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FAIRNESS DOCTRINE AND PUBLIC INTEREST STANDARDS

Handling of Public Issues

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19260; FCC 74-702]

FAIRNESS DOCTRINE AND PUBLIC INTEREST STANDARDS

Fairness Report Regarding Handling of Public Issues

In the matter of the handling of public issues under the Fairness Doctrine and the Public Interest Standards of the Communications Act, Docket No. 19260.

I. *Introduction.* 1. By notice issued June 11, 1971 (Docket No. 19260, 30 FCC 2d 26), we instituted a broad-ranging inquiry into the efficacy of the fairness doctrine and related public interest policies. Observing that almost 22 years had passed since we last gave comprehensive consideration to the fairness doctrine,[1] we stated that the time had come for a reassessment and clarification of basic policy. While we noted that in view of sections 315(a) and 3(h) of the Communications Act, the Commission could not "abandon the fairness doctrine or treat broadcasters as common carriers who must accept all material offered by any and all comers," we did emphasize that these statutory standards were broad in nature and that therefore "there can and must be considerable leeway in both policy formulation and application in specific cases." In this regard, we asked that interested parties formulate their specific comments in light of two general but fundamental considerations of Commission policy. First, in view of the profound, unquestioned national commitment embodied in the First Amendment, our goal in this area must be to foster "uninhibited, robust, wide-open" debate on public issues. "New York Times Co. v. Sullivan," 376 U.S. 254, 270 (1964). Our inquiry was therefore directed in primary part to the question of whether the Commission's application of the doctrine has indeed been consistent with that goal and has promoted it to the maximum extent. Secondly, we also stressed that any promotion of this objective must be compatible with the public interest in "the larger and more effective use of radio." 47 U.S.C. section 303(g). Noting that " • • • to a major extent, ours is a commercially-based broadcast system and that this system renders a vital service to the nation," we emphasized that "[a]ny policies adopted by this Commission • • • should be consistent with the maintenance and growth of that system and should, among other appropriate, standards, be so measured." These basic policy considerations have led the Commission to initiate this inquiry and have continued to guide us in the review and reformulation of the fairness doctrine set forth in this report.

2. To facilitate consideration of the many complex problems involved, we divided the inquiry into four parts, entitled: II. The Fairness Doctrine Generally; III. Application of the Fairness Doctrine to the Broadcast of Paid Announcements; IV. Access Generally to the Broadcast Media for the Discussion of Public Issues; and V. Application of the Fairness Doctrine to Political Broadcasts.[2] Interested parties were invited to comment on any issue or aspect of these subjects. We have received and reviewed the written comments of numerous parties representing the advertising and broadcasting industries, labor unions, public interest, environmental and consumer groups, law schools, and other interested individuals and organizations.[3] Finally, in March 1972, we devoted a full week to panel discussions and oral arguments on the issues raised in this inquiry. Some fifty persons participated in the panel discussions and about thirty additional persons presented oral argument to the Commission. While this Report does not specifically address every suggestion which has been raised in the proceeding, we have given them all careful consideration in reaching the conclusions and policy judgments set forth herein.

II. *The fairness doctrine generally—A. Broadcasting and free speech.* 3. We believe that it is appropriate to begin our evaluation of the fairness doctrine with a consideration of the underlying purposes of the doctrine and its relationship to freedom of speech. In 1949, we set forth the basic premises of the doctrine in these terms:

> It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day • • •. The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station. And we have recognized, with respect to such programs, the paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community. It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting. Report on Editorializing, 13 FCC 1246, 1249 (1949).

4. At first appearance, this affirmative use of government power to expand broadcast debate would seem to raise a striking paradox, for freedom of speech has traditionally implied an absence of governmental supervision or control. Throughout most of our history, the principal function of the First Amendment has been to protect the free marketplace of ideas by precluding governmental intrusion. However, the continuing evolution of the media of mass communications—both technologically and in terms of concentration of control—has led gradually to a different approach to the First Amendment. This approach—an affirmative one—recognizes the responsibility of government in maintaining and enhancing a system of freedom of expression. See generally T. Emerson, "The System of Freedom of Expression," chapter XVII (1970).

5. In the 1949 "Report on Editorializing," the Commission expressed the view that a requirement that broadcast licensees present contrasting views on public issues was "within both the spirit and letter of the first amendment." 13 FCC at 1249. This conclusion was based, in large measure, on the decision of the Supreme Court in "Associated Press v. United States," 326 U.S. 1 (1945), which concerned anti-competitive practices in the newspaper industry. In that decision, the Court emphasized the affirmative aspects of the First Amendment:

> It would be strange indeed however if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of the information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. 326 U.S. at 20.

6. In the field of broadcasting, the principal impediment to free expression arises not from any anti-competitive practices, but from the physical characteristics of the medium itself. Practical experience in the early years of radio

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[1] The Commission's first general statement on fairness doctrine principles was set forth in the Report on Editorializing by Broadcast Licensees, 13 FCC 1246 (1949). Briefly stated, "the doctrine imposes two affirmative responsibilities on the broadcaster: coverage of issues of public importance must be adequate and must fairly reflect differing viewpoints." Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 111 (1973) (hereinafter cited as BEM).

[2] The Commission's First Report—Handling of Political Broadcast, 36 FCC 2d 40 (1972), was issued on June 22, 1972, and dealt with the issues raised in Part V of the inquiry. A copy of this First Report is attached hereto as Appendix A. We expedited consideration of this portion of the inquiry in order to clarify and treat the major questions presented therein prior to the 1972 general election campaign period. We believe, however, that it is desirable in the context of this report to supplement our treatment of the political fairness issues discussed in our First Report.

[3] A list of major contributors can be found in Appendix B. Some submitting comments after filing deadlines may not be included therein. Over 20 parties filed comments and/or replies in Part II; over 40 parties filed in Part III (an additional 71 comments were received in response to the statement of the Federal Trade Commission in Part III); more than 30 comments were filed in Part IV; and approximately 15 comments in Part V.

made it obvious that a complete laissez-faire policy on the part of the government would lead to the destruction of effective radio communication and thus to a frustration of the basic goals of the First Amendment. For a brief period during the nineteen twenties, government regulation of broadcasting was virtually non-existent, and broadcasters had the same freedom of action traditionally afforded the publishers of newspapers or magazines. The underlying policy was that "anyone who will may transmit." 67 Cong. Rec. 5479 (1926) (remarks of Congressman White). The results of this system were disastrous both for the broadcasting industry and for the listening public:

> From July 1926, to February 23, 1927, when Congress enacted the Radio Act of 1927 almost 200 new radio stations went on the air. These new stations used any frequency they desired, regardless of the interference thereby caused to others. Existing stations changed to other frequencies and increased their power and hours of operation at will. The result was confusion and chaos. With everybody on the air, nobody could be heard. FCC Office of Network Study, Second Interim Report on Television Network Procurement, 65-66 (1965).

7. In 1927, Congress acted to end the crisis by establishing an effective system of government licensing. It would have been unthinkable, of course, for the government to have been in the business of deciding who could publish newspapers and magazines and who could not. In purely practical terms, however, it was obvious that licensing was essential to the development of an effective system of broadcasting. In the case of "National Broadcasting Co. v. United States," 319 U.S. 190 (1943), the Supreme Court concluded that, because of the scarcity of available frequencies, the licensing system established by Congress did not violate the First Amendment. In an opinion written by Justice Frankfurter, the Court found that the freedom of speech did not include "the right to use the facilities of radio without a license." Id. at 227. It made it clear, furthermore, that the Commission was not limited to the role of a "traffic officer, policing the wave lengths to prevent stations from interfering with each other." Id. at 215. "[T]he Act," the Court held, "does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic." Id. at 215–16. But, while the NBC case did establish an expansive view of Commission powers, it still left a great many First Amendment questions unanswered.

8. Some twenty-six years later, in the landmark decision in "Red Lion Broadcasting Co. v. FCC", 395 U.S. 367 (1969), the Court set forth a comprehensive First Amendment theory which vindicated both the licensing system and the Commission's fairness doctrine. Justice White, writing for a unanimous Court, reaffirmed Justice Frankfurther's thesis that because of the scarcity factor, licensing was permissible.[4] The First Amendment, in the Court's opinion, did not confer upon anyone the right to operate a radio station:

> [I]f there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airways. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum. Id. at 389.

It was thus concluded that the basic purposes of the First Amendment would be undermined if there were "an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." Id. at 388.

9. While the licensing system was thus designed to further First Amendment interests in the broadcast medium, it was necessary to define those interests and identify their focus and means of implementation.[5] Should the licensees chosen by the government be accorded an absolute and unrestricted right to advance their own views to the exclusion of those of their less privileged fellow citizens? Or should there be some provision made to insure the recognition of the First Amendment interests of those citizens who are of necessity denied the opportunity to operate a broadcasting station? In language strikingly close to that found in our earlier "Report on Editorializing", the Red Lion Court stated that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." Id. at 390. While private businessmen were licensed to operate radio stations, "[t]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purpose of the First Amendment." Ibid. (emphasis supplied). That Amendment, as it has long been recognized, "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *." Associated Press v. United States, 326 U.S. 1, 20 (1945). In this respect the purpose of the First Amendment is not simply to protect the speech of particular individuals, but rather to preserve and promote the informed public opinion which is necessary for the continued vitality of our democratic society and institutions. As the Supreme Court has elsewhere stated, "speech concerning public affairs is more than self-expression; it is the essence of self-government," "Garrison v. Louisiana," 379 U.S. 64, 74–5 (1964), and "[t]hose guarantees [of the First Amendment] are not for the benefit of the press so much as for the benefit of all of us." "Time, Inc., v. Hill," 385 U.S. 374, 389 (1966).

10. In light of this fundamental purpose of the First Amendment and the paramount right of the public to have that purpose implemented in the broadcast medium, it became clear that the license granted by the government to a chosen few could not be considered as a privilege to "ignore the problems which beset the people or * * * exclude from the airways anything but their own views of fundamental questions." 395 U.S. at 394. As the Red Lion Court stated, "the First Amendment confers no right on licensees to prevent others from broadcasting on 'their' frequencies and no right to an unconditional monopoly of a scarce resource which the Government had denied others the right to use." 395 U.S. at 391. Rather, the constitutional status of the broadcast licensee was identified in the following terms:

> [A]s far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves. Id. at 389.

11. Thus, in the context of the scarcity of broadcast frequencies and the resulting necessity for government licensing, the First Amendment impells, rather than prohibits, governmental promotion of a system which will ensure that the public will be informed of the important issues which confront it and of the competing viewpoints on those issues which may differ from the views held by a particular licensee. The purpose and foundation of the fairness doctrine is therefore that of the First Amendment itself: "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." 395 U.S. at 390. In accordance

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[4] This scarcity principle is not predicated upon a comparison between the number of broadcast stations and the number of daily newspapers in a given market. The true measure of scarcity is in terms of the number of persons who wish to broadcast and, in Justice White's language, there are still "substantially more individuals who want to broadcast than there are frequencies to allocate." 395 U.S. at 388.

[5] Professor Emerson has outlined this problem in the following terms: "[o]nce it is assumed that a scarcity of broadcasting facilities exists the next question becomes, what follows from that? * * * In purely commonsense terms it would seem to follow that, if the government must choose among applicants for the same facilities, it should choose on some sensible basis. The only sensible basis is the one that best promotes the system of freedom of expression." T. Emerson, The System of Freedom of Expression 663 (1970).

with this view and theory, the Court in Red Lion held that

> It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern. To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press. 395 U.S. at 394.

12. That the government should act affirmatively to preserve and promote the greater listening and viewing public's First Amendment interests in broadcasting is a concept which some quarters still find difficult to accept. But while arguments have been and will continue to be made as to the wisdom of the fairness doctrine and its application in particular cases, its statutory support[*] and constitutionality are firmly established. BEM, 412 U.S. 94 (1973); "Red Lion Broadcasting Co. v. FCC," 395 U.S. 367 (1969).

13. Although the legality of the fairness doctrine is thus well-established, Chief Judge Bazelon of the District of Columbia Circuit has suggested that the time has come for "the Commission to draw back and consider whether time and technology have so eroded the necessity for governmental imposition of fairness obligations that the doctrine has come to defeat its purposes in a variety of circumstances * * *." "Brandywine-Main Line Radio, Inc. v. FCC," 473 F. 2d 16, 80 (D.C. Cir. 1972) (dissenting opinion). We believe, however, that the problem of scarcity is still very much with us, and that despite recent advances in technology, there are still "substantially more individuals who want to broadcast than there are frequencies to allocate." "Red Lion Broadcasting Co. v. FCC," 395 U.S. at 388. The effective development of an electronic medium with an abundance of channels (through the use of cable, or otherwise) is still very much a thing of the future. For the present, we do not believe that it would be appropriate—or even permissible—for a government agency charged with the allocation of the channels now available to ignore the legitimate First Amendment interests of the general public. We recognize, however, that there exists within the framework of fairness doctrine administration and enforcement the potential for undue governmental interference in the processes of broadcast journalism, and the concomitant diminution of the broadcaster's and the public's legitimate First Amendment interests. It is with a real sensitivity to this potential danger and an equal awareness of our responsibilities to promote the ends and purposes of the First Amendment that we have confronted the task of restating and reformulating our approach to the fairness doctrine and the broadcasters' obligations thereunder.[†]

B. *Does the fairness doctrine inhibit broadcast journalism?* 14. A number of commentators have argued that, in spite of its worthy purposes, the actual effect of the fairness doctrine can only be to restrict and inhibit broadcast journalism. Far from inhibiting debate, however, we believe that the doctrine has done much to expand and enrich it.

15. We have already noted that, stripped to its barest essentials, the fairness doctrine involves a two-fold duty: (1) The broadcaster must devote a reasonable percentage of this broadcast time to the coverage of public issues; and (2) his coverage of these issues must be fair in the sense that it provides an opportunity for the presentation of contrasting points of view. It is impossible to believe that the first of these obligations could hamper broadcast news and commentary in any way. While such a requirement might be viewed as a restriction on the broadcaster as a businessman, there is no doubt that "it is a positive stimulus to broadcast journalism." Wood, Electronic Journalism 127 (1967).

16. We do not believe that the second part of the fairness doctrine should inhibit broadcast journalism any more than the first. It has frequently been suggested, however, that many broadcasters will avoid the coverage of controversial issues if they are required to present contrasting views. These broadcasters, it is argued, will find the opposing viewpoints too offensive, or their presentation too disruptive to their broadcast schedules, too expensive (assuming they are unable to find sponsorship for the presentation of contrasting views), or simply too much trouble. Our first response to this argument is that it represents an attitude which is "completely inconsistent with the broadcaster's role as a public trustee."[‡]

17. The Supreme Court in Red Lion considered the possibility that fairness principles might have a "chilling effect" on broadcast journalism, and found that this

> possibility is at best speculative. The communications industry, and in particular the networks, have taken pains to present controversial issues in the past, and even now they do not assert that they intend to abandon their efforts in this regard. It would be better if the FCC's encouragement were never necessary to induce the broadcasters to meet their responsibility, and if experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications. The fairness doctrine in the past has had no such overall effect. 395 U.S. at 393.

In the years since Red Lion was decided, we have seen no credible evidence that our policies have in fact had "the net effect of reducing rather than enhancing the volume and quality of coverage."

18. In evaluating the possible inhibitory effect of the fairness doctrine, it is appropriate to consider the specifics of the doctrine and the procedures employed by the Commission in implementing it. When a licensee presents one side of a controversial issue he is not required to provide a forum for opposing views on that same program or series of programs. He is simply expected to make a provision for the opposing views in his overall programming. Further, there is no requirement that any precisely equal balance of views be achieved, and all matters concerning the particular opposing views to be presented and the appropriate spokesmen and format for their presentation are left to the licensee's discretion subject only to a standard of reasonableness and good faith.

