

**RENEWING THE DEAL BETWEEN BROADCASTERS AND THE
PUBLIC: REQUIRING CLEAR RULES FOR
CHILDREN'S EDUCATIONAL TELEVISION**

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I. INTRODUCTION

When RCA president David Sarnoff unveiled the television at the 1939 World's Fair he said simply, "Now we add sight to sound."¹

Today we know there was a lot more to it than that. RCA made televisions, but television made us.

Fifty-six years after Sarnoff unveiled the RCA television, the history of broadcast television may again be at a turning point. Congress is contemplating granting incumbent broadcasters free use of additional frequencies in the electromagnetic spectrum. This action would increase the amount of the scarce public airwaves held by a few private licensees as fiduciaries for the public. Meanwhile, polls show Americans frustrated with what they find on television. The time is ripe to ask whether broadcasting is delivering on its responsibilities to the American public, and if not, how—in the next age of broadcasting—it can improve.

This concern confronts the Federal Communications Commission ("FCC") in particular. Congress struck a deal with broadcasters in the industry's infancy. The Communications Act of 1934² grants the few lucky licensees exclusive use of the nation's limited broadcast airwaves. In return, licensees agree to manage them as trustees for the public at large. The FCC's job is to ensure that broadcasters in fact serve the "public interest, convenience, and necessity."³

To that end, the FCC is considering proposals to strengthen implementation of the Children's Television Act of 1990,⁴ including proposals to require a minimum number of hours of children's educa-

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1. NEWTON N. MINOW & CRAIG L. LAMAY, *ABANDONED IN THE WASTELAND: CHILDREN, TELEVISION, AND THE FIRST AMENDMENT* 81 (1995).

2. Pub. L. No. 73-416, 48 Stat. 1064 (1934).

3. 47 U.S.C. § 309(a) (1988).

4. Pub. L. No. 89-670, 104 Stat. 996 (1990).

tional programming.⁵ These proposals should be evaluated in the context of the history of broadcast regulation and should be embraced on First Amendment grounds.

II. THE HISTORY OF THE DEAL BETWEEN BROADCASTERS AND THE PUBLIC

Broadcast policy has its origins in the Communications Act of 1934,⁶ which adopted a uniquely American approach to regulating the new technology of broadcasting. The scarce broadcast spectrum would remain public, Congress decided, but its use would be given in trust to a limited number of private speakers who entered a deal to operate on behalf of the many speakers, listeners, and viewers not blessed with a broadcast license. The broadcasters received the spectrum for free because they were charged with serving the public's interests, not only their own. Like recipients of Western lands who were required to set aside parcels for Land Grant colleges,⁷ broadcasters were required to address non-commercial concerns.

The deal did not look difficult to enforce at first, since, at the time it was conceived, many shared a grand and cheery vision of what television could do for the country. For example, in 1945 FCC Chairman Paul Porter said: "[T]elevision's illuminating light will go far, we hope, to drive out the ghosts that haunt the dark corners of our minds—ignorance, bigotry, fear. It will be able to inform, educate and entertain an entire nation with a magical speed and vividness"⁸ CBS founder Bill Paley predicted that no more than thirty percent of his programming would be commercial; the rest would be educational and community-oriented.⁹

In many respects the grand vision came true. Television really has informed, educated, and entertained our entire nation.

But Congress and the FCC did not foresee or guard against the pressures that market forces would bring to bear on broadcast licensees. Unfortunately, the rules the FCC has adopted to provide a counterweight to these forces to safeguard the public interest have been vague to the point of meaninglessness. As a result the public has been shortchanged. Certainly free "entertainment," interspersed with commercials, is a public good, but it is not the only good the public desires or deserves.

5. See *Children's Television Programming*, 10 F.C.C.R. 6308 (1995).

6. Pub. L. No. 73-416, 48 Stat. 1064 (1934).

7. See, e.g., *Morrill Act*, 7 U.S.C. §§ 301-08 (1988).

8. MINOW & LAMAY, *supra* note 1, at 83.

9. See *id.* at 78-79.

Our main public interest requirement states only that broadcasters have an obligation "to provide programming that responds to issues of concern to the community"¹⁰—a laudable goal but one whose meaning in practice is hopelessly indeterminate.

