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THE FAIRNESS DOCTRINE: TIME FOR THE GRAVEYARD?

"But if we are to go after gnats with a sledgehammer like the fairness doctrine, we ought at least to look at what else is smashed beneath our blow."[1]

Less than a century ago, radio was merely a means for emergency communication. Futile attempts were made to clear the airwaves so that the sinking Titanic could broadcast its pleas for help.[2] News of the tragedy was spread by means of printed newspapers and magazines. Today, momentous events are known throughout the land via hundreds of radio and television stations. The regulations that began as a means for controlling a "common carrier" of information, and later ruled a few stations, must now control the member stations of three television networks, nine national radio networks, thousands of affiliated and independent stations, as well as the fledgling cable and subscription television industries.[3] Rules have developed with the industry, but in some cases the rules have not kept pace. Such is the case with the "fairness doctrine."[4] By man-

1. Brandywine-Main Line Radio, Inc. v. FCC, 473 F.2d 16, 64 (D.C. Cir. 1972) (Bazelon, C.J., dissenting).

2. Several commentators indicate that the Congress was spurred to regulate broadcasting by this disaster in 1912, *see, e.g.*, Houser, *The Fairness Doctrine—An Historical Perspective*, 47 NOTRE DAME LAW. 550, 552 n. 15 (1972). This conclusion is bolstered by regulation of radio licensing being placed under the jurisdiction of the Bureau of Navigation in conjunction with safety inspections. *See* 10 SEC'Y COMMERCE & LABOR ANN. REP. 135 (1912).

3. Television networks are ABC, NBC, and CBS. Radio networks are ABC (4), NBC, CBS, Westinghouse, Mutual, and Metromedia. At the close of the fiscal year 1972 the FCC had authorized a total of 4422 commercial AM stations, 2468 commercial FM stations, 774 commercial television stations. 1972 FCC ANN. REP. 1962. The FCC had also authorized 161 cable television relays. *Id.*

4. Section 315 of the Federal Communications Act is the codification of the fairness doctrine. 47 U.S.C. § 315 (1970) states in pertinent part: "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates . . . . Nothing in the foregoing sentence shall be construed as relieving broadcasters . . . from the obliga-

dating a general balance in broadcast viewpoints on controversial issues of public importance the doctrine often appears to limit speech through regulation of broadcast licensees.

This comment will examine the rationale for the fairness doctrine, the obligations arising under it, and the FCC's administration of the doctrine. The judicial construction of the doctrine will be analyzed with emphasis on the doctrine's functional role and Constitutional ramifications. Finally, the future of the doctrine, in light of recent trends within the FCC and the courts will be discussed.

The Fairness Doctrine Defined

The fairness doctrine is part of a basic broadcast philosophy that has been partially codified in federal statutes and FCC rules and regulations. This philosophy is reflected in a statutory requirement of equal time for political candidates,[5] an FCC requirement of time for individuals to respond to personal attacks broadcast against them,[6] and the fairness doctrine mandate that viewpoints on any

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tion imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." A similar provision was contained in the Radio Act of 1927, Pub. L. No. 69-632, § 18, 44 Stat. 1162 (1927) [hereinafter referred to as the Radio Act] which was the forerunner of the Federal Communications Act.

5. The equal time and balance programming provisions of the fairness doctrine are contained in 47 U.S.C. § 315 (1970). The section indicates that its equal time obligation applies only to the appearance of a legally qualified candidate for public office. If one candidate appears, then all bona fide candidates for that office must be granted equivalent airtime. While the political and personal attack obligations do not attach to bona fide news programs, such broadcasts are not totally exempted from the fairness doctrine in that any broadcast of a controversial issue of public importance is subject to the requirements of fair presentation.

6. The obligations relating to a personal attack are contained in 47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679 (1973). If a personal attack is broadcast, the licensee must notify the person attacked, provide him with a tape, transcript, or summary, and offer equal time for rebuttal. No further attempt is made by the FCC to define such ephemeral terms as "attack" or "controversial." To try and do so is to draw attention to the vagueness of the rules. In Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) the government attempted the following distinction: "It is clear that an 'attack' is something quite different from mere mention, comment, or even criticism." Brief for Appellee at 72.

controversial issue of public importance be fairly presented.[7]

Federal regulation of broadcast communication dates to 1912, when the Federal Radio Act was enacted.[8] The evolution of adminis-

7. *See generally*, Kalven, *Broadcasting, Public Policy and the First Amendment*, 10 J. LAW & ECON. 15 (1967). Kalven analogizes the fairness problem to, "a town meeting where the chair would rule that each speaker must be fair to both sides!" *Id.* at 47. A more accurate analogy would be to a meeting where the chair would rule that the podium must be open to both sides. It should be noted, however, that the situation of a town meeting is in no way similar to that of a broadcast licensee. The idea of opening up a meeting to all those who might wish to speak is vastly different from requiring a licensee to allocate or even donate airtime.

8. Early regulation was of communication in general in so far as such affected commerce and hence was reachable under the Commerce Clause, U.S. Const. art. I § 8, cl. 3. Initial cases involved telegraphic lines, Pensacola Tel. Co. v. Western Union Tel. Co., 96 U.S. 1 (1877) (telegraph found to be an instrument of commerce); Telegram Co. v. Texas, 105 U.S. 460 (1881) (state prohibited from taxing messages either sent out of state or for government business); Western Union Tel. Co. v. Pendleton, 122 U.S. 347 (1887) (state could not prescribe the type of delivery). Federal statutory regulation of radio communication began with the Radio Act of 1912, Act of August 13, 1912, Pub. L. No. 62-264, 37 Stat. 302 (1912), which empowered the Secretary of Commerce (prior to 1913, the Secretary of Labor and Commerce) to issue licenses on a non-discretionary basis which were revocable for cause. *Id.* § 1. The lack of discretion was a cause of much controversy and was found to be total. 29 OP. ATT'Y GEN. 579 (1912). *Accord* Hoover v. Intercity Radio Co., 286 F. 1003, 1007 (D.C. Cir. 1923) (discretionary acts of the Secretary limited to selecting a wave length which would cause the least possible interference), United States v. Zenith Radio Corp. 12 F.2d 614, 617 (N.D. Ill. 1926) (Secretary could not prescribe regulations in addition to those established by the Congress). It is not indicated in the Annual Reports of the Secretary of Commerce 1913-1923, whether any such licenses were ever revoked. However, the report of 1924 indicates that of the 1,076 stations licensed since broadcasting began in September 1921, 541 had been discontinued. 12 SEC'Y OF COMMERCE ANN. REP. 191 (1924). The Radio Act of 1912 proved to be ineffective. Report of W.D. Terrell, Chief, Radio Division, Department of Commerce, 15 SEC'Y OF COMMERCE ANN. REP. 45 (1927). Earlier reports indicated that the failure was not due to draftsmanship but to lack of foresight, *see* 11 SEC'Y OF COMMERCE ANN. REP. 221 (1923). The Congress itself noted the inadequacies, which it admitted "did not attempt at that time to regulate or to give power to regulate unknown and nonexistent means or methods of communication. It dealt only with known factors." 67 CONG. REC. 5478 (1926)