19. As a matter of general procedure, we do not monitor broadcasts for possible violations, but act on the basis of complaints received from interested citizens. These complaints are not forwarded to the licensee for his comments unless they present prima facie evidence of a violation. Allen C. Phelps, 21 FCC 2d 12 (1969). Thus, broadcasters are not burdened with the task of answering idle

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[*] From the earliest days of radio regulation, it was recognized that a standard of fairness was an essential element of regulation in the "public interest." Great Lakes Broadcasting Co., 3 F.R.C. Ann. Rep. 32, 33 (1929), rev'd on other grounds, 59 App. D.C. 197, 37 F. 2d 993, cert. dismissed, 281 U.S. 706 (1930). In 1959, Congress specifically amended the Communications Act so as to vindicate the Commission's view that fairness inhered in the general public interest standard of the Act. 47 U.S.C. section 315(a); see Red Lion Broadcasting Co. v. FCC, 395 U.S. at 380-81.

[†] Judge Skelly Wright of the District of Columbia Circuit has made the following observations with regard to the difficulties inherent in fairness regulation:

> "The problems of figuring out the right thing to do in this area—the system that will best serve the public's First Amendment interest—are enormous. In some areas of the law, constitutional values are clearly discernible, as where one is required to balance some right protected by the Constitution against an asserted countervailing governmental interest * * *. [I]n some areas of the law it is easy to tell the good guys from the bad guys. In the current debate over the broadcast media and the First Amendment, however, each debater claims to be the real protector of the First Amendment, and the analytical problems are much more difficult than in ordinary constitutional adjudication." Commencement address, National Law Center, George Washington University, Washington, D.C., June 3, 1973.

[‡] We concur with the views expressed on this subject by former Commissioner Cox several years ago:

> "[a]s a trustee for the public, a broadcaster must use his facilities to enlighten the public about the critical issues which it faces, and this obviously requires substantial effort and may involve presenting some viewpoints with which the licensee totally disagrees. But so long as he is permitted to express his own view editorially with respect to the matters discussed and is allowed to choose the formats to be employed and the spokesmen for the respective positions, he cannot, it seems to me, claim that his freedom to report and analyze the news has been impaired." Cox, The FCC and the Future of Broadcast Journalism in Survey of Broadcast Journalism 1969–1970 at 115.

or capricious complaints. By way of illustration, the Commission received some 2,400 fairness complaints in fiscal 1973, only 94 of which were forwarded to licensees for their comments.

20. While there may be occasional exceptions, we find it difficult to believe that these policies add significantly to the overall administrative burdens involved in operatng a broadcast station. It is obvious that any form of governmental regulation will impose certain costs or burdens of administration on the industry affected. The point is not whether some burden is involved, but rather whether that burden is justified by the public interest objective embodied in the regulation. Broadcasters are licensed to act as trustees for a valuable public resource and, in view of the public's paramount right to be informed, some administrative burdens must be imposed on the licensee in this area. These burdens simply "run with the territory." Furthermore, any licensee who might be discouraged by such a burden will have to take into account this Commission's requirement that he must provide a forum for the discussion of public issues. The Supreme Court has made it clear and it should be reemphasized here that "if present licensees should suddenly prove timorous, the Commission is not powerless to insist that they give adequate and fair attention to public issues. "Red Lion Broadcasting Co. v. FCC," 395 U.S. at 393.

C. *The specifics of the fairness doctrine.* 21. In developing and implementing the fairness doctrine it has never been our intention to force licensees to conform to any single, preconceived notion of what constitutes the "ideal" in broadcast journalism. Our purpose has merely been to establish general guidelines concerning minimal standards of fairness. We firmly believe that the public's need to be informed can best be served through a system in which the individual broadcasters exercise wide journalistic discretion, and in which government's role is limited to a determination of whether the licensee has acted reasonably and in good faith. Fairness Doctrine Primer 40 FCC 598, 599 (1964). In this regard, we are still convinced that

> there can be no one all embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues. Different issues will inevitably require different techniques of presentation and production. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. Report on Editorializing, 13 FCC 1246, 1251 (1949).

22. It is obvious that under this method of handling fairness, many questionable decisions by broadcast editors may go uncorrected. But, in our judgment, this approach represents the most appropriate way to achieve "robust, wide open debate" on the one hand, while avoiding "the dangers of censorship and pervasive supervision" by the government on the other. "Banzhaf v. FCC," 405 F. 2d 1082, 1095 (D.C. Cir. 1968), cert. denied sub nom. "Tobacco Institute v. FCC," 396 U.S. 842 (1969). In this respect, we are not unmindful of the dangers alluded to by the Court in BEM:

> Congress appears to have concluded • • • that of these two choices—private or official censorship—Government censorship would be the most pervasive, the most self-serving, the most difficult to restrain and hence the one most to be avoided. 412 U.S. 94 at 105.

We therefore recognize that reaching a determination as to what particular policies will best serve the public's right to be informed is a task of "great delicacy and difficulty," and that the Commission must continually walk a "tightrope" between saying too much and saying too little. Id. at 102, 117. However, we also believe that this Commission has a clear responsibility and obligation to assume this task.

1. *Adequate time for the discussion of public issues.* 23. The first, and most basic, requirement of the fairness doctrine is that it establishes an "affirmative responsibility on the part of broadcast licensees to provide a reasonable amount of time for the presentation over their facilities of programs devoted to the discussion and consideration of public issues • • •" "Report on Editorializing," 13 FCC at 1249. Determining what constitutes a "reasonable amount of time" is—like so many other programming questions—a responsibility of the individual broadcast licensee. It is the individual broadcaster who, after evaluating the needs of his particular community, "must determine what percentage of the limited broadcast day should appropriately be devoted to news and discussion or consideration of public issues, rather than to other legitimate services of radio broadcasting • • •." Id. at 1247.

24. In reviewing the adequacy of the amount of a licensee's public issue programming, we will, of course, limit our inquiry to a determination of its reasonableness. We wish to make it plain, however, that we have allocated a very large share of the electromagnetic spectrum to broadcasting chiefly because of our belief that this medium can make a great contribution to an informed public opinion. See "Democratic National Committee," 25 FCC 2d 216, 222 (1970). We are not prepared to allow this purpose to be frustrated by broadcasters who consistently ignore their public interest responsibilities. Indeed, "we regard strict adherence to the fairness doctrine"—including the affirmative obligation to provide coverage of issues of public importance—"as the single most important requirement of operation in the public interest—the 'sine qua non' for grant of a renewal of license." "Committee for the Fair Broadcasting of Controversial Issues," 25 FCC 2d 283, 292 (1970).

25. The individual broadcaster is also the person "who must select or be responsible for the selection of the particular news items to be reported or the particular local, State, national or international issues or questions of public interest to be considered • • •." "Report on Editorializing," 13 FCC at 1247.* We have, in the past, indicated that some issues are so critical or of such great public importance that it would be unreasonable for a licensee to ignore them completely. See Gary Soucie (Friends of the Earth), 24 FCC 2d 743, 750–51 (1970). But such statements on our part are the rare exception, not the rule, and we have no intention of becoming involved in the selection of issues to be discussed, nor do we expect a broadcaster to cover each and every important issue which may arise in his community.

26. We wish to emphasize that the responsibility for the selection of program material is that of the individual licensee. That responsibility "can neither be delegated by the licensee to any network or other person or group, or be unduly fettered by contractual arrangements restricting the licensee in his free exercise of his independent judgments." "Report on Editorializing," 13 FCC at 1248. We believe that stations, in carrying out this responsibility, should be alert to the opportunity to complement network offerings with local programming on these issues, or with syndicated programming.

2. *A reasonable opportunity for opposing viewpoints.* 27. The usual fairness complaint does not involve an allegation that the licensee has not devoted sufficient time to the discussion of public issues. Rather, it concerns a claim that the licensee has presented one viewpoint on a "controversial issue of public importance" and has failed to afford a "reasonable opportunity for the presentation of contrasting viewpoints."

28. It has frequently been suggested that individual stations should not be expected to present opposing points of view and that it should be sufficient for the licensee to demonstrate that the opposing viewpoint has been adequately presented on another station in the market or in the print media. See WSOC Broadcasting Co., 17 P & F Radio Reg. 548, 550 (1958). While we recognize that citizens receive information on public issues from a variety of sources, other considerations require the rejection of this suggestion. First, in amending section 315(a) of the Communications Act in 1959, Congress gave statutory approval to the fairness doctrine, including the requirement that broadcasters themselves provide an opportunity for opposing viewpoints. See BEM, 412 U.S. at 110,

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* Ordinarily, the problems which are identified by a station's ascertainment of its community's needs and interests would be featured prominently in the list of public issues selected by the station for program coverage. See generally, Primer on Ascertainment of Community Problems by Broadcast Applicants, 20 FCC 2d 650 (1971).

note 8.[10] Second, it would be an administrative nightmare for this Commission to attempt to review the overall coverage of an issue in all of the broadcast stations and publications in a given market. Third, and perhaps most importantly, we believe that the requirement that each station provide for contrasting views greatly increases the likelihood that individual members of the public will be exposed to varying points of view. The fairness doctrine will not insure perfect balance in debate and each station is not required to provide an "equal" opportunity for opposing views. Furthermore, since the fairness doctrine does not require balance in individual programs or series of programs, but only in a station's overall programming, there is no assurance that a listener who hears an initial presentation will also hear a rebuttal. Compare 47 U.S.C. 396(g)(1)(A). However, if all stations presenting programming relating to a controversial issue of public importance make an effort to round out their coverage with contrasting viewpoints, these various points of view will receive a much wider public dissemination. This requirement, of course, in no way prevents a station from presenting its own opinions in the strongest terms possible.

a. *What is a "controversial issue of public importance"?* 29. It has frequently been suggested that the Commission set forth comprehensive guidelines to aid interested parties in recognizing whether an issue is "controversial" and of "public importance." However, given the limitless number of potential controversial issues and the varying circumstances in which they might arise, we have not been able to develop detailed criteria which would be appropriate in all cases. For this very practical reason, and for the reason that our role must and should be limited to one of review, we will continue to rely heavily on the reasonable, good faith judgments of our licensees in this area.

30. Some general observations however, are in order. First of all, it is obvious that an issue is not necessarily a matter of significant "public importance" merely because it has received broadcast or newspaper coverage. "Our daily papers and television broadcasts alike are filled with news items which good journalistic judgment would classify as newsworthy, but which the same editors would not characterize as containing important controversial public issues." Healey v. FCC, 460 F.2d 917, 922 (D.C. Cir. 1972). Nevertheless, the degree of media coverage is one factor which clearly should be taken into account in determining an issue's importance. It is also appropriate to consider the degree of attention the issue has received from government officials and other community leaders. The principal test of public importance, however, is not the extent of media or governmental attention, but rather a subjective evaluation of the impact that the issue is likely to have on the community at large.[11] If the issue involves a social or political choice, the licensee might well ask himself whether the outcome of that choice will have a significant impact on society or its institutions. It appears to us that these judgments can be made only on a case-by-case basis.

31. The question of whether an issue is "controversial" may be determined in a somewhat more objective manner. Here, it is highly relevant to measure the degree of attention paid to an issue by government officials, community leaders, and the media. The licensee should be able to tell, with a reasonable degree of objectivity, whether an issue is the subject of vigorous debate with substantial elements of the community in opposition to one another. It is possible, of course, that "programs initiated with no thought on the part of the licensee of their possible controversial nature will subsequently arouse controversy and opposition of a substantial nature which will merit presentation of opposing views." Report on Editorializing, 13 FCC at 1251. In such circumstances, it would be appropriate to make provision for opposing views when the opposition becomes manifest.

b. *What specific issue has been raised?* 32. One of the most difficult problems involved in the administration of the fairness doctrine is the determination of the specific issue or issues raised by a particular program. This would seem to be a simple task, but in many cases it is not. Frequently, resolution of this problem can be of decisional importance. See, e.g., David C. Green, 24 FCC 2d 171 (1970); WCBS-TV, 9 FCC 2d 921, 938 (1967).

33. This determination is complicated by the fact that it is frequently made without the benefit of a transcript or tape of the program giving rise to the complaint. Hence, it is necessary in such cases to rely on the recollections of station employees and listeners. While the availability of an accurate transcript would facilitate the determination of the issue or issues raised, it would not in many cases clearly point up those issues. This is true because a broadcast may avoid explicit mention of the ultimate matter in controversy and focus instead on assertions or arguments which support one side or the other on that ultimate issue. This problem may be illustrated by reference to a hypothetical broadcast which takes place during the course of a heated community debate over a school bond issue. The broadcast presents a spokesman who forcefully asserts that new school construction is urgently needed and that there is also a need for substantial increases in teachers' salaries, both principal arguments advanced by proponents of the bond issue. The spokesman, however, does not explicitly mention or advocate passage of the bond issue. In this case, the licensee would be faced with a need to determine whether the spokesman had raised the issue of whether the school bonds should be authorized (which is controversial), or whether he had merely raised the question of whether present school facilities and teacher salaries are adequate (which might not be at all controversial).

34. In answering this question, we would expect a licensee to exercise his good faith judgment as to whether the spokesman had in an obvious and meaningful fashion presented a position on the ultimate controversial issue of whether the school bond issue should be approved.[12] The licensee's inquiry should focus not on whether the statement bears some tangential relevance to the school bond question, but rather on whether that statement, in the context of the ongoing community debate, is so obviously and substantially related to the school bond issue as to amount to advocacy of a position on that question. If, for example, the arguments and views expressed over the air closely parallel the major arguments advanced by partisans on one side or the other of the public debate it might be reasonable to conclude that there had been a presentation on one side of the ultimate issue, i.e., authorization of the school bonds. Obviously, licensees in specific cases may differ in their answers to this inquiry. If a licensee's determination is reasonable and arrived at in good faith, however, we will not disturb it. Cf., Media Access Project (Georgia Power), 44 FCC 2d 756 (1973).

35. Before leaving this subject, we wish to make it clear that a fairness response is not required as a result of offhand or insubstantial statements. As we have stated in the past, "[a] policy of requiring fairness, statement by statement or inference by inference, with constant Governmental intervention to try to implement the policy, would simply be inconsistent with the profound national commitment to the principle that debate on public issues should be 'uninhibited, robust, wide-open' (New York Times Co. v. Sullivan, 376 U.S. 254, 270)." National Broadcasting Co. (AOPA complaint), 25 FCC 2d 735, 736-37 (1970).

c. *What is a "reasonable opportunity" for contrasting viewpoints?* 36. As noted above, the Commission's first task in

[10] One United States Senator has proposed that it might be desirable to apply the fairness doctrine only where less than four broadcast signals are received in a given area. See 119 Cong. Rec. S20358-62 (November 14, 1973) (remarks of Senator Ervin). We believe that such a proposal is clearly beyond our statutory authority. However, it may be appropriate at some future date to examine the possibility of a different application of the fairness doctrine to new technologies of electronic communication or of a different application in broadcast markets of varying size.

[11] In this regard, we note that the fairness doctrine was not designed for the purpose of providing a forum for the discussion of mere private disputes of no consequence to the general public. Rather, its purpose is to insure that the public will be adequately informed on matters of importance to major segments of the community.

[12] See discussion of the application of this standard to "editorial" advertising in Part III, infra.

handling a typical fairness complaint is to review the licensee's determination as to whether the issue specified in the complaint or the Commission's inquiry has actually been raised in the licensee's programming. Secondly, we must review the licensee's determination of whether that issue is "controversial" and of "public importance." If these questions are answered in the affirmative, either by admission of the licensee or by our determination upon review, we must then determine whether the licensee has afforded a "reasonable opportunity" in his overall programming for the presentation of contrasting points of view.

