ORAL HISTORY
OF
RICHARD E. WILEY

Second Interview – July 24, 2013

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Richard E Wiley, Esquire. The interviewer is George Jones, Esquire. The interview took place at Mr. Wiley’s office at Wiley Rein LLP in Washington, D.C., on July 24, 2013.

Mr. Jones: Mr. Wiley, at the conclusion of Phase One you had been appointed to serve as the General Counsel of the FCC at the tender age of thirty-something, is that right?

Mr. Wiley: Yes, I had just turned 36.

Mr. Jones: Remarkable. And you were in Chicago at the time?

Mr. Wiley: I was.

Mr. Jones: And you had no background in communications law, is that right?

Mr. Wiley: No, I did not. I was an antitrust lawyer. I had a lot of interaction with the Federal Trade Commission so I knew regulatory work, but I had no experience with the FCC. I think we covered it the last time how I managed to get that introduction to Chairman Dean Burch of the FCC and get the job.

Mr. Jones: I think we did. How did you prepare for this massive job?

Mr. Wiley: Well, I discussed last time how I left my poor wife and several children in Chicago, moved down to Washington, DC, worked at the FCC during the daytime, and went home every night and read all I could about communications. I served as General Counsel starting in late September of 1970 and, during the next 15 months, which was my tenure as GC, I tried to learn everything I could about
communications law, about the FCC’s regulations, and about the communications industry then.

Keep in mind the industry was less complex than it is today, less complex. We had in the industry, for example, the telephone field largely dominated by AT&T, which for a hundred years had been a benevolent monopolist of both long distance and local telephone service; Western Union, which was the big telegram company at the time—we don’t think about telegrams very much anymore—and then, of course, the broadcast industry. This was before cable, satellite and wireless and all the rest of it.

I also tried during this period to learn the people involved in the communications field both within the Commission and outside the Commission. In particular, I tried to get to know the FCC staff and to gain their confidence, because I was taking the place of a very renowned individual, Henry Geller, who I mentioned before was sort of the guru of the communications legal field. All this came in very handy as I moved up within the Commission. Of course, I couldn’t foresee that at the time.

All in all, George, it was probably the most challenging period of my life, but there was more to come that, again, I did not anticipate.

Mr. Jones: Just the beginning. Did you address any significant communications or broadcast issues during your tenure as General Counsel or did those all come later?

Mr. Wiley: Yes, that was primarily later. I was really advising all seven Commissioners. We had seven in those days. And, I began to make, for the first time, public
appearances in the field; I argued a case before the United States Court of Appeals for the DC Circuit—I lost, by the way.

Mr. Jones: What was that case?

Mr. Wiley: It was *Friends of the Earth*. [*Friends of the Earth v. FCC, 449 F.2d 1164 (D.C. Cir. 1971)*] It was a fairness doctrine case.

I started making speeches to various industry and public groups; I assisted the Chairman in congressional hearings—I had never been before Congress before so that was a fascinating experience. As I learned my craft, I also began to engage in industry and public interviews and meetings.

One thing I decided early on was that I would maintain an open door approach, and I have to say that I continued that throughout my tenure at the FCC. That is, I saw just about everybody I could within the limits of time—those who agreed with the Commission and those who didn’t.

I had a big advantage in that Dean Burch gave me an opportunity for input into the FCC policy. You asked me once before if General Counsel come in different flavors. Sometimes you’re strictly a lawyer, and sometimes you’re also a policymaker; I tried to be both because Dean Burch wanted it that way. He allowed me to sit in on briefings with his staff. The Commission used to meet once a week on various items that would come up. We would go over them, and that was a real learning experience to hear his staff (all very experienced people) brief the Chairman, hear what the Chairman was saying and what his conclusions were. I found that Dean Burch and I shared a common philosophy in the sense
that we both favored increased competition and perhaps less regulation as more competition made that possible.

You asked me before, “Well, how was it that we could have more competition in the communications field,” which had been largely, as I said, a monopoly in the telephone area and maybe an oligopoly in the media field. It was because a tremendous technological revolution began in the very early 70’s, and I was very fortunate to be there at that time. It made it possible for the FCC to allow competition to AT&T in the form of so-called specialized common carriers. Burch also had an “open skies” policy that brought about COMSAT, the first satellite communication company that the United States had along with, of course, AT&T.

Also, ultimately the development of cable television called Community Antenna Television—CATV—at the time which began to compete with the broadcast industry. What happened was that the signals from broadcast stations in Philadelphia and in Pittsburgh did not reach well into the mountains of central Pennsylvania. An entrepreneur got the idea of stringing a wire from a large tower down into the homes in little hamlets and create so-called community television with the advantage of more programming and more channels. Broadcasting was primarily a one-channel service. So we had to chart out how that entry was going to develop from a regulatory standpoint. For me, all in all, it was a very heady period.

Mr. Jones: Sounds like it. So, did the CATV development and the telephone competition occur simultaneously?
Mr. Wiley: More or less. They were evolutionary, you understand, along with satellite developments. I was just General Counsel, so I wasn’t making the policy decisions in those days. Dean Burch, I think, did a very good job of trying to allow competition to occur. Looking back, probably the competition could have been more rapidly introduced, but we were feeling our way, so to speak. We didn’t want to undermine telephone and broadcast service which went to all Americans by this specialized competition. Today, of course, cable essentially reaches 98% of the American public. In those days that was not true.

Mr. Jones: Were you aware that you were at the beginning of a technological revolution both with respect to cable television and telephone in the early 70’s?

Mr. Wiley: I think we became increasingly aware of that. It was a fascinating experience. And, of course, a lot of it came during my tenure as a Commission member and as Chair of the Commission.

