NOTE:

PATROLLING THE ELECTROMAGNETIC SPECTRUM: A CRITIQUE OF STATE REGULATION OF THE BROADCAST MEDIA IN THE PHILIPPINES

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The crossings or hybridizations of the media release great new force and energy as by fission or fusion. There need be no blindness in these matters once we have been notified that there is anything to observe.

- Marshall McLuhan
Understanding Media

I. INTRODUCTION

Mass media and the state have long been locked into an uncomfortable dance. Their healthy interaction is seen as one of the cornerstones of the modern democracy. However, both would prefer to see their relationship not as symbiotic, but as antibiotic. Surely, both institutions can validly claim with only a hint of arrogance that one can survive without the other. Their interrelation instead is premised on the notion that one has to act in order to expose and cure the ails of the other.

A line is often drawn between the two institutions when at issue is the right of free expression. The freedom to express a belief, no matter how out of

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sync with popular thought, has long been constitutionally ensured.[1] However, notions of social propriety and the dictation of popular will have also lent justification to the regulation of speech. Attempts to strike a balance have resulted in the creation of a framework that has met with tacit acceptance.

The Constitution provides that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."[2] A cursory look at the constitutional provision could lead to the conclusion that the regulation of the constitutional right to freedom of expression does not make any distinction as to the medium. An eminent constitutionalist such as Vicente Sinco (commenting on an earlier incarnation of the provision) draws that same conclusion.

> The bill of rights does not draw any distinction between the various methods of communicating ideas. One form of expression is just as effective and important as another, depending upon the occasion and the circumstances.[3]

In light of current doctrines on the regulation of broadcast media, this opinion is now simplistic.

This provision seemingly prohibits prior restraint on mass media.[4] Joaquin Bernas, S.J. has said that the most blatant form of prior restraint would be "a system of licensing administered by an executive officer."[5] If indeed the

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[1] CONST. (MALOLOS), art. 20. Neither shall any Filipino be deprived of: 1) The right of expressing freely his ideas and opinions either by word or by writing availing himself of the press or any other similar means.

CONST. (1935), art. III, sec.1, par. (8). No law shall be passed abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and petition the Government for redress of grievances.

CONST. (1973), art. IV, sec. 9 likewise restates the provision of the 1935 Constitution.

[2] CONST. art. III, sec.4.

[3] VICENTE SINCO, PHILIPPINE CONSTITUTIONAL LAW 212 (2d ed., 1960).

[4] Prior restraint means official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. See JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 205 (1996).

[5] JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 205 (1996). "In fact, the doctrine which prohibits prior restraint arose as a reaction to sixteenth and seventeenth century attempts to control the press by requiring licenses and permits as a prerequisite to publication."

Bill of Rights makes no distinction as to the medium of expression, the idea that the broadcast media should be subject to "a system of licensing administered by an executive officer" is as noxious to the Bill of Rights as when it is applied to print media. However, all broadcasting, whether through radio or television stations, is licensed by the government. [6] Furthermore, radio and television stations must first secure a legislative franchise in order to operate.[7] Both requirements have long been established in Philippine law.[8]

While the author sympathizes with the opinion of Dean Sinco, the latter takes a decidedly minority stance when seen from the viewpoint of jurisprudence. The evolving legal doctrines that have governed state regulation of broadcast media deserves critical examination. Most of these doctrines were derived from American jurisprudence; when applied in this jurisdiction, however, something is often lost in the translation. This paper shall examine these doctrines and their application (or misapplication) in the Philippine context.

The words on the subject of the eminent legal historian Blackstone bear some importance to this day. "To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and government." *Id.* at 204. It must be noted though that ownership and management of mass media, including print media, is "limited by the Constitution to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens. See CONST. art. XVI, sec. 11, par. (1).

[6] Telecom v. COMELEC, G.R. No. 132922, 21 April 1998, 289 SCRA 337, 347.

[7] *See* Rep. Act No. 3846 (1931), as amended. Sec. 1. No person, firm, company, association or corporation shall construct, install, establish, or operate a radio station within the Philippine Islands without having first obtained a franchise therefor from the Philippine Legislature; Provided however, That no franchise from the Legislature shall be necessary for the construction, installation, establishment or operation of a broadcasting station, an amateur station, an experimental station, a training station, a station on board a mobile vessel, train, or aircraft, or a private station in a place without any means of communication. *See also* NTC Memorandum Circular No. 06-2-81, "No radio or television (TV) broadcasting station/system shall be operated and maintained without first securing a legislative franchise as required by the provisions of the Radio Control Law, Act No. 3846, as amended, and a Certificate of Public Convenience and Necessity from the National Telecommunications Commission (NTC), except non-commercial stations that are wholly devoted for training purposes."

[8] Rep. Act No. 3846 was promulgated on 11 November 1931. In the United States, jurisprudence issued as early as 1929 had upheld the authority of the federal government to regulate radio broadcasters. See U.S. v. American Bond & Mortgage Co., 31 F.2d 448 (N.D.Ill. 1929). *See also* RALPH HOLSINGER, MEDIA LAW 425 (1991).

II. THE TECHNICAL NATURE OF BROADCAST MEDIA

One of the keys to understanding the various rationales adapted for the regulation of broadcast media is the peculiarly technical nature of the medium. Broadcast media is distinguished from other forms of media in its utilization of radio waves. As one distinguished commentator has put it:

> The key characteristics of radio waves are frequency and wavelength, which vary inversely with one another. The former term refers to cycles per second, and the latter term relates to the distance between points in separate cycles. Mass media services mostly are located on medium frequencies, denominated in terms of kilohertz (previously kilocycles and very high and ultrahigh frequencies, classified in terms of megahertz. AM service operates between 540 and 1705 kilohertz, and upon 107 frequencies at 10 kilohertz intervals. FM broadcasting is assigned frequencies from 88 to 108 megahertz, allowing 100 channels at intervals of 200 kilohertz. Television requires wider channels to accommodate picture and sound. Thus, VHF assignments are from 54 to 72 megahertz, 76 to 88 megahertz, and 174 to 216 megahertz, (respectively channels 2,3, and 4; 5 and 6; and 7 through 13) at 6-megahertz intervals. UHF broadcasting occupies frequencies from 470 to 806 megahertz, which runs from channel 14 to channel 69.
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> Broadcasting essentially entails the conversion of vibrations from one voice or other inputs into electrical signals, which vary accordingly in strength and frequency and are amplified as they are transmitted onto a carrier wave. AM refers to audio waves which vary in power and thus in length. With FM broadcasting, wave frequency varies, but amplitude is unchanged. Amplitude modulation is the methodology for AM radio service and the video aspect of television in the United States. Frequency modulation provides radio service and the audio dimension of television. Transmission of radio signals occurs at the speed of light along various routes, depending upon the nature of the signal. AM transmission, for instance, proceeds in waves that both follow the contour of the ground and move upward through the atmosphere. Sky waves are reflected back to the earth effectively at night, which can greatly enhance service range and interference potential. FM signals like other VHF emissions, travel by line of sight and are subject to distortion or absorption by obstacles between transmitting and receiving points.[9]

[9] DONALD LIVELY, MODERN COMMUNICATIONS LAW 202 (1991).

The exact effects of broadcast media on society as a whole and on our daily lives will always be the subject of vigorous debate.[10] However, there is indubitable statistical proof that the effects and influence of broadcast media in the Philippines are widespread and continues to grow. In 1994, 5.7 million of 12.7 million Filipino households owned a television set, an increase of 10.4 percent from 1989. Out of 12.7 million Filipino households, 10.3 million owned a radio set in 1994. From 1989 to 1994, the proportion of radio owners in rural areas grew by 7.6 percent while the proportion of radio owner in urban areas grew by 2.6 percent. Three out of ten Filipinos ten years old and older are exposed to television, while eight out of ten Filipinos are exposed to radio. Radio is still the most effective means for reaching Filipinos today, it posting a higher proportion of exposure than other forms of mass media such as television, video tape, comics, magazines, newspapers and books.[11]

The above statistics may constitute *prima facie* proof that television and radio need to be heavily regulated, due to their ever widening reach within Philippine society. Surely, issues in broadcasting media would fall within the realm of public interest, given the number of people affected by the medium. It must be noted that though the print media (e.g., newspapers) could theoretically reach as many people as broadcast media does, it is not subjected to any interference from any governmental agency. Even if the print media were proven to have a wider influence on people than broadcast media has, the former would still be free from governmental control or regulation.

A wholly new standard has emerged to justify the licensing and franchising requirements imposed on the broadcast media. Various justifications for the deviation have emerged from jurisprudence.

III. FRANCHISE AND LICENSING

The twin requirements of franchising and licensing have been imposed on broadcast companies before they can begin operations in the Philippines. A

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[10] The discussions inevitably focus on the questions on the exact nature of communications in general and mass media in particular. The theories of authors such as Marshall McLuhan have generated much academic controversy, picking up ardent adherents and detractors along the way. See MARSHALL MCLUHAN, UNDERSTANDING MEDIA (1961).

