Does Big Bird need a subsidy?

By George F. Will
Syndicated Columist

Is nothing sacred? Evidently not. Even public television is being questioned by some conservatives who evidently do not understand the importance of being earnest.

Some troglodyte Neanderthal Puritan Yahoo philistine reactionary inquisitorial Victorian barbarian blue-nosed Cromwellian know-nothing Savonarolas—that is, conservatives, as the public television lobby sees them—are wondering why taxpayers should give another $1.1 billion to public television.

A good question.

The Corporation for Public Broadcasting was born 25 years ago as a final filigree on the Great Society. It already has a quarter of a billion of federal funds for 1992 and another quarter of a billion in 1993. At issue today is a 50 percent increase to $1.1 billion for 1994-96. The caliber of the defense of the CPB can be seen in Sen. Al Gore's (D-Tenn.) *crie de coeur*: "How many senators here have children who have watched SESAME STREET and MR. ROGERS'S NEIGHBORHOOD? ... This is one thing that works in this country...."

How apt: a wealthy legislator in a chamber well-stocked with people like him, calling for subsidies for his children's programming because it "works," whatever that means.

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The original argument for public television was that over-the-air broadcasting allows only a few competitors who are driven to seek a broad—and low—common denominator. That argument has been obviated by technology—by cable and the onset of "narrow-casting" to many small segments of the American audience.

Public television's advocates argue that almost all households can receive it, whereas only 60 percent of households are wired for cable. But leaving aside the continuing spread of cable, a crucial question is: How many people who do not have cable

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because they cannot afford it are watching public television? Not many. Public television's audience always has been economically and intellectually up-scale.

The original rationale for public television was wonderfully sealed against questioning. It was that government had to subsidize such programming precisely because so few people wanted it. The argument goes like this: If the public were more discerning, there would be no need for government subsidies—but, then, a discerning public would not object to government subsidies. After all, by definition, a discerning public discerns the merits of government as a provider of services.

The CPB provides 16 percent of the funding for public television stations. But those stations claim 5.2 million voluntary donors. If each would give another $70 a year (less than the average cable subscriber pays for three months of service), they would raise the $1.1 billion without requiring taxpayers to subsidize their entertainment.

Dr. Laurence Jarvik of the Heritage Foundation has another idea about what to do with the CPB: Sell it. Jarvik believes,

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reasonably, that there are ample cable, broadcast and home video markets for magnificent work like Ken Burns's CIVIL WAR series. Therefore private investors could make and syndicate such quality programming. Today, Jarvik says, public television is "a solution in search of a problem."

Walter Goodman of The New York Times asks: "Is Dr. Jarvik so satisfied with commercial TV that he can see no room for further innovation?" The answer is: No, but does Goodman believe that any possibility of "innovation" in any sector of society justifies a federal subsidy? If not, what makes television special?

Politically, what is special is public television's audience. For example WETA, Washington's public station, says its contributors have an average household income of $94,583. They would have $94,513 after sending WETA an extra $70 to keep the senators' children wholesomely entertained.

WETA's audience would be an advertiser's dream. Indeed it is a dream for those who advertise in WETA's magazine. Thus government is entangled in subsidizing competition against private print as well as broadcasting enterprises.

The public television lobby is, in part, another example of government-as-an-interest group. It is government lobbying itself. It is an effective lobby because it is in most congressional districts—wherever there are public stations and audiences. Public television audiences are, like the members of the American Medical Association, the National Association of Manufacturers and many other muscular lobbies largely affluent, educated and articulate.

Public television is a paradigm of America's welfare state gone awry. It is another middle-class—actually, upper middle-class—entitlement. If you doubt the entitlement mentality of the public television lobby, hear its indignant rhetoric equating any questioning of their subsidy with censorship. The public television lobby consists disproportionately of people with the financial and educational means to provide their own entertainment, but who have the political competence to bend public power to their private advantage.

Think of it this way: The relationship of CPB spending to affluent America is approximately that of agriculture subsidies to agribusiness.

FCC Commissioner addresses lack of decency in media

Editor's Note: FCC Commissioner Sherrie P. Marshall gave this address before the Motion Picture, Radio & TV Committee, National Society of the Daughters of American Revolution, April 22, 1992. The address is: FCC, 1919 M Street N.W., Washington, DC 20554.

My subject, of course, is decency, or the lack of it, in American media. This Administration and this FCC are deeply concerned about the tone of American culture. And we have good reason to be: the explicit sexual material, excessive violence, and coarse language so often seen and heard in American radio and TV, and the coarsening, even brutalizing, effect these have on our society are a cause of concern for all citizens, particularly parents.

Think of the number of articles we read today bemoaning the success of groups like 2 Live Crew whose lyrics describe brutal, sexually explicit conduct denigrating women and men. Consider the apparent national fixation on talk shows whose featured guests include transvestites hooked on sadomasochistic relationships or other equally demeaning human behavior. These are not the values that Americans want to be remembered for; these are not accurate reflections, nor models for change, of American society.