trative law and broadcast technology has resulted in seemingly contradictory decisions concerning the powers of the FCC and its implementation of the fairness doctrine. Early decisions gave the Commission extremely broad latitude in the regulation of broadcasts under congressionally imposed standards of "public convenience, interest, or necessity."[9]

Judicial deference to the judgment of the FCC became readily apparent in *National Broadcasting Co. v. United States*,[10] wherein the power of the Commission was expressly delineated for the first time. The Court construed the public interest mandate of the Federal Communications Act as permitting the FCC to evaluate the actual content of programming, provided it did so in the public interest.[11] In discussing its power of review over FCC action, the Court concluded that

(remarks of Representative White). The varioius radio interests had sought to alleviate these shortcomings through the use of annual national radio conferences, 13 SEC'Y OF COMMERCE ANN. REP. 203 (1925), but such self-regulation, although well intentioned, proved inadequate, 14 SEC'Y OF COMMERCE ANN. REP. 233 (1926). This statute was replaced by the Federal Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162 (1927), which established an administrative agency, the Federal Radio Commission, *Id.* § 3, which was empowered to issue licenses in accord with the following guidelines: "The licensing authority, if public convenience, interest, or necessity will be served thereby . . . shall grant to any applicant therefor a station license. . . . In considering applications for licenses . . . the licensing authority shall make such a distribution of licenses . . . among the different States and communities as to give fair, efficient and equitable radio service to each of the same." *Id.* § 9.

9. In FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940) the Supreme Court held that so long as the Commission adhered to the congressionally imposed standards, then their decision would not be reversed by judicial review, even in the face of legal error. *Id.* at 145-46. This case was decided before the passage of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.* (1970), which now provides criteria for judicial review of administrative decisions. This apparent bequest of carte blanche to the Commission was fortified in FCC v. Sanders Bros. Radio Station, 309 U.S. 470 (1940), which provided a corollary rule to that of *Pottsville* holding that economic injury to an applicant or licensee would be insufficient to displace Commission decisions made in the public interest. 309 U.S. at 473.

10. 319 U.S. 190 (1943).

11. *Id.* at 226.

> [o]ur duty is at an end when we find that the action of the Commission was based upon findings supported by evidence, and was made pursuant to authority granted by Congress.[12]

Following the decision in *NBC*, several courts attempted to establish the parameters of FCC power.[13]

In 1969, *NBC* was usurped as the landmark case in the area of communication law by *Red Lion Broadcasting Co. v. FCC*[14] which marked the beginning of a new era in terms of the fairness doctrine. While consistent with *NBC* in its approach to FCC powers, *Red Lion* was the first decision in which the Court evaluated the factual context rather than simply affirming the Commission's powers in general terms.[15] *Red Lion* involved a personal attack, and the licensee's alleged non-compliance with the Commission's rules. The Court held that the regulations were within the congressionally conferred power to require licensee operations to be in the public interest.[16] The Court resolved petitioner's first amendment arguments by stating that different media require different constitutional standards.[17] The specific issue of any first amendment abro-

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12. *Id.* at 224.

13. FCC v. WOKO, 329 U.S. 223 (1946) (deception in application proper grounds for license denial); Regents of the Univ. Sys. of Ga. v. Carroll, 338 U.S. 586 (1949) (FCC limited to deciding licensee status); FCC v. American Broadcasting Co., 347 U.S. 284 (1954) (FCC misconstrued the word "lottery" and could not, therefore, prohibit "give-away" programs); Farmer's Union v. WDAY, 360 U.S. 525 (1958) (federal equal time requirement negates state law holding station liable for defamation).

14. 395 U.S. 367 (1969). *Red Lion* was heard together with United States v. Radio Television News Directors Ass'n, 400 F.2d 1002 (7th Cir. 1968), *cert. granted*, 393 U.S. 1014 (1969). RTNDA attacked the political editorializing and personal attack aspects of the fairness doctrine.

15. 395 U.S. at 395-96.

16. *Id.* at 386.

17. *Id.* The Court's rationale was based on Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952) and Kovacs v. Cooper, 336 U.S. 77 (1949). The latter case involved the free speech implications of a ban on the use of loud sound trucks and seems clearly distinguishable as a valid exercise of the police power to keep the peace. The Court failed to distinguish United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948) which indicated that the type of media involved would not be dispositive of first amendment claims. *Id.* at 166-67. For the Court's reliance on these precedents, see *Red Lion* at 395 U.S. 386-87.

gation was resolved thusly: "Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish . . . . It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."[18]

Red Lion also contains dicta that the fairness doctrine enhances the first amendment[19] since it prevents licensee monopolization of an assigned frequency thereby preventing others from voicing their opinions over the airwaves.[20] The Court viewed the licensee as a fiduciary of the public since he was possessed of a scarce frequency that should be held in trust for all. From this concept has grown a theory of a "right of access" to the airwaves.[21] This theory reconciles the rights of free speech of the broadcaster and that of the individual in favor of the latter. It assumes that since a viewpoint cannot be communicated without a medium, the exclusive licensees of broadcast media must disseminate all significant viewpoints. Since the broadcast spectrum and available airtime are limited, the right of access theory would require that some system of priorities be established[22]—this would necessitate governmental regulation. However, with regard to the constitutional consequences of the regulation,

18. 395 U.S. at 388-90.