37. The first point to be made with regard to the obligation to present contrasting views is that it cannot be met "merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time." Report on Editorializing," 13 FCC at 1251. The licensee has a duty to play a conscious and positive role in encouraging the presentation of opposing viewpoints.[13] We do not believe, however, that it is necessary for the Commission to establish a formula for all broadcasters to follow in their efforts to find a spokesman for an opposing viewpoint. As we stated in "Mid-Florida Television Corp.," 40 FCC 620 (1964):

> The mechanics of achieving fairness will necessarily vary with the circumstances, and it is within the discretion of each licensee, acting in good faith, to choose an appropriate method of implementing the policy to aid and encourage expression of contrasting viewpoints. Our experience indicates that licensees have chosen a variety of methods, and often combinations of various methods. Thus, some licensees, where they know or have reason to believe that a responsible individual or group within the community holds a contrasting viewpoint with respect to a controversial issue presented or to be presented, communicate to such an individual or group a specific offer of the use of their facilities for the expression of contrasting opinion, and send a copy or summary of material broadcast on the issue. Other licensees consult with community leaders as to who might be an appropriate individual or group for such a purpose. Still others announce at the beginning or ending (or both) of programs presenting opinions on controversial issues that opportunity will be made available for the expression of contrasting views upon request by responsible representatives of such views. Id. at 621.

If a licensee fails to present an opposing viewpoint on the ground that no appropriate spokesman is available, he should be prepared to demonstrate that he has made a diligent, good-faith effort to communicate to such potential spokesmen his willingness to present their views on the issue or issues presented. Columbia Broadcasting System, Inc., 34 FCC 2d 773 (1972). There may well be occasions, particularly in cases involving major issues discussed in depth, where such a showing should include specific offers of response time to appropriate individuals in addition to general over-the-air announcements.[14]

38. In making provision for the airing of contrasting viewpoints, the broadcaster should be alert to the possibility that a particular issue may involve more than two opposing viewpoints. Indeed, there may be several important viewpoints or shades of opinion which warrant broadcast coverage.[15]

39. In deciding which viewpoints or shades of opinion are to be presented, licensees should employ a standard similar to that used to decide which political parties or candidates represent a viewpoint of sufficient importance to deserve coverage. As we stated in Lawrence M. C. Smith, 40 FCC 549 (1963), the broadcaster (in programs not covered by the "equal time" requirement of 47 U.S.C. section 315) is not expected to present the views of all political parties no matter how small or insignificant, but rather:

> the licensee would be called upon to make a good faith judgment as to whether there can reasonably be said to be a need or interest in the community calling for some provision of announcement time to these other parties or candidates and, if so, to determine the extent of that interest or need and the appropriate way to meet it. 40 FCC at 550.

In evaluating a "spectrum" of contrasting viewpoints on an issue, the licensee should make a good faith effort to identify the major viewpoints and shades of opinion being debated in the community, and to make a provision for their presentation. In many, or perhaps most, cases it may be possible to find that only two viewpoints are significant enough to warrant broadcast coverage.[16] However, other issues may involve a range of markedly different and important policy alternatives. In such circumstances, the broadcaster must make a determination as to which shades of opinion are of sufficient public importance to warrant coverage, and also the extent and nature of that coverage.

40. The question of the reasonableness of the opportunity for opposing viewpoints goes considerably deeper, however, than a mere finding that some provision has been made for the opposing viewpoints. Indeed, it has frequently been suggested that the wide discretion afforded the licensee in selecting a reply spokesman and format may undermine any possibility that treatment of the opposition view will be either reasonable or fair. Accordingly, it has been argued that the Commission should promulgate regulations establishing standards for the selection of an appropriate reply spokesman and format. We believe, however, that it should be adequate to remind licensees that they have a duty not " 'to stack the cards' by a deliberate selection of spokesmen for opposing points of view to favor one viewpoint at the expense of the other * * *" "Report on Editorializing," 13 FCC at 1253. In the final analysis, fairness must be achieved, "not by the exclusion of particular views because of * * * the forcefulness with which the view is expressed, but by making the microphone available, for the presentation of contrary views without deliberate restrictions designed to impede equally forceful presentation." Id. at 1253–54. (emphasis supplied); see also Brandywine-Main Line Radio, Inc., 24 FCC 2d 18, 23–24 (1970).

41. In providing for the coverage of opposing points of view, we believe that the licensee must make a reasonable allowance for presentations by genuine partisans who actually believe in what they are saying. The fairness doctrine does not permit the broadcaster "to pre-

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[13] This duty includes the obligation defined in Cullman Broadcasting Co., 40 FCC 576, 577 (1963):
"where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, has not presented (or does not plan to present) contrasting viewpoints in other programming, and has been unable to obtain paid sponsorship for the appropriate presentation of the opposing viewpoint or viewpoints, he cannot reject a presentation otherwise suitable to the licensee—and thus leave the public uninformed—on the ground that he cannot obtain paid sponsorship for that presentation." (emphasis in original).
We do not believe that the passage of time since Cullman was decided has in any way diminished the importance and necessity of this principle. If the public's right to be informed of the contrasting views on controversial issues is to be truly honored, broadcasters must provide the forum for the expression of those viewpoints at their own expense if paid sponsorship is unavailable.

[14] In a notice of inquiry and notice of proposed rulemaking in Docket No. 18859, 23 FCC 2d 27, we proposed the adoption of specific procedures to be followed under certain circumstances in seeking an opposition spokesman. We believe, however, that the policy set forth above adequately covers all situations, and consequently that it is now appropriate to terminate that proceeding.

[15] One student commentator has outlined this problem in the following terms:
"A principal purpose of the fairness doctrine is to educate the public on the major alternatives available to it in making social choices * * *. Acknowledging that there is a 'spectrum' of opinion on many issues, it is nonetheless true that there are often clearly definable 'colors' in the spectrum, even though the points at which they blend into one another may be unclear. The controversy concerning American policy in Indochina is illustrative. The alternatives (prior to America's withdrawal from the war) include[d] increasing military activity, maintaining the (then) present level of commitment, a phased withdrawal and an immediate withdrawal. It might be argued that any licensee who does not present some coverage of at least these views has failed to educate the public about the major policy alternatives available." Note, The FCC Fairness Doctrine and Informed Social Choice, 8 Harv. J. Legis 333 351–52 (1971).

[16] This is not to say that a broadcaster is barred from presenting the views of small minorities, but only that the government will not require the coverage of every possible viewpoint or shade of opinion regardless of its significance.

side over a 'paternalistic' regime," BEM, 412 U.S. at 130, and it would clearly not be acceptable for the licensee to adopt a "policy of excluding partisan voices and always itself presenting views in a bland, inoffensive manner * * *." "Democratic National Committee," 25 FCC 2d 216, 222 (1970). Indeed, this point has received considerable emphasis from the Supreme court:

[n]or is it enough that he should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them. Red Lion Broadcasting Co. v. FCC, 395 U.S. at 392, n. 18, quoting J. S. Mill, On Liberty 32 (R. McCallum ed. 1947).

42. This does not mean, however, that the Commission intends to dictate the selection of a particular spokesman or a particular format, or indeed that partisan spokesmen must be presented in every instance. We do not believe that it is either appropriate or feasible for a governmental agency to make decisions as to what is desirable in each situation. In cases involving personal attacks and political campaigns, the natural opposing spokesmen are relatively easy to identify. This is not the case, however, with the majority of public controversies. Ordinarily, there are a variety of spokesmen and formats which could reasonably be deemed to be appropriate. We believe that the public is best served by a system which allows individual broadcasters considerable discretion in selecting the manner of coverage, the appropriate spokesmen, and the techniques of production and presentation.

43. Frequently, the question of the reasonableness of the opportunity provided for contrasting viewpoints comes down to weighing the time allocated to each side. Aside from the field of political broadcasting, the licensee is not required to provide equal time for the various opposing points of view. Indeed, we have long felt that the basic goal of creating an informed citizenry would be frustrated if for every controversial item or presentation on a newscast or other broadcast the licensee had to offer equal time to the other side. Our reasons for granting the licensee broad discretion with respect to the amount or nature of time to be afforded can be summarized as follows:

In our judgment, based on decades of experience in this field, this is the only sound way to proceed as a general policy. A contrary approach of equal opportunities, applying to controversial issues generally the specific equal opportunities requirements for political candidates would in practice not be workable. It would inhibit, rather than promote, the discussion and presentation of controversial issues in the various broadcast program formats (e.g., newscasts, interviews, documentaries). For it is just not practicable to require equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis. Further, it would involve this Commission much too deeply in broadcast journalism; we would indeed become virtually a part of the broadcasting "fourth estate" overseeing thousands of complaints that some issue had not been given "equal treatment." We do not believe that the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, wide-open" (New York Times v. Sullivan, 376 U.S. 254, 270) would be promoted by a general policy of requiring equal treatment on all such issues, with governmental intervention to insure such mathematical equality. Committee For the Fair Broadcasting of Controversial Issues, 25 FCC 2d 283, 292 (1970).

Similarly, we do not believe that it would be appropriate for this Commission to establish any other mathematical ratio, such as 3 to 1 or 5 to 1, to be applied in all cases. We believe that such an approach is much too mechanical in nature and that in many cases our pre-conceived ratios would prove to be far from reasonable. In the case of a 10-second personal attack, for example, fairness may dictate that more time be afforded to answer the attack than was given the attack itself. Moreover, were we to adopt a ratio for fairness programming, the "floor" thereby established might well become the "ceiling" for the treatment of issues by many stations, and such a ratio might also lead to preoccupation with a mathematical formula to the detriment of the substance of the debate. It appears to us, therefore, that no precise mathematical formula would be appropriate for all cases, and the licensee must exercise good faith and reasonableness in considering the particular facts and circumstances of each case.

44. While the road to predicting Commission decisions in this area is not fully and completely marked, there are, nevertheless, a number of signposts which should be recognizable to all concerned parties. We have made it clear, for example, that "it is patently unreasonable for a licensee consistently to present one side in prime time and to relegate the contrasting viewpoint to periods outside prime time. Similarly, there can be an imbalance from the sheer weight on one side as against the other." Committee for the Fair Broadcasting of Controversial Issues, 25 FCC 2d at 293. This imbalance might be a reflection of the total amount of time afforded to each side, of the frequency with which each side is presented, of the size of the listening audience during the various broadcasts, or of a combination of factors. It is incumbent upon a complainant to bring to the Commission's attention any specific factors which he believes point to a finding that fairness has not been achieved. From the standpoint of the licensee, however, the most important protection against arbitrary Commission rulings is the fact that we will not substitute our judgment for his. Our rulings are not based on a determination of whether we believe that the licensee has acted wisely or whether we would have proceeded as he did. Rather, we limit our inquiry to a determination of whether, in the light of all of the facts and circumstances presented, it is apparent that the licensee has acted in an arbitrary or unreasonable fashion.

45. The danger of an unwise Commission decision in this area is considerably reduced by the fact that no sanction is imposed on the broadcaster for isolated fairness violations during the course of the license term. The licensee is simply asked to make an additional provision for the opposing point of view, and this is certainly not too much to ask of a licensee who has been found to be negligent in meeting his fairness obligations. Indeed, it is to the benefit of both the licensee and his listening audience if broadcasters are informed of their fairness duties and given an opportunity to fulfill them on a timely basis.

D. *The complaint procedure.* 46. It has sometimes been suggested that fairness complaints should not be considered at the time they are presented to the Commision, but with few exceptions should simply be placed in the station's license file to be reviewed in connection with its renewal application. This review would focus on the station's overall performance for the license period, and not on the specific facts of individual fairness violations. Some have argued that this approach would have two major advantages over present procedures. First, it might considerably reduce the Commission's administrative workload, since complaints would not be given any consideration unless there were a number of complaints against a single station which indicated a serious pattern of violations. Secondly, it has been suggested that by avoiding a detailed review of individual complaints the Commission would be able to insure that it did not become too deeply involved in the day-to-day operations of broadcast journalism.

47. After giving careful consideration to this proposal, we believe that our present procedure of reviewing complaints on an ongoing basis is preferable.[17] First, we do not believe it would be possible to make an "overall" assessment of licensee performance at renewal time without considering the specifics of individual complaints. It simply would not be possible to look at the bare complaints on file and make any knowledgeable assessment of licensee performance. Secondly, we view consideration of fairness compliance only at renewal time as an inadequate safeguard of the public's paramount right to be informed and believe that we should continue our ongoing effort (through the complaint process) to advance the public's interests in receiving timely information on public issues. This, we believe, will provide an opportunity to remedy violations before a

[17] Some have argued that "[t]he practical effect of this approach [review at time of renewal] to fairness is that the doctrine would have been abandoned." Barrow, The Equal Opportunities and Fairness Doctrine in Broadcasting, 37 Cin. L. Rev. 447, 493 (1968).

flagrant pattern of abuse develops. In addition to the benefits which flow to the listening public, this procedure aids the broadcaster by helping to head off practices which could (if left uncorrected) place his license in jeopardy. For this reason, we believe that most licensees welcome the opportunity to receive guidance on specific fairness matters on a timely basis.

48. Finally, a review only at renewal time would remove a major incentive for interested citizens to file fairness complaints—that is, the chance to have an opposing view aired over the station before the issue has become stale with the passage of time. At present, citizen complaints provide the principal means of insuring compliance with the fairness doctrine. If we were to remove the possibility that these complaints might result in broadcast time for a neglected point of view, we might well have to rely on government monitoring to carry out our investigative role. Such monitoring, of course, would represent an unfortunate step in the direction of deeper government involvement in the day-to-day operation of broadcast journalism.

49. There appears to be a misunderstanding on the part of some persons as to the manner in which the Commission administers the complaint process. On the one hand, some complainants have asserted that the Commission's procedures impose too great a burden on the complainant; on the other, some licensees and networks have claimed that our application of the doctrine may impose such a heavy burden on them as to discourage presentation of subjects which may be found to involve controversial issues of public importance.

50. We believe a brief explanation and restatement of our procedures is in order. As we stated in our "Fairness Doctrine Primer," 40 FCC 598 (1964):[*]

> Where complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating (1) the particular station involved; (2) the particular issue of a controversial nature discussed over the air; (3) the date and time when the program was carried; (4) the basis for the claim that the station has presented only one side of the question; and (5) whether the station had afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints. *Id.* at 600.

51. The Commission requires that a complainant state that "basis for the claim that the station has presented only one side of the question" because the fairness doctrine does not require that each program present contrasting views on an issue; only that a licensee in its overall programming afford reasonable opportunity for presentation of contrasting views. Thus, when a complainant states that he heard or viewed a program which presented only one side of an issue, he has not, on the basis of this statement alone, made a fairness complaint upon which the Commission can act. Rather, we expect the complainant to state his reasons for concluding that in its other programming the station has not presented contrasting views on the issue.

52. This does not require, as some appear to believe, that the complainant constantly monitor the station. Although some groups having a particular interest in a controversial issue and a licensee's presentation of it have monitored such a station for periods of time and thus been able to offer conclusive evidence that contrasting views were not presented, the Commission realizes that such a requirement for every individual complainant would be an unduly burdensome one. While the complainant must state the basis for this claim that the station has not presented contrasting views, that claim might be based on an assertion that the complainant is a regular listener or viewer; that is, a person who consistently or as a matter of routine listens to the news, public affairs and other non-entertainment programs carried by the station involved. This does not require that the complainant listen to or view the station 24 hours a day, seven days a week. One example of a "regular" television viewer would be a person who routinely (but not necessarily every day) watches the evening news and a significant portion of the public affairs programs of a given station. In the case of radio, a regular listener would include a person who, as a matter of routine, listens to major representative segments of the station's news and public affairs programming. Also, the assumption that a station has failed to present an opposing viewpoint would be strengthened if several regular viewers or listeners join together in a statement that they have not heard a presentation of that viewpoint. Complainants should specify the nature and extent of their viewing or listening habits, and should indicate the period of time during which they have been regular members of the station's audience. We do not believe this requirement to be unduly burdensome, as contrasted to the heavy burden we would place on all stations if we required them to provide evidence of compliance with the fairness doctrine based on complaints which assert merely that one program has presented only one side of an issue.