Furthermore, under our rules, a broadcaster is entitled to presumptive renewal if its service is "sound, favorable and substantially above a level of mediocre service which might just minimally warrant renewal."¹¹

What do those rules mean? Who knows? As former FCC Chairman Dean Burch told broadcasters some time ago: "If I were to pose the question, what *are* the FCC's renewal policies . . . , everyone in this room would be on equal footing. You couldn't tell me. I couldn't tell you—and no one else at the Commission could do any better"¹²

Unsurprisingly, in the last fifteen years, the FCC has not revoked a single one of the approximately 1500 television licenses or 10,000 radio licenses in this country for failure to serve the public interest.¹³

In fact, these vague rules disserve First Amendment principles as well as the due process principle that the government punish only after giving proper notice. If our rules actually require something—and something unknowable—of broadcasters, they might be rejected as constitutionally intolerable because they might permit abuse. It is the fact that they actually require nothing of broadcasters that has mitigated the potential injury to constitutional principles. But this is certainly not sufficient justification for vague standards that give the public nothing in exchange for the valuable public resource broadcasters are permitted to use.

The lack of enforcement has created a situation wherein much of the public believes that its interests are being ignored by broadcasters. When asked, eighty percent of Americans say they think television is harmful

10. Revision of Programming and Commercialization Policies, 98 F.C.C.2d 1075, 1077 (1984).

11. Cowles Broadcasting, Inc., 86 F.C.C.2d 993, 1006 (1981), *aff'd sub nom.* Central Florida Enter. v. FCC, 683 F.2d 503 (D.C. Cir. 1982), *cert. denied*, 460 U.S. 1084 (1983).

12. See Henry Geller, *The Comparative Renewal Process in Television: Problems and Suggested Solutions*, 61 VA. L. REV. 471, 488 n.98 (1975) (quoting a speech by Chairman Burch to the International Radio and Television Society on September 14, 1973).

13. Over the past fifteen years, only five television station renewals have been denied. Three were denied for misrepresentation: WNAC, Boston, Mass.; KHJ, Los Angeles, Cal.; and KQEC, San Francisco, Cal. Two were denied for failure to prosecute: KHOF, San Bernardino, Cal.; and KVOF, San Francisco, Cal.

to society, and especially to children.¹⁴ Even children themselves report that television encourages them to take part in sexual activity too soon, to show disrespect for their parents, to lie, and to engage in aggressive behavior.¹⁵ Three-quarters of adolescents and two-thirds of adults believe that television encourages illegal drug use among teenagers.¹⁶

Every year, the average American child watches more than 1,000 rapes, murders, armed robberies, and assaults;¹⁷ the average American teenager views 14,000 sex references on television.¹⁸ This persists despite over a thousand studies, including reports from the Surgeon General¹⁹ and the National Institutes of Mental Health,²⁰ that show a significant link between heavy exposure to television violence and both increased aggressive behavior²¹ and decreased positive or altruistic behavior.²² Some studies have concluded that television accounts for an

14. MINOW & LAMAY, *supra* note 1, at 39 (citing *TV Violence: More Objectionable in Entertainment than in Newscasts*, TIMES MIRROR MEDIA MONITOR, Mar. 24, 1993).

15. Claudia Puig, *Youths in Poll Say TV Is Harmful Influence Media*, L.A. TIMES, Feb. 27, 1995, at A1 (citing the findings of a nationwide poll conducted on behalf of Children Now).

16. See, e.g., Andrea K. Walker, *Drug Use Most Serious Issue Facing Teen-Agers, Poll Says*, BOSTON GLOBE, July 18, 1995, § 3, at 5 (reporting results of nationwide poll conducted for Center on Addiction and Substance Abuse at Columbia University).