[11] *Results of the Second Functional Literacy Education and Mass Media Survey conducted by the National Statistics Office and the Department of Education, Culture and Sports* <http://www.kbp.org.ph/tvmain.html>.

distinction must be made between the two. A franchise started out as a "royal privilege or a branch of the King's prerogative subsisting in the hands of a subject."[12] Consequently, "a franchise, being merely a privilege emanating from the sovereign power of the state and owing its existence to a grant, is subject to regulation by the state itself by virtue of its police power through its administrative agencies."[13]

A. The evolution of the licensing requirement

It should not come as a surprise that broadcasters themselves were among those who had requested the United States government to step in and regulate the fledgling commercial radio industry.[14] In the early years of commercial radio, there was complete freedom of the airwaves. From July 1926 to 23 February 1927 alone, almost 200 stations went on the air. "These new stations used any frequencies they desired, regardless of the interference thereby caused to others. Existing stations changed to other frequencies and increased their power and hours of operation at will. The result was confusion and chaos. With everybody on the air, nobody could be heard."[15] In 1927, the U.S. Congress passed the Radio Act of 1927, which was empowered with wide licensing powers. This law was superseded by the Communications Act of 1934, which established the Federal Communications Commission (FCC).[16] The FCC, in exercising its power and responsibility, is obligated by law to serve "the public interest, convenience, or necessity."[17]

One American commentator has explained the legal justification taken by the United States Congress in exercising regulatory powers over broadcast media:

> Congress rationalized its actions by adopting a theory that has made it possible to impose rules on broadcasters that in any other medium would

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[12] *See* RCPI v. NTC, G.R. No. L-68729, 29 May 1987, 150 SCRA 450, 457. This definition was given by Finch, adopted by Blackstone, and accepted by every authority since State v. Twin Village Water Co., 98 Me 214, 56 A 763 (1903).

[13] RCPI v. NTC, G.R. No. L-68729, 29 May 1987, 150 SCRA 450, 457.

[14] RALPH HOLSINGER, MEDIA LAW 421 (1991).

[15] NBC v. U.S., 319 U.S. 190, 211 (1943).

[16] JOHN BITTNER, LAW AND REGULATION OF ELECTRONIC MEDIA 36 (2d 1994).

[17] "The public interest standard has been described as the "touchstone" criterion for federal regulation of broadcasting." See LIVELY, *supra* note 9, at 206. Public interest of course is a term that defies easy or standard definition.

> be considered a violation of the First Amendment. The theory is based on the assumption that the electronic spectrum, made up of electromagnetic frequencies, belongs to all the people. Further, those frequencies are a scarce commodity because they are limited in number. Therefore, government, acting on behalf of the people, has a right to assign frequencies to operators who will best serve the public interest.[18]

In the Philippines, licensing was originally a function of the Secretary of Commerce and Communications.[19] Apart from the granting of licenses, the Secretary also had specific powers and duties under section 3 of Republic Act No. 3846, pertaihing to the regulation of radio stations.[20]

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[18] See HOLSINGER, *supra* note 14, at 421-22.

[19] *See* Rep. Act No. 3846 (1931), sec. 2.

[20] Sec. 3. The Secretary of Commerce and Communication is hereby empowered to regulate the establishment, use, and operation of all radio stations and of all forms of radio communications and transmissions within the Philippine Islands and to issue such rules and regulations as may be necessary. In addition to the above, he shall have the following specific powers and duties:

a) He shall classify radio stations and prescribe the nature of service to be rendered by each class and by each station within any class;

b) He shall assign call letters and assign frequencies for each station licensed by him and for each station established by virtue of a franchise granted by the Philippine Legislature and specify the stations to which each such frequency may be used;

c) He shall make rules and regulations to prevent and eliminate interference between stations and to carry out the provisions of this Act and the provisions of International Radio Regulations: Provided however, that changes in the frequencies or in the authorized power, or in the character of omitted signals, or in the type of the power supply, or in the hours of operation of any licensed station, shall not be made without first giving the station a hearing;

d) He may establish areas or zones to be served by any station;

e) He may make special rules and regulations applicable to radio stations engaging in chain broadcasting;

f) He may make general rules and regulations requiring stations to keep records of traffic handled, distress, frequency watches, programs, transmissions of energy, communications or signs;

g) He may conduct such investigations as may be necessary in connection with radio matters and hold hearings, summon witnesses, administer oaths and compel the production of books, logs, documents and papers;

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i) He shall prescribe rates of charges to be paid to the Government for the inspection of stations, for the licensing of stations, for the examination of operators, for the licensing of operators, for the renewal of station or operator licenses, and for such other services as may be rendered;

j) He is hereby empowered to approve or disapprove any application for the construction, installation, establishment or operation of a radio station;

k) He may approve or disapprove any application for renewal of station or operator license: Provided however, that no application for renewal shall be disapproved without giving the licensee a hearing;

On 24 September 1972, President Marcos issued Presidential Decree No. 1, adopting the Integrated Reorganization Plan reorganizing the entire executive branch of the government. Under the said plan, two agencies were created governing the field of telecommunications: the Board of Communications and the Telecommunications Control Bureau. These two agencies would eventually be merged to form the National Telecommunications Commission, which was created by Executive Order No. 546.[21]

The National Telecommunications Commission (NTC) is the governmental agency tasked with overseeing the regulation of broadcast media, among others. Section 15 of Executive Order No. 546 enumerates its functions:

> Section 15. *Functions of the Commission.* The Commission shall exercise the following functions:
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> a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;
> b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services . . .
> c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;
> d. Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;
> e. Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;

l) He may, at his discretion, bring criminal actions against violators of the radio law or the regulations; or simply suspend or revoke the offender's station or operator's licenses; or refuse to renew such licenses; or just reprimand and warn the offenders;
m) The location of any station, and the power and kind or type of apparatus to be used shall be subject to his approval;
n) He shall prescribe rules and regulations to be observed by stations for the handling of SOS messages and distress traffic: Provided, that such rules and regulations shall not conflict with the provisions of the International Radio Regulations.

Subsequent amendments would vest these powers in the stead of the Secretary of Commerce and Communications to the Secretary of Public Works and Communications. *See* Rep. Act No. 584 (1950).

[21] Promulgated 23 July 1979, wherein, among others, the National Telecommunications Commission was formed, composing part of the Ministry of Transportation and Communications.

> f. Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;
> g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible;
> h. Supervise and inspect the operation of radio stations and telecommunications facilities;
> i. Undertake the examination and licensing of radio operators;
> j. Undertake, whenever necessary, the registration of radio transmitters and transceivers.

On 14 February 1981, President Marcos issued a memorandum addressed to, among others, the Commissioner of the National Telecommunications Commission, wherein pursuant to Executive Order No. 546, he ordered "all radio and television broadcasting systems be required to secure certificates of public convenience from the NTC, predicated upon a franchise operated as such."[22]

In the United States, licensing was the primary methodology chosen for addressing the chaos and confusion of an unregulated electronic marketplace.[23] The licensing criteria have been generally left up to the FCC, though the legislature has prescribed rules and standards for such.[24] A licensing requirement for media seems noxious to freedom of expression values, acting as a form of prior restraint.[25] However, such an absolutist view has been tempered by more pragmatic values.

> Although a prior restraint is presumptively invalid and imposes upon government a heavy burden of justification, the consequences of an unregulated marketplace are evidenced by history and provide a compelling reason for licensing. Methodologies exist that would remove government from content-related assessments in the course of licensing. Consistent with broadcasting's evolution as a medium with the least First

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[22] This directive was reiterated in the following Memorandum Circulars issued by the NTC Memorandum Circular No. 06-2-81, Memorandum Circular No. 07-04-81, " and" Memorandum Circular No. 01-2-83.

[23] LIVELY, *supra* note 9, at 207.

[24] *Id.*

[25] Both Bernas and Lively make reference to the condemned English practice of licensing publishers. See BERNAS, *supra* note 9, at 205 and LIVELY, *supra* note 9, at 207.

> Amendment status, however, analysis never has insisted upon licensing criteria and procedures that would have the least burdensome impact upon constitutional interests.[26]

The licensing requirement must be applied with great care. As will be shown later, there exist juridical rationalizations on broadcast regulation that are not content-based, but medium-based.

B. The need for a legislative franchise

The rule that radio and television stations must obtain a legislative franchise in order to operate has long been established in Philippine law.[27] The implications of the franchise requirement were illustrated in the recent case of *Telecom v. Comelec*.[28] In this case, Supreme Court, speaking through Justice Mendoza, justified the appropriation without cost by the COMELEC of air time from Republic Broadcasting System, a commercial television station, by citing article XII, section 11 of the Constitution, which reads in full:

> Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. *Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires.* The State shall encourage

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[26] LIVELY, *supra* note 9, at 207.