53. The fact that regular viewers or listeners have not been exposed to an opposing viewpoint is obviously not conclusive evidence that the viewpoint has not been presented, but it does indicate that there is a reasonable basis for the viewer's conclusion that such is the case. See Alan C. Phelps, 21 FCC 2d 12 (1969). Accordingly, we believe that it is a sufficient basis for a Commission inquiry to the station.

54. In responding to such an inquiry, a station is not required to research everything it has broadcast on the subject over a considerable period of time, unless it believes it is necessary to do so in order to establish its compliance with the fairness doctrine with respect to the issue involved. The complaint must specify the date and time of the particular program or programs which presented one side of the issue. If the complaint specifies only a single program, it would be sufficient for the licensee to furnish evidence of having broadcast another program which did afford a reasonable opportunity for contrasting views. Thus, the licensee is not expected to make a showing as to his overall programming, but merely that he has provided contrasting viewpoints an opportunity to be heard which is reasonable when considered in relation to the specific programs complained of.[**] In this regard, it should be kept in mind that the fairness doctrine does not require exact equality in the time provided for contrasting points of view, but only that a reasonable opportunity be afforded for their presentation.

55. After a complaint has been filed, some licensees have found it to be something of a burden to go back through their files and to question their news staff so as to construct a record of the programming they have carried on a given issue. For this reason, some licensees now keep a record of their public issue programming throughout the period of the license term. It should be a relatively simple matter for these stations to respond to a citizen complaint or to a Commission inquiry. Also, the keeping of such records should make it much easier for a licensee to satisfy himself that his station has achieved fairness on the various issues presented. While this Commission does not require the maintenance of a fairness log or diary, we expect that licensees will be cognizant of the programming which has been presented on their stations, for it is difficult to see how a broadcaster who is ignorant of such matters could possibly be making a conscious and positive effort to meet his fairness obligations.

56. The fifth requirement set forth in the above excerpt from our Public Notice—relating to "whether the station has afforded or has plans to afford, an opportunity for the presentation of contrasting viewpoints"—also may require explanation. We have found in many cases that if the complainant first addresses his complaint to the station, the licensee is able to provide an explanation satisfactory to the complainant of what steps it has taken to broadcast contrasting views, or what steps it plans to take to achieve this end. It is for this reason that we ask complainants first to go to the station or network involved. If the

[*] Because of the many developments which have taken place since 1964, we plan to issue a new fairness "Primer" in the near future.

[**] The procedure which we are outlining here is the one which we will follow in the ordinary case. It is possible, however, that in some circumstances the Commission may find it necessary to inquire into a station's total programming effort on an issue or at least a significant portion of that programming. Also, in cases where a message on one side of an issue has obviously been repeated many times (as in "editorial" advertising campaign), the complainant could not be expected to provide a list showing the time and date of each presentation. This information would have to be provided by the licensee in his response to a Commission inquiry.

station or network fails to answer the complaint at all, or to provide what complainant considers to be a satisfactory answer, then the complainant should address the complaint to the Commission, enclosing a copy of the complaint he sent to the station and a copy of its reply—or, if no response has been received after a reasonable period of time, so stating.

57. One further matter with respect to complaints and licensee responses thereto deserves some discussion. It would be a great assistance to the Commission, and would greatly expedite the handling of complaints, if all parties would be as specific as possible in defining the controversial public issue involved in the programs complained of. Also, it would save everyone concerned a great deal of time if, in listing those presentations on each side of an issue, parties would include only those programs which are truly germane to that specific issue.[*]

E. *Fairness and accurate news reporting.* 58. In our 1949 Report on Editorializing, we alluded to a licensee's obligation to present the news in an accurate manner:

> It must be recognized, however, that the licensee's opportunity to express his own views * * * does not justify or empower any licensee to exercise his authority over the selection of program material to distort or suppress the basic factual information upon which any truly fair and free discussion of public issues must necessarily depend * * *. A licensee would be abusing his position as public trustee of these important means of mass communication were he to withhold from expression over his facilities relevant news or facts concerning a controversy or to slant or distort the presentation of such news. No discussion of the issues involved in any controversy can be fair or in the public interest where such discussion must take place in a climate of false or misleading information concerning the basic facts of the controversy. 13 FCC at 1254-55.

It is a matter of critical importance to the public that the basic facts or elements of a controversy should not be deliberately suppressed or misstated by a licensee. But, we must recognize that such distortions are "so continually done in perfect good faith, by persons who are not considered * * * ignorant or incompetent, that it is rarely possible, on adequate grounds, conscientiously to stamp the misrepresentations as morally culpable * * *." J. S. Mill, "On Liberty" 31 (People's ed. 1921). Accordingly, we do not believe that it would be either useful or appropriate for us to investigate charges of news misrepresentations in the absence of substantial extrinsic evidence or documents that on their face reflect deliberate distortion. See "The Selling of the Pentagon," 30 FCC 2d 150 (1971).

III. *Application of the fairness doctrine to the broadcast of paid announcements.* 59. We turn now to the fairness doctrine problems which stem from the broadcast of paid announcements. For the purpose of this discussion, we will consider three general categories of such announcements: (1) Advertisements which may properly be classified as "editorial" in nature; (2) advertisements for commercial products or services; and (3) advertisements included in the Federal Trade Commission's so-called "countercommercial" proposal.

The role of advertising in broadcasting and its relationship to the licensee's responsibility to broadcast in the public interest was considered by the Federal Radio Commission in 1929. 3 F.R.C. Ann. Rep. 32 (1929). It seems to us that the Commission at that time placed advertising in its proper context and perspective. It first noted that broadcasters are licensed to serve the public and not the private or selfish interests of individuals or groups. The Commission then stated that "[t]he only exception that can be made to this rule has to do with advertising; the exception, however, is only apparent because advertising furnishes the economic support for the service and thus makes it possible." Id. "The Commission * * * must recognize that, without advertising, broadcasting would not exist, and must confine itself to limiting this advertising in amount and in character so as to preserve the largest possible amount of service for the public." Id. at 35. Accordingly, we believe that any consideration of the applicability of the fairness doctrine to broadcast advertising must proceed with caution so as to ensure that the policies and standards which are formulated in this area will serve the genuine purposes of the doctrine without undermining the economic base of the system.

A. *Editorial advertising.* 60. Some "commericials" actually consist of direct and substantial commentary on important public issues. For the purpose of the fairness doctrine, these announcements should be recognized for what they are—editorials paid for by the sponsor. We can see no reason why the fairness doctrine should not apply to these "editorial advertisements" in the same manner that it applies to the commentary of a station announcer. At present, editorial advertising represents only a small percentage of total commercial time, and we cannot believe that an application of fairness here would have any serious effect on station revenues.

61. An example of an overt editorial advertisement would be a thirty or sixty second announcement prepared and sponsored by an organization opposed to abortion which urges a constitutional amendment to override a decision of the Supreme Court legalizing abortion under certain circumstances. While the brevity of such announcements might make it difficult to develop the issue in great detail, they could, nevertheless, make a meaningful contribution to the public debate, and we believe that the fairness doctrine should be fully applicable to them.

62. Editorial advertisements may be difficult to identify if they are sponsored by groups which are not normally considered to be engaged in debate on controversial issues. This problem is most likely to arise in the context of promotional or institutional advertising; that is, advertising designed to present a favorable public image of a particular corporation or industry rather than to sell a product. Such advertising is, of course, a legitimate commercial practice and ordinarily does not involve debate on public issue. See, e.g., "Anthony R. Martin-Trigona," 19 FCC 2d 620 (1969). In some cases, however, the advertiser may seek to play an obvious and meaningful role in public debate. In such instances, the fairness doctrine—including the obligation to provide free time in the circumstances described in the "Cullman" decision—applies.

63. In the past, we have wrestled with the application of the fairness doctrine to institutional advertisements which appeared to have discussed public issues, but which did not explicitly address the ultimate matter in controversy. An example of this problem may be found in the so-called "ESSO" case. "National Broadcasting Co.," 30 FCC 2d 643 (1971). Here, the Commission found that certain commercials for Standard Oil Company constituted a discussion of one side of a controversial issue involving construction of the Alaskan pipeline. These advertisements did not explicitly mention that pipeline, but they did present what could be termed arguments in support of its construction. Specifically, we found that the advertisements argued that the nation's urgent need for oil necessitated a rapid development of reserves on Alaska's North Slope. Id. at 643. The commercials also referred to an ESSO affiliate to build a pipeline in the far north, and yet "preserve the ecology." Ibid. As we noted on rehearing, the problem involved here "is indeed a difficult one * * * because the pipeline controversy is not specifically referred to * * *." Wilderness Society, 31 FCC 2d 729, 733, reconsideration denied 32 FCC 2d 714 (1971).

64. In the face of such difficulties, what guidance can the Commission give to its licensees and to the public? Professor Louis Jaffe has offered the following suggestion:

> [I]t is not easy to formulate a fully satisfactory rule for applying the fairness doctrine to advertising. Its application is most obvious where the advertisement is explicitly controversial. But the advertiser may avoid the explicit precisely to foreclose a claim of rebuttal, or because he believes the subliminal is more effective. It should suffice to trigger the doctrine that by implication he intends to speak to a current, publicly-acknowledged controversy. Jaffe, The Editorial Responsibility of the Broadcaster: Reflections on Fairness and Access, 85 Harv. L. Rev. 768, 777-78 (1972).

We believe that this suggestion comes close to the mark, but what we are really

[*] One station, in responding to a complaint concerning the issue of gasoline and air pollution, provided the Commission with a list of programs which included the following: "The Great Red Apes," "Turtle of the Sulu Sea," "The Night of the Squid," and "Return of the Sea Elephants." While such programming obviously would provide information on a part of the world's environment, it may not be germane to any specific issue concerning gasoline and air pollution.

concerned with is an obvious participation in public debate and not a subjective judgment as to the advertiser's actual intentions. Accordingly, we expect our licensees to do nothing more than to make a reasonable, common sense judgment as to whether the "advertisement" presents a meaningful statement which obviously addresses, and advocates a point of view on, a controversial issue of public importance. This determination cannot be made in a vacuum; in addition to his review of the text of the ad, the licensee must take into account his general knowledge of the issues and arguments in the ongoing public debate. Indeed, this relationship of the ad to the debate being carried on in the community is critical. If the ad bears only a tenuous relationship to that debate, or one drawn by unnecessary inference, the drawn by unnecessary inference, the fairness doctrine would clearly not be applicable.

65. The situation would be different, however, if that relationship could be shown to be both substantial and obvious. For example, if the arguments and views expressed in the ad closely parallel the major arguments advanced by partisans on one side or the other of a public debate, it might be reasonable to conclude that one side of the issue involved had been presented thereby raising fairness doctrine obligations. See, e.g., Media Access Project (Georgia Power), 44 FCC 2d 755, 761 (1973). We fully appreciate that, in many cases, this judgment may prove to be a difficult one and individual licensees may well reach differing conclusions concerning the same advertisement. We will, of course, review these judgments only to determine their reasonableness and good faith under the particular facts and circumstances presented and will not rule against the licensee unless the facts are so clear that the only reasonable conclusion would be to view the "advertisement" as a presentation on one side of a specific public issue.

B. *Advertisements for commercial products or services.* 66. Many advertisements which do not look or sound like editorials are, nevertheless, the subject of fairness complaints because the business, product, or service advertised is itself controversial. This may be true even though the advertisement does not mention any aspect of a controversy. Commercial announcements of precisely this type led to the current debate over fairness and advertising. This debate began in 1967 with our decision to extend the fairness doctrine to advertisements for cigarettes. WCBS-TV, 8 FCC 2d 381, stay and reconsideration denied 9 FCC 2d 921 (1967). These advertisements, like many others, addressed themselves solely to the desirability of the product. They tended to portray "the use of the particular cigarette as attractive and enjoyable * * *," but avoided any mention of the then raging smoking-health controversy. 8 FCC 2d at 382. At the time, broadcasters argued that, in the absence of an affirmative discussion of the health issue, the commercials could not realistically be viewed as part of a public debate, 9 FCC 2d at 938. We rejected this argument and insisted that the issue should be defined in terms of the desirability of smoking. *Id.* With the issue defined in this fashion, it was a simple mechanical procedure to "trigger" the fairness doctrine and treat all cigarette advertisements—regardless of what they actually said—as being presentations on one side of a controversial issue. It seemed to be clear enough that all cigarette advertisements suggested that the use of the product was desirable.

67. In retrospect, we believe that this mechanical approach to the fairness doctrine represented a serious departure from the doctrine's central purpose which, of course, is to facilitate "the development of an informed public opinion." "Report on Editorializing," 13 FCC 1246, 1249 (1949) (emphasis supplied). We believe that standard product commercials, such as the old cigarette ads, make no meaningful contribution toward informing the public on any side of any issue. Indeed, as the D.C. Circuit Court of Appeals succinctly stated:

> Promoting the sale of a product is not ordinarily associated with any of the interests the First Amendment seeks to protect. As a rule, it does not affect the political process, does not contribute to the exchange of ideas, does not provide information on matters of public importance, and is not, except perhaps for the ad-men, a form of individual self-expression * * * Accordingly, even if * * * [such] commercials are protected speech, we think they are at best a negligible part of any exposition of ideas, and are of * * * slight social value as a step to truth * * *. Banzhaf *v.* FCC, 405 F. 2d 1082, 1101-02 (D.C. Cir. 1968), quoting Chaplinsky *v.* New Hampshire, 315 U.S. 568, 572 (1942).

In this light, it seems to us to make little practical sense to view advertisements such as these as presenting a meaningful discussion of a controversial issue of public importance.

68. In our view, an application of the fairness doctrine to normal product commercials would, at best, provide the public with only one side of a public controversy. In the cigarette case, for example, the ads run by the industry did not provide the listening public with any information or arguments relevant to the underlying issue of smoking and health. At the time of our ruling, Commissioner Loevinger suggested that we were not really encouraging a balanced debate but, rather, were simply imposing our view that discouraging smoking was in the public interest. 9 FCC 2d at 953.[24] While such an approach may have represented good policy from the standpoint of the public health, the precedent is not at all in keeping with the basic purposes of the fairness doctrine.[25]

69. This precedent would not have been particularly troublesome if it had been limited to cigarette advertising as the Commission originally intended.[26] In 1971, however, the D.C. Circuit ruled that the cigarette precedent could not logically be limited to cigarette advertising alone. "Friends of the Earth v. FCC," 449 F. 2d 1164 (D.C. Cir. 1971). In this decision, it was suggested that high-powered cars pollute the atmos-

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[24] Following the Congressional ban on cigarette advertising, the Commission was criticized even more strongly for taking sides on this issue. At that time, we ruled that stations were free to broadcast anti-smoking messages without incurring any obligation to carry arguments in favor of smoking. This holding was based on a Commission determination that the issue was no longer controversial. Cigarette Advertising and Anti-Smoking Presentation, 27 FCC 2d 453 (1970), aff'd sub nom. Larus & Brother Co. v. FCC, 477 F. 2d 876 (4th Cir. 1971).