Unfortunately, the usual advice about how to respond to this broadcast bombardment of aberrant behavior, "Just turn off the set" is far from adequate and responsive. It forces parents to be policemen in their own home—which isn't necessarily bad, but hardly gets to the root of the problem.

It's like saying about the drug problem, "Just don't buy drugs." It's an important first step, but it doesn't replace the bad, or the pandering, with something good or inspiring—something that reflects the reality of America, its warts and shortcomings, as well as its Samaritans and heroes and irrepressible faith in the goodness of the human spirit and the efficacy of individual action. No, something more than just turning the dial is needed to clean up our airwaves.

The FCC, encouraged by the Congress and the Administration, has been attempting to deal with the growing problem of broadcast indecency.

As the agency charged with licensing and regulating broadcast television and radio, the FCC is primarily responsible for enforcing the laws against broadcast obscenity and indecency. The FCC also works in coordination with the Justice Department in its enforcement of the laws against obscenity in other media such as cable, satellite and other subscription programming services.

Since 1989, the FCC has dedicated itself to vigorous enforcement of its authority against "indecent" broadcasts. We have said "No!" to the infamous Howard Stern's pandering dialogs about Christmas orgies. And "No!" to those shock jocks from Las Vegas to Detroit and Miami who would engage in puerile locker room humor and play such sexually graphic songs as, "Walk with an Erection" and "Penis Envy" while children get ready for school.

In the last three years the Commission has cited nearly 20 broadcast stations for violations of federal indecency statutes and ordered them to pay fines ranging from $2000 to $20,000.

Now some of you might ask, "Why only 20 stations?", when you're sure there are numerous other stations across the country broadcasting what you and many other consider "indecent" songs and programs. The honest answer is, there are severe limitations upon the government's ability, and FCC's authority, to enforce in this area.

The indecency standard, necessarily and for good Constitutional reasons, is broadcast specific and narrowly drawn; we can't use dragnets or prior restraint, and a free society shouldn't want to.

The FCC's authority to banish offensive television or radio programming is constrained by values as deeply-held by our forefathers as the traditional values of faith, industry, patriotism and the Golden Rule. I speak, as you know, of free speech and free press—the liberties that in large measure inspired a revolution and were memorialized in our First Amendment.

The Courts have been strict in limiting what the FCC does because of these important First Amendment considerations. Thus, even though the Commission has expanded its definition of "indecency" beyond its earlier list of "seven dirty words", this broader definition still encompasses only a very limited subset of all the broadcast material you or I might find objectionable.

In essence, the Courts have limited the FCC's definition of broadcast indecency to "the portrayal of sexual or excretory activities or organs in a patently offensive manner as measured by contemporary standards for the broadcast medium." This standard leaves out whole categories of offensive material that does not involve "sexual or excretory activities or organs" and leaves the Commission puzzling over such bizarre questions as whether pubic hair (featured in one rather repulsive lyric played on the radio) actually constitutes a sexual organ.

Further, the Supreme Court recently laid to rest the prospects for a 24-hour ban on the broadcast of indecent materials. Just last month, the Court let stand a federal court of appeals' determination that indecent programming—which enjoys less than full, but still some First Amendment protection—cannot be altogether banned from the public airwaves.

We at the Commission had vigorously defended the Senator Helms-sponsored 24-hour statutory ban on indecent broadcasts, arguing that the pervasiveness of the medium and the presence of unsupervised children in the audience at all hours rendered any less restrictive ban inadequate. The Court of Appeals, however, concluded that the First Amendment required some "safe harbor" or reasonable time period into which broadcasters can channel programming intended for more mature audiences.

Now the Commission must identify the time of day (or, let us hope, night) before which indecency will still be prohibited—but after which a "safe harbor" will exist for the broadcast of programming that may be indecent. I expect us to invite public comment on this difficult legal question, as well as our proposed solution, in the next few months. And I hope organizations such as yours will help us build a record in support of as expansive an enforcement range as possible

The battle, of course, will be over how small a safe harbor is legally permissible. In prior litigation the court of appeals has rejected Commission efforts to extend its enforcement authority from a 10 PM curtain to midnight; indeed, the court even cast some doubt on the validity of our delaying the safe harbor window beyond 8 PM. Defending an even later hour will be a difficult, but not insurmountable task—I hope.

If the Commission is permanently precluded from reaching beyond 8 PM, prime time television and late-night radio, both of which are often fertile ground for indecency complaints, will be fully protected from indecency prohibitions by a judicially-constructed, "safe harbor." And the Commission will be forced to continue to dismiss many of the complaints we receive for lack of jurisdiction.

Indeed, in 1991, some 40 percent of the documented indecency complaints the Commission received had to be dismissed because they related to broadcasts after 8 PM. And, whether or not we ultimately reach into prime time, the judicially established definition of indecency will remain too narrow to encompass much of the material which many of you may find offensive.

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