[27] Such requirement was imposed as early as 1931, with the promulgation of Rep. Act No. 3846. Secton 1 thereof reads: "No person, firm, company, association or corporation shall construct, install, establish, or operate a radio station within the Philippine Islands without having first obtained a franchise therefor from the Philippine Legislature; Provided however, That no franchise from the Legislature shall be necessary for the construction, installation, establishment or operation of a broadcasting station, an amateur station, an experimental station, a training station, a station on board a mobile vessel, train, or aircraft, or a private station in a place without any means of communication." There was an attempt to enshrine the principle into the 1987 Constitution, but it failed in the Constitutional Commission. As then Commissioner, now Chief Justice Davide pointed out, the right to regulate was inherent, and it was unnecessary to provide for such in the constitution. See V RECORD 221.

[28] G.R. No. 132922, 21 April 1998, 289 SCRA 337. The core issue in the said case was whether appropriation by the COMELEC of free airtime from television stations pursuant to sec. 92 of Batas Pambansa Blg. 881 constituted an unlawful taking of property by the state without due process of law and without just compensation.

> equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines (emphasis supplied).

In explaining the nature of the legislative franchise, the Court delved into the questioned of who owned the airwaves.

> In truth, radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them.[29]

In support of the above proposition, the opinion of the U.S. Supreme Court in a leading case was cited in part:

> But air time is not owned by broadcast companies . . . "licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them." Consequently, "a license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens."[30]

This contention was challenged by Justice Panganiban in his dissent in the *Telecom* case. He asked whether the State could claim ownership over the airwaves.

> [The Constitution] is silent as to the ownership of the airwaves and frequencies. It is then reasonable to say that no one owns them. Like the air we breathe and the sunshine that sustains life, the air lanes themselves "are not property because they cannot be appropriated for the benefit of any individual," but are to be used to the best advantage of all.[31]

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[29] Telecom v. COMELEC, G.R. 132922, 21 April 21 1998, 289 SCRA 337, 349.

[30] Red Lion v. Federal Communications Commission, 395 U.S. 371, 391 (1969), as cited in Telecom v. COMELEC, G.R. No. 132922, 21 April 1998, 289 SCRA 337, 352-353. It must be kept in mind that a legislative franchise is not required in the United States in order to operate a broadcast station, though the procurement of a license from the Federal Communications Commission is required.

[31] Telecom v. COMELEC, G.R. No. 132922, 21 April 1998, 289 SCRA 337, 372, citing II ARTURO TOLENTINO, COMMENTARIES ON THE CIVIL CODE (6th ed. 1996). Tolentino, in turn, cites Planiol and Ripol.

The dissent characterized legislative franchises for broadcasting companies as "essentially for the purpose of putting order in the use of the airwaves by assigning to such companies their respective frequencies. The purpose is not to grant them the privilege of using public property. For, as earlier stated, airwaves are not owned by the government."[32]

Responding to the points raised in the dissent, the majority opinion pointed out that:

> [T]he dissent also says that "[T]he franchise holders can recover their huge investments only by selling air time to advertisers." If airlanes cannot be appropriated, how can they be used to produce air time which the franchise holders can sell to recover their investment? There is a contradiction here.[33]

However, it would not necessary follow that ownership of the airwaves belongs to the State. The majority opinion never makes such a categorical assertion, a fact pointed out by Justice Panganiban in his dissent.

The question of ownership of the electromagnetic spectrum was discussed in the context of whether or not the demand for airtime constituted a "taking" contemplated by the Constitution, and thus subject to just compensation. If the airwaves are at all appropriable, could the State claim ownership over them? There is no clarity on these points.[34] However, even assuming that the airwaves are indeed owned by the State, the constitutional values of freedom of expression are in no way less protected. It is worth considering the point once made by Justice Douglas in a leading case.[35] He pointed out that while the United States government possessed ownership over federal parks, it would still be unlawful for the State to proscribe the right of speakers to express their points of view within those parks.[36]

Perhaps the more crucial question is whether or not broadcasting stations should be subject to the franchising requirement, along with other

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[32] Telecom v. COMELEC, G.R. No. 132922, 21 April 1998, 289 SCRA 337, 372.

[33] Telecom v. COMELEC, G.R. No. 132922, 21 April 1998, 289 SCRA 337, 353.

[34] The Radio Act of 1927, passed by the United States Congress, declared that the electromagnetic spectrum was public property, expressly rejecting a regime that would have allowed individuals to obtain private property rights in the spectrum. See Charles W. Logan, Jr., *Getting Beyond Scarcity: A New Paradigm for Assessing the Constitutionality of Broadcast Regulation*, 85 CAL. L. REV. 1687, 1710 (1997).

[35] Columbia Broadcasting System v. Democratic National Committee 412 U.S. 94 (1973).

[36] Columbia Broadcasting System v. Democratic National Committee 412 U.S. 94, 162 (1973).

public utilities. As shown in the *Telecom* case, the legislative franchise is subject to "amendment, alteration, or repeal by the Congress when the common good so requires."[37]

Any grant by Congress contains certain standard provisions that illustrate the power wielded by the legislature over these broadcasting stations. Aside from defining the nature, scope and duration of the franchise, the grant also requires the station to provide airtime for public service; provide sound, balanced and truthful programming; and exercise self-regulation,[38] among others.

Most notably, the franchise may be cancelled for broadcasting programs that contain indecent or immoral themes or language, and programs that have the tendency to propose and/or incite treason, rebellion, or sedition. It should be noted that Congress has chosen to adapt the less liberal "dangerous tendency"[39] rule rather than the "clear and present danger"[40] rule, which has gained more acceptance within our jurisprudence.

In the first place, why are broadcasting stations deemed to be in the contemplation of article XII, section 12 of the Constitution, which clearly refers to public utilities?[41] A public utility has been defined as "a business or

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[37] CONST. art. XII, sec. 11.

[38] *See* Rep. Act No. 7252 (1992), which granted a franchise to the Republic Broadcasting System to construct, install, operate and maintain broadcast stations in the Philippines.

[39] As explained in Cabansag v. Fernandez, 102 Phil. 152, 163 (1957):

> [I]f the words uttered create a dangerous tendency which the State has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.

[40] As explained in Cabansag v. Fernandez, 102 Phil. 152, 161 (1957):

> [T]he evil consequences of the command or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.

[41] It is worthwhile noting that the Broadcast Division of the National Telecommunications Commission has acknowledged the applicability of this said provision.

service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service."[42] Bernas defines a public utility under the Constitution and the Public Service law as "one organized 'for hire or compensation' to serve the public." The broadcast industry could be said to be engaged in the public service, but its function is not similar to that served by electrical companies or even telephone services. Rather, the broadcast industry performs a public service in the same way that the publishing and motion picture industries do. They are engaged in the dissemination of information and entertainment. The very idea of franchising print media has long been deemed noxious to constitutional values. Why shouldn't a similar stamp of invalidity apply to the franchising requirement for broadcast media?

The laws from which the franchising requirement was derived were formulated in an era when the broadcast media was in its infancy. The notions on the functions of broadcast media have since been subjected to reassessment, especially in the United States. It is time to reassess the need for a legislative franchise. At the very least, franchising is contrary to the values of free expression. Since broadcast media are vehicles of free expression, at least one prominent legal commentator has called for their exemption from franchise.[43]

IV. JUDGE-MADE RATIONALIZATIONS OF BROADCAST REGULATION

In the first few decades of broadcast regulation, American courts were deferential to standards imposed by the legislature in deciding cases involving that matter. Within the last thirty years though, judicial decisions have created new doctrines specifically applicable to the broadcast media. These doctrines, primarily hinged on the peculiar technical nature of the medium, have likewise found their way into Philippine jurisprudence.

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[42] See BERNAS *supra* note 5, at 1043, citing Albano v. Reyes, G.R. No. 83551, 11 July 1989, 175 SCRA 264, 270, n. 1, quoting 64 AM. JUR. 2d 549.

[43] See Perfecto Fernandez, Francisco Trinidad, Zenaida Atienza, and Elizabeth Diaz, *Proposal for a Special Broadcasting Law*, 45 PHIL. L.J. 305 (1970).

A. The scarcity of resources doctrine

One of the most seductive arguments for government regulation of broadcast media is the "scarcity of resources" argument. It first emerged in the case of *Red Lion v. FCC*.[44] The United States Supreme Court, speaking through Justice Byron White, noted that before the government regulated radio, it had become apparent,

> that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. Without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard . . .[45]

> 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. If 100 persons want broadcast licenses, but there are only ten frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.[46]

The scarcity of radio frequencies would, according to the Court, involve interests other than those of broadcasters, but also of

> [the] people as a whole [who] retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters which is paramount.[47]

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[44] 395 U.S. 367 (1969).
[45] Red Lion v. Federal Communications Commission, 395 U.S. 367, 376-77 (1969).
[46] Red Lion v. Federal Communications Commission, 395 U.S. 367, 389 (1969).
[47] Red Lion v. Federal Communications Commission, 395 U.S. 367, 390 (1969).

