

The federation includes representatives from all segments of advertising—manufacturers, advertising agencies, advertising media, advertising associations, and media associations. In addition, the federation represents 173 advertising clubs throughout the country with an aggregate membership of approximately 40,000 people.

My comments are directed to the issue of the extension of the application of the Fairness Doctrine to product advertising as touched on by Professor Jaffe.

It has been stated earlier in these discussions that the Fairness Doctrine itself is of questionable legal validity, with which I concur.

I do not agree with Professor Jaffe's contention that the case for a Fairness Doctrine application to cigarette advertising is "somewhat more persuasive" than its application to other types of communication.

At no time prior to the September 15, 1967, memorandum opinion and order of the Federal Communications Commission was there statutory or regulatory history suggesting that the doctrine was intended to cover general advertising in any form whatsoever.

Nowhere in congressional floor debates, testimony, or committee reports is there any reference to product advertising. The doctrine's application had been consistently and exclusively related to free or paid-for programing involving the presentations of controversial issues. I think the discussions in the past 2 days have clearly demonstrated that this has been the thrust of the doctrine.

Consequently, the Commission's ruling is not only a further extension of a questionable policy, but it is a radical departure from that policy as it had been understood and interpreted prior to that time.

In essence, the extension amounts to a regulation of advertising itself, contrary to FCC authority and jurisdiction or congressional intent. The general regulation of advertising has not been vested in the FCC by the Congress.

Further, the Congress itself has spoken on the cigarette issue. It has precluded the Federal Trade Commission's imposition of special health warning regulations in the cigarette package itself.

At the time this act was under consideration by the Congress, the FCC advised the Congress that it proposed no independent action with respect to broadcast cigarette advertising and that such advertising should not be specially regulated.

The subsequent law made no provision for any special FCC responsibility for cigarette advertising. Professor Jaffe says that broadcasting is not distinct, it is part of the whole. That being so, I believe it should be treated as such.

The singling out of the broadcast media for special regulation of its advertising is both highly discriminatory and manifestly unfair. It encroaches upon the freedom which broadcasting should enjoy equally with all other media.

The FCC rationale for its extension of the Fairness Doctrine to cigarette advertising is stated in paragraph 38 of its order:

It comes down, we think, to a simple controversial issue: the cigarette commercials are conveying any number of reasons why it appears desirable to smoke but understandably do not set forth the reasons why it is not desirable to commence or continue smoking.

It is the affirmative presentation of smoking as a desirable habit which constitutes the viewpoint which others desire to oppose.