

# Opinion: Feds have no business regulating news content

By Corydon B. Dunham

The FCC is poised to resurrect broad censorship rules that were revoked in 1987 because of their chilling effect on both free speech and the television press.

The proposed new Localism, Balance and Diversity Doctrine could eventually also affect news on the Internet. The FCC is reportedly planning to transfer the broadcast spectrum used by local television to the Internet to make it the nation's primary communications platform, and the agency has started to regulate the Internet.

In my book "Government Control of News: A Constitutional Challenge" I recount the evolution of government control of television news and the Fairness Doctrine. The book, the result of a study initiated at the Woodrow Wilson International Center for Scholars at the Smithsonian Institute, examines the history of the Fairness Doctrine – the rules by which the federal government regulated TV journalism. Similar rules had governed radio news since 1934 and were applied to TV in 1949 by the Federal Communications Commission.

TV was a powerful new medium and there were only a few broadcast stations in many communities. It was thought that this gave unusual power to station and network owners. The government justified the Fairness Doctrine as a way to ensure stations aired opposing viewpoints on issues.

But what was touted as an attempt to encourage robust discourse became a tool for censoring the news.

If a complaint was made about a view that had been broadcast, the FCC investigated. If it concluded that a view should be changed, it ordered that. If it concluded other views should be presented, or even related issues, it ordered that.

Failure to comply could result in no license renewal, renewal for a shorter period of time, or a “negative record” applied at renewal time.

In 1987, the FCC unanimously revoked the Fairness Doctrine, with court approval, after finding it had deterred news reporting on controversial issues, and had repeatedly been used to suppress viewpoints and help some officials pursue their own political objectives.

After two decades of failed attempts in Congress to revive the Fairness Doctrine, support began building anew. In 2008, the FCC released a new proposed body of rules for TV news – the Localism, Balance and Diversity Doctrine.

It has many of the same characteristics of the old Fairness Doctrine and can be expected to have similar results. News broadcast by television stations would have to meet government criteria for “localism” – local news production and coverage – as well as a regulatory balance and diversity of viewpoints. A three-vote majority of five FCC commissioners at a central government agency would make local news judgments and override those of thousands of independent, local TV reporters and editors.

It would also be enforced by having a local board at each station monitor programming, including news, and recommend against license renewal if the station did not comply with FCC policy.

In 2011, the FCC-sponsored Future of Media Study recommended the localism doctrine proceeding be ended. The present chief of the White House regulatory office has long recommended that the government regulate news to advance its political and

social objectives.

There is unprecedented silence from the FCC about its plans for television news in this country.

TV is not the only medium potentially affected.

At the end of 2010, the FCC decided to take over regulation of the Internet in this country. It will regulate its traffic and gain some power to review content.

The president, Congress and the FCC have also agreed to transfer the entire broadcast spectrum (currently used by TV stations) to the Internet over the next 10 years. If the localism doctrine is adopted, it could apply to the Internet and its participants as users of the FCC-controlled spectrum.

Requiring journalists to comply with a central government agency's policy on how to report the news means those journalists will no longer be free and independent.

As the Fairness Doctrine broadcast history shows, the threat of loss of license will deter station news coverage, particularly of controversy, and the public will lose news and information.

If the broadcast press is not free and independent of government, it cannot act as a watchdog for the public, which is its constitutional role.

*Corydon B. Dunham is a Harvard Law School graduate. His "Government Control of News" study was expanded and developed for the Corydon B. Dunham Fellowship for the First Amendment at Harvard Law School and the Dunham Open Forum for First Amendment Values at Bowdoin College. Dunham was an executive at NBC from 1965 to 1990. He oversaw legal and government matters and Broadcast Standards.*