Over the next few years, the rationale for regulation posited in the *Red Lion* case was upheld.[48] Given spectrum scarcity, those who are granted a license to broadcast must serve in a sense as fiduciaries for the public by presenting "those views and voices which are representative of [their] community and which would otherwise, by necessity, be barred from the airwaves."[49]

Perhaps in anticipation of attacks on the newly formulated doctrine, the Court predicted that even with a change of conditions, the scarcity argument would still be valid.

> Scarcity is not entirely a thing of the past. Advances in technology, such as microwave transmission, have led to more efficient utilization of the frequency spectrum, but uses for that spectrum have also grown apace. Portions of the spectrum must be reserved for vital uses unconnected with human communication, such as radio-navigational aids used by aircraft and vessels. Conflicts have even emerged between such vital functions as defense preparedness and experimentation in methods of averting midair collisions through radio warning devices. "Land mobile services" such as police, ambulance, fire department, public utility, and other communications systems have been occupying an increasingly crowded portion of the frequency spectrum and there are, apart from licensed amateur radio operators' equipment, 5,000,000 transmitters operated on the "citizens' band" which is also increasingly congested. Among the various uses for radio frequency space, including marine, aviation, amateur, military, and common carrier users, there are easily enough claimants to permit use of the whole with an even smaller allocation to broadcast radio and television uses than now exists.[50]

Notwithstanding this point, in the thirty odd years since the *Red Lion* case, the scarcity argument has been subject to significant amount of criticism,[51]

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[48] *See* Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94, 101 (1973). "Unlike other media, broadcasting is subject to an inherent physical limitation. Broadcast frequencies are a scarce resource; they must be portioned out among applicants." *See also* League of Women Voters v. Federal Communications Commission, 468 U.S. 364, 377 (1982). "The fundamental distinguishing characteristic of the new medium of broadcasting that . . . has required some adjustment in First Amendment analysis is that "[b]roadcast frequencies are a scarce resource [that] must be portioned out among applicants."

[49] League of Women Voters v. Federal Communications Commission 468, U.S. 364, 377 (1982), citing Red Lion v. Federal Communications Commission, 395 U.S. 367 (1969).

[50] 395 U.S. 367, 396-98 (1969).

[51] The scarcity issue even found its way in the 1996 U.S. presidential elections. Republican nominee Bob Dole attacked the scarcity principle which he alleged was still espoused by President Clinton. See Logan, *supra* note 34, at 1689 (1997).

some of it coming from judges. In the 1986 case of *Telecommunications Research v. FCC*,[52] the validity of the scarcity rationale was questioned.

> It is certainly true that broadcast frequencies are scarce but it is unclear why that fact justifies content regulation of broadcasting in a way that would be intolerable if applied to the editorial process of the print media. All economic goods are scarce, not least the newsprint, ink, delivery trucks, computers and other resources that go into the production and dissemination of print journalism. Not everyone who wishes to publish a newspaper, or even a pamphlet, may do so. Since scarcity is a universal fact, it can hardly explain regulation in one context and not another. The attempt to use a universal fact as a distinguishing principle necessarily leads to analytical confusion.[53]

The D.C. Circuit Court asserted that unlike in past decades, "[b]roadcast frequencies are less scarce now . . . and it appears that currently, 'the number of broadcst stations . . . rivals and perhaps surpasses the number of newspapers and magazines in which political messages may effectively be carried . . . Indeed, many markets have a far greater number of broadcasting stations than newspapers.'"[54]

Already, the U.S. Supreme Court has refused the contention of the government that cable television be subjected to the same scarcity argument as broadcast television.[55] It would be interesting to see if the U.S. Supreme Court,

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[52] 801 F.2d 501 (D.C. Cir. 1986).

[53] Telecommunications Research v. Federal Communications Commission, 801 F.2d 501, 509 (D.C. Cir. 1986). It is of some interest to note that the decision was penned by Robert Bork, the aborted Supreme Court nominee of the Reagan administration. One of the judges who joined the opinion was Antonin Scalia, who eventually was appointed to the Federal Supreme Court and who still serves there as of this writing. It is not unreasonable to expect that the Supreme Court may eventually expressly renounce the scarcity doctrine.

[54] Telecommunications Research v. Federal Communications Commission, 801 F.2d n. 4 501, 508-509 (D.C. Cir. 1986), citing Loveday v. Federal Communications Commission, 707 F.2d 1443, 1459 (D.C. Cir. 1983).

[55] Turner Broadcasting v. Federal Communications Commission, 129 L. Ed. 2d. 497, 515 (1994). "Although courts and commentators have criticized the scarcity rationale since its inception, we have declined to question its continuing validity as support for our broadcast jurisprudence . . . and see no reason to do so here. The broadcast cases are inapposite in the present context, because cable television does not suffer from the inherent limitations that characterize the broadcast medium. Indeed, given the rapid advances in fiber optics and digital compression technology, soon there may be no practical limitation on the number of speakers who may use the cable medium. Nor is there any danger of physical interference between two cable speakers attempting to share the same channel. In light of these fundamental technological differences between broadcast and cable transmission, application of the more relaxed standard of scrutiny adopted in Red Lion and the other broadcast cases is inapt when determining the First Amendment validity of cable regulation."

confronted with hard empirical data, would be willing to abandon the scarcity of resources doctrine.

In the Philippines, scarcity of resources was recently used to justify the regulation of broadcast media, in the *Telecom* case.

> Because of the physical limitations of the broadcast spectrum, the government must, of necessity, allocate broadcast frequencies to those wishing to use them. There is similar justification for government allocation and regulation of the print media.
>
> In the allocation of limited resources, relevant conditions may be validly imposed on the grantees or licensees. The reason for this is that, as already noted, the government spends public funds for the allocation and regulation of the broadcast industry, which it does not do in the case of the print media.[56]

Unfortunately, the Supreme Court did not respond to the arguments that the scarcity doctrine has become irrelevant. It is hoped that when the next opportunity for the Court to revisit the question of broadcast regulation arises, it will inquire into the continued existence of the physical limitations that necessitated the scarcity doctrine before choosing to apply or not to apply the same.

B. Doctrine of pervasive influence and the *Pacifica* ruling

Eight years after the *Red Lion* case, the U.S. Supreme Court pronounced a new doctrine justifying the regulation of the broadcast media. Unlike the scarcity doctrine, which premised regulation on the peculiar technical nature of the medium, the doctrine of pervasive influence was premised on the peculiar effects of the medium.

The case was *FCC v. Pacifica Foundation.*[57] A New York radio station owned by Pacifica broadcast a recorded twelve-minute monologue by the satirist George Carlin entitled "Filthy Words," which made fun of "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely

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[56] Telecom v. COMELEC, G.R. No. 132922, 21 April 1998, 289 SCRA 337, 358-359.
[57] 438 U.S. 726 (1978).

wouldn't say, ever."[58] The program was aired at two o'clock in the afternoon. A complaint about the broadcast was filed with the FCC by a man who claimed he was driving with his young son when he heard the broadcast. The FCC would later characterize the language used in the broadcast as "patently offensive," though not necessarily obscene, and expressed the opinion that it should be regulated by principles analogous to those found in the law of nuisance where the "law generally speaks to channeling behavior more than actually prohibiting it. . . ." The FCC, after hearing comment from Pacifica, issued a declaratory order granting the complaint and holding that Pacifica "could have been the subject of administrative sanctions," though it did not impose formal sanctions. The FCC said that there was no intention on its part to impose an absolute ban on the broadcast of language of that type.

The Supreme Court upheld the actions of the FCC by a five to four vote.[59] There was a finding that there was statutory basis in banning the use of "any obscene, indecent, or profane language by means of radio communications."[60] The words of the monologue were considered to have fallen within the definition of "indecent," which the court deemed to merely refer "to nonconformance with accepted standards of morality."[61]

Ultimately though, the resolution of the case in favor of the FCC hinged on two important distinctions.

> First, the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder.
>
> Second, broadcasting is uniquely accessible to children, even those too young to read . . . Pacifica's broadcast could have enlarged a child's vocabulary in an instant. Other forms of offensive expression may be withheld from the young without restricting the expression at its source. Bookstores and motion picture theaters for example may be prohibited from making indecent material available to children. We held in *Ginsberg*

[58] Federal Communications Commission v. Pacifica, 438 U.S. 726 (1978). As found in the appendix to the Opinion of the court, the seven words "you couldn't say in public [were] shit, piss, fuck, cunt, cocksucker, motherfucker, and tits." *See also* LIVELY, *supra* note 9, at 421.

