

personal attack rules, which are being challenged as unconstitutional in the *Red Lion* case¹¹ pending in the Supreme Court, have now been codified into specific regulations which require opportunity to reply to personal attacks and also require the station to offer rebuttal time in the case of editorial endorsements of, or opposition to, qualified political candidates. These regulations have also been challenged in the Court of Appeals for the Seventh Circuit.¹²

I might note that the Supreme Court has agreed to defer consideration of the *Red Lion* case pending a decision in the seventh circuit on this appeal from the regulations themselves.

The Commission's enforcement of the fairness doctrine is substantially similar to its enforcement of the equal time requirements. Upon complaint that a licensee has not accorded fair coverage to a controversial public issue, the Commission forwards the complaint to the licensee and demands a reply. If the reply does not satisfy the Commission, it informs the station of the error of its ways, indicating perhaps that the matter may be considered at renewal time. In addition, it may demand from the licensee a statement of how it will comply with the doctrine in the future.

A notification to the applicant that the matter will be considered at renewal time is the kind of "lifted eyebrow"—to use the words of a former FCC Commissioner—technique which the Commission has employed in other aspects of broadcast regulation—usually with notable success. Generally, it is not so much the possible loss of a station's license as the threat of being forced through the ordeal of a hearing which makes the informal procedure effective. To reinforce this informal procedure, the Commission has in one recent case issued a 1-year renewal where a station's presentation of controversial public issues had been of questionable fairness.¹³

I might add it has also set another renewal application down for hearing for inquiry into its compliance with the fairness doctrine.

If the fairness doctrine has been incorporated into section 315, then enforcement methods such as cease and desist orders and fines would presumably be available although the Commission has not resorted to such methods. A major reason for "codifying" its new personal attack rules into regulations, was to make clear the availability of such methods to enforce policies.

The requirements of the fairness doctrine are elusive. The Commission has attempted to furnish guidance in its so-called fairness primer,¹⁴ which is chiefly a collection of various past rulings. Time does not permit a detailed review and analysis of these rulings. They are in any event a very uncertain guide. They tell us, for example, that civil rights,¹⁵ racial integration,¹⁶ the banning of nuclear testing,¹⁷ "krebiozen,"¹⁸ and pay TV¹⁹ are controversial issues of public importance,

¹¹ *Red Lion Broadcasting Co. v. FCC*, 381 F. 2d 908 (D.C. Cir. 1967), cert. granted, 36 U.S. Law Week 3226 (Dec. 4, 1967).

¹² *Radio Television News Director Association v. United States*, seventh circuit No. 16369.

¹³ *Lamar Life Broadcasting Co.*, 5 P. & F. Radio Regulation, 2d 205 (1965), reviewed on question of standing and whether license should be renewed at all, sub nom., *Office of Communication of the United Church of Christ v. FCC*, 359 F. 2d 994 (D.C. Cir. 1966).

¹⁴ Fairness Doctrine, 2 P. & F. Radio Regulation 2d 1901 (1964).

¹⁵ *New Broadcasting Co. (WLJB)*, 6 P. & F. Radio Regulation 258 (1950).

¹⁶ *Lamar Life Ins. Co.*, 18 P. & F. Radio Regulation 683 (1959).

¹⁷ *Cullman Broadcasting Co.*, 25 P. & F. Radio Regulation 895 (1963).

¹⁸ Report on "Living Should Be Fun" inquiry, 23 P. & F. Radio Regulation 1599 (1962).

¹⁹ *WSOC Broadcasting Co.*, 17 P. & F. Radio Regulation 548 (1958).