Mr. Jones: I don’t remember whether it was you or somebody else who made the comment that in the early days telephone communication was by wire and television broadcasts were in the air. Today it’s almost exactly the opposite.

Mr. Wiley: Absolutely. I think I did say that. We probably would have built our industries exactly the opposite that we did, but we, of course, couldn’t foresee it all. You know with telephone, you don’t have to sit at your desk, you can carry the phone around today. But we didn’t have cellular telephone then, we didn’t have wireless. The very first “mobile” telephone I saw was when I was Chairman of the FCC. Motorola brought it in to a social event and it was this big Dynatac, they called it. It was like carrying a brick over your shoulder—a very large brick
I might say. And, we did not understand that you could have hundreds of channels of broadcast programming.

Mr. Jones: So, Dean Burch was the Chair of the Commission—

Mr. Wiley: Yes.

Mr. Jones: And who were the other Commissioners when you became General Counsel?

Mr. Wiley: I have two pictures here, George, of my Commission.

Mr. Jones: Okay, the best of your recollection.

Mr. Wiley: Perhaps I could cover it when I became a Commissioner.

Mr. Jones: Okay.

Mr. Jones: So you were General Counsel for only 15 months. How did it come about that you became a Commissioner.

Mr. Wiley: Well, it was an interesting experience. One day, I think it was sometime in early fall of 1971 after I had been there not quite a year, the Chairman called me in and said, “What are you doing to become an FCC commissioner”? I said, “What am I doing? I’m not doing anything. I’m your General Counsel.” He said, “Well, you know, Commissioner Wells”—Bob Wells was a former broadcaster from Kansas—is leaving and you’d better get over to the White House, because they’re going to pick somebody else if you don’t make your appearance there.” I was dumbstruck. Maybe I should have known Wells was leaving, but I didn’t. I said, “Well, would I have your support, Mr. Chairman,” and he said, “Yes, but it’s not going to be my decision ultimately.” So I made an appointment very quickly and got over to the White House. I met with presidential personnel and also some of the President’s personal aides—some of them I knew from the campaign. And
they knew me. During my year as General Counsel, I apparently had made a
favorable impression on them. I made the case as to why I, as a young vigorous
guy, could be a good commissioner.

Mr. Jones: Thirty-something.

Mr. Wiley: I had just turned 37, and I thought I could really help the Chairman in operating
the Commission. I was perhaps more of an activist commissioner than some.
They said, “Listen, no argument with us. We think you’d be great, but there’s a
key Senator that perhaps wants this seat to go to a female or a minority.” And I
said, “Well, who’s that”? They said, “Senator Charles Percy from Illinois”? Well
I knew him. I had been head of the Republican Party in a small township in
Illinois when he was running for the Senate at the time. I backed his candidacy
against perhaps some of the more conservative elements that thought he was
perhaps too moderate. I had been a “big tent” guy, so to speak, and I hoped that
he would remember that.

So I made an appointment, went up to see him and, in fact, he did
remember it. Our discussion went very well, particularly when I told him, “By
the way Senator, there is a Democratic vacancy coming up in about five months.
Perhaps you might see fit to allow me to have the Republican appointment, and
then perhaps a female or minority could be selected for the Democratic seat.” He
thought that was a good idea. Later, I found out I was only going to get a recess
appointment. Senator Percy was going to make certain that the next appointment
went to a minority, and we would have to be confirmed together. So lo and
behold comes January 5 of 1972, I was a commissioner.
Mr. Jones: Senator Percy’s strategy sounds like an early application of Reagan’s maxim “trust, but verify.”

Mr. Wiley: Yes, perhaps so. I suddenly found myself on the Commission. And, of course, having been General Counsel was a great background for my new duties. You knew the Commission staff, and you knew all the issues. So I started voting early and often on just about everything that came up. And it never occurred to me at the time—I know this sounds tremendously naïve by today’s political standards—that there might be some hazards in that because I had not yet been confirmed by the Senate.

If you spent five months voting on everything, you could win some friends and you could also make some enemies. And those enemies could oppose your confirmation. But it was a different era then and that didn’t happen. I came up for confirmation five months later with Reverend Ben Hooks, a Black Baptist minister and lawyer from Tennessee who had been appointed to the Democratic seat. And we were confirmed together and became great friends thereafter. I later visited his churches in Detroit and Tennessee and, more recently, when he was preaching here in northeast Washington. Frances and Betty—my wife—have been very good friends through the years. Ben just died within the last couple of years, but he was a great orator and excellent commissioner, I thought.

So I spent two years as commissioner, really as an ally and a confidant of Chairman Burch. I was probably a pretty active, aggressive commissioner—a little younger than my colleagues as you can see by this photograph that I’m showing you of the commissioners.
I am standing in the back behind Dean Burch and the other commissioners. I had good relationships with all the commissioners, both Republican and Democrat. Again, it was perhaps a different era then. I never thought our issues were partisan and we all got along quite well, including Nick Johnson who was sort of the “enfant terrible,” you might say, of the Commission. He was a very liberal firebrand that Dean Burch didn’t particularly care for, but he and I were about the same age and we got along even though we might have thought quite differently.

Mr. Jones: Where was Nick Johnson from?

Mr. Wiley: Iowa.

Mr. Jones: Iowa.

Mr. Wiley: And he later ran for Congress against Chuck Grassley. Grassley beat him and then went on, of course, to the Senate. And he’s still in the Senate as you know.

Mr. Jones: So the commissioners—

Mr. Wiley: This is in the Burch era.

Mr. Jones: The Burch era.

