

in which the Commission reversed its earlier ban on editorializing and dealt generally with the licensee's overall duty of fairness in treating controversial issues. It set forth a twofold affirmative obligation: first, to speak out on controversial public issues, although not necessarily in the format of station editorials; and, second, to ascertain and seek out all responsible viewpoints on controversial issues and afford the opportunity for such contrasting viewpoints to be heard.

Congress recognized the fairness doctrine in its 1959 amendments to section 315. Amended section 315, after establishing the exemption for bona fide news broadcasts, provides:

Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation 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.

Although the Commission has read this provision as a ratification of the fairness doctrine, there is no evidence that Congress, in amending section 315, actually intended to give specific statutory sanction to the doctrine. More probably, the intent was neither to approve nor disapprove of it, but merely to insure that section 315 would not interfere with it.

It is important at the outset to distinguish the fairness doctrine from the equal time requirements, with which it is often confused.

Unlike the equal time requirements the fairness doctrine puts an affirmative duty on the broadcaster to encourage and implement the broadcast of all sides of controversial issues. Unlike the equal time requirements the fairness doctrine does not necessarily require a station to grant equal time to all opposing viewpoints. A 10-minute commentary by the station on one side of a controversial school bond issue, for example, does not necessarily require that the station grant 10 minutes to all other sides. This flows from the fact that the obligation is, in theory, to insure fair treatment of the issue, not necessarily precisely equal time to the various sides. Unlike the equal time requirements the fairness doctrine does not in all cases require the station to offer time to outside person, group, or agency. If the scheduled programming is such that fairness is accorded to all sides over a reasonable period of time, then the station's obligations are, at least theoretically, met.⁹ However, I might note that where a station editorializes many licensees do not rely on this apparent flexibility but routinely seek out persons or groups having contrasting views and offer them an opportunity to express those views. Even where outside groups are sought out to insure fairness, however, the station has discretion in selecting who the spokesmen must be to give the contrasting views.¹⁰

An exception to this broad test of overall fairness, however, are the so-called personal attack rules which require that, where a station makes an attack upon the honesty, character, integrity, or like personal qualities of an individual or group, or takes a partisan position with respect to candidates and issues in a political campaign, it must provide the individual or group attacked with a script or tape of the broadcast prior to or at the time of the broadcast with a specific offer of a reasonable opportunity to respond over the station's facilities. The

⁹ E.g., Blair Clark, 12 P. & F. Radio Regulation 24 106 (1968).

¹⁰ E.g., Cullman Broadcasting Co., 25 P. & F. Radio Regulation 895 (1963).