[25] In the conclusion to our second opinion in the cigarette case, we tried to make it clear that our holding was based more on public health considerations than on "the specifics of the Fairness Doctrine." WCBS-TV, 9 FCC 2d 921, 949 (1967). We recognized that, in view of the overwhelming evidence of danger to the public health, the question presented would ordinarily be "how the carriage of such commercials is consistent with the obligation to operate in the public interest." Id. We felt, however, that the question of removing these commercials from the air was one Congress had reserved to itself, and that the only remedy we were free to implement was one along the lines suggested by the fairness doctrine. The fairness doctrine, therefore, served "chiefly to put flesh on these policy bones by providing a familiar mold to define the general contours of the obligation imposed." Banzhaf v. FCC, 405 F. 2d at 1093. Subsequent to our action in the cigarette case, the Congress developed a more complete remedy of its own by banning the broadcast of cigarette ads entirely in the Public Health Cigarette Smoking Act of 1969. See generally Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582 (D.D.C. 1971), aff'd mem. sub nom. Capital Broadcasting Co. v. Kleindienst, 405 U.S. 1000 (1972). If in the future we are confronted with a case similar to that presented by the cigarette controversy, it may be more appropriate to refer the matter to Congress for resolution. For Congress is in a far better position than this Commission to develop expert information on whether particular broadcast advertising is dangerous to health or otherwise detrimental to the public interest. Furthermore, it is questionable whether this Commission has a mandate so broad as to permit it "to scan the airwaves for offensive material with no more discriminating a lens than the 'public interest' or even the 'public health.'" Banzhaf v. FCC, 405 F. 2d at 1090.

[26] At the time, cigarettes were thought to be a unique product because their "normal use has been found by congressional and other Governmental action to pose * * * a serious threat to general public health * * *." 9 FCC 2d at 943. In a concurring opinion, Commissioner Johnson expressed the view that "[b]y drawing the line at cigarette advertising we have framed a distinction fully as sound and durable as those in thousands of other rules laid down by courts every day since the common law system began." Id. at 958. In affirming our ruling, the D.C. Circuit agreed that cigarettes were, in fact, "unique." Banzhaf v. FCC, 405 F. 2d 1082, 1097 n. 63 (D.C. Cir. 1968).

phere more than low-powered cars.[24] It was then determined that the fairness doctrine was triggered by the advertisements there involved because they extolled the virtues of high-powered cars and thus glorified product attributes aggravating an existing health hazard, namely air pollution. The commercials, of course, made no attempt at all to discuss the product in the context of the air pollution controversy. If these advertisements presented one point of view on the issue, then, by the same reasoning, the "contrasting" viewpoint must have been similarly presented in ads for low-powered cars. The problem with this kind of logic is that it engages both broadcasters and the Commission in the trivial task of "balancing" two sets of commercials which contribute nothing to public understanding of the underlying issue of how to deal with the problem of air pollution.[25]

70. We do not believe that the underlying purposes of the fairness doctrine would be well served by permitting the cigarette case to stand as a fairness doctrine precedent. In the absence of some meaningful or substantive discussion, such as that found in the "editorial advertisements" referred to above, we do not believe that the usual product commercial can realistically be said to inform the public on any side of a controversial issue of public importance. It would be a great mistake to consider standard advertisements, such as those involved in the "Banzhaf" and "Friends of the Earth," as though they made a meaningful contribution to public debate. It is a mistake, furthermore, which tends only to divert the attention of broadcasters from their public trustee responsibilities in aiding the development of an informed public opinion. Accordingly, in the future, we will apply the fairness doctrine only to those "commercials" which are devoted in an obvious and meaningful way to the discussion of public issues.

C. *The Federal Trade Commission proposal.* 71. The Federal Trade Commission has filed a statement in this inquiry which proposes the creation of a right of access to respond to four categories of commercial announcements. Very generally, these categories are as follows: (a) Those advertisements that explicitly raise controversial issues; (b) those that raise such issues implicitly; (c) those that make claims based on scientific premises that are in dispute; and (d) those that are silent about negative aspects of the advertised products.

72. We have already discussed the first two categories and the applicability of the fairness doctrine with respect thereto. One of our major difficulties with the FTC's categories is that they seem to include virtually all existing advertising. As one commentator has stated, "it is hard to imagine a product commercial so pure that it would not be viewed as implicitly raising some controversial issue or resting upon some disputed scientific premise or remaining silent about negative aspects of the product." Putz, "Fairness and Commercial Advertising: A Review and a Proposal," 6 U.S.F.L. Rev. 215, 246 (1972). We believe that the adoption of the FTC proposal—wholly apart from a predictable adverse economic effect on broadcasting—might seriously divert the attention and resources of broadcasters from the traditional purposes of the fairness doctrine. We are therefore not persuaded that the adoption of these proposals would further "the larger and more effective use of radio in the public interest * * *" 47 U.S.C. Section 303(g), or contribute in any way to the promotion of genuine debate on public issues.

73. We do not believe that our policy will leave the public uninformed on important matters of interest to consumers. Certainly, we expect that consumer issues will rank high on the agenda of many, if not most, broadcasters since their importance to the public is self-evident. But our point is that the decision to cover these and other matters of similar public concern appropriately lies with individual licensees in the fulfillment of their public trustee responsibilities, and should not grow out of a tortured or distorted application of fairness doctrine principles to announcements in which public issues are not discussed.

74. A matter which relates directly to the FTC proposal was considered in the so-called "Chevron" case. Alan F. Neckritz, 29 FCC 2d 807 (1971), reconsideration denied 37 FCC 2d 528 (1972). This case involved a claim made by Chevron that its F-310 additive would reduce exhaust emissions and contribute to cleaner air. Chevron did not claim that its product would solve the air pollution problem caused by automobiles, but did extol the product's virtues in reducing pollution. Complainants argued that the claim was controversial within the meaning of the fairness doctrine. They supported this argument by pointing to a pending FTC complaint which alleged that the claims made on behalf of F-310 were false and misleading. 29 FCC 2d at 816. While the F-310 claim obviously did relate to a matter of public concern, we do not believe that the ads engaged in an obvious and meaningful discussion of a controversial issue of public importance. As we stated in "Chevron,"

> making a claim for a product is not the same thing as arguing a position on a controversial issue of public importance. That the claim is alleged to be untrue or partially deceptive does not change its nature * * *. It would ill suit the purposes of the fairness doctrine, designed to illumine significant controversial issues, to apply it to claims of a product's efficacy or social utility. The merits of any one gasoline, weight reducer, breakfast cereal or headache remedy—to name but a few examples that come readily to mind—do not rise to the level of a significant public issue * * *. We think this conclusion is required not only as a matter of reason, but also of practical necessity if fairness is to work for the public and not to its detriment. Alan F. Neckritz, 29 FCC 2d at 812.

75. We do not believe that the fairness doctrine provides an appropriate vehicle for the correction of false and misleading advertising. The fairness doctrine is only one aspect of the public interest. A Congressionally-mandated remedy for deceptive advertising already exists in the form of various FTC sanctions.[26] If an advertisement is found to be false or misleading, we believe that the proper course is to ban it altogether rather than to make its claims a subject of broadcast debate. We believe that the approach to advertising outlined here will do much to reduce the confusion which has existed in this area. Under the general fairness doctrine, broadcasters—as trustees for their communities—are required to make a positive effort to implement a meaningful discussion of major public issues and in practical effect consumer issues will receive a significant amount of coverage. But at the same time, we do not believe that it is in the public interest to stretch the fairness doctrine in an artificial way by applying it to commercials which play no meaningful or significant role in the debate of controversial issues.

76. In the separate but related area of deceptive advertising, we believe that the public interest can be best served through the existing, Congressionally-mandated scheme of regulation, and by a conscientious effort on the part of broadcasters to meet their obligations in this area.[27]

IV. *Access generally to the broadcast media for the discussion of public issues.* 77. Various parties to this proceeding have argued that, quite aside from the traditional fairness doctrine, there should be a system of mandated access, either free or paid, for persons or groups wishing to express a viewpoint on a controversial public issue. In the "BEM"

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[24] The case also considered a comparison of high-test and "regular" gasoline.

[25] The Court has further suggested that the cigarette precedent might logically have to be extended out of the health area entirely to cover some labor-management disputes. Retail Store Employees Union v. FCC, 436 F. 2d 248 (D.C. Cir. 1970). The Court, however, questioned whether such an application would truly serve the underlying purposes of the fairness doctrine:

> "Stripped to its essentials, this dispute is one facet of the economic warfare that is a recognized part of labor management relations * * *. Part of the Union's campaign was publicity for its boycott; part of management's arsenal was advertising to persuade the public to patronize its stores. If viewed in this light, it could well be argued that the traditional purposes of the fairness doctrine are not substantially served by presentation of advertisements intended to less inform than serve merely as a weapon in a labor-management dispute." Id. at 259.

[26] The problem may be further alleviated by the FTC's newly developed ad substantiation program. See 36 FR 12058 (1971); and generally, Note, The FTC Ad Substantiation Program, 61 Geo. L.J. 1427 (1973).

[27] See Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising, 32 FCC 2d 396 (1971); Consumer Association of District of Columbia, 32 FCC 2d 400 (1971).

case,[24] the Supreme Court made it clear that such access is not a matter of either constitutional or statutory right. The Court noted, however, that Congress has left the Commission with "the flexibility to experiment with new ideas as changing conditions require." Id. at 122. It was further stated that "at some future date Congress or the Commission—or the broadcasters—may devise some kind of limited right of access that is both practicable and desirable." Id. at 131.

78. Our studies during the course of this inquiry have not disclosed any scheme of government-dictated access which we consider "both practicable and desirable." We believe, to the contrary, that the public's interest in free expression through broadcasting will best be served and promoted through continued reliance on the fairness doctrine which leaves questions of access and the specific handling of public issues to the licensee's journalistic discretion. This system is far from perfect. However, in our judgment, it does represent the most appropriate accommodation of the various First Amendment interests involved, and provides for maximum public enlightenment on issues of significance with a minimum of governmental intrusion into the journalistic process.

79. In our opinion, this Commission would not be justified in dictating the establishment of a system of access to particular spokesmen on either a free or paid basis. If the access were free, the government would inevitably be drawn into the role of deciding who should be allowed on the air and when.[25] This governmental involvement in the day-to-day processes of broadcast journalism would, we believe, be antithetical to this country's tradition of uninhibited dissemination of ideas. With regard to the suggestion that we establish a system of paid access, we believe that "the public interest in providing access to the marketplace of 'ideas and experiences' would scarcely be served by a system so heavily weighted in favor of the financially affluent, or those with access to wealth," BEM, 412 U.S. at 123, or wherein "money alone determines what issues are to be aired, and in what format," "Business 'Executives' Move for Vietnam Peace v. FCC," 450 F. 2d 642, 666 (D.C. Cir. 1971) (McGowan, J., dissenting). This problem would in no way be alleviated by the application of the fairness doctrine, including the Cullman corollary, to editorial advertising, since the agenda for public debate would be set solely by those financially able to take advantage of the right to purchase time in the first instance. Furthermore, there would be elements of unfairness in applying the Cullman principle in this situation, for it would require the licensee to correct an imbalance—at its own expense—which it had not created. On the other hand, if Cullman were suspended in the case of editorial advertisements, the public would be left in many if not most instances with one-sided presentations of those issues which the financially able chose to discuss.

80. We have given serious thought to the suggestion that broadcasters be required to maintain a policy of examining and considering—but not necessarily accepting—editorial advertisements tendered for broadcast. While this suggestion has some surface appeal, we believe that such a requirement would, in our judgment, inevitably draw this Commission into deciding a broadcaster's good faith in accepting or rejecting proffered material and into adjudicating competing claims to buy limited time on the basis of criteria that would necessarily favor one person's speech over another's. This is precisely the sort of governmental intrusion which we have sought to avoid in developing and administering the fairness doctrine, and why we believe that our present policy of leaving such decisions initially to the editorial discretion of the licensee, though imperfect, must be maintained. As Chief Justice Burger stated for the Court in BEM:

> For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors—newspaper or broadcast—can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values. 412 U.S. at 124–125.

81. While we have rejected the suggestion that the Commission should establish a system of mandated access (either free or paid), we certainly do not mean to suggest any disapproval of efforts by broadcasters to provide for access to their stations. Indeed, the fairness doctrine itself insures that many citizens will be afforded a type of access, for the licensee

> is required to "present representative community views and voices on controversial issues which are of importance to [its] listeners," and it is prohibited from "excluding partisan voices and always itself presenting views in a bland, inoffensive manner." 25 FCC 2d at 222. A broadcaster neglects that obligation only at the risk of losing his license. BEM, supra at 131.

Under this system, many representative community spokesmen do express their views in newscasts, interviews, call-in programs, editorial replies, and through various other formats. Thus, while no particular individual has a guaranteed right of access to the broadcast microphone for his own self-expression, the public as a whole does retain its "paramount" right "to receive suitable access to social, political, esthetic, moral, and other ideas and experiences * * *." "Red Lion Broadcasting Co. v. FCC," 395 U.S. at 390 (emphasis supplied). In a real sense, therefore, there is a "right of access" in broadcasting, that right being guaranteed the listening and viewing public. However, in order to secure this right to the people, and to avoid unwarranted governmental supervision, Congress has delegated the primary responsibility for the selection of particular spokesmen and specific program material to private licensees who are required to serve as trustees for the public. As the Supreme Court stated in its BEM decision:

> This policy (of concentrating the allocation of journalistic priorities in the licensee) gives the public some assurance that the broadcaster will be answerable if he fails to meet its legitimate needs. No such accountability attaches to the private individual, whose only qualifications for using the broadcast facility may be abundant funds and a point of view. To agree that debate on public issues should be "robust and wide-open" does not mean that we should exchange "public trustee" broadcasting, with all its limitations, for a system of self-appointed editorial commentators. 412 U.S. at 125.

82. We do not mean to suggest that broadcasters are in any way required to maintain "tight editorial control" over the spokesmen who appear on their stations. Much to the contrary, we wish to give every encouragement to broadcasters to experiment with new ways of providing for wide-open debate of public issues. Our point here is that while genuine partisan debate should be encouraged, we cannot, at this time, justify or support its particularized imposition by Commission fiat.

83. Although we have here reaffirmed the present system of licensee responsibility and discretion and rejected requests for the creation of a direct "right" of access, we wish to emphasize that this system is predicated entirely upon the assumption that licensees will in fact make a reasonable, good faith effort to meet their public obligations. Licensee discretion is but a means to a greater end, and not an end in and of itself, and only insofar as it is exercised in genuine conformity with the paramount right of the listening and viewing public to be informed of the competing viewpoints on public issues can such discretion be considered an adequate means of maintaining and enhancing First Amendment interests in the broadcast medium. For the present, we remain convinced that the general rubric of the fairness doctrine, with its emphasis on licensee responsibility and discretion, provides the most desirable and practical means to that end. However, should future experience indicate that the doctrine is inadequate, either in its expectations or in its results, the Commission will have the opportunity—and the responsibility—for such further reassessment and action as would be mandated by the public interest and the First Amendment.

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[24] Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1973).

[25] The only alternative to governmental involvement of this type would appear to be access on a first-come-first-served basis (or by lot or drawing). This system would, however, give no assurance that the most important issues would be discussed on a timely basis. Moreover, as the Supreme Court observed in BEM, "[t]he public interest would no longer be 'paramount' but rather subordinate to private whim especially since * * * a broadcaster would be largely precluded from rejecting editorial advertisements that dealt with matters trivial or insignificant or already fairly covered by the broadcaster." 412 U.S. at 124.

V. *Application of the fairness doctrine to political broadcasts—ballot propositions.* 84. The First Report on Part V. of the Fairness Doctrine Inquiry, 36 FCC 2d 40 (1972), dealt almost exclusively with appearances by the President and other public officials and with questions of the application of the Zapple doctrine[29] to such appearances. However, Part V of our Notice of Inquiry phrased the Zapple question in broader terms:

> We request comment on such relevant questions as the following: whether the quasi-equal opportunities approach should be restricted, expanded, or left alone, with a specific description of the feasibility and effect of any proposed revision on the underlying policies of the statute (see section 315 (a)). 30 FCC 2d 26, 34 (1971).

