

public interest in broadcasting in the 1959 amendment of section 315(a) of the Communications Act, 73 Stat. 557, 47 U.S.C. 315(a), limited the scope of the doctrine to programing of that nature since it did not amend section 317 of the Act to incorporate a similar provision. It follows, the parties state, that the present ruling is an unprecedented extension of the Fairness Doctrine which is beyond the Commission's discretion or statutory authority.

10. We do not find these arguments persuasive. The Fairness Doctrine has its foundation in the obligation imposed on licensees by the Communications Act to operate in the public interest (see discussion, *infra*, par. 64), which includes the "basic policy of the 'standard of fairness'" and the "broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public controversy." H. Rept. No. 1069, 86th Cong., 1st sess., p. 5; S. Rept. No. 562, 86th Cong., 1st sess., p. 13; section 315(a); 1949 Report on Editorializing, 13 F.C.C. 1246, 1248-1249. That "one of the basic elements of any such operation" (13 F.C.C. at 1248) is a recognition by the licensee of "the right of the public to be informed" (13 F.C.C. at 1249) as to "opposing positions on the public issues of interest and importance in the community" (13 F.C.C. at 1258) when the licensee is presenting programing in the nature of news, commentary on public issues, or editorial opinion, does not mean that the licensee is relieved of his statutory responsibility for advertising broadcast over his facilities or his overall duty to operate in the public interest and to make a fair presentation of controversial issues of public importance in whatever context they may arise. Section 315(a); 1949 Report on Editorializing, 13 F.C.C. at 1257-1258. Moreover, the circumstance that Congress specifically incorporated in the Fairness Doctrine into the 1959 amendment to section 315 to make it "crystal clear" that the programing exemptions from the equal time requirement of that section did not exempt licensees "from objective presentation thereof in the public interest" does "not diminish or affect in any way Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public controversy." S. Rept. No. 562, 86th Cong., 1st sess., p. 13; 705 Cong. Rec. 14439.⁶ Most important, the amendment refers to the obligation imposed upon broadcast licensees "under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance" (emphasis supplied).

11. The Commission's present ruling that advertising falls within the public interest responsibilities of a licensee is not a novel or unprecedented policy determination. See concurring opinion of Mr. Justice Brennan in *Head v. Board of Examiners*, 374 U.S. 424, 437-441. This opinion sets out in detail the administrative and other pertinent history establishing the pattern of Commission regulation in this area. See paragraph 13, *infra*.

12. The Commission has always directed itself particularly to programing and advertising which bears upon public health and safety. The Federal Radio Commission denied a renewal of license to a station which broadcast a "medical question box" devoted to diagnosing and prescribing treatment of illnesses from symptoms given in letters from listeners, and which received a rebate on each prescription sold. *KFKB Broadcasting Association v. Federal Radio Commission*, 47 F. 2d 670, 671 (C.A.D.C.). The Radio Commission held, with judicial approval, that "the practice of a physician's prescribing treatment for a patient whom he has never seen, and bases his diagnosis upon what symptoms may be recited by the patient in a letter addressed to him, is inimical to the public health and safety, and for that reason is not in the public interest." *Id.*, at 671-672. The Communications Commission has similarly condemned advertising of alleged medical prescriptions and quack remedies which were deemed inimical to health, and granted renewal only upon assurances that such broadcasting would be discontinued. *Farmers and Bankers Life Insurance Co.*, 2 F.C.C. 455, 457-459. The Commission stated that "[a] broadcast station carrying such programs should be held to a high degree of responsibility, affecting as they may the health and welfare of the listeners, and careful investigation of such products,

⁶ Given the background to the 1959 amendments (see *Red Lion Broadcasting Company v. Federal Communications Commission*, *supra*), we are unable to see any significance in the fact that Congress did not also amend sec. 317 to incorporate the Fairness Doctrine expressly. In any event, as stated, the absence of a specific reference to the Fairness Doctrine in sec. 317 does not show a lack of Commission authority under the general provisions of the Act.