[59] Chief Justice Burger, Justices Stevens, Rehnquist, Powell and Blackmun to uphold, Justices Brennan, Marshall, Stewart, and White to reverse.

[60] Federal Communications Commission v. Pacifica, 438 U.S. 726 (1978).

[61] Federal Communications Commission v. Pacifica, 438 U.S. 726 (1978).

> *v. New York* that the government's interest in the "well-being of its youth and in supporting 'parent's claim to authority in their own household' justified the regulation of otherwise protected expression."[62]

The above-quoted passage came from section IV-C of the main opinion of Justice John Paul Stevens. Significantly, this portion was joined only by two other justices in the majority, Justices Lewis Powell and Harry Blackmun. Justice Powell, writing for himself and Justice Blackmun, refused to subscribe to the theory adopted by the other justices in the majority that:

> [T]he Justices of this Court are free generally to decide on the basis of its content which speech protected by the First Amendment is most "valuable" and hence deserving of the most protection, and which is less "valuable" and hence deserving of less protection . . . In my view, the result in this case does not turn on whether Carlin's monologue, viewed as a whole, or the words that constitute it, have more or less "value" than a candidate's campaign speech. This is a judgment for each person to make, not one for the judges to impose upon him.[63]

Justice Powell instead clarified:

> [T]he result turns instead on the unique characteristics of the broadcast media, combined with society's right to protect its children from speech generally agreed to be inappropriate for their years, and with the interest of unwilling adults in not being assaulted by such offensive speech in their homes.[64]

Hence, the concurrence of the two justices with section IV-C of the main opinion, the portion which is best remembered to this day. The narrow margin of decision in the *Pacifica* case underscores the controversy accompanying this new doctrine enunciated by the U.S. Supreme Court. With the emergence of this new "pervasiveness" doctrine, the regulation of broadcast media could now be based on a ground other than the scarcity doctrine. In one notable instance, the FCC could now specifically reject "the rationale that scarcity of the airwaves" gave it the "requisite authority to regulate indecency," and instead apply the *Pacifica* test by saying that indecency is now actionable when there is a reasonable risk that children may be in an audience.

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[62] Federal Communications Commission v. Pacifica, 438 U.S. 726, 747 (1978).
[63] Federal Communications Commission v. Pacifica, 438 U.S. 726, 747 (1978).
[64] Federal Communications Commission v. Pacifica, 438 U.S. 726, 761-62 (1978).

The *Pacifica* decision must be subject to careful interpretation. The closeness of the vote and the fact that no singular line of reasoning was subscribed to by a majority of the nine justices should have influenced future interpretation of this doctrine. Unfortunately, our own Supreme Court did not act so prudently.

The ruling of the Philippine Supreme Court in *Eastern Broadcasting v. Dans*[65] is ostensibly a strong reaffirmation of the right to freedom of expression. The refusal of the NTC to reopen a radio station it had ordered summarily closed on the ground of protecting national security gave cause for the Court to reiterate basic precepts governing the right of expression of broadcasting stations. However, the Court, speaking through Justice Gutierrez, may have unwittingly provided further justification to infringe on the rights of broadcast stations.

> All forms of communication are entitled to the broad protection of the freedom of expression clause. Necessarily, however, the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.
>
> "The American court in" *Federal Communications Commission v. Pacifica Foundation* (438 U.S. 726), confronted with a patently offensive and indecent regular radio program, explained why radio broadcasting, more than other forms of communications, receives the most limited protection from the free expression clause. First, broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizen, not only in public, but in the privacy of his home. Second, broadcasting is uniquely accessible to children. Bookstores and motion picture theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or television, where the listener or viewer is constantly tuning in and out.
>
> *Similar considerations apply in the area of national security.*
>
> The broadcast media have also established a uniquely pervasive presence in the lives of all Filipinos. Newspapers and current books are found only in metropolitan areas and in the poblaciones of municipalities accessible to fast and regular transportation. Even here, there are low income masses who find the cost of books, newspapers, and magazines beyond

[65] G.R. No. L-59329, 19 July 1985, 137 SCRA 628.

> their humble means. Basic needs like food and shelter perforce enjoy high priorities.
>
> On the other hand, the transistor radio is found everywhere. The television set is also becoming universal. Their message may be simultaneously received by a national or regional audience of listeners including the indifferent or unwilling who happen to be within reach of a blaring radio or television set. *The materials broadcast over the airwaves reach every person of every age, persons of varying susceptibilities to persuasion, persons of different I.Q.s and mental capabilities, persons whose reactions to inflammatory or offensive speech would be difficult to monitor or predict. The impact of the vibrant speech is forceful and immediate. Unlike readers of the printed work, the radio audience has lesser opportunity to cogitate, analyze, and reject the utterance.* (emphasis supplied)[66]

The Court was careless in its application of the phrase "pervasive presence of broadcast media." The doctrine in *Pacifica* referred to "patently offensive and indecent material," the broadcast of which confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone "plainly outweighs the First Amendment rights of an intruder." More specifically, the *Pacifica* doctrine was made to apply to the broadcast of seven "dirty" words on the radio. Obscene speech in itself does not pose a threat to national security. But as defined by the Court in *Eastern Broadcasting*, the "pervasive presence of broadcast media" now allows the possibility of general national security considerations to influence regulation premised on the pervasive presence of broadcast media. Critical, perhaps even inflammatory speech, which could fall under the protection guaranteed of print media, may be regulated when broadcast, on the ground that the medium has afforded the possibility of instantaneous, more guttural reaction towards the speech. Much of critical speech, anyway, is formulated to provoke as ardent a reaction as possible. Speech could not be denied protection just because passionate rhetoric begets passionate rhetoric. When it is said that that "[T]he impact of the vibrant speech is forceful and immediate. Unlike readers of the printed work, the radio audience has lesser opportunity to cogitate, analyze, and reject the utterance," it reads like an indictment of the medium, when perhaps the more mature attitude would be to welcome the greater degree of

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[66] Eastern Broadcasting v. Dans, G.R. No. L-59329, 19 July 1985, 137 SCRA 628, 635-636. The validity of the premises of the last paragraph in the selection could well be challenged by various mass media theorists. McLuhan, for one, has consistently reiterated his assertion that radio is a "hot" medium, more capable of inciting passions that the "cool" medium of television or print. See MCLUHAN, *supra* note 10.

involvement of the viewers/listeners of broadcast media as compared to that of the readers of print media.

It is unfortunate that the *Pacifica* decision, which was narrowly decided with emphasis on the highly contextual nature of the speech,[67] was interpreted so expansively by the Philippine Supreme Court. The doctrine of pervasive presence is problematic even in its initial formulation. Other media are also pervasive. "One can hardly argue that a one-newspaper town is not 'pervaded,' 'uniquely' by by the orientation of its paper. A blockbuster motion picture, unlike a typical television or radio braodcast, is repeated for weeks on end in a community. Its exhibition is also more likely to pervade the community's consciousness."[68]

V. POLICE POWER AND BROADCASTING MEDIA

In an obiter dictum, Chief Justice Fernando, in *Gonzales v. Kalaw Katigbak*,[69] without finding need to cite the *Pacifica* case, noted that a less liberal approach was called for in the censorship of television because

> unlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely will (sic) be among the viewers of the programs therein shown . . . It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young.[70]

Police power is considered the most pervasive, the least limitable, and the most demanding of the inherent powers of the State.[71] It regulates the liberty of private persons, and virtually all the people.[72] The distinguished constitutionalist Paul Freund has described it as "the power of promoting the public welfare by restraining and regulating the use of liberty and property."[73] Police power is a potent arm of the State which can be used in order to justify the regulation of the broadcast media. While freedom of expression also

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[67] See Logan, *supra* note 34, at 1706.

[68] See Mark S. Fowler and Daniel L. Brenner, *A Marketplace Approach to Broadcast Regulation*, 60 TEX. L. REV. 207, 228 (1982).

[69] Gonzales v. Kalaw Katigbak, G.R. No. L-69500, 22 July 1985, 137 SCRA 717, 729.

[70] Gonzales v. Kalaw Katigbak, G.R. No. L-69500, 22 July 1985, 137 SCRA 717, 729.

[71] ISAGANI CRUZ, CONSTITUTIONAL LAW 39 (1991).

