

THE FAIRNESS DOCTRINE: FCC REGULATIONS AND THE FIRST AMENDMENT

The Fairness Doctrine is a policy of the Federal Communications Commission which requires broadcasters to provide fair and equal coverage of any issues which are controversial or of public interest or importance (Hybels 252). On the surface, this seems to be a perfectly reasonable request. However, many broadcasters feel that this doctrine is an infringement on the First Amendment.

Journalists are decidedly wary of any "government actions that might impede the flow of the news and information Americans receive" (Diamond 7). As a result, the Fairness Doctrine raises the issues of political right of reply, access to media, editorial comment, and broadcasters' compliance to the FCC's regulations regarding these issues.<sup>5</sup> It appears that some regulation is necessary, but it remains difficult to determine when the government is overstepping its bounds.

In the article "Memories of unFairness," Dave Berkman advocates the Fairness Doctrine as a means of ruling out family-owned media monopolies which might choose to report the news as they see fit, rather than the way<sup>it</sup> is. He writes that although an increase in professionalism among journalists in recent years should be enough to prohibit heavily biased reporting, some government control is still necessary. He has faith that journalists would remain ethical "were Fairness abolished... I just wouldn't want to bet on it" (17).

It has been said that the First Amendment provides for an "uninhibited marketplace of ideas... rather than a mono-

*Would this be  
much of a problem  
now with the  
12-12-12 rule*

polization of that market... (by) a private licensee" (Salvaggio 92). This seems to support the Federal Communications Commission's three main policies concerning equal time. The first policy, Equal Opportunities, provides equal quality and arrangement of time for paid political announcements. The second policy deals with Personal Attack, in which an "individual who has been defamed" is given free reply time. The third is the Fairness Doctrine, which involves equal time given to both sides of a controversial issue (Hybels 275).

These policies were formulated over a period of years, as a result of several precedent-setting court cases. One of the first such cases involved the Mayflower Corporation, <sup>which</sup> ~~who~~ in 1941 sought to renew a license for radio station WAAB in Boston. The FCC found that the station's policy was to support "one side of various questions in public controversy, with no pretense at objective or impartial reporting" (Chester 121). The FCC renewed the license, but also moved to prohibit practices of this nature in the future. Although the Commission did not limit editorializing from commentators, it stated that a "truly free radio cannot be used to advocate the causes of the licensee" (121).

This move by the Federal Communications Commission caused a great public outcry. Individuals who were opposed felt that this ruling was unnecessary; there were enough radio stations "to allow editorializing without fear that all points of view would not be heard" (121). Others supported the Commission's decision; they felt that "it would be unfair and

*In effect,  
the ban took  
a little while  
to disappear  
from practice  
many broadcasters  
interpreted  
this as a ban  
they could live  
with.*



potentially dangerous to allow licensees to make use of the prestige and goodwill of their stations for editorial purposes" (122). *Might comment here on current status of editorializing*

This policy declaration raises a number of questions regarding access to the media. One of these was raised in the court case "Red Lion Broadcasting Co. v the FCC." In 1969, the Supreme Court "upheld the validity of the Federal Communications Commission regulations that obliged broadcasters to provide free reply time to persons whose honesty or integrity were attacked over the air during discussions of controversial issues" (Schmidt 8). In essence, this decision gave more importance to the rights of the media consumers over those of the broadcasters.

Even within the Supreme Court, there was opposition to this ruling. Justice William O. Douglas felt that this ruling went against the First Amendment, which "absolutely prohibited the imposition of access obligations on any medium of expression" (Schmidt 179). The ruling, he felt, would leave radio and television to the whims of public and political organizations (179).