19. *Id.* at 389.

20. *Id.*

21. *See generally*, Barron, *Law and the Free Society Lectures, Access—the Only Choice for the Media?* 48 TEX. L. REV. 766 (1970). Professor Barron sees *Red Lion* as the progeny of a first amendment right of access, Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641 (1967). In reference to *Red Lion*, Barron concurs with Justice White's fear of private censorship in the media. Barron, *supra* at 772. Query whether this would not be the lesser of two evils when compared with government censorship and its inevitable erosion of the first amendment freedoms? Barron also feels that the Supreme Court might in the future hold that freedom of the broadcast press could be provided for by statute. *Id.* at 773. This too seems to fly in the face of the first amendment since to legislate is necessarily to limit.

22. It would presumably fall to the Commission to establish such priorities based on as yet undisclosed criteria. For an argument that the present fairness doctrine lacks sufficient guidelines *see* Note, 56 GEO. L.J. 547 (1968).

the Commission itself has said: "[W]e are constrained to point out that the First Amendment forbids government interference asserted in aid of free speech as well as government action repressive of it. The protection against abridgement of freedom of speech and press flatly forbids governmental interference, benign or otherwise."[23]

Thus, the fairness doctrine exists among several competing interests: the licensee's and the individual citizen's right to free speech, and the right of the public to be informed.[24] It is clear that a broadcast may fall within the purview of the first amendment.[25] At the same time, a broadcaster's license is dependent on his ability to meet community needs through his monopoly of a limited airwave frequency. Thus, the FCC, while statutorily prohibited from exercising any form of censorship,[26] has denied the renewal of a broadcast license when the licensee's overall program content failed to meet community needs. There is a fundamental clash between the broadcaster's right to regulate his programming through the exercise of editorial discretion and the FCC's right to regulate him in the public interest.[27] The problem is highlighted when FCC regula-

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23. Report of Statement of Policy Re: Commission en banc Programming Inquiry, FCC Public Notice B, July 25, 1960, *as reprinted in* REPORT OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, TELEVISION NETWORK PROGRAM PROCUREMENT, H.R. REP. NO. 281, 88th Cong., 1st Sess. 157, 162 (1963).

24. *See* note 18 *supra*.

25. United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948). The Court was there concerned with the effect of the monopolization of the movie industry on first amendment rights. The Court said, "We have no doubt that moving pictures, like newspapers and the radio, are included in the press whose freedom is guaranteed by the First Amendment." *Id.* at 166. *See also* St. Amant v. Thompson, 390 U.S. 727 (1968).

26. 47 U.S.C. § 326 (1970) states: "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." The FCC is to be guided by, "public interest, convenience, and necessity." 47 U.S.C. § 307(d). This standard was found to be constitutionally sufficient in National Broadcasting Co. v. United States, 319 U.S. 190 (1943). *See* note 10 *supra*.

27. *See generally* Swartz, *Fairness for Whom? Administration of the Fairness Doctrine, 1969-70*, 14 B.C. IND. & COM. L. REV. 457 (1973).

tions create administrative tangles and semantic difficulties for the licensee, complaining listeners, and the FCC itself.[28]

The Federal Communications Act specifically states that a broadcast licensee is not a "common carrier."[29] If held to be a common carrier, a station would have to render its services upon any reasonable request[30] and could not exercise any discrimination as to those services.[31] It seems clear that Congress intended that the licensee have some of the editorial discretion traditionally associated with the press,[32] such discretion to be limited only by the public interest

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28. The source of many of these problems is *Applicability of Fairness Doctrine to Cigarette Advertising*, 9 F.C.C.2d 921 (1967), *aff'd sub nom* Banzhaf v. FCC, 405 F.2d 1082 (D.C. Cir. 1968), *cert. denied*, 396 U.S. 842 (1969) in which the FCC held that commercial cigarette advertising involved a controversial issue of public importance and therefore any station carrying such advertising must present the other side of the issue, to wit, the deleterious effects of smoking. It should be noted that the court of appeals opinion contained an in depth analysis of the fairness issues but its holding was grounded on the public interest responsibilities of the FCC rather than on an implementation of the fairness doctrine. *But see* Neckritz v. FCC, 24 F.C.C.2d 175 (1970), *aff'd*, 446 F.2d 501 (9th Cir. 1971) and Green v. FCC, 24 F.C.C.2d 171 (1970), *aff'd*, 447 F.2d 323 (D.C. Cir. 1971) (armed forces recruiting messages and Vietnam conflict are controversial issues of public importance but must be viewed in light of established right of government to raise an army); Friends of the Earth, 24 F.C.C.2d 743 (1970), *rev'd*, 449 F.2d 1164 (D.C. Cir. 1971) (automobile pollution parallel to harmful effects of smoking).

29. 47 U.S.C. § 153(h) (1970).

30. *Id.* § 201(a).

31. *Id.* § 202(a).

32. Indeed the Congress appeared to adopt the recommendation of the Fourth National Radio Conference, held in Washington, November, 1925, which had advised, *inter alia*, "(c) That the doctrine of free speech be held inviolate. (d) That those engaged in radio broadcasting shall not be required to devote their property to public use. . . ." 67 CONG. REC. 5479 (1926) (remarks of Representative White). Although debate was held on the possibility of using monopoly power to close off political discussion, *id.* at 5483 (remarks of Representative Davis), it was inferred that discriminatory pricing of air time was utilized to effect this end. *Id.* (remarks of Representative Celler). Testimony before one congressional committee indicated that at least one radio station admitted to "editing" matter rather than censoring it. *Id.* at 5484 (remarks of Representative Davis). The Federal Radio Commission noted this congressional concern

mandate of the Act. On the other hand, the FCC has held that if one side of a controversial issue of public importance is broadcast, the licensee must give time to the opposing side[33] or initiate programming sufficient to present the other side of the issue.[34] Failure

