

The Mayflower Doctrine remained in effect for almost 10 years. Since the Commission had actually renewed the station's license, relying on the licensee's sworn statement that he had desisted from editorializing, there was no appeal from the decision.

In 1948 the Commission held public hearings designed to clarify and reappraise its policies in this area. The result was the FCC's 1949 *Report on Editorializing by Licensees*.⁷³ This is still the definitive statement of the Fairness Doctrine. In the report, the FCC receded from its previous ban on editorializing. It now held that editorializing was permissible so long as the licensee maintained an overall balance in its broadcasting by affording opportunities for the presentation of conflicting points of view.

The Editorializing Report noted that the American system of broadcasting leaves to the individual licensee the responsibility for determining the specific program material to be broadcast. But, said the Commission, this choice must be exercised in a manner consistent with the basic policy of the Congress that radio be maintained as a medium of free speech for the general public as a whole rather than as an outlet for the purely personal interests of the licensee. The Commission held that this requires that the licensee devote a reasonable percentage of his broadcasting time to the discussion of public issues of interest to the community served, and that such programs be designed so as to give the public a reasonable opportunity to hear different or opposing views on such issues. To protests that such a policy constituted a form of censorship and violated the broadcasters' rights of free speech, the Commission answered:

There remains for consideration the allegation made * * * that any action by the Commission in this field enforcing a basic standard of fairness upon broadcast licensees necessarily constitutes an "abridgement of the right of free speech" in violation of the first amendment of the United States Constitution. We can see no sound basis for any such conclusion. The freedom of speech protected against governmental abridgement by the first amendment does not extend any privilege to government licensees of means of public communications to exclude the expression of opinions and ideas with which they are in disagreement. We believe, on the contrary, that a requirement that broadcast licensees utilize their franchises in a manner in which the listening public may be assured of hearing varying opinions on the paramount issues facing the American people is within both the spirit and letter of the first amendment.⁷⁴

In his dissenting statement to the *Editorializing Report*, Commissioner Jones stated:

I agree that radio station licensees may editorialize over their own facilities. I believe that any document establishing this policy requires a reversal of the Mayflower Broadcasting Company decision, 8 FCC 333, which fully and completely suppressed and prohibited the licensee from speaking in the future over his facilities in behalf of any cause. * * * I believe that the Commission thus violated that first amendment and that the Commission should acknowledge the unconstitutionality of the *Mayflower* decision and rule that the licensee may speak.⁷⁵

Commissioner Jones also questioned the FCC's application of the Fairness Doctrine as a prior restraint on the licensee's right to speak:

I cannot subscribe to the action of the Commission in expressly imposing prospective conditions on the exercise of the licensee's right to use the facilities of a station for purposes of editorialization. I would not say to the licensee as

⁷³ 25 R.R. 1901 (1949).

⁷⁴ *Id.*, p. 1911.

⁷⁵ *Id.*, p. 1914.