The question of access to radio and television was raised again in 1973, when the Supreme Court ruled on the case of "Columbia Broadcasting System v Democratic National Committee." Two cases were presented under this name; one concerned "broadcasters' refusals to accept non-candidate-oriented political advertisements" from the Democratic National Committee (Schmidt 175). The other "concerned whether a radio station could rightfully refuse to air an anti-Vietnam ad from a group called Business



Executives' Move for Vietnam Peace" (175). *... necessary to ask why* The FCC decided that the coverage of controversial issues was up to the licensee's discretion. Therefore, it was legal for the broadcasters to refuse to air the ads (175). This ruling emphasized that broadcasters were only obligated to provide equal time in cases of personal attacks or paid political announcements. *... a natural and limited resource, to transmit information*

The issue of political advertising in the broadcast media has raised a great deal of debate over Section 315 of the Communications Act, amended in 1959. The act provides for Equal Time for political candidates. In 1975, the Supreme Court ruled that coverage of debates and press conferences "will be treated as on-the-spot coverage of bona fide news events, and thus exempted..." from the Equal Time rule (Schmidt 147). *... this is rightly being given under the umbrella of* Therefore, it was not necessary for broadcasters to cover the appearances of all political candidates, just the ones deemed newsworthy. *... This* Therein lies the basis of the controversy. The FCC does, however, guard against favoritism on the part of broadcasters (155). *... jeopardize the operation of the fairness doctrine*

This case opened the door for questions about access to the print media. The newspaper industry had heretofore been exempt from government regulation. In 1974, the Supreme Court heard the case of "Miami Herald Publishing Co. v Tornillo." The Court decided that "enforced access violates the First Amendment because it penalizes newspapers, inhibits criticism of public officials, and intrudes on the editorial function" (Schmidt 218). *... came under attack for portraying a "number of*

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Following the "Tornillo" case, it became necessary to ask why the rules that apply to radio and television broadcast would not apply to newspapers. The Supreme Court's superficial treatment of the case left many questions unanswered. *And has perpetuated disharmony between*

In essence, radio and television are set apart from the *the two media* print media by virtue of the fact that they rely upon the radio spectrum, "a natural and limited resource," to transmit information from sender to receiver (Salvaggio 88). Since the airwaves are limited, only a certain number of broadcast stations may exist at any given time. Thus, "the idea developed that broadcasters were public trustees and therefore subject to governmental regulations" (88).

The notion of radio and television stations as public trustees has raised the issue of public access to the media. The practice of selling time for editorials has been one related topic of debate. The Federal Communications Commission has decided that this practice should not be allowed since "such a system would be heavily weighted in favor of the financially affluent and would jeopardize the operation of the fairness doctrine" (Chester 132).

*This is rapidly losing favor under this administration -*

Application of the Fairness Doctrine becomes an even more convoluted issue in the area of editorial documentaries. The question has been raised regarding whether a broadcaster who presents a derogatory exposé should be required to allow equal time for a rebuttal.

In one such case, an NBC documentary, "Pensions: the Broken Promise," came under attack for portraying a "number of



older workers who were left after retirement without pension benefits because of failures in their pension plans" (Schmidt 194). In response to a complaint filed with the FCC, the Commission decided that since "the issue was controversial and of public importance... the Fairness Doctrine... obligated NBC to program views on the other side." NBC appealed this ruling (194).

*Result?*

Although the actions of the FCC regarding regulation apply mostly to news and political advertisements, commercial television is also affected. The recent moves to deregulate broadcasting could have a noticeable impact on commercial programming, also.

Commercial television makes use of a self-regulatory board, the National Association of Broadcasters (NAB). When the NAB proposed that between the hours of 7 and 9 p.m. only programming suitable for family viewing would be shown, opponents were quick to blame the FCC for putting pressure on the broadcasters. Although many members of the NAB favor some form of government regulation, this decision was apparently made without interference from the FCC (Kuhn 175).

Government control of the broadcast media has a long-standing tradition. In 1927, a law was passed to prohibit radio stations from existing without a license (Salvaggio 87). It's interesting to note that by law, licenses are only issued to "those persons who federal regulators determine will best serve the 'public interest'" (87).

Doesn't  
make  
sense

[The Fairness Doctrine uses this notion in the licensing of radio and television stations.] Because these media are seen

as public servants, this claim must be proven before a license to broadcast is issued. Court cases in the 1960's and 1970's have brought the service of the public interest by the media into the spotlight as a deciding factor in license renewal.

Two early cases involved important rulings by Judge Warren Burger, who was serving on the District of Columbia Board of Appeals at the time. The first "effectively removed the license of station WLBT in Jackson, Mississippi, for routinely refusing to air the viewpoints of a substantial local black community" (Schmidt 189). The second denied renewal of a license for a fundamentalist radio station for failure to comply to the Fairness Doctrine (189).