We now address ourselves specifically to application of the fairness doctrine to ballot propositions such as referenda, initiative or recall propositions, bond proposals and constitutional amendments.

85. Some comments filed in this inquiry have urged that Zapple rather than the Cullman doctrine be applied to ballot propositions on the ground that such situations are analogous to those covered by the "equal opportunities" requirement of Section 315 and the "political supporters" policy in Zapple. One party has suggested that not only should Cullman apply but that when one side buys spots, the licensee should be required to present opposing announcements in the same format (i.e., spots), and also to afford proponents of all sides opportunity for extended discussion of the issues. In this regard, the Commission also has received informal complaints that application of the Cullman doctrine to ballot propositions is unfair on the ground that it enables proponents of one side to spend their money on newspaper, billboard and direct mail advertising—where there is no Cullman requirement—and then to rely on Cullman to obtain free broadcast exposure of their views because the other side has spent its money in that medium.

86. After considering all comments, we find no substantial reason to alter our previous application of the fairness doctrine to ballot propositions. The Zapple doctrine, which some urge that we apply to this area, was adopted solely because it was analogous to the situation for which Congress itself had provided for "equal opportunities." As we explained in our First Report, Zapple was simply a common-sense application of the statutory scheme relating to appearances by political candidates, and we made clear the fact that we did not intend to extend its application further. While ballot propositions are similar to political candidacies in the sense that both are subject to popular vote, they are more closely analogous to ordinary public issues such as a bill pending in Congress or a state legislature. We are unable to perceive why such issues should be treated differently merely because they are subject to popular vote. In a case involving political candidacies, the natural opposing spokesmen are readily identifiable (i.e., the candidates themselves or their chosen representatives). In the case of a ballot proposition, however, there is generally no specific individual or group which is entitled to equal or comparable time. Furthermore, Congress has shown no intent to alter the Commission's traditional application of the fairness doctrine, including the Cullman corollary, to ballot propositions.

87. It has been argued that in the closing days of an election campaign, licensees may be overwhelmed by orders for large quantities of spot announcements favoring or opposing a proposition, and could be hard put to comply with the requirements of the fairness doctrine if only one side buys time. No licensee, however, is required to sell all the time that an advocate of a proposition (or even a legally qualified candidate) may wish to buy.[30] Indeed, some licensees in the past have discovered to their dismay that an employee has sold an inordinate amount of time in the closing days of campaign to one candidate—only to be confronted by a demand from the opposing candidate to buy an equal amount. It is the responsibility of the licensee in such situations to look ahead and commit himself to no more time for Candidate A than he is prepared to sell to Candidate B. Similarly, no licensee is required by statute or Commission rule or policy to yield his facilities to one side of a ballot proposition for a so-called "blitz." His clear obligation in fairness situations is, again, to plan his programming in advance so that he is prepared to afford reasonable opportunity for presentation of contrasting views on the issue, whether or not presented in paid time.[31]

88. Finally, it is argued that some ballot issue advocates take advantage of the Cullman principle by spending their available money on non-broadcast media, then waiting for the other side to buy time on the air, and finally demanding that their own views on the proposition be given free broadcast exposure, thus obtaining a broadcast "subsidy" for their views. To the extent that this could occur, the same criticism can be voiced against any application of Cullman. We believe, however, it is more important in a democracy that the public have an opportunity to receive contrasting views on controversial issues of public importance—that "robust, wide-open debate" take place—than that the Cullman principle be abandoned because of the possible practices of a few parties. Moreover, the fairness doctrine does not require equality of exposure of contrasting views, and those who rely solely on Cullman have no assurance of obtaining equality by such means.

89. Thus, we shall continue to deal with ballot proposition issues as we do with other controversial public issues. As in all fairness doctrine matters, the licensee is required to use his own discretion regarding issues to be presented, the amount of time to be devoted to each, parties to present contrasting views, and the formats to be employed. Upon receipt of a complaint, we shall as in the past review the licensee's actions only for reasonableness and good faith.

VI. *Conclusion.* 90. It is hoped that this inquiry and report will provide a needed restatement and clarification of the essential principles and policies of the fairness doctrine—both in terms of its theoretical foundations and its practical application. While we have here reaffirmed the basic validity and soundness of these principles and policies in ensuring that the medium of broadcasting will continue to function consistently with the ends and purposes of the First Amendment and the public interest, the Commission fully recognizes that their specific application in particular cases can involve questions determinations of considerable complexity and difficulty. For this reason, the administration of the doctrine must proceed, within the framework of general policies set forth herein, on a case-by-case basis according to the particular facts and circumstances presented. We do wish to emphasize that in the final analysis, the fairness doctrine can fulfill its purpose and function only

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[29] See Nicholas Zapple, 24 FCC 2d 707 (1970).

[30] However, stations are required to either give or sell reasonable amounts of time to candidates for federal elective office. 47 U.S.C. section 312(a)(7); See also Use of Broadcast and Cablecast Facilities by Candidates for Public Office, 34 FCC 2d 510 (1972). While we do not dictate how much time should be devoted to the various issues being debated in a community, ballot propositions and other election matters will frequently receive considerable coverage on the basis of their importance to the community. In this regard, we recognize that

> "The existence of an issue on which the community is asked to vote must be presumed to be a controversial issue of public importance, absent unusual circumstances * * * It is precisely within the context of an election that the fairness doctrine can be best utilized to inform the public of the existence of and basis for contrasting viewpoints on an issue about which there must be a public resolution through the election process." King Broadcasting Co., 23 FCC 2d 41, 43 (1970) (staff ruling).

[31] In our public notice of March 16, 1972, 34 FCC 2d 510, setting forth our interpretation of the Federal Election Campaign Act of 1971, we stated that Congress, in amending section 312(a) of the Communications Act to require licensees to allow reasonable access to or to permit purchase of reasonable amounts of time by candidates for federal elective office, "clearly did not intend, to take the extreme case, that during the closing days of a campaign, stations should be required to accommodate requests for political time to the exclusion of all or most other types of programming or advertising. Important as an informed electorate is in our society, there are other elements in the public interest standard, and the public is entitled to other kinds of programming than political. It was not intended that all or most time be preempted for political broadcasts * * *." (Question and Answer 3, section VIII). The same principle would, of course, apply to ballot propositions.

to the extent that all the parties involved—the broadcasters, the Commission, and individual members of the public—participate with a sense of reasonableness and good faith.

91. Accordingly, the proceedings in Docket 19260 are terminated.

Adopted: June 27, 1974.

Released: July 12, 1974.

FEDERAL COMMUNICATIONS COMMISSION,[a]

[SEAL] VINCENT J. MULLINS, *Secretary.*

APPENDIX A

[Docket No. 19260; FCC 72-534; 79505]

FIRST REPORT REGARDING HANDLING OF POLITICAL BROADCAST

In the matter of the handling of public issues under the Fairness Doctrine and the Public Interest Standards of the Communications Act.

I. *Introduction.* 1. The first report deals with Part V of our Notice—the fairness doctrine as it relates to political broadcasts. We would ordinarily consider this aspect in the context of the revisions made in the general fairness area, including possible public interest decisions as to access. However, we are operating under time constraints here that we must take into account—namely, the appropriateness of disposing of this aspect well before the commencement of the general election period. See DNC v. FCC, ____ U.S. App. D.C. ____, ____ FCC 2d ____, Case No. 71-1738 (D.C. Cir. Feb. 22, 1972), (slip op. at 7). We therefore have expedited our consideration of this aspect and, if necessary, will re-examine this report in light of our later decisions in Parts II-IV.

2. While this was the last topic in this inquiry, it is not, of course, the one of least importance. Promotion of robust, wide-open debate in this field vitally serves the public interest.

II. *Background.* 3. In applying the fairness doctrine the Commission has traditionally required licensees to afford reasonable opportunity for the presentation of contrasting views following the presentation of one side of a controversial issue of public importance. The licensee has been given wide discretion in selecting the appropriate spokesman, format and time for the presentation of the opposing views on controversial issues, with two significant exceptions. Under § 315 of the Communications Act of 1934, as amended, licensees are required to afford equal time to legally qualified candidates; and under the Commission's political editorializing rules (§§ 73.123(c), 73.300(c), 73.598(c), 73.679 (c)) the licensee must afford a reasonable opportunity for a candidate or his spokesman to respond when the licensee has opposed him or supported his opponent in an editorial.

4. Under the ruling in "Letter to Mr. Nicholas Zapple," 23 F.C.C. 2d 707(1970) the Commission further limited the licensee's discretion. The Commission held in "Zapple" that when a licensee sells time to supporters or spokesmen of a candidate during an election campaign who urge the candidate's election, discuss the campaign issues, or criticize an opponent, then the licensee must afford comparable time to the spokesmen for an opponent.[1] Known as the quasi-equal opportunities or political party corollary to the fairness doctrine, the "Zapple" doctrine is based on the equal opportunity requirement of section 315 of the Communications Act; accordingly, free time need not be afforded to respond to a paid program.

5. Since some controversy has been generated as to the applicability or wisdom of this doctrine, the Commission asked for public comment on the following questions in its Notice of Public Inquiry in Docket No. 19260 (hereinafter, Fairness Inquiry).

"Should the quasi-equal opportunities approach be restricted or expanded and what is the feasibility and effect of any proposed revision on the underlying policies of the statute (see section 315(a))?

"Should the Commission adopt a position that Zapple applies only to political campaigns and not to other times?

"Should Zapple be disassociated from the fairness doctrine and incorporated into Section 315?

"Should Zapple be limited by applying a 7-day deadline for requesting "quasi-equal opportunities"?

"Should Zapple continue to apply only to major parties (see Letter to Lawrence M. C. Smith, 28 R.R. 291 (1963)), or should it be extended to all parties or to some mathematically-defined category of "parties with substantial public support" (e.g., percentage of popular vote)? How should it apply to "new" parties?

"Should Zapple be extended to include spokesmen for ballot issues such as bond issues; amendments of state constitutions, etc.?"

6. One additional suggestion has been that the Zapple doctrine should be extended to include broadcast appearances of the President of the United States so that an automatic right to respond in comparable time, format, etc., would accrue to appropriate spokesman following a Presidential appearance. In "Complaint of Committee for the Fair Broadcasting of Controversial Issues," 25 F.C.C. 2d 283, 294-298 (1970), the Commission declined to extend the "Zapple" quasi-equal opportunities concept generally to Presidential appearances, although it said that the fairness doctrine was applicable to Presidential appearances when dealing with controversial issues of public importance. Upon re-examination in "Republican National Committee," 25 F.C.C. 2d 739, 744 (1970), the Commission again explained that Presidential broadcasts made in a non-election period do not come within the "Zapple" corollary but are included under the general fairness doctrine to the extent that controversial issues of importance are discussed. The question was raised once again and ruled on by the Commission in "Democratic National Committee," 31 F.C.C. 2d 708 (1971), aff'd "Democratic National Committee v. F.C.C.," —— U.S. App. D.C. ——, —— F. 2d ——, Case No. 71-1738 (D.C. Cir. Feb. 22, 1972). However, we solicited the comments of the public on the questions raised in these cases in this inquiry.

III. *Summary of comments.* 7. Extensive comments and reply comments addressing these questions were received in response to the Fairness Inquiry from fourteen parties. In addition, the Commission conducted panel discussions and heard oral argument for a full week in March 1972, during which these issues were exhaustively discussed. (A list of all participants is included in Appendix A below.) A variety of ideas, proposals, and criticisms were presented, a brief summary of which follows.

8. Storer Broadcasting Company observes that since the fairness doctrine, unlike Section 315, gives no particular person a right to reply to previously broadcast material, the extension of the fairness doctrine to a quasi-equal opportunities doctrine in Zapple is a contradiction of the fairness doctrine. As presently constituted, Zapple and its progeny provide insufficient direction to licensees as to when comparable responses to noncampaign appearances of public officials are required, as to which party spokesman is entitled to reply when different factions within a party wish to respond, and as to the rights of minority parties to comparable time. Storer recommends, therefore, that Zapple should be codified in Commission rules or be incorporated into section 315 to remove it from the ambit of the fairness doctrine. Storer further suggests that the Commission adopt a political broadcast primer to specify licensee obligations and responsibilities in this area.

9. The National Association of Broadcasters (NAB), General Electric Broadcasting Co., American Broadcasting Co. (ABC), National Broadcasting Co. (NBC), the Evening News Association, Lee Enterprises, Inc., Time Life Broadcasting, Inc. and others support the principles of the Zapple doctrine so long as the Cullman[2] doctrine continues to be inapplicable, and licensees are not required to subsidize the campaigns of opposing candidates by affording free response time. Zapple is seen by those filing joint comments with the Evening News Association as an appropriate means to fulfill the purposes of section 315, ensuring the equality of treatment of political candidates by broadcast licensees. Consequently, they would impose obligations progress in which the broadcaster has afforded time and relinquished content control to a spokesman for a candidate to support that candidate or to oppose rival candidates.

10. The NAB, ABC, NBC, and G.E. Broadcasting Co. argue that the Zapple doctrine should also apply to "political" broadcasts where a campaign issue (bond proposal, constitutional amendment, etc.) that is supported or opposed by a political spokesman has been placed on the ballot. It is argued that this situation is analogous to both section 315 and Zapple, and, as is the case with the political spokesman doctrine, Cullman should not apply. NBC emphasizes that the quasi-equal opportunity approach of Zapple or its extension to ballot issues should apply only to paid presentations in campaign

[a] Commissioner Hooks concurring in part and dissenting in part and issuing a separate statement. Commissioner Quello concurring and issuing a separate statement. Statements of Commissioners Hooks and Quello filed as part of the original document.

[1] In Re Complaint of Committee for the Fair Broadcasting of Controversial Issues, 25 F.C.C. 2d 283 (1970), affirmed on reconsideration sub nom. Republican National Committee, 25 F.C.C. 2d 739 (1970), the Commission extended the "Zapple" ruling to a non-campaign period proffer of time to a political party chairman where the licensee did not specify the issue or issues to be discussed. This ruling was reversed in Columbia Broadcasting Co. v. F.C.C., 454 F. 2d 1018, (D.C. Cir. 1971).

[2] Cullman Broadcasting Co. Inc., 40 F.C.C. 576, 577 (1963) held that "• • • where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, has not presented (or does not plan to present) contrasting viewpoints in other programming, and has been unable to obtain paid sponsorship for the appropriate presentation of the opposing viewpoint or viewpoints, he cannot reject a presentation otherwise suitable to the licensee—and thus leave the public uninformed—on the ground that he cannot obtain paid sponsorship for that presentation."

periods, since the equal opportunities approach involving free time inhibits the presentation of political programming and interferes with a licensee's editorial judgment.

11. Two commentators, Democratic National Committee (DNC) and American Civil Liberties Union (ACLU) suggest that the Commission extend the fairness doctrine or adopt a specific rule that would require licensees to broadcast the opposing views of appropriate spokesmen following an appearance of a public official. It is claimed that there is an overriding national concern in informing the public on both sides of issues dealt with by public officials, and accordingly, that licensee discretion in presenting opposing views and selecting appropriate spokesman should be more limited than at present.

