

this and will provide time for the presentation of such conflicting viewpoints." However it appears that this statement treats the rebuttal section of the Fairness Doctrine rather than the section requiring balanced and fair presentation of controversial issues. In view of the intrinsic importance of implementing the second section of the Fairness Doctrine, we believe that a hearing on this phase in the Station KTYM case would be desirable. Such clarification is doubly important because the owner of KTYM now has pending before the Commission an application to purchase television station KAIL-TV in Fresno, California. The question of whether he has operated his radio station in accord with the Fairness Doctrine's full meaning seems an essential fact for the Commission to know.

The Union is aware of the burdens which a hearing places upon a station licensee or applicant. Often such a hearing, if extensive, may effectively prevent the station from proceeding with its renewal application. However, even our brief survey of the station's programming tends to show such a glaring disregard of the Fairness Doctrine that a hearing should be held in order to determine the nature and extent of programming, if any, which has been broadcast by the station to balance the views expressed on the anti-Semitic programs. It is only after such a hearing, we submit, that the Commission can most accurately determine whether the license should be renewed.

Another recent elaboration of the fairness doctrine which has been noted by the Union is the ruling last June that the fairness doctrine applies to cigarette advertising. While the ACLU Board of Directors has not yet taken action on the matter, its Communications Media Committee has considered the question. The Committee endorsed the FCC action in the interest of balanced programming. The Committee agreed with the Commission's statement: "Governmental and private reports and Congressional action assert that normal use of this product can be a hazard to the health of millions of persons. The advertisements in question clearly promote the use of a particular cigarette as attractive and enjoyable. Indeed, they understandably have no other purpose. We believe that a station which presents such advertisements has the duty of informing its audience of the other side of this controversial issue of public importance—that however enjoyable, such smoking may be a hazard to the smoker's health." In light of the public health danger involved in cigarette smoking and in light of the one-sidedness of the material broadcast on it, the right to reply to the advertising in this instance is fully consistent with the principle of the fairness doctrine.

*Procedures for implementing the doctrine.*—The problem of what principles to apply is not the only question that needs clarification. Assuming one agrees on the principles, how do we make the fairness doctrine work? This, in turn, brings to the fore some of the elementary questions concerning FCC operations.

Over the years the Union has taken the position that a station must be judged on the totality of its programming over its three-year license period—criticisms of individual programs are not and should not be the basis for sanctions against a station. However, more recently we and other organizations have pointed to the fairness doctrine as the recourse for obtaining in specific cases (a) fairer treatment, and (b) presentation of more controversial issues on the air.

Although resort to the fairness doctrine has increased, persons worried about the involvement of government in programming content continue to express their fear of government control. One argument advanced is the administrative burden placed on the FCC to handle large numbers of complaints filed annually with the government agency. It has been pointed out that already important decisions are made at lower administrative echelons because of the inability of the few commissioners to deal with the heavy caseload. Although this anxiety covers the wide range of issues brought to the FCC, it seems clear that if there is increased reliance on the fairness doctrine, particularly if the more complicated "affirmative obligation" provision were to be actively pressed on stations, the FCC pipelines through which decisions flow might be further clogged. In addition to the administrative burden, the involvement of the FCC staff in the various stages of decision-making before ruling on a fairness complaint would accentuate that which is so feared already—government influence in programming.

If, despite the fear of government control, there is need to increase diversity—to have various sides of controversial issues heard—what can be done to strengthen the fairness doctrine?

The Union recommends the creation of machinery which would take off the shoulders of the FCC all of the responsibility for hearing and studying complaints of violation of the fairness doctrine, *except* for the final decision by the Commissioners themselves. This would be done by adapting the system employed in