In 1975, two more court battles were fought over refusal to renew licenses, based on "violations of fairness or related public interest standards in programming" (189). In the first, the FCC denied renewal of licenses for eight educational television stations owned by the Alabama Educational Television Commission. The FCC cited "a racially discriminatory policy in its overall programming practices during the license period" (189). The station also failed to provide programs specifically suited to the needs of the black community of the state.

The other refusal to renew was based on "slanted newscasts designed to further certain political candidacies" (189). This is not in direct violation of the fairness policies of the FCC, but it emphasizes "operation in the public interest (as)... the 'sine qua non' for grant of renewal of license" (190).

The Reverend Dr. Everett C. Parker has provided some strong



rebuttals for those who may question the legality of the Fairness Doctrine. Dr. Parker was influential in establishing the right of citizens to challenge the license of broadcasting. In the era of moves to deregulate, he fears the downfall of the notion of public trusteeship.

With deregulation, broadcasters will quickly shed their trusteeship responsibilities. Vital public issues will vanish from commercial television. News and public affairs will be presented only when profitable. (Geller 77)

Dr. Parker also fears that as public service programming disappears from the airwaves, so will controversial issues. Advertisers would gain control of what was offered for public consumption, and would stress programming of only that which draws the largest audience. "Furthermore," he says, "there would be stations that would use the power of broadcasting, which is far greater than the power of the printed word, to smear their enemies" (78).

For these reasons, Dr. Parker advocates a continuation of Federal Communications Commissions regulations so that television will "continue to serve the public interest, and, conversely, that television not be weakened, so poorer people who cannot afford cable service or a satellite dish will always get video services" (77).

The need for regulation is best exhibited in the fact that no radio or television station "permitted people with something to say to walk into the station and have their messages put on

the air (as they were permitted to do on cable systems that had public access channels)" (Wicklein 136). A guarantee of the provision of diversity of viewpoints is necessary as long as "access to the main channels of electronic communications is restricted" (136).

In any study of the Fairness Doctrine of the Federal Communication Commission, it is important to note the Commission's official stance on compliance. Although the Commission may elect to withhold a license from a station which exhibits flagrant disregard for the regulations, "compliance with fairness obligations should be left to the editorial discretion of the broadcaster, with a minimum of official intervention. The Fairness Doctrine both feeds and frustrates access demands" (Schmidt 157).

The right of access to the broadcast media is one that many people take for granted, and therefore never make use of. If one has an opinion to express, a letter to the editor of a newspaper or magazine might be the only avenue exploited. However, a number of radio stations present talk shows which discuss controversial issues, a fitting place to air one's views.

Most cable systems, too, provide public access channels as a way of offering their viewers a way of expressing themselves. A recent issue of Day And Age, an Albany-based punk newsletter, offered its readers tips on how to produce a video and have it aired on a cable station. The article stressed that although the station may not like to admit it, it was their duty to provide air time to all local residents, even if the resident in



expressed a propensity to wear leather, safety pins, and a fluorescent red Mohawk. *fu*

In assessing the impact of the fairness regulations of the Federal Communications Commission, it is important to realize that their influence has been felt far beyond the realm of the media. In the case involving the Alabama Educational Television Commission, along with refusal to grant renewal of license, the FCC condemned the AETC for excluding "blacks from policymaking staff positions and... (failure) to consult with the black community about programming policies" (Schmidt 189).

The possibility of deregulation would also have an effect on commercial programming, according to the Rev. Dr. Parker. As regulations and trusteeship obligations are removed, television will pander more to the interests of young people with disposable income. Dr. Parker fears that all television will come to resemble MTV, with "a continuous increase in violence (and denigration) ...of women" (Geller 77).

The FCC fairness regulations, as currently practiced, seem to be a necessary evil. The print industry must continue to use its exempt status to be a watchdog, to make certain that government regulations do not become oppressive. With the concern of an informed and conscientious public, the Federal Communications Commissions regulations should present no problem to the future of broadcasting.

*One of the best papers on FD I've read*

*A (95)*

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