

VII. ACTION BY THE COURTS, THE FEDERAL RADIO COMMISSION, AND THE FEDERAL COMMUNICATIONS COMMISSION RELEVANT TO THE FAIRNESS DOCTRINE—1927-1959

Comprehensive accounts of the circumstances which necessitated the Radio Act of 1927 may readily be found elsewhere.⁵⁸ The purpose of the following brief description is to review quickly the considerations which motivated this legislation since these historical facts have had their part in the formation of the Fairness Doctrine.

The first domestic law for the control of radio in general was the Radio Act of 1912. Under this Act, the then Secretary of Commerce and Labor was made responsible for licensing radio stations and operators. The enforcement of the first Radio Act presented no serious problems prior to the First World War since there were at that time more than enough frequencies for all the stations in existence, and questions of interference arose only rarely.

By 1925, however, the rapid increase in the number of AM stations caused problems which could not be met under the Radio Act of 1912. The courts had interpreted that Act as not providing authority to the Secretary of Commerce to impose restrictions as to frequency, power, and hours of operation.⁵⁹

The Secretary of Commerce finally issued a statement abandoning his futile efforts to regulate radio under the Radio Act of 1912, and urging that the stations undertake self-regulation. This plea went unheeded. Many broadcasters jumped their frequencies and increased their power and operating hours at will, regardless of the effect on other stations. The result was bedlam on the air.

President Coolidge, in his message of December 7, 1926, appealed to Congress to enact a comprehensive radio law to end the confusion.⁶⁰ The result was the Dill-White Radio Act of 1927.

The Radio Act of 1927 created a five-member Federal Radio Commission with regulatory powers to issue station licenses, allocate frequency bands to various services, and specify frequencies and power for individual stations.

As a result of new rules and regulations promulgated by the FRC, about 150 of the 732 operating broadcast stations surrendered their licenses.⁶¹

The Communications Act of 1934, the present law, was an extension of the Radio Act of 1927. The 1934 Act was intended to place under one regulatory agency all interstate and foreign communication by wire and radio.

The Fairness Doctrine is generally supposed to have received its first enunciation in the FCC's 1949 *Editorializing Report*.⁶² Although the term itself seems to have originated in reference to this document, the underlying rationale for the Doctrine appears to have evolved from a much earlier period in the regulation of radio.

⁵⁸ See *Regulation of Broadcasting*, supra note 51, pp. 1-7; *National Broadcasting Co., Inc. v. U.S.*, 319 U.S. 190 (1942) pp. 210-12.

⁵⁹ *U.S. v. Zenith Radio Corp.*, 12 F.2d 614 (N.D. Ill. 1926); see also the opinion of the Attorney General to the same effect, 35 Ops. Atty. Gen. 126 (1926).

⁶⁰ H. Doc. 483, 69th Cong., second sess., p. 10.

⁶¹ FCC *Broadcast Primer*, Inf. Bulletin No. 2-B (Feb. 1964).

⁶² *Editorializing by Broadcast Licensees*, 25 R.R. 1901 (1949).