12. DNC specifically urges the adoption of a rule that: (1) Would establish a presumption that a Presidential broadcast appearance involves a controversial issue of public importance; (2) would require licensees to seek out appropriate spokesmen to present an opposing view and to afford them equal opportunities; and (3) would require licensees or networks to keep publicly available for three years a tape or transcript of every Presidential appearance. DNC asserts that such a rule is necessitated by the public interest standard of the Communications Act and by the First Amendment, in view of the public's need to be fully informed on important public issues discussed by the President. The public is not presently receiving balanced information on such issues, DNC believes, because the President's control of the time, format, and content of his appearances maximizes their impact and effectiveness while, on the other hand, the difficulties encountered by DNC in buying time to discuss public issues or in securing free time to respond to Presidential appearances limits the effectiveness of the presentation of their viewpoint. DNC's views are currently presented, it maintains, through news and panel show presentations in which DNC representatives are merely responding to questions and have no opportunity, comparable to the President's, to develop a reasoned and uninterrupted presentation of the issues. DNC thus argues that the First Amendment goal of promoting robust, wide-open debate is being thwarted by its rejection as an entity responsible for defining options for the American people on major public issues and by denying it access, comparable to the President's, to respond to his appearances.

13. ACLU maintains that the responsibility of the licensee under the fairness doctrine should extend to making available comparable opportunities for opposing spokesman to comment on the issues raised in the broadcast appearance of any public official, including the President. Because of the President's unquestioned power to command broadcasting time and to attract an audience, ACLU feels that comparable time can be afforded only if the contrasting viewpoint is presented immediately after each Presidential appearance. The President and other public officials should furnish copies of their statements sufficiently in advance of their broadcast to permit station licensees to fulfill these fairness obligations.

14. The proposals of DNC and ACLU were opposed by a number of parties. ABC and G.E. Broadcasting Co. argue that no justification for the proposed rule can be found in section 315 of the Act, since under that Section, the recipient of an equal time opportunity to respond to a candidate's appearance must himself be a legally qualified opposing candidate and not just a representative of a political party or some other appropriate group. To extend a quasi-equal opportunities doctrine to non-election period Presidential appearances would require Congressional amendment of section 315 because such extension would violate the intent of section 315, and specifically, would negate the newscast, news documentary, and news interview exemptions to the equal time provisions contained in section 315(a). Implementation of these proposals would also be a distortion of the fairness doctrine, it is argued, since the fairness doctrine focuses on issues, not individuals or candidates.

15. Those parties filing with the Evening News Association argue that the broadcast appearance of a public office holder should be treated as the appearance of a public official fulfilling the duties of his office, not as the appearance of a partisan spokesman presenting one side of a controversial issue absent some extrinsic evidence to the contrary. Otherwise, the public's right to be informed on important matters by its elected officials would be subordinated to the rights of a particular class (political candidates) to broadcast.

16. NBC believes that both DNC and ACLU have failed to show the necessity of their proposed policies or the present inadequacy of the fairness doctrine as a tool for informing the public on important public issues. Creation of an equal or quasi-equal time right to reply to all public official addresses would, as a practical matter, inhibit the appearance of public officials, NBC maintains. It would also ignore the difference in media use by different officials, as well as the fact that it is possible to distinguish the leadership appearances of an official from his political opinions. NBC also has argued that under present rules Presidential appearances during a campaign for his re-election are subject to the Section 315 equal time requirements, that Presidential appearances in a non-election period are subject to the fairness doctrine and the political party corollary, and that these doctrines are adequate to ensure that the electorate is informed.

17. WGN Broadcasting Co. (WGN) is also opposed to the DNC/ACLU proposals on the grounds that the standard proposed by DNC, that Presidential broadcasts that enhanced the political or personal image of the President would be subject to the rule and require the presentation of opposition programming, is too vague to be realistically applied by licensees; and that the FCC would be inexorably involved in politically sensitive adjudications which should be avoided.

18. Three parties argue that the Zapple doctrine should be repealed altogether. WGN maintains that Zapple exceeds the intent of section 315, which grants equal opportunities only to opposing candidates and not to their supporters. That question, WGN maintains, was settled in Felix v. Westinghouse, 186 F. 2d 1 (3d Cir. 1950), where it was held that the supporters of a candidate were specifically excluded from section 315.

19. The law firm of Haley Bader & Potts argues that the Zapple doctrine overlooks the fact that the informational needs of the public are of primary importance, and mistakenly confers rights on individual parties. The standards in Zapple are too vague for day-to-day application by the licensee, it maintains, and the resultant confusion will tend to inhibit licensee coverage of political matters. Moreover, it argues that Zapple unduly restricts licensee discretion in selecting spokesmen and regulating content.

20. The holding of Zapple would be acceptable to Public Broadcasting Service (PBS) as a fairness question if the Commission had limited itself to a discussion of the reasonableness of the balance of opposing views afforded by the licensee. PBS is opposed, however, to the extension of traditional fairness concepts of "reasonable balance" to a "comparable time" or "quasi-equal opportunity" doctrine because this restricts licensee discretion and creates artificial barriers to the discussion of controversial issues of public importance. Furthermore, PBS argues that Zapple cannot be limited to the two major parties nor to campaign periods only, but instead will engender a spiraling round robin of partisan responses. Several other parties also voiced this particular fear.

21. At the fairness panels, counsel for PBS further developed the foregoing argument by stating that the pricing mechanism and the economic realities of buying time on the commercial networks tend to discourage the broadcast appearances of minority candidates, but that no such economic barrier to access by minority parties exists in the Public Broadcasting Service. Counsel for PBS also argued that in extending quasi-equal opportunities to supporters of a candidate in Zapple, the Commission was doing what the Congress had decided not to do when it adopted section 315 of the Communications Act.

22. Several parties submitted comments on the procedural methods or standards by which the Commission should enforce fairness concepts in the political broadcast area. As previously mentioned, Storer Broadcasting Co. urges the Commission to adopt political broadcasting rules or to develop a political broadcasting primer that would specifically define those situations in which licensees would be required to afford comparable time and which would specify guidelines for the selection of the appropriate opposing spokesmen in order to minimize the confusion that has resulted from the recent series of ad hoc adjudications (Zapple, RNC, etc.) modifying the traditional fairness doctrine.

23. Those filing with the Evening News Association argue that the FCC frequently oversteps its authority in judging the "reasonableness" of licensee action in the political broadcasting area. The Commission should therefore adopt a "grossly unreasonable" test of licensee conduct, and impose penalties only when licensee conduct meets an "actual malice" test.

24. Two other general points raised by commentators were as follows:

A. The G.E. Broadcasting Company believes that the Commission's recent ruling in In re Rosenbush Advertising Agency, 31 F.C.C. 2d 782 (1971)[3] should be upheld since it affords discretion in making determination as to how a given licensee's facilities should be made effectively available to candidates or supporters of candidates. Section 315 itself permits a licensee to have discretion in scheduling and the Commission, it is contended, should not restrict this discretion any further in "quasi-315" situations.

B. During the panel discussions, former FCC Chairman Newton Minow discussed the recent study and recommendations of the bipartisan Twentieth Century Fund[4] on this

[3] The Commission held in Rosenbush that a licensee's policy of accepting only paid political advertising of five minutes or longer during a primary campaign was consistent with Commission precedent where the licensee recognized its public interest obligation to make its facilities effectively available to candidates. The licensee had stated its intention to make free time available to candidates for major offices in the primary; planned a one-hour special program presenting the candidates for mayor; and had announced the candidacies for the top three city offices in its regular news programs.

[4] Twentieth Century Fund, Voters' Time (1969).

subject. He recommended that the Commission support legislation that would enable the major party candidates in a Presidential campaign to obtain six one-half hour periods called "Voters' Time" in prime time for the simultaneous broadcast on all TV and radio stations of political presentations. Use of this time would be entirely within the candidates' discretion, and, since the beneficiary of these programs would be the American public who would thus receive information pertinent to the election of the President, public funds should be used to buy the time.

IV. *Discussion*—A. *The fairness doctrine with respect to appearances of the President or other public officials.* 25. The Commission can appreciate why so much attention is focused on the question of the application of the fairness doctrine to Presidential appearances. As the Court noted in Democratic National Committee v. FCC, C.A.D.C., No. 71-1637, decided February 2, 1972, petition for writ of certiorari filed April 28, 1972, No. 71-1405, O.T. 1971, "• • • the President's status differs from that of other Americans and is of a superior nature," and calls for him to make use of broadcasting to report to the nation on important matters:

"While political scientists and historians may argue about the institution of the Presidency and the obligations and role of the nation's chief executive officer it is clear that in this day and age it is obligatory for the President to inform the public on his program and its progress from time to time. By the very nature of his position, the President is a focal point of national life. The people of this country look to him in his numerous roles for guidance, understanding, perspective and information. No matter who the man living at 1600 Pennsylvania Avenue is he will be subject to greater coverage in the press and on the media than any other person in the free world. The President is obliged to keep the American people informed and • • • this obligation exists for the good of the nation • • •." (Sl. Op. pp. 26-27)

Because of this use of broadcasting by the nation's most powerful and most important public office, the argument has been made by DNC and by ACLU that there must be special provision for a response by the opposition party—some specific corollary to the general fairness doctrine that ensures equal or comparable use of the broadcast media by an opposition party spokesman.

26. We make two preliminary observations. First, the issue is not whether the American people shall be reasonably informed concerning the contrasting viewpoints on controversial issues of public importance covered by Presidential reports. The fairness doctrine is in any event applicable to such reports—as indeed it is to a report by any public official that deals with a controversial issue of public importance. See section 315(a). Rather, the issue is whether something more—something akin to equal time—is to be required. The word "required" brings us to our second point. Because our goal is robust, wide-open debate, the Commission of course welcomes any and all programming efforts by licensees to present contrasting viewpoints on controversial issues covered by Presidential addresses. As we stated in our commendation of the CBS series, "The Loyal Opposition", Committee for the Fair Broadcasting of Controversial Issues, 25 FCC 2d 283, 300 (1970); Republican National Committee, 25 FCC 2d 739, 745-46 (1970, the more debate on such issues, the better informed the electorate. But the issue is not what programming judgment the licensee makes in this area but, rather, whether there should be an FCC requirement. With this as background, we turn to the proposal that equal time be afforded to an opposition spokesman to respond to a Presidential report.[5]

27. First, there is a substantial issue whether any such Commission prescription might not run counter to the Congressional scheme. In section 315(a), Congress has specified that equal opportunities shall be applicable to appearances of legally qualified candidates and that in other instances "fairness" be applicable—that is, that there be afforded "• • • reasonable opportunity for the discussion of conflicting viewpoints on issues of public importance." While fairness may entail different things in particular circumstances (*see* par. 30, *infra*), there is a substantial question whether it is not a matter for Congress to take the discussion of public issues by the President out of the fairness area and place it within the equal opportunities requirement—just as, for example, it was up to Congress in 1960 to take appearances by candidates for President out of equal opportunities and place them under fairness. There is a further troublesome issue here—whether we could create a special fairness rule for Presidential reports but then hold that a report by Governor Reagan in California or Mayor Lindsay in New York, for example, would come only under the "reasonable opportunities" standard of section 315(a), in the face of arguments that such reports dealt with State or local issues of the greatest importance. Again we do not say that distinctions cannot be made here (compare section 103(a)(2)(A) of the Federal Election Campaign Act of 1971, 86 Stat. 3 applicable only to Federal offices) but rather raise the issue whether such distinctions are not more appropriately the province of the Congress.

28. But in any event, it would not be sound policy to adopt the DNC or ACLU proposals. From the time of the Editorializing Report, 13 FCC 1246 (1949), to the present, we have been urged to adopt ever more precise rules—always in the cause of insuring robust debate (e.g., the argument, advanced in 1949 and now repeated by the ACLU, that fairness requires the contrasting viewpoint to follow immediately the presentation of the first viewpoint—see par. 8, Report on Editorializing by Broadcast Licensees, supra, at pp. 1250-51.). However well intentioned these arguments are, we believe that increasingly detailed Commission regulation militates against robust, wide-open debate. The genius of the fairness doctrine has been precisely the leeway and discretion it affords the licensee to discharge his obligation to contribute to an informed electorate. Editorializing Report, par. 10, supra, at pp. 1251-52. Thus, the arguments for flexibility, rather than rigid mechanical rules, discussed in Committee for Fair Broadcasting of Controversial Issues, 25 FCC 2d 283, 292, (1970), remain persuasive. Applying those principles, we do not believe it appropriate to adopt equal time policies that might well inhibit reports to the electorate by elected officials. Rather, the general fairness approach of facilitating such reports and at the same time insuring that the public is reasonably informed concerning the contrasting viewpoints best serves the public interest.[6] See DNC v. FCC, supra, Sl. Op. p. 27 (" • • • the President is obliged to keep the American people informed and as this obligation exists for the good of the nation, this court can find no reason to abridge the right of the public to be informed by creating an automatic right to respond reposed in the opposition party • • •"); Committee for Fair Broadcasting, supra, at pp. 295-98. The latter case demonstrates that fairness can and does operate to protect the public interest in this important area.

29. In this connection, we note that the Commission believes that the public interest would be served by revision of the equal opportunities requirement so as to make it applicable only to major party candidates, with such candidates liberally defined to include any candidate with significant public support (see infra, par. 35); it has also supported, as a less desirable alternative, suspension or repeal of that requirement as to the offices of President and Vice President.[7] It would surely be anomalous for us to seek relaxation of the equal opportunities requirement as to candidates for the office of President, and at the same time to apply a new policy akin to the equal opportunities to Presidential broadcasts not coming within the present statutory equal opportunities requirement. We decline to do so.

B. *The Zapple ruling.* 30. Our 1970 ruling, Letter to Nicholas Zapple, 23 FCC 2d 707 (1970), concerned campaign presentations that did not involve the appearance of the candidate. We pointed out that in some such presentations, the requirements of the fairness doctrine become in effect quasi-equal opportunities. There has been considerable comment on this ruling but in large part the interest in it may stem from a misunderstanding of the ruling (e.g., that the ruling extends quasi-equal opportunities to all candidates or parties, even of a fringe nature). We can appreciate how such a misunderstanding could arise. The terms we used, fairness and quasi-equal opportunities, are terms of art and have accumulated their own baggage. Thus, quasi-equal opportunities conjures up a notion of all parties—even those of a fringe nature—being treated equally. And fairness carries with it concepts such as Cullman (free time if the public has not been informed of the contrasting viewpoint). See, also, In re Complaint of George F. Cooley, 15 FCC 2d 828, 829 (1968). But, Zapple was neither traditional fairness nor traditional equal opportunities. It was a particularization of what the public interest calls for in certain political broadcast situations in light of the Congressional policies set forth in section 315(a).[8] With this as background, we turn to the ruling.

31. What we were stating in Zapple was simply a common sense application of the statutory scheme. If the candidate himself appears to some significant extent (cf. Gray Communications, Inc., 14 FCC 2d 769, 13 FCC 2d 532 (1968)), then the Congressional policy is clear: Equal opportunities, which means no applicability of Cullman but rather mathematical precision of opportunity. Suppose neither the picture or voice of the candidate is used—even briefly—but rather a political message devised by him and his supporters is broadcast.

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[5] We are not dealing here with Presidential appearances during election campaigns where equal opportunities or Zapple (see B, infra) would ordinarily be applicable.

[6] For obvious reasons already developed, we strongly decline to make evaluations whether a report by an official is "partisan" or "political" and thus requires rebuttal by a spokesman for the other party, or the contending faction, or whatever. This would drag us into a wholly inadministratable quagmire. See, e.g., In re Complaint of Democratic National Committee, 31 FCC 2d 708, 712-713 (1971).

[7] See Hearings Before the Senate Communications Subcommittee, 91st Cong., 1st Sess., on S. 2876, p. 50.

[8] Similarly, the personal attack and political editorializing rules are a particularization of what fairness requires in those situations. See, e.g., Report on Personal Attack and Political Editorializing rules, 32 FR 10303 (1967); Editorializing Report, supra, at p. 1252.