Mr. Wiley: And then you had Charlotte Reid, a former radio singer in Chicago. She married a congressman from Illinois who died in the course of running for re-election. Within just a couple days, Charlotte made the decision to replace him. She was supposedly President Nixon’s favorite congresswoman. I was General Counsel when she came on the Commission and I briefed her on the issues. Charlotte Reid was a wonderful person. She lived to 93, and just died within the last five years or so. Rex Lee standing in the back next to me was a Democratic commissioner
and a fine gentleman. Mr. Barkley down in front was the fellow who was leaving in five months whose seat Ben Hooks took. And then on Dean Burch’s left is Bob Lee who served four seven-year terms, the longest in history. Twenty-eight years on the FCC. He was a Republican from Chicago. One of the problems I had when I was trying to move up to the Chairman was that the three of us were Republicans from the same state: Illinois.

Mr. Jones: Democrats and Republicans on the Commission. Did the commissioners share a vision of how the telephone and TV industry should develop?

Mr. Wiley: I think more or less they did. I think some would have gone faster in introducing competition and some slower. But I think all of them could see that technology was driving us. If we had been completely clairvoyant and more farsighted than we were, we would have made decisions a little bit better than we did. But we were struggling with, really, a fast changing world which by the way continues to this day and, as with the advent of the Internet, has accelerated exponentially.

Mr. Jones: Just before we get too far from your beginnings on the Commission, do you have a sense of why Senator Percy was such an influential person for this particular slot?

Mr. Wiley: You know, I don’t recall that. I think he was an activist in terms of wanting to have diversity on these commissions and I think the White House was listening to him. But, fortunately, since he was from my state, and since there was another vacancy coming along, he could see the advantages of the suggestion I made to him.
I began to travel and speak widely during my two years as a Commissioner and really to develop myself as a Commission member. There was some press speculation that eventually I might be a future chairman candidate even though I was still in my thirties. Then, one day Chairman Burch didn’t come to the Commission meeting. The Chairman runs the Commission meetings, so this was unusual. Afterward I went into the Chairman’s office and I said to his secretary, “Hey, where was Chairman Burch? And she said, “He’s in Key Biscayne,” which you may recall was Nixon’s sort of—

Mr. Jones: Southern White House.

Mr. Wiley: Southern White House. And she said, “And he’s going to be calling you.” And, in fact, he did call me an hour or two later and he said, “Dick, I’m going to the White House. I’m going to be an aide to President Nixon, and you’re going to be the next Chairman.” Boom. And I remember saying to him, “The President’s had some problems. Aren’t you concerned about that”? He said, “No, I think it’s going to work out for me.”

Mr. Jones: Was this ’74?

Mr. Wiley: This was ’74. And he said, “Stay by your phone; the President will be calling.” So, I went back in my office and I told my secretary if you get that call let me know. Every once in a while I’d have to go down to the men’s room, but I rushed back. Two days came and went and I got no phone call. I envisioned a Rose Garden swearing-in with my wife and children there and the President swearing me in. What I got instead was a two-sentence letter from the President, “I hereby
appoint you as Chairman.” Dean Burch said, “Take it and run.” I agreed with him.

So suddenly, May of 1974, I was the Chairman. You see this other photograph as the Commission began slightly to change. Charlotte Reid and Bob Lee are still on the Commission. There’s Ben Hooks, who took Mr. Barkley’s place. Then along came Jim Quello who came shortly after I did. A Democrat from Michigan—second from the right, and then later on, on the top left, a Republican, Abbott Washburn, who had been a former ambassador. And, finally, we have Glenn Robinson, a Democratic member who was a professor of law at the University of Minnesota and later at the University of Virginia.

Within three months after I became Chairman, President Nixon resigned.

Mr. Jones: August of ’74.

Mr. Wiley: August of ’74. I had never met the President and, after he resigned, I wondered what was going to happen to me. Fortunately, President Ford invited all of the independent regulatory agency chairmen to come over to the White House. He had us in the Cabinet Room, talked about his vision for the presidency and for our areas, generally speaking, and it was pretty clear that we were his guys. So that was a great relief for me. He said, “You’re all going to stay in your positions.” Since I only had it for three months, I certainly wanted to stay in that position.

So, at that point, I began to set some goals. The first thing I felt was that the Commission historically had been very slow moving under both Republican and Democratic administrations. We think about the great policy decisions, but there are also just a lot of applications and demands for action that people want...
and the Commission didn’t always reach determinations very quickly. So I
wanted to set deadlines, make decisions, move paper. I had the advantage, again,
of knowing all the Bureau chiefs. So I decided to hold a weekly meeting with
them and asked, “Let’s agree that you’re going to identify any item in your
Bureau that’s over one year old. Let’s agree on a date by which you can bring it
to the Commission to make a decision. If you can’t do it down at the staff level
because it’s too complex, too controversial, then let’s get it up to the Commission
and we’ll make the decision.” I started establishing three-month calendars. I told
the commissioners, we’re going to meet three times a week, not once a week.
Now the commissioners meet once a month, but we moved from once a week to
three times a week.

Mr. Jones: Are you saying now?

Mr. Wiley: It’s once a month.

Mr. Jones: Wow.

Mr. Wiley: They make a lot of other decisions by circulation, and we did too in those days.
But I wanted to get a lot of big matters teed up—major decisions. Set aside a
Tuesday on which we’re going to decide this big decision, and nothing else, then
have our standard meeting on Wednesday and then another big decision on
Thursday. I told the commissioners if you want to travel, make speeches,
whatever you need to do, do it Monday and Friday because Tuesday, Wednesday,
Thursday are going to belong to me. I published my three-month agendas inside
and outside the agency, which locked everybody in.