in its first annual report: "[Y]ou [the Congress] are primarily interested in radio as a means of political education . . . . You would be quick to see the danger if there could only be a fixed and rather small number of newspapers and magazines published in the United States; you would rightly fear that the newcomer, the nonconformist, the representative of the minority, would have a small chance to present his ideas to the public." 1 FRC 7 (1927). The right of the public to hear, rather than the right to be heard appeared to be the Federal Radio Commission's touchstone. 2 FRC 167-68 (1928). In ruling on the application of Great Lakes Broadcasting Co., the commission gave an initial appraisal of the concept of right to access of the airwaves: "Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals. . . . As an instrument for the communication of intelligence, a broadcasting station has frequently been compared to other forms of communication, such as wire telegraphy or telephony. . . . If the analogy were pursued with the usual legal incidents, a broadcasting station would have to accept and transmit for all persons on an equal basis without discrimination in charge, and according to rates fixed by a governmental body, this obligation would extend to anything and everything any member of the public might desire to communicate to the listening public, whether it consists of music, propaganda, reading, advertising, or whatnot. *The public would be deprived of the advantage of the self-imposed censorship exercised by the program directors.* . . . To pursue the analogy . . . is, therefore, to emphasize the right of the sender of messages to the detriment of the listening public." "There is not room in the broadcast band for every school of thought, religious, political, social and economic. . . , particular doctrines, creeds and beliefs must find their way into the market of ideas by the existing public-service stations, and if they are of sufficient importance *to the listening public* the microphone will undoubtedly be available." 3 FRC ANN. REP. 32-36 (1929) (emphasis added). But even the traditional notion of freedom of the press has of late come under attack. *See* Tornillo v. Miami Herald, 287 So. 2d 78 (1973) (statute that requires newspapers to print replies of political candidates they criticize in editorials held Constitutional). *But see* Opinion of the Justices, 298 N.E.2d 829 (1973) (proposed bill that newspapers publishing paid editorial advertising for one candidate must publish same for all opponents violates first amendment).

33. Cullman Broadcasting Co., 25 P&F RADIO REG. 895 (1963).

34. John J. Dempsey, 6 P&F RADIO REG. 615 (1950).

to adhere to these tenets can result in the denial or non-renewal of a license.[35] The licensee faces a serious dilemma in differentiating among the various shades of controversy and public importance since the renewal of his license might hang on the decision. He must determine if an issue is controversial within the meaning of the fairness doctrine and then decide what viewpoints must be heard so as to present balanced programming.

In any ruling with regard to the controversiality and public importance of an issue, the FCC resorts to boilerplate language extracted from the Commission's "fairness primer."[36] It provides that responsibility rests with the licensee for determining whether one side of a controversial issue of public importance has been presented, and the Commission will review the licensee's decision only to determine whether it appears to have been a reasonable one, made in good faith."[37] Beyond this there appears to be no set formula for determining controversiality and public importance. Neither are there standards by which the FCC can judge the reasonableness of a licensee decision. Defining controversiality and public importance has proven difficult for licensees as well as the FCC,[38] and a misinterpretation of these terms may have dire consequences.

A licensee can run afoul of the fairness doctrine in two ways. He may be the subject of complaints about his treatment of specific programming or issues and he is subject to a review of his total balance in programming when his license is up for renewal every three years,[39] or upon termination of a provisional one year license.[40]

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35. *See, e.g.*, Trinity Methodist Church v. FRC, 62 F.2d 850 (D.C. Cir. 1932), Young Peoples' Ass'n for the Propagation of the Gospel, 6 F.C.C. 178 (1938), FCC v. WOKO, Inc., 329 U.S. 223 (1946). Brandywine-Main Line Radio, Inc. v. FCC, 473 F.2d 16 (D.C. Cir. 1972).

36. Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 40 F.C.C. 598 (1964) [hereinafter cited as Fairness Primer]. It should be noted that the doctrine is still under review. *See* The Handling of Public Issues Under the Fairness Doctrine and Public Interest Standards of the Communications Act, 30 F.C.C.2d 26 (1971).

37. Fairness Primer at 599. *See also Robert H. Scott*, 25 F.C.C.2d 239 (1970); San Francisco Women for Peace, 24 F.C.C.2d 156 (1970).

38. *See* note 28 *supra*.

39. 47 U.S.C. § 307(d).

40. *Id.*

When a complaint is received by the Commission, it is scrutinized to see if it warrants further consideration. If substantial, the Commission notifies the licensee of the contents of the complaint and requests the station's comments with regard to the matter.[41] There seems to be no particular format or wording required for the complaint. The "fairness primer" points out that the FCC's rulings must necessarily depend on the specific facts presented and therefore may vary greatly with those facts.[42] It also sets forth the allegations that should be contained in a complaint:[43] (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 complainant's claim that the station has presented only one side of the issue, and (5) whether the station has in the past, or plans in the future to afford an opportunity for presentation of contrasting viewpoints.[44] One commentator[45] adds yet another factor to be included in the complaint, the contention that the issue is controversial within the station's service area. It appears settled that general allegations alone will not suffice and that some degree of specificity is required.[46] But even then, a com-

41. Fairness Primer at 600.

42. *Id.* at 599-600.

43. *Id.* at 600.

44. In a footnote, the Primer indicates that the required information is to be collected by directing a request to the station for the same. It does not provide any further recourse to the complainant should the licensee refuse to divulge the information. Presumably stations would not resort to this tactic because of the adverse inferences to be drawn by the Commission. Fairness Primer at 600 n.4.

45. Swartz, *Fairness for Whom? Administration of the Fairness Doctrine, 1969-70*, 14 B.C. IND. & COM. L. REV. 457, 463 (1973). This requirement was apparently gleaned from the summary of rulings contained within the primer itself. For example, with regard to the issue of controversiality within the station's service area the Primer states, "A licensee cannot excuse a one-sided presentation on the basis that the subject matter was not controversial in its service area, for it is only through a fair presentation of all facts and arguments on a particular question that public opinion can properly develop." Fairness Primer at 603.

46. John K. Snyder, 17 F.C.C.2d 611 (1969). It is interesting to note that here the initial complaint was followed by a denial and/or answer by the station. The Commission grounded its non-action on the complainant's failure to respond to the answer within three days of receipt. *See also*

plaint still may not be perfected in the eyes of the FCC.