[72] *Id.*

[73] *Id.*

presupposes that the State may not enforce subsequent punishment resulting from the exercise of the right of speech, it has likewise been conceded that the exercise of free expression can be muted by the exercise of police power.[74]

The exercise of police power is primarily lodged in the legislature, which in turn can validly delegate the exercise of such to the executive or to administrative agencies.[75] An example of this valid delegation is embodied in the standard clause that is contained in all legislative franchises, which allows the President of the Philippines

> in times of rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, to temporarily take over and operate the stations of the grantee, to temporarily suspend the operation of any station in the interest of public safety, security and public welfare, or to authorize the temporary use and operation thereof by any agency of the Government, upon due compensation to the grantee, for the use of said stations during the period when they shall be so operated.[76]

However, this power has been exercised rather arbitrarily in the past. For example, in October 1987, radio station DZME was closed upon the orders of NTC Commissioner Jose Alcuaz, for allegedly broadcasting a recorded speech of former President Marcos at the height of the 28 August 1987 coup d'etat. A complaint was filed by the owner of the said radio station, citing among other things, the absence of an officially proclaimed State of Emergency. The NTC then conceded that the case against DZME was one of mistaken identity.[77]

Perhaps the most ubiquitous sign of police power is the Movies and Television Review and Classification Board (hereinafter MTRCB), which was created by Presidential Decree No. 1986. Curiously, its creation was premised on the fact that "the movie and television industry is now on the brink of economic collapse, that unless remedial measures are undertaken, this grave

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[74] The exercise of police power is subject to constitutional tests in order to determine the validity of the measure. (1) The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; (2) The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. *Id.* at 47.

[75] *Id.* at 44.

[76] *See* Rep. Act No. 7252, sec. 5 (1992). The clause echoes the constitutional provision that allows the State, in times of national emergency, when the public interest so requires, and under reasonable terms prescribed by it, to "temporarily take over or direct the operation of any privately onwned public utility or business affected with public interest." See CONST. art. XII, sec. 17.

[77] See INFORMATION FREEDOM AND CENSORSHIP 1991 WORLD REPORT 214 (1991).

emergency facing the industry will be a roadblock to the early economic recovery program of the government."[78] The duties of the MTRCB however are geared towards the regulation of the content of motion pictures and television:

> Section 3. *Powers and Functions.* The [MTRCB] shall have the following functions, powers and duties:
>
> x x x x x
>
> b) To screen, review and examine all motion pictures as herein defined, television programs . . . whether such motion pictures and publicity materials be for theatrical or non-theatrical distribution, for television broadcast or for general viewing, imported or produced in the Philippines, and in the latter case, whether they be for local viewing or for export;
>
> c) To approve or disapprove, delete objectionable portions from and/or prohibit the importation, exportation, production, copying, distribution, sale, lease, exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject of the preceding paragraph, which, in the judgment of the board applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of wrong or crime, such as but not limited to:
>
> i) Those which tend to incite subversion, insurrection, rebellion or sedition against the State, or otherwise threaten the economic and/or political stability of the State;
>
> ii) Those which tend to undermine the faith and confidence of the people in their government and/or the duly constituted authorities;
>
> iii) Those which glorify criminals or condone crimes;
>
> iv) Those which serve no other purpose but to satisfy the market for violence or pornography;
>
> v) Those which tend to abet the traffic in and use of prohibited drugs;
>
> vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead; and
>
> vii) Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matter which are sub-judice in nature.

[78] Pres. Decree No. 1986 (1985), Perambulatory provision.

Under such guidelines, the MTRCB had in the past justified the prohibition of a telecast of a program depicting the life of urban slum dwellers,[79] and suspended a popular variety show for airing an interview with a noted psychologist who discussed in a graphic manner certain sexual practices.

The Supreme Court has so far declined to pass upon the question regarding the constitutionality of Presidential Decree No. 1986.[80] However, in one leading case, it admonished the MTRCB for refusing to air a program produced by the Iglesia Ni Kristo which was critical of certain Catholic dogmas.[81]

The NTC is likewise empowered to deny or refuse the renewal of licenses of the broadcast station upon their violation of their legislative franchise, including the airing of broadcasts with the tendency to propose or incite "treason, rebellion or sedition; or the language used therein or the theme thereof is indecent or immoral." The most effective weapon the State can employ against broadcasting stations is the denial or refusal to renew licenses. A cardinal protection afforded to broadcast stations is the due process guarantee. Notice and hearing is required before a license can be validly revoked.[82]

It is commendable that the NTC has chosen a regime of self-regulation in supervising the conduct of broadcasting stations.[83] It has adopted the Program Standards and the Technical Standards formulated by the Kapisanan ng mga Broadkaster sa Pilipinas (KBP) as its own standard for regulation. However, the standards adopted by the KBP in its Radio Code and Television Code will not satisfy free speech absolutists.[84]

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[79] See INFORMATION FREEDOM AND CENSORSHIP, *supra* note 77, 79 at 217.

[80] *See, e.g.*,Gonzales v. Kalaw Katigbak, G.R. No. L-69500, 22 July 1985, 137 SCRA 717, 729; Iglesia ni Kristo v. Court of Appeals, G.R. No. 119673, 26 July 1996, 259 SCRA 529.

[81] Iglesia ni Kristo v. Court of Appeals, G.R. No. 119673, 26 July 1996, 259 SCRA 529, 545-553.

[82] See Eastern Telecom v. Dans, G.R. No. L-59329, 19 July 1985, 137 SCRA 628, 634.

[83] See NTC Memorandum Circular No. 31-04-85. The framework of the MTRCB is designed to allow for a semblance of self-regulation. At least fifteen members of the Board must come from the movie and television industry.

[84] The Radio Code of the KBP provides that for commentaries and analyses, "[l]anguage shall be polite and not vulgar, obscene or inflammatory," and "[c]omments and analyses shall be presented decently to the best interest of the listening public." Its Television Code, on the other hand, provides for the following general program standards:

5) Cruelty, greed, selfishness, unfair exploitation of others and similar unworthy motivations shall not be presented in a favorable light.

Questions could be raised as to whether or not these standards are in consonance with the principles of free expression, or with quality radio and television, for that matter. Yet, adherence to these restrictive codes is marginally better than an expansive supervisory role for the State over broadcast media.[85]

VI. SEEKING AN ALTERNATIVE PHILOSOPHY FOR BROADCAST REGULATION

This paper is devoted to answering two questions: Is there sufficient justification for government regulation of broadcast media? If so, what philosophy should underlie such regulation?

Our laws and jurisprudence are replete with justifications for the regulation by the State of the broadcast industry. But the bald assertion that broadcast media should be regulated by the State deserves close scrutiny. Does the need for regulation arise because of problems caused by the peculiarly technical characteristics of the medium, as implied in the *Red Lion* case, or is it indicative of an interventionist streak on the part of the State?

Many years ago, Justice Holmes proposed a healthy marriage of free speech values and economic orthodoxies when he proposed his "marketplace of ideas" standard. Since then, regulatory schemes for broadcast media have been hinged on this principle. The Holmesian dictum indeed seems apt for broadcast media, since broadcasting has, after all, burgeoned into a full-fledged industry.[86] However, it has been often expressed that the commercialization of the broadcast industry has led to the proliferation of shows whose content are of questionable taste and quality. "[E]mphasis has been on entertainment, which in most cases is of dubious worth. In many instances, the material presented is

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6) Programs shall not be presented in a manner that would degrade the ideals of family unity and traditional values of the Filipino family such as mutual respect, trust, assistance and affection

7) Programs shall not use dialogues, actions and other similar manifestations which are obscene, blasphemous, profane, derogatory, or vulgar.

[85] Both the Radio and Television Codes of the KBP provide that for the fourth offense of the station, the KBP would recommend to the NTC for the cancellation of the permit to operate the station.

[86] See Fernandez, *supra* note 43, at 308.

objectionable."[87] Doubts have been cast as to the ability of commercial media to showcase material and views worthy of barter in the idealized marketplace.

The deliberations of the 1986 Constitutional Commission illustrate the debate over the role of broadcast media in society. There were attempts to impose in the proposed constitution a provision forwarded by Commissioner Christian Monsod that read: "The State has the duty and media the social responsibility to respect the right of the people to accurate and truthful information."[88] Commissioner Florangel Rosario Braid argued for the inclusion of the said provision:

> [W]e are talking here about communication media which could enable the people in rural areas to develop their own capability, their own self-dignity and self-reliance so that they can participate in nation building. The reason they are left out is that they do not have information — whether correct or inaccurate — and this is what we are trying to provide here. We are trying to show that social responsibility encompasses not only the responsibility to provide accurate and correct information to our own colleagues and people living in urban centers where there is a proliferation of media but also to open the opportunity to people in the rural areas . . . [S]ocial responsibility means not merely adequate or accurate information but also includes meeting the need of diverse cultural communities of our society by providing them enough information for them to develop self-reliance.[89]
>
> This is a statement that not only mandates the State or the communicators but everybody to help build a socially responsible environment which would be ever vigilant about the role of the media. This would mean strengthening education, research, and other support areas of communication so that we are able to develop a more professional core of communicators and, above all, an alert, vigilant citizenry that is aware of the role and respect for communication in society.[90]

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[87] *Id.*

[88] Proposed by Commissioner Christian Monsod. See IV RECORD 924. "[S]ocial responsibility implies that the government should take steps also in furthering and improving the welfare of media people and other communicators who have often been left out actually. They are left out to fend for themselves. I think that if we have to exercise social responsibility, the State should provide encouragement of professional development and incentives in terms of development programs, such as a local program fund that would improve the capability and the credibility of communicators." Remarks of Commissioner Florangel Rosario-Braid, IV RECORD 925.