Mr. Jones: Including you.
Mr. Wiley: Including me. We did move a lot of paper. It was a fast-moving era. When you move fast, you make mistakes. I’m sure we did, and we can talk about some of the bigger ones later, but at that time I was just trying to decide a lot of relatively minor issues rapidly.

In particular, there had been a huge backlog of petitions to deny broadcast licenses. In those days broadcasters got three-year licenses. Today their licenses are for eight years. The standard for upsetting that license renewal, as we call it, is much more difficult since the 1996 Telecommunications Act. But, in those days, a lot of people thought maybe they could knock off some of the broadcasters by filing so-called petitions to deny. Three years would go by, and a second term coming up, and still no FCC decision. I thought that was ridiculous.

So I started telling the staff to bring up twenty-five at a time. We’re going to have a meeting called Petition to Deny Day, and we’ll take twenty-five at a time. Maybe there’ll be a difficult case here and there, but the rest we’re going to move on. Because a lot of them were pretty routine, I thought. So we did clean that backlog up and that was good.

I also continued Dean Burch’s very important policy of competition in the telecommunications side of the industry—in the specialized common carrier and satellite fields. But one particular area that had not been dealt with—it just hadn’t developed during the Burch era—was equipment.

In those days you could not attach an answering device, let’s say, to your telephone unless you got AT&T’s approval. AT&T would have these products manufactured by an independent company and when they were attached to the
AT&T lines, there wasn’t a problem. But if MCI attached it, there was a big problem. AT&T was a very good company, so I’m not knocking them. It was just a different era.

So we established interconnection standards for all carriers alike and if the foreign attachment, as it was then called, caused harm to the network, then we were going to shut it down. But if it didn’t—and most of them didn’t—they would be allowed. And robust competition in the equipment field began to develop. And, of course, it has continued to this day.

My very first speech as Chairman was to the National Association of Broadcasters. I had a reputation of being deregulatory-minded and I suppose they were looking for a speech that would say let’s deregulate more. I may have given that speech later, but this talk was saying that we should do more for children’s television. You know, cartoons are great—nothing wrong with them. On Saturday morning, I like to relax a little bit more and children perhaps would like to watch cartoons. But why, I asked, not use this great device—window into the world as I called it, television—also for some educational and informational programming. I didn’t intend more regulation, because in programming it is very sensitive. The Commission can’t be a censor. So, I couldn’t tell them put this on; I could suggest to them they should. I used the bully pulpit, so to speak. And, as a result perhaps, Captain Kangaroo, Mr. Rogers’ Neighborhood, Squire Rushnell and others began to appear on the airwaves. So it was a good speech, I guess.

I also tried to further something Dean Burch had been interested in: equal employment opportunity rules. We had a pluralistic society; I said we also should
have a pluralistic industry. Make information on jobs available; make sure that
the percentages in the community were matched by the employment structure you
had at various broadcast stations.

I also established what I call the New Ethic, that if broadcasters engaged
in improper billing practices, or if they didn’t give equal opportunities to
Democrat and Republican candidates, we would take regulatory action. During
that era, despite my reputation as being sort of deregulatory-minded, we took
away thirty-four licenses from broadcasters. I don’t say that with any great joy,
but these were people who violated FCC rules, and those denials were upheld in
courts.

I also thought that broadcasters ought to do news and information
programming, but, again, it was difficult without being a censor to tell them how
much news and information they should do. So, I came up with the idea and sold
it to the industry of guidelines. We used to get all the percentages, so we knew
what everybody was doing around the country, generally, and what the industry
standards were. And, we said, If your station meets those, you’re going to get
renewed at the staff level easily. (And remember this was a period where renewal
wasn’t that easy.) If you don’t want to meet those levels, your renewal will come
up to the Commission. That doesn’t mean that you can’t argue your programming
performance is appropriate, but we’re going to look at it. Well a lot of people, of
course, carrot-and-stick, decided they were going to meet those percentages. So,
that worked out fairly successfully.
We also had two policies, the Fairness Doctrine and Equal Opportunities, which is often thought of as equal time. The Fairness Doctrine dealt with controversial issues of public importance. In general, if you covered one side of the abortion issue, you had to somewhere in your programming cover the other side. It wasn’t with mathematical certainty. The Equal Opportunities rule was mathematical, and it was candidate-oriented. If you sold a half-hour of time to Candidate Carter you had to offer a half-hour of time to Candidate Ford.

Now there were some exceptions to the equal opportunities rules and those were for bona fide news programs. If you had the evening news, you couldn’t have twenty-four people who were running for President on the program and give equal opportunity to all of them. And the same if you had a news interview; that also was an exception. But one thing that was not an exception, historically, was Presidential debates.

Henry Geller, former FCC Chairman Newton Minow, and I were all Northwestern Law School graduates, and we agreed that we were going to make 1976 a model year in political broadcast coverage. We decided to establish debates as a bona fide news event. I thought I was going to get a 7 to 0 vote for Commission approval but, after some Congressional opposition, ended up with a 5 to 2 bipartisan vote. So that became the rule. And, in 1976, we had the Ford/Carter debate as a bona fide news event.

On the fairness doctrine, one of the problems we had was counteradvertising. People would argue that, if broadcasters were going to run a product ad, they had to run a counter ad that would give the health deficits of this
product. I felt that the fairness doctrine should only apply if the ad made an explicit argument on a controversial issue of public importance. So we reformulated the fairness doctrine and that became the standard, and ended the counter advertising controversy. I got support on Capitol Hill for that view, by the way.

