The real purpose of his paper is more ambitious. What he is saying is that, as we win this round of argument we can anticipate the final knockout blow which floors not just the fairness doctrine but the FCC's entire concern, as a regulatory agency, with programing of any sort. The veil is drawn aside in his concluding paragraph and more particularly in his last sentence. "I think a reappraisal of the role of the FCC in such matters is clearly called for."

Albeit obliquely, a whole philosophy of life is bespoken in this closing paragraph. All men, it suggests, are scoundrels, but some are more scoundrelly than others, notably men in government. This hatchet job (on the FCC) was better (because more frankly) done nearly 20 years ago, and curiously at hearings before the FCC on a matter intimately related to the subject we're discussing now—the revised Mayflower decision hearings.

In his testimony before the Commission, Mr. Theodore Pierson then argued, and brilliantly, for rescinding the Mayflower decision and, with it, all FCC concern with programing as incompatible with the provisions of the first amendment. His was a devastating case, its logic remorseless and irrefutable—given his premise. His premise was that the Founding Fathers were literate men, using the English language to say what they meant, and that consequently "no law" meant, precisely and unequivocally, "no law" without ifs, ands, or buts.

This is a view that I respect and with which, historically, I agree. By historically I mean as having reference to the circumstances of the time and, more specifically, as having reference to the press as it then was. For to publish a paper then was within the means of every members of the electorate.

Thus freedom of the press, as the mere extension of the reach and range of the spoken word, was synonymous with individual freedom of speech and, as such, included in the language of the first amendment.

What I disagree about is that such absolute interpretation of the first amendment applies today—given the radical change in the nature and function of the modern press and the motivation of those at its control. But irrespective of my views on this subject, Mr. Pierson's (like Mr. Robinson's) position would seem to be undermined by the distinctive nature and role of broadcasting as defined in the Communications Act. For, unlike other media, broadcasting is not a form of free enterprise. Broadcasters do not own or have free access to the airwaves. Broadcasters have temporary, conditional and privileged access to a public domain.

The FCC allocates frequencies and prescribes the nature of their use (see section 303 of the Communications Act). Like a building contractor, the prospective licensee bids, and against competitors, for execution of a prespecified design. No one has to bid, but if he does, he is under obligation to meet the specifications of the contract. The first amendment protects him in the way he goes about the job, but not in determination of what the job shall be.

The rationale, moreover, of the Communications Act derives (as becomes clear from reading the congressional debates preceding its passage), not, as Mr. Robinson suggests, from the incidental shortage of frequencies, to which Mr. Justice Frankfurter's often-quoted dictum refers, but from the conception of broadcasting as a service in the