In February, 1973, the Diocesan Union of Holy Name Societies of Rockville Centre and the Long Island Coalition for Life complained to the Commission[47] with regard to a two-part episode of "Maude" which portrayed Maude's discovery that she was pregnant and her decision to have an abortion. Complainants alleged that the program "espoused a pro-death position by promoting abortion."[48] The demand was for "fairness time on the ground that abortion is a major controversial issue."[49] In dismissing the complaint the FCC stated that the complainants "[h]ave not provided the Commission with any information indicating that the station has presented only one side of such issue in its *overall* programming."[50] The Commission went on to state, that "before the Commission can take appropriate action on your complaint, it must receive specific information setting forth reasonable grounds for the conclusion that the licensee, in its overall programming, has not afforded reasonable opportunity for the presentation of contrasting views on the particular controversial issue of public importance involved."[51] While the "fairness primer" requires a complaint to allege the licensee's past or future plans for the presentation of contrasting viewpoints,[52] it is suggested that this allegation refers to specific programming within the complainant's knowledge or ascertainable from the station and is not meant to establish a burden of proof.

Commissioner Johnson wrote a scathing dissent[53] to accompany the Commission's refusal to review the dismissal of the above complaint. The dissent scored "the procedural straight-jacket in which the majority's decision straps fairness complaints; a restraint which,

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Federation of Citizens Ass'n of the Dist. of Columbia, 21 F.C.C.2d 12 (1969). *Cf.* Lexington-Richland Economic Opportunity Agency, 24 F.C.C.2d 505 (1970) for the handling of a petition for reconsideration of prior Commission non-action.

47. Letter from William B. Ray, Chief, Complaints and Compliance Division, FCC to Eugene James McMahon, June 12, 1973.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *See* note 42 *supra*.

53. Complaint by Diocesan Union of Holy Name Soc'y of Rockville Centre and Long Island Coalition for Life, 43 F.C.C. 2d 548 (1973).

in effect, denies them a substantive ruling until they meet a burden that, as a practical matter, can never be met."[54] Commissioner Johnson further stated that "it is ludicrous for this Commission to sanction a procedural rule requiring members of the *public* to submit *proof* of something the licensee has *not* broadcast."[55] The dissent noted that the fairness primer places the burden of providing information as to balanced programming on the licensee and not the complainant[56] and concluded, "[w]hile it is true that the death knell of the doctrine has, of late, been sounded rather frequently, it seems chicken-hearted to destroy it on as flimsy a procedural infirmity as the Commission has chosen today."[57]

Often the FCC drops a complaint after receiving the licensee's answer letter which presumably sets forth the balance he has maintained in terms of total programming.[58] It would appear that this rebuttal on the part of the station is procedurely critical. According to the "fairness primer," unless the FCC or the complainant requests further information upon receipt of these answering comments, the matter is usually disposed of without further proceedings.[59] In other cases, the Commission may pursue a full review and after a hearing, find no fairness violation. If a fairness violation is found, the Commission can issue a cease and desist order or render advisory opinions and rulings.[60] Even if no violation is found, after a full investigation, a station's entire fairness file is renewed during license renewal proceedings and the Commission can deny or revoke a license for noncompliance with the fairness doctrine. This rather drastic remedy has been rarely invoked.[61]

In any fairness question, the FCC's scope of review goes only to

54. *Id.* at 548-49.

55. *Id.* at 549.

56. *Id.*

57. *Id.* at 550.

58. *See* note 41 *supra*. *See also* Swartz, *Fairness for Whom? Administration of the Fairness Doctrine, 1969-70*, 14 B.C. IND. & COM. L. REV. 457-463 (1973) for a discussion of the heavy burden of proof placed upon the complaining listener.

59. Fairness Primer at 600.

60. *See generally* The Fairness Doctrine and Broadcast License Renewals: Brandywine-Main Line Radio Inc., 71 COLUM. L. REV. 452 (1971).

61. *See* note 35 *supra*.

the broadcaster's good faith and reasonableness.[62] The fairness doctrine's obligations are of a substantial nature and are not triggered by a mere passing reference to an issue.[63] In deciding if one side of a controversial issue of public importance has been presented, the whole program must be considered and a statement by statement analysis will not suffice.[64] The fairness doctrine requirements are non-delegable,[65] and cannot be discharged by alluding to the position taken by the other media.[66] The licensee has an affirmative duty to seek out and present contrasting views.[67] It must contact apparent spokesmen,[68] but may choose the individual or group that will go on the air.[69] The fairness doctrine requires only a reasonable opportunity for the presentation of contrasting viewpoints and does not require equal time.[70] However, a last minute invitation to appear[71] or a presentation of opposing views long after the initial broadcast[72] will not be viewed as compliance with the doctrine. While the counter-broadcast need not be on the same program that first presented one side of the issue,[73] it should appear in the same general time period.[74] Beyond these basic propositions, the Commission will not formulate any strict rule or standard for judging fairness doctrine compliance[75] or balancing the interests of the complainant, the licensee, or the FCC.

The Brandywine Decision

The competing interests within which the fairness doctrine oper-

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62. *See* note 37 *supra*.
63. Anthony R. Martin-Trigona, 19 F.C.C.2d 620 (1969).
64. National Broadcasting Co. 25 F.C.C.2d 735 (1970).
65. Fairness Primer at 605.
66. *Id.* at 605-06.
67. Wilbur E. Schonek, 19 F.C.C.2d 840 (1969).
68. Lincoln Smith and Earl J. Ormsby, 23 F.C.C.2d 45 (1970).
69. Fairness Primer at 608. *See* Cullman Broadcasting Co., 25 P&F Radio Reg. 895 (1963).
70. Fairness Primer at 606-07. Equal time does apply to the situation of a legally qualified candidate for public office. *See* note 4 *supra*.
71. *See* note 33 *supra*. Cullman Broadcasting Co., 25 P&F Radio Reg. 895 (1963).
72. National Broadcasting Co., 16 F.C.C.2d 956 (1969).
73. Fairness Primer at 608.
74. National Broadcasting Co., 16 F.C.C.2d 956 (1969).
75. Paul E. Fitzpatrick, 6 P&F Radio Reg. 543 (1949).