In those circumstances, a common sense view of the policy embodied in section 315 would still call for the inapplicability of Cullman [9] and for some measure of treatment that, while not mathematically rigid, at least took on the appearance of rough comparability. If the DNC were sold time for a number of spots, it is difficult to conceive on what basis the licensee could then refuse to sell comparable time to the RNC. Or, if during a campaign the latter were given a half-hour of free time to advance its cause, could a licensee fairly reject the subsequent request of the DNC that it be given a comparable opportunity? [10] Clearly, these examples deal with exaggerated, hypothetical situations that would never arise. No licensee would try to act in such an arbitrary fashion. Thus, the Zapple ruling simply reflects the common sense of what the public interest, taking into account underlying Congressional policies in the political broadcast area, requires in campaign situations such as the above (and in view of its nature, the application of Zapple, for all practical purposes, is confined to campaign periods). Significantly, because it does take into account the policies of section 315, the public interest here requires both more (comparable time) and less (no applicability of Cullman) than traditional fairness.[11]

Based on practical experience, we stress that in any event—taking into account the sum total of political broadcasts and news-type programs—the American people are reasonably informed on campaign issues, and thus that the basic public interest requirement is being met in this vital area. Green v. FCC, 447 F. 2d 323 (C.A.D.C.).

32. It follows that Zapple did not establish that in the political broadcast field there is now a quasi-equal opportunities approach applicable to all candidates and parties, including those of a fringe nature. This would clearly undermine any future suspension or repeal of the "equal opportunities" requirement, because it would mean that despite such suspension or repeal, the fairness doctrine would require that fringe party candidates be given comparable treatment with major party candidates. Further, it would negate the 1959 Amendments to the Communications Act. The purpose of these amendments was to permit presentation of candidates on, for example, a bona fide newscast, news interview, or news documentary, without the station having to present the fringe candidates.[12] We need not belabor the point further. The Zapple ruling did not overrule the holding in Letter to Lawrence M. C. Smith, 25 Pike & Fischer, R.R. 291 (1963).[13]

33. The foregoing discussion—and the general approach that we have adopted in the fairness area—also dispose of the questions raised as to the desirability of extending Zapple, codifying it, or otherwise supplementing it with procedural and other trappings (e.g., a seven-day procedural requirement). Because Zapple reflects simply a common sense distillation of the public interest in certain political broadcast situations, there is no need to try to codify it or engraft new corollaries onto it. On the contrary, we have concluded that, generally, traditional fairness works better by setting out broad principles and permitting the licensee to exercise good faith reasonable discretion in applying those broad principles. We think that this is true here. Further, we doubt if we will be confronted with a host of ad hoc rulings in this field. Most problems should be disposed of at the licensee level by the application of rudimentary concepts of fairness and common sense. Significantly, Zapple itself was a ruling on hypothetical questions; there have been very few times when the issue has arisen on concrete cases. As to its extension beyond political broadcasts, the short answer is that it is based in substantial part on Congressional policies applicable to such broadcasts.[14]

C. *Commission efforts to encourage the widest possible coverage of political campaigns.* 34. We have considered most seriously what steps we can take in this respect. There would appear to be little we can do on an administrative agency basis. Let us take the most obvious suggestion: That the Commission by rule specify that a certain amount of time be set aside for presentation of political broadcasts on a sustaining basis. See section 303(b). There are a number of difficult policy issues that would have to be resolved in any such undertaking. But there is, we believe, again an overriding consideration here—namely, that this is truly a matter for Congressional resolution. Congress is aware of the high expense of running for political office, particularly in view of mounting broadcast costs. It has considered a number of worthwhile suggestions here—for example the subsidy plan in the Presidential Campaign Fund Act of 1966 (the now inoperative Long Act) to supply Federal funds to the national party candidates for the Presidency; the Voters Time proposal (see Hearings Before the Senate Communications Subcommittee, on S. 2876, 91st Cong., 1st Sess., pp. 24–34). Its response to this problem has been the Federal Election Campaign Act of 1971 (Pub. L. 92–225), with its limitations of spending, and requirement for reasonable access for those running for Federal office and reduced rates for all political candidates. We do not see how we can sweep aside this scheme, and substitute our own. Indeed, we could not in any event be truly effective in any such agency action. Take the most important office—the Presidency. Were we to require free time for that office, we would run afoul of the equal time provision; we would find that we had required the broadcast to devote hours of prime time not just to the significant candidates but also to as many as 75 fringe party candidates (e.g., Socialist Labor, Socialist Worker, Vegetarian).[15] Our point is obvious: Reform here is needed, we believe, but it must come from the Congress because that is the only way it can be effectively accomplished.

35. Congress then can do much. We believe that consideration should again be given to the Voters Time concept or to some scheme akin to that used in Great Britain (i.e., blocs of free time to the major political parties). At the least, we propose again to urge Congress to adopt our proposed amendment to section 315, limiting to major party candidates the applicability of the equal time provision in partisan general election campaigns. We described that legislation in the following terms (see Hearings Before the Communications Subcommittee on S. 2876, 91st Cong., 1st Sess., p. 43):

"In any general election, other than non-partisan ones, the draft legislation would make the equal opportunities requirement, as to free time, applicable only to major party candidates, leaving fringe candidates coming under the general fairness requirement. It would define major candidates very liberally so as to include any significant candidates—such as Henry Wallace as the candidate of the Progressive Party 1948, Strom Thurmond of the Dixiecrats 1948, or George Wallace in the last election. The figures in the draft legislation are set forth only as possible guidelines—namely, that the candidate's party garnered 2 percent of the vote in the state in the last election or, if the candidate represents a new party, that petitions be submitted signed by a number of voters equalling 1 percent of the votes cast in the last election. To obtain time on the national networks, as distinguished from individual stations in particular states, there would also be a requirement that the candidate be on the ballot in at least two-thirds of the states.

"In short, section 315 in its present operational form is claimed and would appear to inhibit broadcasters from allowing free time—and does so, we urge, without any significant practical compensating benefits. The Socialist Labor or Vegetarian candidate does not get free time; rather, no one gets any free time for the political broadcast. Further, and

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[9] In this respect, Zapple did not break new ground. In our Report and Order on the personal attack rules (32 FR 10303, 10305), we noted the applicability of the Congressional standard in Section 315 to attacks involving candidates, their supporters, or authorized spokesmen, and accordingly made our rules—which result, as a practical matter, in free time—inapplicable to such attacks. See §§ 73.123(b), 73.300(b), 73.598(b), 73.679(b).

[10] This example is stated as if the RNC program were the only matter to be considered. Of course in a particular factual situation this may well not be so. See CBS v. FCC, supra, n. 1, where the DNC program was presented by CBS to offset Presidential speech appearances, and the Court held that this was perfectly appropriate and reversed a Commission holding that to avoid coming within Zapple, CBS should have specified the issues to which the DNC was to address itself. This case is of course the law governing similar future factual situations. Thus, each case must be judged in its factual setting, with the licensee having considerable discretion to discharge fairness obligations.

[11] And for the foregoing reasons, we do not believe that we have acted contrary to the legislative history. We have, on the contrary, acted to carry out the Congressional scheme in section 315.

[12] In view of the 1959 Amendments, it follows that no quasi-equal opportunities doctrine is applicable when supporters or spokesmen for candidates are presented in bona fide newscasts; in this respect, the same general fairness principles that apply to the candidates are equally applicable to their supporters.

[13] We there held that as to fund raising announcements for political parties, fairness does not require equal or comparable treatment for the fringe parties but rather that the licensee can make reasonable good faith judgments as to the significance of a particular party in the area.

[14] Thus, we do not extend Zapple to the situation involving ballot issues.

[15] To give but one example, in 1960 when Congress acted to suspend the equal opportunities requirement for the President and Vice President races, there were on the ballots in the several States 14 different candidates for the office of President: C. Benton Coiner, Conservative Party of Virginia; Merrit Curtis, Constitution Party; Lar Daly, Tax Cut Party; Dr. E. L. Dosker, Prohibition Party; Farrell Dobbs, Socialist Workers Party, Farmer Labor Party of Iowa, Socialist Workers and Farmers Party, Utah; Orval E. Faubus, National States Rights Party; Symon Gould, American Vegetarian Party, Minnesota; Clennon King, Afro-American Unity Party; Henry Krajewski, American Third Party; J. Bracken Lee, Conservative Party of New Jersey; Whitley Slocomb, Greenback Party; William Lloyd Smith, American Beat Consensus; Charles Sullivan, Constitution Party of Texas. See H. Rept. No. 1236, 86th Cong., 2d Sess., p. 3. Query how effective any agency action in 1960 would have been.

most important, there would appear to be little, if any, public benefits from insuring such equal treatment for candidates whose public support is wholly insignificant. We repeat that in defining the major party candidate, we would urge the selection of a numerical figure such as to insure equality to any candidate who did have some significant public support, regardless of what his chances of actually winning might be." This, by itself, will make a marked contribution to facilitating broadcast presentation of important political candidates.[16]

36. As an alternative, we propose an additional exemption to section 315(a) to cover any joint or back-to-back appearances of candidates. Additionally, consideration should be given, we think, to the further exemption that we urged upon Congress in connection with our 1970 Advocates ruling, 23 FCC 2d 462. We suggested the addition of the following provision to section 315(a):[17]

"(5) Any other program of a news or journalistic character—

"(i) Which is regularly scheduled; and

"(ii) In which the content, format, and participants are determined by the licensee or network; and

"(iii) Which explores conflicting views on a current issue of public importance; and

"(iv) Which is not designed to serve the political advantage of any legally qualified candidate."

37. At the least, we had thought that we could make a contribution here by giving the 1959 exemptions a reasonable construction in line with the broad remedial purpose of Congress. Accordingly, we did so in the recent Chisholm ruling, FCC 72-486, decided June 2, 1972. The validity of this construction of Section 315(a) is, however, now in doubt in view of the action of the Court of Appeals in its interim relief Order of June 3, 1972. Until the matter is definitely settled, licensees cannot plan with any certainty, and the area remains confused. This is, we believe, unfortunate. We continue to believe that our construction of the exemption in section 315(a)(2) is sound, meets the pertinent Congressional criteria, and markedly serves the public interest by allowing broadcasting to make a fuller and more effective contribution to an informed electorate. But unless and until that construction prevails upon appeal—or is in any event affirmed by Congressional revisions along the above stated lines—we cannot in good conscience urge licensees to act in this area as if there were no "equal opportunities" pitfalls. There clearly are.

D. *Use in bona fide newscasts of film supplied by candidates.* 38. One other political broadcast matter which has been brought to our attention merits comment here. Candidates, like many other news sources, have normally issued press releases to the news media containing statements of the candidates, advance copies of their speeches, their future speaking schedules, etc. Media news editors in turn made judgments whether and to what extent to use such material. Increasingly, candidates have been supplying radio and television broadcasters with audio recordings and film excerpts produced by the candidates, e.g., depicting their campaign efforts that day or containing statements of their positions on current issues. Obviously, these excerpts are designed to show the candidate in the best light and, if presented on a newscast, have the added advantage of increased impact or credibility over a paid political presentation. We do not hold that the station cannot exercise its good faith news judgment as to whether and to what extent it wishes to present these tape or film excerpts. If it believes that they are newsworthy, it can appropriately use them in newscasts. But the public should be informed that the tape or film was supplied by the candidate as an inducement to the broadcasting of it.

39. In fact, our rules require such disclosure in these circumstances; that is, "in the case of any political program or any program involving the discussion of public controversial issues for which any films, records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcast of such program * * *"[18] Disclosure of the furnishing of the tape or film is required to be made whether or not a candidate is involved in these types of programs. Accordingly, we take this opportunity to stress to all licensees their duty to comply with the rules and announce that the tape or film was supplied by the candidate in question.[19] If it was edited by the licensee, he may, of course, add a suitable phrase such as "and edited by the XXXX news department."

IV. *Conclusion.* 40. Much remains to be done in the fairness area (Parts II–IV).[20] We have acted here as best we could for the reasons stated in par. 1. The piecemeal approach is thus regrettable but necessary.

As stated, we shall reconsider this most important aspect in light of the conclusions reached in overall proceedings. Our final message is one urging broadcasting to make the maximum possible contribution to the nation's political process. That process is the bedrock of the Republic, and broadcasting is clearly the acknowledged leading medium for communicating political ideas. No area is thus of greater importance "* * * to the public interest in the larger and more effective use of radio." (section 303(g) of the Communications Act of 1934, as amended).

FEDERAL COMMUNICATIONS COMMISSION,[21]

[SEAL] BEN F. WAPLE,
Secretary.

Adopted: June 16, 1972.

Released: June 22, 1972.

ATTACHMENT TO APPENDIX A

I. Comments on the applicability of the fairness doctrine to political broadcasts were received from the following parties:

ACLU
American Broadcasting Company
Columbia Broadcasting Company
Democratic National Committee
Evening News Association, et al.
Haley, Bader & Potts
McKenna & Wilkinson
National Association of Broadcasters
National Broadcasting Company
Public Broadcasting Service
Republican National Committee
Storer Broadcasting
United Church of Christ
WGN Continental Broadcasting Company

II. The following parties participated in panel discussion on the applicability of the fairness doctrine to political broadcasts held, before the Commission, on March 29, 1972.

Roger E. Ailes, President Roger Ailes & Associates, Inc.
Charles A. Wilson, Jr., for the Democratic National Committee
James J. Freeman, Associate Special Counsel, Republican National Committee
Reed J. Irvine, Chairman of the Board, Accuracy in Media, Inc.
Newton N. Minow; Leibman, Williams, Bennett, Baird & Minow, Chicago, Illinois
Harry M. Plotkin, Counsel, Public Broadcasting Service
Paul A. Porter; Arnold & Porter, Washington, D.C.
Allen U. Schwartz, Counsel, Communications Media Committee, ACLU
Rosel Hyde; Wilkinson, Cragun & Barker, Washington, D.C.

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[16] Thus, in the above noted hearings, we stated (supra, at p. 50):

"* * * when freed from the constraints of equal opportunities requirement, there has been no failure on the part of the broadcasters with respect to affording time for the Presidential candidates, and see that that time has been in substantial amounts, and free, not just reduced. Thus, in the one instance where the equal time requirement was suspended (1960), the TV networks afforded 39 hours and 22 minutes of free time, including the four hours for the Great Debates. Further, the audience for these debates totalled 280 million, or an average of 70 million viewers per broadcast. We believe that the networks thus effectively discharged their responsibility to inform the electorate in 1960. They have stated that they stand ready to do so in every Presidential election, if freed from the equal time requirement."

[17] See Hearings Before the Subcommittee on Communications and Power of the House Interstate and Foreign Commerce Committee, on H.R. 8721 and S. 3637, 91st Cong., 2d Sess., p. 8.

[18] Sections 73.119(d), 73.289(d) and 73.654(d), relating, respectively, to AM, FM and TV. See also section 317(a)(2) of the Communications Act which specifically authorizes the Commission to require announcements disclosing that such matter was furnished.

[19] In order to avoid possible confusion in interpreting this rule in relation to one interpretative example in House Rept. 1800 (86th Cong., 2d Sess.) dealing with Section 317 of the Act and rules thereunder, we should add that we are not attempting to apply the above disclosure requirement to mere mimeographed news releases or typed advance copies of speeches. Example 11 of the House Report (see FCC Public Notice of May 6, 1963, FCC 63-409) states that no announcement is required when "news releases are furnished to a station by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program." We believe, however, that with respect to program material dealing with political or other controversial matters, the requirements of our rules must be followed strictly when audio tape or film is furnished.

[20] GE supports the Rosenbush ruling (see par. 24(A)). We have considered this issue generally in our recent Notice (Use of Broadcast and Cablecast Facilities by Candidates for Public Office, 37 FR 5796, 5805; sec. 8, Q. 8), and will reexamine the matter as we gain experience. We thus may clarify our policies here either in a particular case or in our further reports in this Docket.

[21] Commissioner Johnson dissenting and issuing a statement; Commissioner H. Rex Lee concurring in the result. Statements of Commissioners Johnson and Lee filed as part of the original document.