17. MINOW & LAMAY, *supra* note 1, at 28 (citing DAVID A. HAMBURG, TODAY'S CHILDREN: CREATING A FUTURE FOR A GENERATION IN CRISIS (1992); William H. Dietz & Victor C. Strasburger, *Children, Adolescents, and Television*, 21 CURRENT PROBS. PEDIATRICS 8, 14 (1991)).

18. See, e.g., Elizabeth Mehren, *New Study Claims TV Fails to Balance Sex, Responsibility*, L.A. TIMES, Jan. 27, 1988, Calender section, at 1 (reporting results of study conducted for Planned Parenthood).

19. SURGEON GENERAL'S SCIENTIFIC ADVISORY COMMITTEE ON TELEVISION AND SOCIAL BEHAVIOR, TELEVISION AND GROWING UP: THE IMPACT OF TELEVISED VIOLENCE (1972).

20. 1 NATIONAL INSTITUTE OF MENTAL HEALTH, TELEVISION AND BEHAVIOR: TEN YEARS OF SCIENTIFIC PROGRESS AND IMPLICATIONS FOR THE EIGHTIES—SUMMARY REPORT (David Pearl et al. eds., 1982); 2 NATIONAL INSTITUTE OF MENTAL HEALTH, TELEVISION AND BEHAVIOR: TEN YEARS OF SCIENTIFIC PROGRESS AND IMPLICATIONS FOR THE EIGHTIES—TECHNICAL REVIEWS (David Pearl et al. eds., 1982).

21. See John P. Murray, *The Impact of Television Violence*, 22 HOFSTRA L. REV. 809, 821-23 (1994).

22. See *id.* at 815-16 (discussing a field experiment conducted by Aletha Stein and Lynette Friedrich for the Surgeon General's project).

increase in the level of violence in our society by between five and fifteen percent.²³

On the positive side, television can be a powerful educational tool; yet broadcasters air a woefully small amount of such educational television, despite a recent poll illustrating that over eighty percent of American adults think there should be more such programming.²⁴ Each of the three major networks admitted in recent filings with the FCC that they feed less than three hours of educational programming—as defined by them—to their affiliated stations each week.²⁵

The fault lies not with the broadcasters, but with the market pressures under which they compete. Advertising dollars follow desirable viewers. Yet, children constitute a smaller potential audience than adults (especially since educational programming must be targeted to narrow age groups) and advertisers value eighteen- to forty-nine-year-olds far more highly than they do children.²⁶ Market forces in this instance work in opposition to the interests of society. Advertisers value children less than adults as a potential market, but society benefits more from educating children than from entertaining adults.

As broadcasters have succumbed to increasing market pressures, the public has grown more frustrated. In 1990, the U.S. Congress passed the Children's Television Act²⁷ in an attempt to limit commercials during children's programming and increase the amount of educational fare available to children.²⁸ Members of both the U.S. Senate and House of Representatives defied Congressional leadership this summer to adopt amendments to the telecommunications reform bills requiring the V-chip blocking technology, technology which allows parents to block out

23. See, e.g., Marc Silver, *Sex and Violence on TV*, U.S. NEWS & WORLD REP., Sept. 11, 1995, at 62, 67 (citing a study by Professor George Comstock suggesting 10% of antisocial and illegal acts could be linked to television); cf. Haejung Paik & George Comstock, *The Effects of Television Violence on Antisocial Behavior: A Meta-Analysis*, 21 COM. RES. 516, 516-39 (1994); Brandon Centerwall, *Television and Violence: The Scale of the Problem and Where to Go from Here*, 267 JAMA 3059, 3060-61 (1992).

24. Doug Abrahms, *TV Viewers Want Networks to Air More Kids' Shows*, WASH. TIMES, Oct. 6, 1995, at A2.

25. Comments of Capital Cities/ABC, at n.4, *in* FCC MM Docket No. 93-48 (1995); Comments of CBS, at 22, *in* FCC MM Docket No. 93-48 (1995); Comments of NBC, at 8, *in* FCC MM Docket No. 93-48 (1995).

