

seventh circuit. The decisions in these cases should cast much light on the constitutionality permissible scope of regulation affecting program content.

As stated above, however, this paper does not deal with questions of the permissible scope of program regulation or the desirable extent of such regulation. Rather, the question examined herein is the statutory basis for the doctrine as reflected in the language of the Communications Act and the relevant legislative history.

Before taking up this legislative history, however, it would be well to establish definitions of terms and concepts to be used herein.

*Broadcast regulation affecting program content, as distinguished from technical regulation and economic regulation*

"Program content" refers to the substantive import of a broadcast communication. The degree to which the Fairness Doctrine, and other FCC policies, exert an influence on broadcast licensees with respect to their programming may be debated. It is clear, however, that such policies do have some effect on subject matter and mode of presentation.

Program content regulation, direct or indirect, should be differentiated from two other types of broadcast regulation: technical and economic. Technical regulation concerns the purely scientific or physical aspects of broadcasting. Under this heading would be included assignment of frequencies, signal power, hours of station operation, antenna location, and the like. Economic regulation deals with the financial and economic considerations peculiar to the broadcasting industry. It includes such topics as multiple station ownership and contractual relationships between networks and stations.

*Equal time*

This term refers to the requirement contained in section 315 of the Communications Act that legally qualified candidates for public office shall be afforded equal opportunity with competing candidates for the same office in the use of a licensee's facilities. While the words "equal opportunities" appear in the statute, they have been interpreted as being equivalent to equal time. In order to assert a right to equal time, an individual must himself be a legally qualified candidate, and the station's facilities must have undergone a prior use by a competing legally qualified candidate for the same office.

The concept of equal time for political candidates is often confused with the Fairness Doctrine (see below). For example, many communications have been received by this subcommittee which assert or suggest that a statement on some controversial issue raises an obligation on the part of a station licensee to provide equal time for some spokesman of a contradictory persuasion. While the Fairness Doctrine does require a reasonable opportunity for the discussion of opposing views on controversial public questions, it does not impose any "equal time" obligation for the presentation of such opposing views. Furthermore the mode of presentation is left to the licensee's good faith judgment.

The "equal time" obligation arises only when demand is made by a legally qualified candidate. Obligations under the Fairness Doctrine arise whenever a "controversial issue of public importance" is discussed, regardless of any request for presentation of contrasting viewpoints. Furthermore, the right of a candidate to equal time is not absolute; he is not entitled to free time to reply unless his opponent was