Now I did lose some decisions, important ones, but I will say that I ultimately won some of them later. One of them was indecency. There is a federal criminal statute that forbids the broadcast utterance of profane, indecent and obscene material. Profane is sort of “damn” and “hell,” and it really wasn’t regulated much in those days. Obscene is the hardcore stuff that is banned 24-hours a day. The question was whether there was something in between—so-called “indecency”—for example, words that you wouldn’t normally hear or see on radio or television on which we should take regulatory action.

I got all sorts of input from Capitol Hill, because people were running programs and slipping in words that Congress felt shouldn’t be said. In particular, at 2 o’clock in the afternoon, allegedly, a father and son were searching for the Yankees ballgame on their car radio and instead of the Yankees ballgame they got George Carlin’s famous comedic sketch, 11-minutes long, of the seven words you can’t say on radio and television. Some people called it “the seven dirty words.” And some of those words, believe me, were not “damn” and “hell.”

So, we decided to make this a test case, and we said on two basic standards it was an indecent program. One was the ubiquitous entry of broadcasting into the American home, and, second, the presence of children in the
audience. The Court of Appeals for the D.C. Circuit, under Chief Judge Bazelon, was considered by some as rather regulatory and liberal where I might have been considered deregulatory and more conservative. And they upset my standard. We took it to the full court of appeals en banc and lost 5 to 4. Finally, we took it to the Supreme Court and, in the famous Pacifica case in 1978 after I had left the Commission, the Commission was upheld—and on the very two bases that we had established. It is indeed still the standard to this day. One can argue whether or not it’s narrowly tailored and whether it’s needed as much, as many broadcasters do. But at that time it was a big victory.

The next case was Newspaper/Broadcast Cross-Ownership. I had inherited a rulemaking from Chairman Burch that questioned whether or not broadcasters and newspapers should be co-owned by the same owner in the same marketplace. The concern then was that newspapers which were a very dominant, powerful industry in those days—you wouldn’t think of that today—would perhaps dominate the electronic medium. So ultimately we issued a rulemaking order that said we weren’t going to break up longstanding co-owned arrangements like the Chicago Tribune and WGN in Chicago, and many others around the country which for years and years had served their communities, but looking forward you couldn’t own a newspaper and broadcast station in the same market. We would look at waivers, however.

Mr. Jones: When you say broadcast do you mean television and radio?
Mr. Wiley: Television and radio.
Mr. Jones: Or television or radio?
Mr. Wiley: Television or radio.

Mr. Jones: Got it.

Mr. Wiley: And, by the way, it’s still the rule today. And I again got upset by the Bazelon court of appeals which would have divested everything immediately. We took it to the Supreme Court, which again in 1978 upheld our rule: 8 to 0. That was a great relief for me, but it came, again, after I had left the Commission.

Another one was radio formats. It’s a little hard to believe this today when we have CDs, Pandora and Sirius XM, et cetera. In those days, if a station had a classical music format, it might have been the only one in town. And if the people who owned that station made the decision that they were going to drop classical music and take a country format or something like that, people got very upset. It was their classical music station. But I felt this was a marketplace decision because stations were constantly changing their formats to reach larger audiences. The court of appeals overruled me, but that also was upheld later. So this all sounds good, sounds like I had a successful chairmanship, but I can tell you I did make some mistakes.

Mr. Jones: Wait, before we go to the mistakes I’d like to talk just a little bit more about the various initiatives that you described in general. First, competition in the telephone industry: did you have a sense of Bill McGowan who was the chairman of MCI at the time?

Mr. Wiley: Yes I did. Very dynamic, very demanding. He really wanted to move faster than the Commission was moving because we were feeling our way. And he really
wanted to become equal in every way to the dominant telephone companies and he eventually got there.

Mr. Jones: Right.

Mr. Wiley: He was one of the most amazing individuals I met during that period. A great person in many respects.

Mr. Jones: One of the things that I have come to think about him is that he was a person who came from outside the telephone business and you probably needed somebody who was outside the telephone business to even conceive of an MCI that would compete with AT&T from end-to-end.

Mr. Wiley: Yes. What really happened was that Chicago and St. Louis brokers were selling stocks and bonds and they wanted a dedicated line because their customers were calling in all the time, and AT&T wouldn’t provide it. MCI came in and offered a dedicated line, and that’s how it all got started. That was the first little homely example.

Mr. Jones: But that’s before the specialized common carriers decision.

Mr. Wiley: Right, but the specialized common carrier really made it possible for other carriers to compete in these areas. I’m only touching on the surface, but the Commission was moving in the right direction.

Mr. Jones: As you watched MCI develop, were you surprised by how successful they were?

Mr. Wiley: Yes, to some extent I was.

Mr. Jones: Why?

Mr. Wiley: Well because they were taking on the big kahuna, right? And we were making these decisions and never foreseeing that in 1983 AT&T would be broken up.
The Kingsbury Commitment of 1913 gave AT&T a monopoly in return for making telephone service available to everyone, including in the rural areas which was expensive to do. But the tradeoff began to splinter a bit when other companies came in and started taking parts of their business, sometimes the most lucrative part of their business. And so AT&T had legitimate concerns.

On the other hand, if you were going to have competition you had to move in that direction. So when the Justice Department brought an antitrust lawsuit against AT&T, the company made a deal to spin off the local Bell operating companies, keep the long distance and the equipment—and that was probably the wrong decision, but who knew, right? The Baby Bells then took over the parent, and the current AT&T, of course, is actually Southwestern Bell Company, the smallest of the seven Baby Bells, but led by a very dynamic management that started buying the other Baby Bells. Today we have three of those original Baby Bells, more or less, still in existence.

Mr. Jones: I guess the Justice Department had filed suit against AT&T—

Mr. Wiley: Just at the end of my tenure. Just before I went out of office they told me they were going to bring this lawsuit.