26. Men and women ages 18-49 are the preferred target group for advertisers. See, e.g., Ron Miller, *Generation Axed*, ALBANY TIMES UNION, Sept. 15, 1995, at C1; Rick Kushman, *NYPD Blue Fans Begin Caruso Countdown*, SACRAMENTO BEE, Oct. 11, 1994, at D1.

27. Pub. L. No. 89-670, 104 Stat. 996 (1990).

28. H.R. REP. NO. 385, 101st Cong., 1st Sess. 2 (1989).

certain programs to prevent their children from watching them.²⁹ Just this fall, U.S. Senator Joseph Lieberman and former Secretary of Education William Bennett have begun a public campaign to condemn many television talk shows.³⁰

It is clear that many in the public feel the deal they have is a raw one.

III. RENEWING THE DEAL

So what is to be done?

The public's dissatisfaction is growing at the same time Congress contemplates granting the few incumbent broadcasters additional portions of the spectrum, doubling each broadcaster's current use of spectrum at an opportunity cost to taxpayers of eleven to seventy billion dollars. Broadcasters will be given this new spectrum to broadcast digital television using a technology that allows prettier pictures and vastly more programming per broadcast channel.

The time is ripe to question the public's "deal" with the broadcasters and ask if a new scheme is required for the digital future.

There are two choices for how we can proceed. As a society, we can renew the deal between broadcasters and the public in a way that gives meaning to the public interest responsibilities of broadcasters. This option entails translating the broadcasters' duty to serve the public interest into a limited number of clear and concrete requirements—rules that are understandable and enforceable. These could be determined by Congress or, as is currently the case, by a mixture of legislation and regulation. The Children's Television Act of 1990 plainly makes educational television for children one such requirement.

If we renew the public's deal with broadcasters, these few specific public interest requirements would be virtually the only requirements on broadcasters. The FCC would continue to extract itself from the business of meddling in the strictly commercial aspects of broadcasters' businesses.

But we would have to agree, finally, to real requirements for broadcasters.

If broadcasters reject these terms, then the public may consider an alternative: giving up on the deal and starting all over. Broadcasters would have no public interest requirements. They would have no special privileges either.

29. S. 652, 104th Cong., 1st Sess. (1995); H.R. 1555, 104th Cong., 1st Sess. (1995).

30. Howard Kurtz, *Morality Guru Takes on Talk TV*, WASH. POST, Oct. 26, 1995, at C1.

This is the route that President Reagan's FCC Chairman, Mark Fowler, seemed to prefer. Instead of making public service obligations concrete and real, he sought in effect to eliminate them. As he said: "[T]he perception of broadcasters as community trustees should be replaced by a view of broadcasters as marketplace participants [T]he public's interest, then, defines the public interest."³¹ Putting his point more colorfully, Fowler said the television is just a "toaster with pictures."³²

Inevitably, this paradigm would support the proposition that the FCC should auction the digital broadcast spectrum, just as we have recently auctioned other portions of the spectrum for use by competitors of cellular telephone operators. If broadcasters are not obligated to provide public interest programming that the market fails to generate, then it will be exceedingly difficult to explain to the American people why digital spectra worth billions of dollars should be given to broadcasters and not auctioned to the highest bidder. After all, we would not give a portion of one of our national forests to a logging company for free.

It would be similarly difficult to justify special measures for broadcasters such as laws requiring cable operators to carry broadcast signals and to give them favorable channel placement. Free digital spectrum, "must carry," channel placement—these are all easier to justify if broadcasters commit to providing real public service to kids and communities in return for use of the public's spectrum.

To be clear, I am not taking a position on whether the digital spectrum should be auctioned. The FCC lacks the explicit legal authority to take this path. As between the two approaches, I much prefer the first. At the FCC we are making an attempt to renew the deal. We are focusing on children's television, a clear element of the public interest in light of the demonstrable influence of television on children's development.