ates collided in *Brandywine-Main Line Radio, Inc. v. FCC*.[76] In that case, the Faith Theological Seminary, of which the Rev. Carl McIntire is President, sought permission to buy station WXUR which had encountered financial difficulties.[77] The Seminary's application to the FCC stated that programming would include general entertainment, talk shows, and religious programs.[78] Nevertheless, the application was heavily opposed,[79] presumably because of Rev. McIntire's association with the Seminary and his past right wing "partisan and extremist" views.[80] The Seminary subsequently amended its application to provide further evidence of its intent to provide balanced religious programming.[81] The Commission granted the transfer application but went to great lengths to reiterate and clarify the obligations incumbent upon the transferee under the fairness doctrine.[82] The Commission was specific in noting its reliance on the representations made in the transfer application.[83]

When Brandywine took over WXUR it made programming changes that had not been disclosed in the transfer application. In addition, the station delayed the broadcasts of several programs described in the application.[84] Substantial complaints were received by the FCC with regard to WXUR's compliance with the fairness doctrine[85] and when the station's license came up for renewal it again was heavily opposed.[86] The hearing examiner found that WXUR should be excused from the obligations of the fairness doctrine because of its small staff, that its programming was balanced by that of other licensees, and while it violated the Commission's personal attack rules, no sanctions should be imposed.[87] The FCC reversed this initial decision and denied the application for re-

76. 473 F.2d 16 (D.C. Cir. 1972).
77. *Id.* at 19.
78. *Id.* at 20.
79. Numerous community groups opposed the transfer. For a partial list see *Id.* at 20 n.7.
80. *Id.* at 20.
81. *Id.* at 31.
82. George E. Borst, 4 P&F RADIO REG. 2d 697 (1965).
83. *Id.*
84. 473 F.2d at 23.
85. *Id.* at 25.
86. *Id.* at 26.
87. Initial Decision of Hearing Examiner, 24 F.C.C.2d 42 (1970).

newal[88] citing non-compliance with the fairness doctrine[89] and personal attack rules,[90] and the misrepresentations made to the Commission.[91] Brandywine's application for reconsideration was also denied on these same grounds. The Commission stated that *Red Lion* had clearly established the validity of the fairness doctrine and the rules promulgated thereunder.[92] Brandywine then appealed.

The Court of Appeals for the District of Columbia began its discussion by examining the historical foundations of the fairness doctrine[93] calling it a " 'common law development' which has evolved from a long line of rulings by the Commission on a case by case basis."[94] It went on to state that the need for government regulation of broadcasting arose out of the fact that if everyone transmitted when they wanted on the frequency of their choice, no one could be heard. Thus the government would parcel out this scarce resource in the public interest.[95] After reiterating the obligations arising under the fairness doctrine,[96] the court grounded its holding of non-compliance on the absence of good faith on the part of Brandywine.[97] The court also found "complete disregard" for the personal attack rules[98] and again alluded to Brandywine's lack of good faith in as much as it had represented that it both understood and would adhere to those rules.[99] Brandywine's defenses that it was unable to

88. Brandywine-Main Line Radio, Inc., 24 F.C.C.2d 18, 35 (1970).
89. *Id.* at 21-25.
90. *Id.* at 34-35.
91. *Id.* at 28-32.
92. Brandywine-Main Line Radio, Inc., 27 F.C.C.2d 565, 566 (1971).
93. 473 F.2d at 40-41. In recounting the remarks of Congressman White, a sponsor of the Radio Act of 1927, the court inadvertently undermines its own arguments. Congressman White stated: "The recent radio conference . . . recognized that in the present state of scientific development there must be a limitation upon the number of broadcasting stations." Thus whatever the rationale for the fairness doctrine, be it a scarce resource held in trust or the public interest, it appears that the drafters of the Communications Act recognized that this reasoning could change in the light of advances in communication technology. 473 F.2d at 40 n.115.
94. *Id.* at 38-39.
95. *Id.*
96. *Id.* at 43-46.
97. *Id.* at 46.
98. *Id.* at 49.
99. *Id.* at 50.

screen programs prior to broadcast because of its small staff and that such screening would constitute censorship were held to be without merit.[100]

The court was most disturbed by the gross misrepresentations made by Brandywine, coupled with an apparently premeditated plan to deceive,[101] but it admitted that the first amendment considerations were the most serious stating that "any shortcomings in this area would necessitate our reversing the decision of the Commission."[102] The court began its analysis by stating that the first amendment was aimed at prior restraints[103] on freedom of speech and that such freedom was not entirely without limit.[104] The majority relied heavily on the scarcity rationale for the fairness doctrine when it said, "in the area of radio broadcasting, where the very physical limitations of the medium make this form of communication unavailable to all who would utilize it, the court has sanctioned the Commission's power of selective licensing."[105] According to the court, *Red Lion* had propelled the right of the public to be informed to a position superior to the first amendment rights of the licensee.[106] Because of the flagrant nature of Brandywine's transgressions and total breach of its fiduciary duty as a licensee, the court found no constitutional difficulty in upholding the Commission's findings and conclusions.[107] The court did not bar the door to future attack on the fairness doctrine completely: "As in the *Red Lion* case, we note that other questions in this area could pose more serious first amendment problems. Since such problems are not at issue here there is no need to hypothecate upon them."[108] One dissenting judge, however, had several such questions.

Chief Judge Bazelon put forth a cogent dissent on the ground that enforcement of the fairness doctrine in this case was a prima facie violation of the first amendment.[109] He stated: "The Federal Com-

100. *Id.*
101. *Id.* at 51.
102. *Id.* at 52.
103. *Id.* at 54.
104. *Id.* at 56.
105. *Id.*
106. *Id.* at 59.
107. *Id.* at 60.
108. *Id.*
109. *Id.* at 63.

munications Commission has subjected Brandywine to the supreme penalty: it may no longer operate as a radio broadcast station. In silencing WXUR, the Commission has dealt a death blow to the licensee's freedom of speech and press."[110] Judge Bazelon would have remanded to the Commission for an inquiry into possible alternative courses of action.[111] Moreover, the dissent further scored the public trust rationale for the fairness doctrine since this fiduciary duty is born of the need for allocating scarce frequencies and should not be extended beyond its genesis.[112] Thus it would appear that a licensee is only bound not to broadcast on other than its assigned frequency. To expand further the licensee's trusteeship so as to abrogate his first amendment rights is both illogical and unwarranted.