[89] IV RECORD 926.

[90] *Id.* at 927

Commissioner Bernas, on the other hand, expressed the belief that the amendment

> dangerously trenches on freedom of debate. It is not for us to say to the press, "You must exercise social responsibility," because who is to say to them what social responsibility is? This is the very essence of democracy — that people really express themselves on matters that are debatable, and it is not for the Constitution to say what this kind of liberty is or to limit it.[91]

The provision proposed by Commissioner Monsod was not adopted by the Constitutional Commission. However, the Commission adopted two provisions that comment on the role broadcast media ought to play in our society, to wit:

> Article II, section 24. The State recognizes the vital role of communication and information in nation-building.
>
> Article XVI, section 10. The State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press.[92]

A. State impositions on the role of broadcast media

Article XVI, section 10 is emblematic of the notion that the broadcast media must contribute to the wholistic development of the Filipino and his or her nation. The earlier discussion has shown that there is ample opportunity and justification for the State to regulate broadcast media. The question now arises: How active a role should the State play to nurture this idyllic agora.

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[91] *Id.*

[92] The provision can be found under the heading General Provisions, and thus merely express policy aims of the State. Under the same heading are the constitutional provisions which limit the ownership and management of mass media to Filipino citizens or to corporations, cooperatives or associations, wholly-owned and managed by such citizens, and the prohibition of monopolies in commercial mass media.

1. The promotion of Filipino music

Memorandum Circular No. 4-07-88 was enacted by the NTC pursuant to the provisions of Executive Order No. 255.[93] It directed all radio stations to broadcast a minimum of four original Filipino musical compositions in every clock hour of a program with a musical format. The avowed purpose of the law was "to ensure the growth of the local music industry, promote popularize, and conserve the nation's historical and cultural heritage, resources, as well as artistic creations and to give patronage to the arts and letters."[94]

To ensure compliance with the directive, the Commission may require the submission by radio stations of logbooks, records, and "other pertinent directions." When necessary, radio stations may even be monitored to ensure compliance. Violators would be fined one hundred pesos per violation, and repeated violations could result in the cancellation or suspension of the Certificate of Registration and Authority of the radio station.

Unwittingly perhaps, this law reveals the low regard held by the State for Filipino music and indicates a lack of trust in the ability of local music to thrive in the marketplace.

2. The promotion of intelligent choice in the electoral process

The cases of *National Press Club v. COMELEC* and *Osmeña v. COMELEC* have been much commented upon elsewhere. These two cases upheld the advertisement ban imposed by section 11 paragraph (b) of the Electoral Reforms Law of 1987.[95] Newspapers, radio broadcasting and television stations were prohibited to sell or to give free of charge print space or airtime for candidates to public office, such print space or airtime to be made available to the candidates only during the so-called COMELEC hour.[96] The Supreme Court upheld the ban, noting that the "COMELEC has thus been expressly authorized by the Constitution to supervise or regulate the enjoyment or utilization of the franchises or permits for the operation of media

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[93] Exec. Order No. 255 (1987).
[94] See Memorandum Circular No. 4-07-88 (1988).
[95] Rep. Act No. 6646 (1985).
[96] See ELECT. CODE, Batas Pambansa Blg. 881 (1985), sec. 90 and sec. 92.

of communication and information."[97] It also emphasized that the purpose of regulation or supervision was to ensure "equal opportunity, time and space, and the right to reply." What is notable for our purposes is Court's apparent lack of faith in the ability of the viewer/listener to make an intelligent electoral choice when paid political advertisements influence the said choice.

> The paid political advertisements introjected into the electronic media and repeated with mind-deadening frequency, are commonly intended and crafted, not so much to inform and educate as to condition and manipulate, not so much to provoke rational and objective appraisal of candidates' qualifications or programs as to appeal to the non-intellective faculties of the captive and passive audience. The right of the general listening and viewing public to be free from such intrusions and their subliminal effects is at least as important as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.[98]

The electronic media, in particular, has been singled out for blame by the Court. The nature of the medium, it seems, mesmerizes the audience into making an uninformed choice.

> [T]he nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded . . . [T]he only limitation upon the free speech of the candidates imposed is on the right of candidates to bombard the helpless electorate with paid advertisements commonly repeated in the mass media ad nauseam. Frequently, such repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate. It might be supposed that it is easy enough for a person at home to simply flick off his radio or television set. But it is rarely that simple. For candidates with deep pockets may purchase radio or television time in many, if not all, the major stations or channels.[99]

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[97] National Press Club v. COMELEC, G.R. Nos. 102653, 102925, 102983, 5 March 1992, 207 SCRA 1, 8. See also CONST. art. IX (C), sec. 4, par. (4).

[98] National Press Club v. COMELEC. G.R. Nos. 102653, 102925, 102983, 5 March 1992, 207 SCRA 1, 16.

[99] National Press Club v. COMELEC. G.R. Nos. 102653, 102925, 102983, 5 March 1992, 207 SCRA 1, 15.

3. The Promotion of Children's Television

In 1997, a popular piece of legislation, the Children's Television Act of 1997,[100] was enacted by Congress. It recognized the "importance and impact of broadcast media, particularly television programs on the value formation and intellectual development of children" the need to "take steps to support and protect children's interests by providing television programs that reflect their needs, concerns and interests without exploiting them." Being impressed with public interest, the broadcast industry had "the social responsibility of ensuring that its activities serve the interest and welfare of the Filipino people."

The Children's Television Act established the National Council for Children's Television. Among its functions were:

> 1. to promote and encourage the production and broadcasting of developmentally-appropriate television programs for children through the administration of a national endowment fund for children's television and other necessary mechanisms;
>
> 2. to monitor, review and classify children's television programs and advertisements aired during the hours known to be child-viewing hours in order to take appropriate action such as disseminating information to the public and bringing monitoring results to the attention of concerned agencies for appropriate action. . . .[101]

The Council was to be guided by standards to be known as "The Charter of Children's Television."[102]

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[100] Rep. Act. No. 8370 (1997).

[101] Rep. Act. No. 8370 (1997).

[102] The provisions of the Charter of Children's Television are, to wit:

> a) Children should have programs of high quality which are made specifically for them, and which do not exploit them. These programs, in addition to being entertaining should allow children to develop physically, mentally and socially to their fullest potential;
> b) Children should hear, see and express themselves, their culture, languages and life experiences through television programs which affirm their sense of self, community and place;
> c) Children's programs should promote an awareness and appreciation of other cultures in parallel with the child's own cultural background;
> d) Children's program should be wide-ranging in genre and content, but should not include gratuitous scenes of violence and sex;
> e) Children's program should be aired in regular time slots when children are available to view and/or distributed through widely accessible media or technologies;

The Children's Television Act did not limit itself to issuing a series of mission statements. Section 9 of the said Act ordered broadcast networks to allot a minimum of fifteen percent of the daily total air time for "child-friendly" shows within the regular programming. This requirement was to become a condition for renewal of broadcast licenses, "as part of the network's responsibility of serving the public." Failure to comply with this provision allowed the National Council to petition proper government agencies to suspend, revoke or cancel the license to operate television stations.

The goals of the Children's Television Act are critic-proof. Perhaps it will take many years to assess whatever impact the law would have on the development of the Filipino child. But the American experience should teach us a few lessons.

The United States Congress passed the Children's Television Act of 1990.[103] In line with this new law, the Federal Communications Commission adopted regulations requiring television stations to air at least three hours per week of educational or informational children's programming.[104] To comply with this directive, networks in the United States have classified as children's programming, such shows as *NBA Inside Stuff* (a show featuring highlights and activities of players of the National Basketball Association),[105] or situation comedies geared towards the teenage audience.[106] Such shows meet the

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f) Sufficient funds must be made available to make these programs conform to the highest possible standards; and

g) Government, production, distribution and funding organizations should recognize both the importance and vulnerability of indigenous children's television and the steps to support and protect it.

[103] Pub. L. No. 101-437, title I, §103, 104 Stat. 997 (codified as amended at 47 U.S.C. §§ 303a, 303b (1994).

[104] Ronald J. Krotoszynski, Jr., *The Inevitable Wasteland: Why the Public Trustee Model of Broadcast Television Regulation Must Fail*, 95 MICH. L. REV. 2101, 2112 (1997).

