.

Why do these public rights, and broadcaster limitations, make any difference in a democracy? Why can't we just let big business totally dominate the nation's communications system as it does other areas of our lives?

Put in its most fundamental terms, it is because a democracy rests on two principles of faith: (1) The common people, once adequately educated and informed, are capable of governing themselves. (2) The wisest public opinion and policy will emerge from an uncensored dialogue (a "marketplace of ideas") in which every citizen has an equal opportunity both to speak and to hear all views.

Both principles may be utter nonsense, but on them; to paraphrase Learned Hand, we have "staked our all." Unless Lionel Van Deerlin and Karl Meyer really want to argue for an alternative form of government, we can go on to address how radio and

television can best serve these two presumptions of a democratic society.

By the time the average television viewer is 65 years of age, he or she will have devoted nine full years to watching TV. Today, democracy's dialogue is going to take place on radio and television or it's not going to take place at all. Conversations after Sunday services, debates in the town hall, and occasional handbill campaigns just don't have the impact on society that they did 200 years ago.

Van Deerlin wants to substitute "marketplace forces" for government regulation. It's a goal I have often espoused, and even tried to implement, for other industries during my ten years as U.S. Maritime Administrator and FCC Commissioner. There are only two problems with attempts to apply it to broadcasting.

We do not now have a marketplace in broadcasting. Broadcasters and elected officials (who owe their political lives to broadcasters) have opposed all attempts to create a real marketplace (cable and pay TV, paid and free access to the airwaves, additional VHF stations, and so forth). Moreover, however well marketplace forces may be thought to regulate economic abuses, there is no reason to believe them effective in providing a free society with the full range of art, information and opinion necessary to its self-governing.

"Deregulating" a protected monopoly, while continuing the monopoly and the protection, does not create competition. It just creates an unregulated monopoly. We don't leave protection from contaminated water, or unsafe drugs, to "marketplace forces," and there's no reason to suspect better results from doing so in broadcasting.

The ideas of television's marketplace are ideas about the odors of mouths and armpits—and praises sung to the politics and life styles of transnational conglomerate corporations. No, the ideas of the marketplace do not make a marketplace of ideas.

Big business has access to the airwaves—and it should. But if similar access is to be available to labor, education, religion, agriculture—in short, to the common people who are supposed to be governing this country—the Van Deerlin bill is, in a quite literal sense, one of the most un-American pieces of proposed legislation to be seen in a long time.

Of course it's an economic giveaway. That's obvious. But that's also the least of its faults. If this bill passes we'll lose far more from the Capitol than the gold on its dome. We'll have lost much of its foundation as well. □