The dissent also notes that WXUR was doomed from the start.[113] As it was, the station was silenced. But even if reprieved, compliance with the fairness doctrine would have meant a slow death. In order to monitor its programming, WXUR would have had to expand its staff and facilities beyond its economic capabilities.[114] The dissent calls attention to the severe first amendment ramifications should FCC regulations represent an economic barrier to the exercise of free speech.[115] Furthermore, the chief judge notes that the fairness doctrine would force WXUR to "censor its views—to decrease the number of issues it discussed, or to decrease the intensity of its presentation."[116] In short, diversity of presentation would be chilled. Judge Bazelon also questioned the long run benefits to be derived from the fairness doctrine[117] and concluded that the holding in *Red Lion* is insufficiently broad to warrant the majority opinion.[118] It is also noteworthy that the dissent points out the tremen-

110. *Id.* at 63-64.
111. *Id.* at 64.
112. *Id.* at 68.
113. *Id.* at 70.
114. *Id.* at 61.
115. *Id.* at 70 n.29.
116. *Id.* at 70.
117. *Id.*
118. *Id.* at 71. Chief Judge Bazelon feels the exact holding of *Red Lion* to be: "The Congress and the Commission do not violate the First Amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials." *Id.* at n.31.

dous capability of cable television[119] and how it may well dispel all fears of future monopolization and limited access and put yet another nail in the coffin of the fairness doctrine.

The CBS Decision

Judicial discontent with the strict application of the fairness doctrine surfaced in a recent Supreme Court decision, *Columbia Broadcasting System v. Democratic National Committee.*[120] The case involved suits by the DNC and the Business Executives Move for Vietnam Peace (BEM) against several broadcast licensees[121] and the FCC. The Commission held that the licensees were not required to accept paid editorial advertising against the Vietnam War.[122] The court of appeals for the District of Columbia in a divided opinion reversed,[123] and held that a unilateral refusal to accept editorial advertising violated the first amendment. The court remanded to the Commission for its determination of a constitutional right of access.[124] The Supreme Court reversed and concluded that "the policies complained of do not constitute governmental action violative of the First Amendment."[125]

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119. "It is a fact that with existing equipment and technology a single coaxial [tv] cable can carry between 28 and 36 channels of television, plus the entire AM and FM radio bands and a quantity of other non-visual electronic signals." *Id.* at 76. *See also* Lapierre, *Cable Television and the Promise of Programming Diversity*, 42 FORDHAM L. REV. 25 (1973) for an exhaustive analysis of the impact of cable television.

120. 412 U.S. 94 (1973). *See also* Note, 62 GEO. L.J. 355 (1973).

121. Specifically named were the American Broadcasting Company, The Columbia Broadcasting System, and Post-Newsweek Stations, Capitol Area, Inc. 412 U.S. at 94.

122. Democratic National Committee, 25 F.C.C.2d 216 (1970); Business Executive's Move for Vietnam Peace, 25 F.C.C.2d 242 (1970). Paid editorial advertising involves the purchase of a specified amount of airtime for the broadcast of the purely personal views of the purchaser on any topic of his choice. The distinction between editorial and commercial advertising is not a clear one. *See, e.g.*, Wilderness Society and Friends of the Earth, 30 F.C.C.2d 643 (1971) where an Esso commercial concerning its efforts to extract oil without damaging the environment was held to present one side of a controversial issue of public importance. *Id.* at 646.

123. Business Executive's Move for Vietnam Peace v. FCC, 450 F.2d 642 (D.C. Cir. 1971).

124. *Id.* at 665.

125. 412 U.S. at 121.

Respondents contended that since the amount of broadcasting time dealing with anti-war expression was minimal, the licensees had violated the fairness doctrine. The stations refused to broadcast BEM's viewpoint citing a policy against accepting such editorial advertising.[126] A declaratory ruling was sought before the FCC which found no basis for requiring the acceptance of such advertising, and thus the battle lines were drawn. As the case progressed along the appellate process, the fairness doctrine allegations became increasingly less important and the first amendment and public interest mandate of the Federal Communications Act came to the fore.[127] Nevertheless, the litigation weighs heavily in the future of the fairness doctrine.

CBS signals a return by the Court to emphasizing the editorial discretion of the licensee. In analyzing the legislative intent behind the Communications Act the Court states, "Congress appears to have concluded, however, 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."[128] In support of this analysis, other sections of the Act are referred to, such as the prohibition against FCC censorship[129] and the exclusion of licensees from the duties and obligations of the common carrier.[130]

The Federal Communications Commission seems to have been result oriented with regard to its implementation of the fairness doctrine. As Chief Justice Burger stated, "The Commission's reasoning, consistent with nearly forty years precedent, is that so long as the licensee meets its 'public trustee' obligation to provide balanced coverage of issues and events, it has broad discretion to decide how that obligation will be met."[131]

126. The Court made note of the fact that the licensee had no such policy against commercial advertising. *Id.* at 118. This may have contributed heavily to the Court's finding of a First Amendment violation.

127. *See* Business Executive's Move for Vietnam Peace, 25 F.C.C.2d 242 (1970); Democratic National Committee, 25 F.C.C.2d 216 (1970), Business Executive's Move for Vietnam Peace v. FCC, 450 F.2d 642 (D.C. Cir. 1971).

128. 412 U.S. at 105.

129. *See* note 26 *supra*.

130. *See* notes 29-31 *supra*.

131. 412 U.S. at 118-19.

