

The doctrine has also been applied to discussions of the nuclear test ban treaty.¹⁹

The licensee has been held to have an affirmative duty to encourage the presentations of contrasting views; he may not merely make time available upon request.²⁰ The licensee's duty to observe the Fairness Doctrine is not affected by the positions on public questions which may be taken by other media.²¹ The licensee may not seek to avoid Fairness Doctrine problems altogether by refusing to carry programs dealing with controversial issues.²²

C. COMMISSION RULES

The FCC has not promulgated any general rule or regulation on the Fairness Doctrine.²³ The Commission has decided Fairness Doctrine questions on an *ad hoc* basis.²⁴

On July 5, and August 2, 1967, the FCC adopted rules covering the special cases of personal attacks and political endorsements. These rules, however, are applicable only in the specialized fact situations to which they are addressed.²⁵

The reasons for the formal promulgation of these rules were stated by the Commission as follows:

The purpose of embodying the procedural aspects of the Commission's long-adhered-to personal attack principle and political editorial policy in its rules is twofold. It will clarify and make more precise the obligations of broadcast licensees where they have aired personal attacks and editorials regarding political candidates. Further, in the event of failure to comply with these rules, the Commission will be in a position to impose appropriate forfeitures (503(b) of the Act) in cases of clear violations by licensees which would not warrant designating their applications for hearings at renewal time or instituting revocation proceedings but on the other hand do warrant more than a mere letter of reprimand.²⁶

This raises by negative inference the question of whether violations of the Fairness Doctrine which do not involve personal attacks or political endorsements might be immune from fine under section 503(b) of the Act.²⁷

This in turn bears upon the question of whether the Fairness Doctrine is a statutory requirement or merely an administrative policy. If

¹⁹ Cullman Broadcasting Co., Inc., 25 R.R. 895 (1963).

²⁰ Fairness Primer, paragraph 9.; see also John J. Dempsey, 6 R.R. 615 (1950).

²¹ Letter to WSOB Broadcasting Co. 17 R.R. 548 (1958.)

²² See United Broadcasting Co., 10 FCC 515 (1945).

²³ A fact noted by the FCC in its Fourth Report and Order on Subscription TV. 10 R.R. 2d 1623, at page 1719 (note 48).

²⁴ On September 5, 1963, Chairman Harris of the House Commerce Committee addressed a letter to the FCC taking issue with the *ad hoc* approach to regulation under the Fairness Doctrine: "If the Commission in an attempt to achieve fairness seeks to apply its Fairness Doctrine to the content of individual programs involving the discussion of issues of public importance then, contrary to the policy of the Act, the Commission inevitably will inject itself into programming on a day-to-day basis."

The Commission defended its approach to Fairness Doctrine questions in its reply dated September 20, 1963. Letter to Oren Harris, 3 R.R. 2d 163 (1963).

²⁵ See note 2, above.

²⁶ Fairness Doctrine Rules, 10 R.R. 2d 1901 (1967), at 1904.

²⁷ The section reads, in part, as follows:

"Any licensee or permittee of a broadcast station who—
 (A) willfully or repeatedly fails to operate such station substantially as set forth in his license or permit,
 (B) willfully or repeatedly fails to observe any of the provisions of this Act or of any rule or regulation of the Commission prescribed under authority of this Act or under authority of any treaty ratified by the United States,
 (C) fails to observe any final cease and desist order issued by the Commission,
 (D) violates section 317(c) or section 509(a) (4) of this Act, or
 (E) violates section 1304, 1343, or 1464 of title 18 of the United States Code,
 shall forfeit to the United States a sum not to exceed \$1,000. Each day during which such violation occurs shall constitute a separate offense. Such forfeiture shall be in addition to any other penalty provided by this Act. * * *