The FCC is in the process of a rulemaking to implement the Children's Television Act of 1990.³³ This Act limits the time allowed for commercials on children's programs and requires the FCC to review the amount of children's educational and informational programming

31. Mark S. Fowler & Daniel L. Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. 207, 209-10 (1982).

32. Caroline E. Mayer, *FCC Chief's Fears: Fowler Sees Threat in Regulation*, WASH. POST, Feb. 6, 1983, at K6.

33. See Children's Television Programming, *supra* note 5.

aired by broadcasters when reviewing their license renewal applications.³⁴

We have received public comments and are now evaluating three sets of proposals. First, we are evaluating whether to tighten the current definition of what qualifies as "educational and informational" for the purposes of the Act. The definition is now overly broad. We propose narrowing it somewhat to include only shows for which a "significant purpose" is educational or informational. We have also proposed that a program be deemed educational or informational for the purposes of the Act only if it is of substantial length and is aired during children's viewing hours.³⁵

Second, we are evaluating proposals to empower parents and communities with the tools they need to be the real enforcers of broadcasters' compliance with the Act. Broadcasters would be required to tell local programming guides which shows they consider educational. In addition to giving parents advance information, these television listings would provide some check against claims that shows like *America's Funniest Home Videos*³⁶ are educational—since broadcasters presumably would be embarrassed to make this claim in such a public fashion.³⁷

Another option for harnessing public opinion to the job of increasing quality educational programming would be for an institute or a university with academic freedom to issue reports on networks' educational shows. Networks would agree to provide to the institute a list of their educational programming, and then let social scientists evaluate just how well those shows teach kids. Such a report card could grade each show and each network on teaching effectiveness, ratings and audience share (showing that it is engaging enough to attract kids), and so on.

Our kids receive report cards to prove they are learning. Maybe networks should get them, too.

Third, we are evaluating whether or not to clarify the rules implementing the Children's Television Act by requiring that each broadcaster air a minimum number of hours of children's educational programming each week.³⁸

We have received thousands of letters, electronic messages, and formal comments on these proposals from broadcasters and from groups

34. Children's Television Act of 1990, 47 U.S.C. §§ 303a, 303b (Supp. 1995).

35. See Children's Television Programming, *supra* note 5.

36. See Comments of Dale Kunkel, in FCC MM Docket No. 93-48 (1995) (citing shows listed by broadcasters as satisfying the Children's Television Act requirements).

37. See Children's Television Programming, *supra* note 5.

38. See *id.*

representing millions of people. We will now read through these comments and decide how best to address the concerns raised.

Meanwhile, we are sweeping away those vague regulations that do the public no service. This is the other part of renewing the deal: we must move toward eliminating all but the essential, clear, and specific rules. Already, our record of accomplishment on this score is long and it is getting longer. In the last twelve months, we have been reviewing virtually every rule governing broadcasters' commercial practices, rules that have been on the books for a very long time. We very recently announced the demise of two rules that have tied the economic hands of broadcasters for more than fifteen years: the financial syndication rule³⁹ and the prime time access rule.⁴⁰ And we have proposed eliminating network/affiliate rules,⁴¹ promised to relax ownership caps,⁴² jump-started the wireless cable industry,⁴³ and eliminated the chronic backlog of license-transfer applications.

This deregulatory, pro-competitive agenda is completely in keeping with the emphasis on clarifying, at last, broadcasters' public interest obligations. In order to take a truly deregulatory, market-oriented approach, we must eliminate vague rules that enrich lobbyists and allow for unaccountable ad hoc decisionmaking. And we should replace them with clear, unambiguous, concrete, and tradeable duties for those who use the public property of the airwaves.