Mr. Jones: If you had foreseen while you were Chairman that allowing MCI and the other competitive carriers to get into the business, to compete with AT&T, would ultimately lead to the breakup of AT&T and to the revolution of telephone service in the United States, do you think you would have had the votes to go forward?

Mr. Wiley: Well it’s questionable because I remember Ben Hooks was very concerned about my policies of competition to AT&T and here he was a Democrat and a minority.
He used to come and say to me, “You’re a Republican. You’re a conservative from the Middle West. What are you doing to this big company, AT&T”? And I said, “Ben, we’re not trying to hurt them, we’re trying to create competition for the public.” And Ben ultimately supported it, but he had a concern. Would we harm the nation’s telephone system, which is vital to this country? And would we harm the nation’s broadcast system which was vital to this country at that time, particularly because there were no options? Those were real concerns. And looking back today you’d say, Well, gee, Burch and Wiley and all these guys could have moved competition a lot faster than they did. And I accept that criticism, but we were playing with an unknown frankly because these were vital services. And we received a lot of criticism on Capitol Hill. In fact, there was the so-called Bell Bill, which got several hundred congressional supporters actually trying to constrict what we were doing to AT&T. I had to go up and testify and say, “Look, this is a wonderful company, but we feel there’s a chance for competition. Technology has made it possible.” I don’t want to sound like a hero here because as I said I think we made our mistakes along the line but that one wasn’t one of the mistakes.

Mr. Jones: Was there a Bill McGowan in the cable industry?

Mr. Wiley: Yes, John Malone who’s still out there.

Mr. Jones: Oh.

Mr. Wiley: John Malone was one of them. And there were other entrepreneurs around the country. And they were pushing us to deregulate them much faster than we did. Dean Burch had an elaborate cable policy that he had set up in ’72, which I had
voted for when I was a commissioner, to put a bunch of restrictions on cable to make sure we were protecting local broadcast service. Then slowly but surely we began to remove those restrictions as we became convinced that cable wouldn’t harm the basic over-the-air service. But the tension between broadcasters and cable is a difficult problem even to this day.

Mr. Jones: The Presidential debates, was there any opposition?

Mr. Wiley: Lots. And from the Hill, in particular. Senator Pastore called Ben Hooks and some of our other commissioners, and they would come in and see me and say, Gosh, what are you doing. I’d say, “You’ve got to stick with me. We agreed we were going to do this.” Fortunately, we managed to get the votes. But there was a worry as to whether somehow we were upsetting Presidential politics. You know, for an independent regulatory agency, that’s not what you want to get into, right?

Mr. Jones: Right. But was the concern about the policy or the potential political impact?

Mr. Wiley: Definitely the latter. One of the best known lawyers in town at that time came to me and said, “How could you do this?” He said, “How could you turn this agency into a partisan agency?” I said, “This isn’t a partisan thing.” Fortunately I had Henry Geller and Newton Minow with me. It certainly helped a great deal that we were together on that.

Mr. Jones: Now, was Geller a Democrat?

Mr. Wiley: He was a Democrat. Remember he was the General Counsel before I got there.

Mr. Jones: Right. But was Burch a Democrat?

Mr. Wiley: No, he was a Republican, but Burch kept Geller on his staff.
Mr. Jones: I got it.

Mr. Wiley: That often happens.

Mr. Jones: So Geller the Democrat, Newt Minow the Democrat and you.

Mr. Wiley: Wiley the Republican. But we all agreed that the policy was in the public interest.

Mr. Jones: Right.

Mr. Wiley: And in the end we had a bipartisan Commission. It was demonstrably the right decision for the country. Unfortunately, in the debate with Jimmy Carter, Gerald Ford said that Poland was not under Communist rule and many people thought that he lost the debate and, therefore, lost the presidency. And, as a result, I was going to lose my job!

I had a wonderful seven years at the Commission. The Commissioners and I used to have rotating dinners at their homes, which I think would be a good idea today. We were all friends. We would disagree from time-to-time on an issue, but then you’d see each other on Friday night. It’s a little hard to cuss people out if you’re seeing them at their homes for dinner. In all, it was the most enthralling, enjoyable period of my life. But when the 1976 election results rolled in, I said, “Gee, my government career, which I greatly enjoy, is about over.”

In December, I got a call from the Carter transition team. And I said to my secretary, “This is it.” So I went up to Union Station where the Carter transition team was officed, and I met this fellow and I said, “Look, I’ve been a commissioner before and I’m happy to be a commissioner again. My term runs to the following June. I’m going to stay and finish my term.” It sounds very honorable, but it would also give me a chance to practice law before the agency
immediately. That was the rule then. Obviously you couldn’t get involved in things that you had decided, but you could go over to the Commission right away on other matters if you finished your term.

Mr. Jones: Whose rule was that? I mean was it a statute or just a policy?

Mr. Wiley: I don’t recall now what it was, but they changed it obviously to one year and now I guess it’s two years.

Mr. Jones: Right, for senior people. So the Ethics in Government Act, that comes after Watergate. It’s in ’78.

Mr. Wiley: Yes. So I told this gentleman, I said “Look, I’m going to stay until June so you can do whatever you need to do.” He said, “I’m a Kansas public broadcaster. I know and like your policies. We don’t have our guy yet so why don’t you just stay on as Chairman.” I was really surprised to say the least, but also very pleased because I loved the job.

The one person that wasn’t pleased, by the way, was my wife who was assuming that after seven long years at the Commission I might be leaving and actually earning some money; because we were not in good financial shape at that point. I had just made partner out in Chicago before I joined the FCC and my income went down and hadn’t really gone up very much. So I went back to the Commission, called the three Democrat members in and said: “Guys, you’re looking at the next Chairman of the FCC.”

