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Privatize the Airwaves!

by Sheldon Richman

The Federal Communications Commission has begun a new crackdown on “indecent” on radio and television. While the baring of Janet Jackson’s breast during the Super Bowl halftime show created a stir, the FCC has mainly focused on “shock-jock” radio. Someone called Bubba the Love Sponge lost his job for explicitly sexual material, and six Clear Channel Communications stations that carried Howard Stern’s radio program were fined nearly half a million dollars because of a few minutes of sexually oriented talk one day in April. That prompted Clear Channel to drop Stern’s program. Now the spotlight is on Infinity Broadcasting, which airs the program on 18 stations and distributes it to many others.

The debate over this controversy has been pathetic. Most supporters and critics of the FCC actions ignore essential facts. For example, conservatives who egg the FCC on (not all of them do) argue that no violations of free speech are involved. All that has happened, says columnist Cal Thomas and his allies, is that private companies have either fired someone or refused to carry a program, and that’s their right. What these commentators shamelessly overlook is that the private companies acted only after being fined or threatened with fines. That hardly constitutes uncoerced private activity. True, under ordinary circumstances, the right of free speech does not mean someone else must provide you a forum. But these are not ordinary circumstances. It’s possible that a public outcry against indecency, backed by a boycott of sponsors (which would be perfectly legitimate), might have pressured the radio stations to drop offensive programs. But since the government is imposing fines, we’ll never know.

Another gap in the debate is the failure to question the status of the airwaves, or broadcast spectrum, as government property. In a statement typical of those battling indecency, L. Brent Bozell III, president of the conservative Parents Television Council, asks, “Why does the FCC ignore its Congressionally mandated role to enforce broadcast decency standards over the publicly owned airways?”

The airwaves have been socialized for so long that most people accept it as natural and proper. It is neither. First, let’s get something straight: just because we call them “the public’s

airwaves,” it doesn’t mean that’s what they are. Anything said to be owned by the public is actually controlled by the government — politicians and bureaucrats. If you think you are a real part-owner of the airwaves, try selling your “share.” Real owners can sell what they own.

The spectrum started out as a privately owned, homesteaded resource, as innovators discovered how to use it to satisfy various human wants (information, entertainment, et cetera). Of course, in the early days of radio, broadcasters interfered with one another’s transmissions. But rather than asking the government to nationalize the airwaves, they went to court, just as landowners did in cases of trespass. The courts responded by applying the common-law principles of ownership. As a result, an orderly system of private airwaves was emerging, until it was derailed in the 1920s by the commerce secretary, Herbert Hoover, who has an odd reputation as a champion of laissez faire. As historian Murray Rothbard described it, “Hoover by sheer administrative fiat and the drumming up of ‘voluntary cooperation’ was able to control and dictate to the radio industry and keep the airwaves nationalized until he could secure passage of the Radio Act of 1927. The act established the government as inalienable owner of the airwaves, the uses of which were then granted to designated licensed favorites.” In return for licenses, the government imposed various obligations. In recent years, those obligations have been eased or eliminated, but the government still holds the ultimate power to revoke the license of any television or radio station in the country.

You’d think someone would point out that it is strange for a reputedly paradigmatic capitalist country to have nationalized airwaves. I sympathize with parents who don’t want their children exposed to a lot of what’s broadcast today. But government control of what should be private property is no answer.

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