39. Network Financial Interest and Syndication Rules, 60 Fed. Reg. 48,907 (1995) (to be codified at 47 C.F.R. pt. 73).

40. Prime Time Access Rule, 60 Fed. Reg. 44,773 (1995) (to be codified at 47 C.F.R. pt. 73).

41. Network/Affiliate Programming Rules, 60 Fed. Reg. 35,369 (1995) (to be codified at 47 C.F.R. pt. 73) (proposed July 7, 1995); Network/Affiliate Advertising Rule, 60 Fed. Reg. 34,959 (to be codified at 47 C.F.R. pt. 73) (proposed July 5, 1995); Filing of Network Affiliation Contracts, 10 F.C.C.R. 5677 (1995).

42. See, e.g., Television Ownership Rules, 60 Fed. Reg. 6490, 6494 (1995).

43. See, e.g., 60 Fed. Reg. 57,365 at 57,366 (1995) (to be codified at 47 C.F.R. pts. 21 & 74); 60 Fed. Reg. 36,524 (1995) (to be codified at 47 C.F.R. pt. 21).

IV. FIRST AMENDMENT ARGUMENTS FOR CLEAR RULES ON CHILDREN'S TELEVISION

The National Association of Broadcasters strongly opposes a clear, enforceable requirement that broadcasters air a minimum number of hours of children's educational programming.⁴⁴ They base their arguments in part on the First Amendment.⁴⁵

A. Rules Promoting Children's Television Promote Interests at the Core of the First Amendment

Nothing in the First Amendment forbids government from "promot[ing] programming that helps children and discourag[ing] programming that harms them," as one of our country's foremost First Amendment scholars, Professor Cass Sunstein of the University of Chicago Law School, recently wrote.⁴⁶

In fact, a focus on children's educational programming promotes interests at the core of the First Amendment. James Madison, the father of the First Amendment, viewed its purposes as encompassing public deliberation and democratic self-government.⁴⁷ The great Justice Louis Brandeis, a leading figure in the development of contemporary First Amendment doctrine, said that the First Amendment bolsters democratic self-governance, and that it concerns preparing and educating citizens to take their civic duty seriously, to avoid that "greatest menace to freedom"—"an inert people."⁴⁸ By requiring that broadcasters provide children with ample educational programming, we only assure that they play their proper role in promoting these important public purposes.

B. Review in the Courts

Would the requirement that broadcasters devote a specified number of hours per week to children's educational programming be upheld by the courts? I believe it would.

44. Comments of the National of Association Broadcasters, at 2, in FCC MM Docket No. 93-48, at 2 (1995).

45. Comments of the National Association of Broadcasters, at 25-26, in FCC MM Docket No. 93-48, at 25-26 (1995) (citing the Statement of Rodney A. Smolla in Support of NAB Comments).

46. CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* at xi (2d ed. 1995).

47. See Cass R. Sunstein, *Selling Children*, NEW REPUBLIC, Aug. 21 & 28, 1995, at 38, 38 (reviewing MINOW & LAMAY, *supra* note 1).

48. *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

Although a Commentary is not the place for a full legal defense of the Commission's evolving children's television proposals, reasonable weekly programming requirements would fall well within the FCC's authority to regulate broadcast content in the public interest. That authority rests on two independent constitutional principles. First, as the Supreme Court recognized in *Red Lion Broadcasting Co. v. FCC*⁴⁹:

Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern.⁵⁰

As a result of spectrum scarcity, in other words, the Court applies a standard for First Amendment review of broadcast regulation that is less rigorous than it applies in other contexts.⁵¹ Under this less rigorous standard, I do not believe that a court would have any trouble finding the educational development of America's children a matter of "great public concern," and then upholding a reasonable weekly requirement for children's educational programming.

Second, in licensing out part of the public airwaves for free, Congress has conferred on broadcasters an enormous subsidy that carries important First Amendment consequences. Here, as in other contexts, the government may impose reasonable, viewpoint-neutral restrictions on a private party's use of public resources. Specifically, "a licensed broadcaster is granted the free and exclusive use of a limited and

49. 395 U.S. 367 (1969).

50. *Red Lion*, 395 U.S. at 388, 394. See also *Turner Broadcasting, Inc. v. FCC*, 114 S. Ct. 2445, 2456 (1994) ("our cases have permitted more intrusive regulation of broadcast speakers than of speakers in other media" in light of "the unique physical limitations of the broadcast medium").