Mr. Jones: Looking a lot like the old Chairman, right?
Mr. Wiley: Yes. The old Chairman and I’m the new Chairman. I said, “I think they’ve got somebody else in mind who maybe isn’t ready yet. But whatever it is,” I said, “They’ve asked me to stay on and I’m going to do it.”

Ben Hooks later decided he would leave. He wasn’t going to get to be Chairman. He could see that, and so he became head of the NAACP which was a great job for him. And the other two commissioners stayed on.

I started working with the Carter White House. I traveled internationally with them to various treaty organizational meetings. Sy Lazarus and Rick Neustadt who were the Carter aides at that time became good friends of mine. Rick actually became such a good friend that he later came with me to Kirkland Ellis, the firm that I joined—we’ll get to that later. Rick was the son of the famous Harvard history professor, Richard Neustadt, and he was a terrific individual.

Carter and Ford had similar policies, I would say. Call it moderate deregulation. So the Carter folks didn’t seem to have much problem with my policies, and it was a good opportunity for me because I knew later I was going into private practice and I got to know these guys. It was only a short time until June, I figured, so it was good.

Comes June I got a call saying, Hey, come over to the White House for lunch. They took me around, showed me Amy’s tree house, and they showed me the tennis court, because they knew I was a tennis buff. They said, Look, we’re still not ready. Any chance you could stay on until Labor Day? My wife was, again, not particularly happy. Senator McClellan, a very conservative Democrat,
who liked me said, “We’re going to get you reappointed.” I said, “No, that’s not what I had in mind.” I would get a divorce, I think, from my wife and I didn’t want that. But I said, “I’ll stay on until Labor Day.” So, finally, it was October 18 of 1977, within two weeks of the day that Ford had lost, that they finally replaced me at the Commission. And I realized that my seven-year journey at the FCC was over and I would have to find a job in the private sector. George, I guess that’s stage three.

Mr. Jones: Well, we’re not there yet. We have some more to talk about in stage two. So as I think I understand it, the obstacle to Presidential debates was the Equal Opportunity Doctrine.

Mr. Wiley: Absolutely.

Mr. Jones: Is that statutory, regulatory Commission decision?

Mr. Wiley: Oh, it’s statutory.

Mr. Jones: Statutory. And to have Presidential debates without having to invite fifty candidates you reinterpreted the statute?

Mr. Wiley: Yes, exactly. There were exceptions as I said earlier for bona fide news events which would include news casts, news interviews and other kinds of sudden news events. We said that a presidential debate could be a bona fide news event.

Mr. Jones: I see. I see.

Mr. Wiley: In those days the League of Women Voters had to be the moderator. It was before the days in which the networks took over. Now, we don’t think of debates as being controversial. Indeed, we think of them as being one of the most
important elements of the public’s determination of who they’re going to vote for, right?

Mr. Jones: Yes. On indecency, were you the leader on that?

Mr. Wiley: Yes. I was the Chairman, I had to make that decision and I thought that we had the right grounds because there was a concern about children being subjected to this kind of language which, by the way, with little kids at the time, I shared. I didn’t want the “F” word being broadcast during times when children were likely to be in the audience.

Mr. Jones: You mentioned “ubiquitous”—

Mr. Wiley: Immediate availability into the American home by mere turn of a dial or a knob, right?

Mr. Jones: So would that apply to cable stations?

Mr. Wiley: No, that would not apply to cable and, as a matter of fact, I was pilloried by some people on Capitol Hill on this point. They would bring me up, and show me *Midnight Blue*, which was a cable program that was very explicit and they’d say, What about this Mr. Chairman? And I’d say, “We can’t regulate it because it’s like movies. You want to go see a XXX film and you pay your money, the government can’t stop that. And this is the same thing”. And the courts later upheld that position. You’re paying a monthly subscription for cable. Unlike broadcasting which is advertising supported and is immediately available to every American—

Mr. Jones: Who has a TV. And that’s a distinction that has continued to exist even today?
Mr. Wiley: Yes. And people are questioning whether or not that still makes sense, because there are so many ways in which programming can now be made available to the public. Only this one little segment is sort of pristine. But the most recent Supreme Court decision has upheld—

Mr. Jones: Fox.

Mr. Wiley: Fox, yes. Has upheld it, and even upheld the “fleeting expletive” policy of the FCC, which when Bono, the lead singer for U2, held up his Golden Globe award and said, “This is f’ing brilliant,” the Commission ruled that that was indecent and the courts have basically upheld that. Now, the Commission may move away from that policy and I happen to think that’s probably wise. It’s so hard to regulate in that area. But, on the other hand, I don’t like to see gratuitous use of bad language on the airwaves.

Mr. Jones: So you mentioned common ownership. You were worried about the newspapers controlling radio or television in the same market.

Mr. Wiley: By the way, that is still the rule today. But the world of the Internet and fragmented media and multiple competitive sources have made that rule, in my personal opinion, outmoded and counterproductive.

Mr. Jones: So, at the outset, the concern was that newspapers would dominate communication to the public?

Mr. Wiley: Yes. If you owned a newspaper and you had your television station in the same marketplace, you would be in a very super competitive status compared to the other stations in the marketplace.

Mr. Jones: And charge more for advertising?
Mr. Wiley: Perhaps. And control what went on that station. There were all those concerns.

Mr. Jones: Lots of power. You could influence the candidates who were elected and the like. And today you have almost countless avenues for communication.

Mr. Wiley: George, I’d like to use you as one of my witnesses here when we go to the FCC next time because that’s what I’m saying over there. But so far we haven’t sold it.

Mr. Jones: And the notion is that because you have multiple ways of communication there is no way for anybody to dominate communication?