[105] Rachel Taylor, *That's Edutainment*, BRILL'S CONTENT, October 1998, at 81, 83. NBA Inside Stuff, which is aired by most NBC affiliates, has been scorned as "a half hour of basketball commercials for the NBA" by Peggy Charen, founder of the advocacy group Action for Children's Television. Amy Jordan, a senior research investigator at the Annenberg Public Policy Center notes that the show "seems more interested in talking about the latest basketball trades and who is winning and losing, rather than providing kids with anything they could use outside the viewing situation." *Id.*

[106] A notable example of such is "Saved by the Bell," which "epitomizes the discomfort we have with labeling shows that are pro-social about relationships and dating and friendships as educational." *Id.*

requirements of black letter law, but their educational value is dubious at best.[107]

In fact, the policy of state intervention to promote children's programming has come under fire in some quarters in the United States. The said policy is criticized for being imprudently insensitive to market realities. Commercial television broadcasters have increasingly focused their efforts on building and maintaining mass audiences, as larger audiences would mean higher rates for spots. The allocation of airtime for children's programming, which admittedly would generate lower advertising revenue,[108] would decrease potential revenues. The lack of any financial incentive to invest in such children's programming would not motivate commercial broadcasters to go beyond the minimum efforts necessary to placate the FCC. to promote quality programming.[109] Even the threat of cancellation of franchise that our Children Television Act provides for will not ensure that broadcasters would make efforts to promote quality children's shows.

B. Adopting market sensibilities to broadcast regulation

Distrust of market forces seems to underlie the philosophy behind broadcast regulation in the Philippines. If broadcast media is treated as a business, it is done so with some amount of distaste. This attitude is unfortunate, and unhealthy for the broadcast industry. Undeniably, broadcasting is a business, and the State must respect that fact. It is the desire for profit, and not a "nobler social purpose" that dictates program content and policy. Should the ultimate goal of our broadcast policy be consumer enlightenment or consumer satisfaction?

Acknowledging that broadcasting is primarily a business should be the first step towards sensible government regulation. It is a business that faces

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[107] See Taylor, *supra* note 105, at 81 (October 1998).

[108] See Krotoszynski, *supra* note 104, at 2113. Bob Keeshan, who hosted the children's program Captain Kangaroo, admitted that his objective was never to serve a mass audience, but rather to reach the very youngest television viewers. He said, "Fifteen percent of [the American audience] is the total juvenile audience. How can I possibly, by commercial network standards, build a large audience when I start with that small number? [T]here is no good reason for doing quality-oriented children's programming. The marketplace will not take care of the child audience."

[109] See Krotoszynski, *supra* note 104, at 2114.

increasing competition for the eyes and ears of its audience.[110] Already, systems such as cable television and the Internet provide an alternative source of entertainment and information. These systems are subject to less government regulation, and an increasing burden of regulation of broadcast media may hamper the latter's competitiveness.

There are demands of the medium that preclude a strict application of market doctrines to broadcast media. While broadcasters in a true marketplace compete with all potential users of the airwaves for the exclusive right to use a particular frequency, they instead receive exclusive use of an assigned frequency which is unavailable for nonbroadcasting uses regardless of demand.[111] In an article co-written by former FCC chairman Mark Fowler, the broadcasting marketplace is characterized as consisting of "seeking government-granted *exclusivities*."[112] He notes that a true marketplace approach to the exclusive use of radio frequencies would "open all positions in the electromagnetic spectrum to bidding by those who want them."[113]

Adopting such a bidding system in the Philippines would raise a considerable howl since this runs counter to the precept that access to the broadcast spectrum should be equalized. It has its advantages though. It would ensure that only those with the resources to invest in and maintain a broadcasting station would operate such. Stagnant or bankrupt broadcasting stations could undermine the stability of the industry as a whole.

Another distinct advantage of introducing a market philosophy in broadcast regulation is in the area of content regulation. It is more consistent with free expression values if public taste, rather than the discretion of the State, dictates which content should be broadcast or not.[114] The differences between the current approach to broadcast regulation and that of print media

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[110] See Fowler and Brenner, *supra* note 68, at 210.

[111] *Id.*

[112] *Id.* at 211.

[113] *Id.* In the Philippines, such use of radio frequencies would be allocated by the NTC, subject to the procurement by the station of a franchise from Congress. As earlier stated, such a procedure unduly burdens the broadcasting station and the legislative docket, and the entire franchise requirement should be dispensed with.

[114] Fowler and Brenner even point out that the concerns of Justice Powell in *Pacifica* about the welfare of the children are better served within a marketplace framework. They note that advertisers and subscribers would not eagerly support materials that are likely to offend as to attract potential customers. See Fowler and Brenner, *supra* note 68, at 210.

will be diminished. Unprotected speech could still be subject to governmental regulation.[115]

Government need not totally abdicate its role in utilizing the broadcast media to promote ideas it believes worthy of dissemination. Republic Act No. 7306, which creates the People's Television Network Incorporated, exemplifies how the government can continue to act towards the public interest without unduly burdening the broadcast industry. Section 2 of the said law enumerates state policies adopted "[i]n consonance with the constitutional recognition of the vital role of communication and information in nation-building, and the important aspect played by the broadcasting industry:"

> a) Fully develop communication structures suitable to the needs and aspirations of the nation and in accordance with a policy that respects the freedom of speech and of the press;
> b) Give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development;
> c) Develop the broadcasting industry as a medium for the development, promotion and advancement of Filipino nationalism, culture and values that serve as an instrument in the struggle for Filipino sovereignty, identity, national unity and integration;
> d) Harness the resources of the government and the private sector towards a close, continuous and balanced cooperation in order to take advantage of technological advances in the broadcasting industry;
> e) Maintain a broadcast industry system that serves as a vital link for participative democracy and effective government information dissemination through developmental communication, free from any political or partisan influence and held accountable directly to the people;
> f) Encourage the development and broadcast of balanced programs which feature, among others, educational, wholesome entertainment, cultural, public affairs and sports; and
> g) Detach government television from advertising and commercial interest as far as practicable so as not to unduly compete with the private television sector and ensure that government television shall provide quality alternative programs for the benefit and moral upliftment of the citizenry.

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[115] It is acknowledged that there are two types of unprotected speech: obscenity and libel. See BERNAS, *supra* note 5, at 248-268.

The People's Television Network was created with these lofty aims in mind.[116] Whether or not it would succeed would depend on viewer acceptance more than anything else.

VII. RECOMMENDATIONS

This paper will make two final recommendations. First, the Supreme Court must abandon the scarcity doctrine and the pervasive presence doctrine. There is little doubt that the conditions that created scarcity in the past will continue to prevail in the future, and it would make no sense to justify regulation by way of an obsolete premise. The premises surrounding the doctrine of pervasive presence are highly dubitable, and while it may make some sense, it does not make good law. The police power of the State is sufficient to justify the instances of State regulation, though such must be exercised prudently. The extent of regulation will be determined by the standards promulgated by the legislature.

Second, Congress must enact a new Broadcasting Code. This recommendation may come as a surprise for some, considering the previous arguments for lesser governmental regulation. However, as earlier stated, it will be the task of the legislature to determine the standards by which regulation is

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[116] Rep. Act No. 7306 (1992), sec. 9 enumerates the functions of the People's Television Network, to wit:

a) to serve primarily as a vehicle for the State for purposes of education, science and technology, arts, culture, and sports in order to foster national pride and identity;
b) to serve as a vehicle for bringing the Government closer to the people in order to enhance their awareness of the programs, policies, thrusts, and directions of the Government;
c) to ensure that the programs broadcast by the Network maintain a high general standard in all respects, and in particular, in respect to their content and quality and proper balance of educational, news, public affairs, entertainment, and sports programs;
d) to serve as an effective outlet for alternative programming;
e) to provide subsidized air time to legitimate people's organizations NGOs in the promotion of their programs and projects;
f) to serve as an effective medium for national unity and political stability by reaching as much of the Filipino population as possible through the effective use of modern broadcasting technology; and
g) to ensure that nothing is included in the programs broadcast by the Network which shall;
    1) offend public morals, good taste, or decency;
    2) offend any racial group or promote ill-will between different races or different public groups, prescribing such programs as would promote strictly partisan politics and propaganda;
    3) offend the followers of any religious faith, sect, or order, or
    4) outrage public feeling in general.

to be implemented. The standards would be best contained in a new Broadcasting Code. Besides, the current statutes applicable to broadcast regulation reflect an older philosophy towards regulation which do not stand the test of time.

The said Broadcasting Code should clearly delineate the functions and powers of the National Telecommunications Commission, or it may create another administrative body to oversee the regulation of broadcast media. It must take into consideration that broadcasting is primarily a business and the rights of free speech of broadcasters are protected by the Constitution. The requirement of a legislative franchise should be eliminated in favor of a mere licensing requirement.

Most importantly, the new Broadcasting Code should avoid instituting an ambiguous standard such as the American public interest standard which has allowed too much leeway for content regulation. It must delineate a standard that would be solicitous towards the concerns of the broadcasting industry as a business, the rights of broadcasters of free expression and the concerns of viewers and listeners as consumers.

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