

promotion of the "virtues and values of smoking." There was also attached a reply to Mr. Banzhaf by WCBS-TV setting forth the programs which it had broadcast on the effect of smoking on health, taking the position that these programs provided contrasting viewpoints on this issue, and stating its view that the Fairness Doctrine may be inapplicable to commercial announcements solely aimed at selling products. In Mr. Banzhaf's complaint, he asserted that the WCBS-TV showing a compliance with the Fairness Doctrine was insufficient to offset the effects of advertisements broadcast daily for a total of 5 to 10 minutes each broadcast day.

3. The Commission ruled that the Fairness Doctrine is applicable to cigarette advertisements, but rejected Mr. Banzhaf's claim that the time to be afforded roughly approximate that devoted to cigarette commercials. We held that a station which carries commercials promoting the use of a particular cigarette as attractive and enjoyable is required to provide a significant amount of time to the other side of this controversial issue of public importance—i.e., that however enjoyable, such smoking may be a hazard to the smoker's health. We stated that here, as in other areas under the Fairness Doctrine, the type of programming and the amount and nature of time to be afforded is a matter for the good faith, reasonable judgment of the licensee, upon the facts of his situation; and that accordingly the initial judgment as to whether sufficient time is being allocated each week in this area by WCBS-TV is one for the licensee.

4. By a letter to the Commission dated June 23, 1967, CBS requests that the contents of its letter be treated as the comments of WCBS-TV on the complaint and that the Commission reconsider its ruling on the basis of these comments. CBS does not request a stay of the effectiveness of the ruling, but does challenge the merits of the ruling.

5. In support of their requests for relief, other petitioners urge that the ruling has broad implications and will affect all licensees carrying cigarette advertising though they did not have an opportunity to be heard prior to its adoption. It is asserted that substantial doubts as to the validity of the ruling are presented by the various requests for reconsideration and other relief, and that licensees will not dare risk noncompliance pending action on these pleadings lest their non-compliance be raised at license renewal time. It is further asserted that licensees would suffer irreparable damage in the interim by temporarily adhering to the ruling because they would risk loss of substantial amounts of advertising revenue and compliance would disrupt station advertising policies as well as give rise to scheduling and production problems. Consequently, petitioners state, fairness and an equitable administration of the Fairness Doctrine call for a suspension of the effectiveness of the ruling pending action on the petitions for reconsideration and rule making.

6. We agree that the ruling constitutes a precedent on an important issue which will affect licensees other than WCBS-TV and may necessitate a change in the operations of some. In view of the widespread interest in the ruling by persons who have not hitherto been heard, and since stay relief has been requested, we have decided to give expeditious consideration to the arguments made in all of the pleadings before us to determine whether anything has been advanced on the merits which would warrant reconsideration of our ruling, a stay of its effectiveness, or rule making in this area. The positions of the parties appear to be amply set forth in the pleadings on file, and we have given thorough consideration to the arguments made in reaching our decision. For the reasons set forth below, it is the conclusion of this Commission that nothing has been advanced which would warrant reconsideration or a stay of our ruling or rule making. However, in the circumstances, we have decided for reasons of equity that the conduct of licensees (including WCBS-TV) in applying the Fairness Doctrine to cigarette advertising prior to the publication date of this memorandum opinion and order (which we shall also mail to all broadcast licensees) will not be considered in connection with their applications for renewal of license; conduct subsequent to that date will receive consideration, in specific rulings where appropriate or at license renewal time.

I. PETITIONERS' ARGUMENTS ON THE MERITS

7. The principal contentions presented on the merits of the ruling are: (A) That the Fairness Doctrine is itself violative of the First and Fifth Amendments to the U.S. Constitution and hence cannot properly serve as a basis for delineating licensee responsibilities under the Communications Act; (B) that the Fairness Doctrine, even if constitutional, applies only to programming in the nature of