Mr. Wiley: Well, I would argue that, but others still are concerned about too much consolidation.

Mr. Jones: You might have the equivalent of the failing company defense in the antitrust area—

Mr. Wiley: Well we do have a failing station rule over at the FCC, but not failing newspapers because the FCC doesn’t regulate newspapers. They only regulate their co-ownership of television stations.

Mr. Jones: Okay. Let’s talk about your mistakes.

Mr. Wiley: Yes, well I’ve made a few. I think we were slow sometimes in our pace of deregulation, particularly, in pay television. But the big one was—and this was kind of akin to the indecency situation—concerned so-called “Family Viewing.” People from Capitol Hill expressed concerns to me about violence and sexually oriented programming that was appearing on television. So I decided to call in the presidents of the three major networks—ABC, NBC and CBS—into my office. I wanted to have an adult conversation with them about this problem. I suggested, for their consideration because, again, you’ve got the—
Mr. Jones: First Amendment.

Mr. Wiley: First Amendment. And you’ve got the no censorship provision. I suggested to them intelligent scheduling that would say that in the first two early hours of prime time—say, 7:00 to 9:00 a.m. in the East Coast—you wouldn’t have programs that were not suitable for the entire family.

And I also suggested the avoidance, even in the later hours, of gratuitous violence and sex when it wasn’t necessary to the programming line. And finally I said, “How about warnings to parents if there’s going to be a program that may be upsetting to some?” And you see those warnings today.

Mr. Jones: Right.

Mr. Wiley: So I made those suggestions. I never used the term family viewing. Arthur Taylor was a young, dynamic president of CBS. And he made a speech a couple weeks later calling for a family viewing hour, and it basically followed the outline of my suggestions. The first two hours of prime time would be appropriate for family viewing, there would be warnings, avoidance of gratuitous violence and sex. I, of course, liked it.

Mr. Jones: Did he attribute it to you?

Mr. Wiley: Well he said we had discussed it, but he said, “This was our idea.” And I endorsed it as a landmark in self-regulation. It was all looking good. But Norman Lear and some of the folks in Hollywood didn’t see it that way, and they sued the networks for antitrust violations and sued me, again, for violation of the First Amendment. It went to a District Court. I remember the judge telling me
that he thought Norman Lear was a genius, which he may well be. (Both laugh) I didn’t take that as a comforting sign.

Mr. Jones: During the hearing?

Mr. Wiley: He actually said that. This was in Los Angeles and we lost that case.

Mr. Jones: I’m shocked. (Laugh)

Mr. Wiley: Yes, I’m shocked there’s gambling going on here. Fortunately, a couple years later the Ninth Circuit Court of Appeals reversed and vacated that decision. But by that time, the family viewing hour concept had come and gone although you’ll still see references to it. You had asked me once whether it really was a mistake. No, I believed in it. I thought it was a good idea. Maybe I could have handled it better. I never thought about getting sued.

Mr. Jones: That’s the biggest one, or the only one?

Mr. Wiley: Oh, there were many, I am sure, but that’s the biggest one that I’ll always recall because I had to have the Justice Department representing me, and I had my deposition taken and my cross-examination by a very smart lawyer from Munger, Tolles. I still remember that.

Mr. Jones: Who was the lawyer?

Mr. Wiley: I can’t recall who it was, but he was good. (Both laugh) I thought I held my own, but obviously the judge didn’t see it that way.

Mr. Jones: I’m not sure I would regard that as a mistake, if I were you.

Mr. Wiley: You’re nice to say that, but at the time it was upsetting and it was nerve racking. To be sued, and it got lots of press. It was not a comfortable position to be in. So I was very pleased when the Ninth Circuit issued their decision.
Mr. Jones: Did they come out with the decision while you were still Chairman?

Mr. Wiley: No, I was gone. I got all the good decisions after I left office. (Both laugh)

Mr. Jones: The weekly dinners with the commissioners, was that your innovation or was that a continuation of—

Mr. Wiley: No, it was mine. And, you know, again, it was self-serving in the sense that obviously it helped me to have good relationships. But that was my nature anyway. I liked these people. They all remained friends of mine. Unfortunately, the only one that’s still living to this day is Glen Robinson—up there in the far right of that picture—and he’s retired from the University of Virginia Law School. But just a terrific fellow. And you know Glen was a libertarian Democrat, so when we did the children’s television proceeding he actually opposed it because he thought the FCC shouldn’t be involved in this area. I said, “Well, Glen, we’re just trying to do something in the public interest and we’re not regulating.” But he was a purist in that respect.

Mr. Jones: Was it unusual for a person like Charlotte Reid who was a performer, not—

Mr. Wiley: But she was a congresswoman. I think she served four or five terms as a congresswoman.

Mr. Jones: Oh, I see.

Mr. Wiley: So she was a performer earlier and then was the wife of a congressman and then became a congresswoman herself. As I say, Nixon thought highly of her. She was a very smart woman and ultimately decided, after many years, to get remarried and she left the Commission.
Mr. Jones: Sy Lazarus, the guy you mentioned as being one of the Carter administration people—

Mr. Wiley: Carter people, yes.

Mr. Jones: —was at our firm for a few years.

Mr. Wiley: Oh, is that so?

Mr. Jones: Yes, he’s a good guy. I see him from time-to-time.

Mr. Wiley: Oh, a very good guy. Is he still practicing?

Mr. Jones: Not with us. He does a lot of work with, I think, the Constitutional Accountability Center.

        Let’s see. We’ll call this the end of Phase Two.

Mr. Wiley: Phase Two or Stage Two, you called it.

Mr. Jones: Stage Two.