

Rather, particularly in light of the consideration set forth above (par. 50), we are not persuaded that the effect of our ruling on the amount of cigarette advertising presented on broadcast media will be significant.²⁸

52. We also fail to see how the ruling would require any major change in the operation of broadcast stations. In complying generally with the Fairness Doctrine in their overall broadcast operations, broadcast licensees are required to afford reasonable opportunity for the presentation of the other side of controversial issues of public importance when they choose to present one side, and to document their efforts upon complaint. Our rules require the keeping of program logs (see, e.g., §§ 73.111 and 73.112; see also sec. 303(j) of the Communications Act), and we are sure that licensees in the conduct of their business affairs presently keep full accounts as to advertising matters. Thus, we think that this particular controversial issue can be handled by licensees in a manner similar to their established practices in this area.²⁹

53. There is nothing in our ruling which would preclude or curtail the ability of cigarette manufactures to obtain advertising time on broadcast media. Licensees remain free to present such cigarette advertising as they choose. Conceivably, some licensees, in view of the mounting public concern as to the potential health hazard of cigarette smoking, might voluntarily decide to curtail or refrain from cigarette advertising broadcasts in the public interest. But that is appropriately a matter for licensee judgment as to how to conduct broadcast operations to serve the public interest, and not a requirement of our ruling. Under section 3(h) of the Communications Act, broadcasters are not common carriers and they cannot be compelled to present advertising which they do not wish to present. Moreover, cigarette manufacturers clearly have no right to insist that a broadcast licensee, who is willing to present cigarette advertising, present it in a manner that does not comport with his statutory obligation to operate in the public interest. Nor does a cigarette manufacturer have any legal right to complain that the use of radio to inform the public as to the potential health hazard of cigarette smoking may lead to some decline in cigarette sales or slow down the present trend of rising cigarette sales (FTC Report, pp. 4-7). Indeed, that is the very purpose of the educational efforts which Congress has directed HEW to undertake.

54. In sum, we see no merit to the contention that our ruling will lead to severe curtailment or possible elimination of cigarette advertising, or have a serious economic impact on the broadcasting industry, contrary to the intent of Congress in the Labeling Act. The ruling properly effectuates the responsibilities of broadcast licensees and this Commission under the Communications Act. There is no unlawful burden on interstate commerce nor conflict with Congressional intent in, or the provisions of, the Labeling Act.

H. THE PROCEDURAL CONTENTION

55. Finally, petitioners urge that the ruling is procedurally invalid because it effects an important and unprecedented change of policy which will affect all licensees and it was adopted without affording WCBS-TV, broadcast licensees generally and other interested persons an opportunity to be heard. CBS, in particular, asserts that this was a departure from the Commission's procedure of advising a licensee of a fairness complaint and requesting its comments (Fairness Primer, F.C.C. Public Notice of July 1, 1964, 29 F.R. 10415, 10416, cited with approval in the Red Lion case, *supra*, par. 8). CBS requests that the contents of its letter be treated as its comments on Mr. Banzhaf's complaint, and that we reconsider the ruling on the basis of such comments.³⁰

56. We have granted this request of CBS and have carefully considered its comments in determining that reconsideration is not warranted by the arguments contained in its letter. Our omission to seek the comments of WCBS-TV initially

²⁸ Certainly, there is no reason to anticipate that any such minimal impact could have any substantial adverse effect upon the ability of broadcast stations to serve the public interest. Cf. also FTC Report of June 30, 1967 at p. 10.

²⁹ We note that WCBS-TV apparently had no difficulty in ascertaining what programs that station had broadcast on this issue in response to Mr. Banzhaf's complaint.

³⁰ NBC notes that the Commission did not have before it the text of the three commercials Mr. Banzhaf referred to as examples. It has attached to its comments the texts of three advertisements and states that two of them appear to be those mentioned in the complaint and the third is probably the other. NBC further states: "They may show 'attractive' people 'enjoying' themselves while smoking cigarettes, but surely that does not constitute the expression of a viewpoint on whether smoking is a hazard to the smoker's health." For the reasons stated in par. 38 above, we do not think that the text of the particular advertisements was necessary to our ruling or to our decision on the requests for reconsideration.