51. See, e.g., *FCC v. League of Women Voters*, 468 U.S. 364, 376 (1984) ("[O]ur cases have not followed precisely the same approach that we have applied to other media and have never gone so far as to demand that such regulations serve 'compelling' governmental interests."); see also *Turner Broadcasting*, 114 S. Ct. at 2456 (citing *League of Women Voters*, *Red Lion*, and *NBC v. United States*, 319 U.S. 190 (1943)).

valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations."⁵²

A quantitative children's educational programming requirement would not regulate on the basis of viewpoint. The rule would say nothing about the educational subject of the programming or the (idea) presented. It would merely apply to broadcasters the public obligations that come with the license they are granted, and would thus likely be upheld by the courts.

V. BROADCASTING AT A TURNING POINT

I hope everyone involved in the key decisions about the future of broadcasting will think about the story of another great American industry that faced a similar crisis of direction three decades ago.

This industry was great and powerful. Like the information, entertainment, and communications industries today, it employed hundreds of thousands of workers. It faced no significant foreign competition and it exported its products all around the world. Its CEOs were honored as *Time's* "Man of the Year"; they were chosen as Cabinet Secretaries. It was, like broadcasting, crucial to our economic success, and, like broadcasting, it helped define our culture. But this industry had a problem. The products sold by this industry were involved in the deaths of over 50,000 Americans a year.

The industry was of course the automobile industry. The time was the 1950s and 1960s.

Detroit had always denied studies that car design caused injuries and deaths in accidents. But then Ralph Nader published a book called *Unsafe at Any Speed*. Public opinion was mobilized. In 1966 Congress unanimously passed the National Traffic and Motor Vehicle Safety Act and regulation began. Yet the industry continued to oppose passive restraints, air bags, and other safety measures. It claimed the public didn't want safe cars. Then, it spent millions of dollars on public relations firms, lawyers, and lobbyists in countless legal battles over safety regulations and recalls.

52. *CBS, Inc. v. FCC*, 453 U.S. 367, 395 (1981); see also *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 115 S.Ct. 2510, 2516-17 (1995) (government may regulate subject matter of speech conveyed in limited public forum); *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (permitting government to enforce desire "to fund one activity to the exclusion of the other" by forbidding federally funded program to include speech on specified topics); *Regan v. Taxation with Representation*, 461 U.S. 540, 548-51 (1983) (government may withhold otherwise available tax exemption from certain nonprofit organizations that "carry[] on lobbying, or otherwise attempt[] to influence legislation").

Meanwhile, foreign competition arrived. Detroit missed out on the quality revolution. Americans fell out of love with the cars of my youth. Detroit lost its public trust and market share.

But the story has at last had a happy end. Detroit is well into a turnaround, dramatized in the 1980s by the invention of a brand new product fit for the whole family—the minivan. Detroit has made a commitment to quality and is regaining public confidence. As the *New York Times* reported on its front page: “The auto industry [is] working to sell more cars by selling safety”⁵³

Violence and children’s educational television issues challenge television in much the same way that the concerns about safety challenged the car companies in the 1960s. There was then for the car companies, and there is now for television, a fork in the road: one way is the path of denial and confrontation, the other way is the route to opportunity and renewal.

Yogi Berra explained what to do in this situation: “When you come to a fork in the road, take it.”

Notwithstanding Yogi’s views, I think that the better way is clear. Nonviolent, decent, family-friendly, and even educational shows can be for broadcasters what safety now is for the car companies: an opportunity to win again the trust of their public. It can be a chance to redefine television programming so that it more perfectly mirrors the values of our country. Just as the automobile industry invented a new family car, broadcasters can invent a new kind of family programming, renewing their deal with the American public.

53. Matthew L. Wald, *Dummies Get Smarter for Car-Crash Test*, N.Y. TIMES, Jan. 23, 1994, at A1.