To establish a constitutional right of access to the airwaves would invoke many new and difficult considerations. Aside from the problem of allocating a frequency spectrum that is technologically capable of expansion, there is also the problem of dividing up a twenty-four hour day. In addition, a private right of access would effectively allow the licensee to avoid responsibility for the content of paid programming. The Supreme Court succinctly states the basic issue involved: "The question here is not whether there is to be discussion of controversial issues of public importance on the broadcast media, but rather who shall determine what issues are to be discussed by whom, and when."[132] Not all these questions are resolved in *CBS* and the Court itself did not approach unanimity in its analysis of the issues.[133] Noteworthy is the Court's discussion of the fact that the challenged ban on editorial advertising was not uniform throughout the broadcast industry.[134] It is difficult to tell what effect this had on the Court, but it appears to have been given considerable weight by Justice Stewart who said, "This variation in broadcaster policy reflects the very kind of diversity and competition that best protects the free flow of ideas under a system of broadcasting predicated on private management."[135] Thus, in deciding the possible violation of the fairness doctrine by one licensee, the Court is considering the policies of the entire industry. This seems to erode the strictly non-delegable character of the fairness doctrine obligations[136] and portends a realistic appraisal of the total flow of information to the public. Left unanswered is the fairness doctrine's relevance in light of technological and sociological changes, as well as the constitutional mandate of the first amendment. The Court's

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132. *Id.* at 130.

133. Chief Justice Burger delivered the opinion of the Court. Justices White, Blackmun, Powell, and Rehnquist joined the Chief Justice with respect to parts I, II, and IV of the opinion as did Justices Rehnquist and Stewart with respect to parts I, II, and III. Justice Stewart filed an opinion concurring in parts I, II, and III. Justice White filed an opinion concurring in parts I, II, and IV, as did Justice Blackmun with Justice Powell joining. Justice Douglas filed a separate opinion concurring in the judgment. Justice Brennan filed a dissenting opinion in which Justice Marshall joined.

134. 412 U.S. at 98. *See also Id.* at 143-44, (Stewart, J., concurring).

135. *Id.* at 144.

136. *See* note 65 *supra.*

analysis of these areas hints at future obsolesence of the fairness doctrine.

The Future of the Fairness Doctrine

Of great importance to the future development or demise of the fairness doctrine is the majority opinion's inference in *CBS* that the doctrine's foundation is a purely technological one.[137] A limited broadcast spectrum coupled with the "public trustee" role of the licensee brought about the need for enforced fairness. But the advent of cable television may offer a viewer four hundred channels from which to choose[138] and thus eliminate the basic rationale for *Red Lion*. Perhaps the most prophetic statement in this respect was put forth by Justice Stewart:

> This Court was persuaded in *Red Lion* to accept the Commission's view that a so-called fairness doctrine was required by the unique electronic limitations of broadcasting, at least in the then existing state of the art. Rightly or wrongly, we there decided that broadcasters' First Amendment rights were 'abridgeable' . . . . If we must choose whether editorial decisions are to be made in the free judgment of individual broadcasters, or imposed by bureaucratic fiat, the choice must be for freedom.[139]

The majority acknowledge that the entire area of communications law is in a process of evolution and that there is, "a continuing search for means to achieve reasonable regulation compatible with the First Amendment rights of the public and the licensee."[140] It seems clear that the fairness doctrine must rise, fall, or fail in the face of changing technology.

As the communications industry has grown through technology, so have the people it seeks to reach. If the licensed broadcast media were the sole source of information for the public, the fairness doctrine might have some justification. But people today read, listen, and discuss, and are constantly exposed to all sides of controversial issues of public importance.[141] Closely related to the public's access

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137. 412 U.S. at 101.

138. *Id.* at 158 n.8 *See also* note 119 *supra.*

139. 412 U.S. at 146.

140. *Id.* at 132.

141. Justice Douglas cites Professor Jaffe with approval: "The implication that the people of this country . . . are mere unthinking automatons manipulated by the media, without interests, conflicts, or prejudices is an assumption which I find quite maddening. The development of Constitu-

to divergent sources of information is the free speech paradox created in an urban environment. In a large city there are often many more broadcast licensees than newspapers. Yet the printed media enjoys far more first amendment protections.[142] This disparity in protection seems irreconcilable in view of the similarity of functions performed.[143] It would seem that need for the imposition of the fairness doctrine obligations, if such a need exists, should be tempered by the efficacy of these other sources of information.[144] The rationale behind the fairness doctrine is the right of the public to be informed[145] and it is submitted that this is being accomplished by other means. Simply stated, the doctrine has lost its *raison d'etre*.

Lurking ominously behind the fairness doctrine is the first amendment. Despite *Red Lion*, Justice Douglas would abolish the fairness doctrine solely on constitutional grounds.[146] The rest of the Court in *CBS* evades the problem by failing to find the necessary "government action."[147] But it seems clear that the fairness doctrine and the first amendment cannot share a peaceful coexistence. It may well be that the Court is waiting for a propitious opportunity to declare that the first amendment must prevail.[148]

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tional doctrine should not be based on such hysterical overestimation of media power and underestimation of the good sense of the American public." 412 U.S. at 152 n.3.

142. New York City, for example, has three major daily newspapers (the New York Times, the Daily News, and the New York Post), seven television stations, and numerous AM and FM radio stations. The Court in *CBS* notes that there are only 1792 daily newspapers in the United States. *Id.* at 144 n. 14. *See* note 2 *supra* detailing broadcast media statistics.

143. *See* New York Times v. Sullivan, 376 U.S. 254 (1964).

144. Professor Jaffe disagrees with the idea that the typical viewer or listener is so insulated that he receives no information other than that broadcast. *See* JAFFE, THE FAIRNESS DOCTRINE, EQUAL TIME, REPLY TO PERSONAL ATTACKS, AND THE LOCAL SERVICE OBLIGATION, IMPLICATIONS OF TECHNOLOGICAL CHANGE 2-3 (1968).

145. *See* note 18 *supra*.

146. 412 U.S. at 148.

147. *Id.* at 109-10.

148. That time may soon be upon us. NBC has chosen to appeal the imposition of the fairness doctrine in the area of investigative reporting. *See* N.Y. Times, Dec. 21, 1973, at 70, cols. 6-8.

Conclusion

When the "Marconi" was the only means of wireless communication, strict regulation of the broadcast spectrum was a necessity. When people received a large majority of their information from a few broadcast licensees, the imposition of rules mandating fair presentation of important issues had some justification. But in the present state of the communications industry this justification has evaporated. The Federal Communications Commission will soon be required to oversee a potential source of virtually unlimited information. People no longer cling to their radios for news of the world. Both the communications industry and the nation have outgrown the fairness doctrine.