

was occasioned by our view that Mr. Branzhaf's complaint, which enclosed his request to WCBS-TV and the reply of that station, adequately set forth the facts of the case and the positions of the parties. Since WCBS-TV has a continuing policy of presenting the smoking-health hazard controversy and asserted only its position that the Fairness Doctrine does not apply to advertising, our letter of June 2, 1967 to that station had two purposes: One, to apprise WCBS-TV of the Commission's view that the Fairness Doctrine does apply to cigarette advertising, as a matter of law and policy, and second, to bring to the station's attention our view that a sufficient amount of time must be allocated, usually each week, for the opposing viewpoint so that WCBS-TV could appropriately exercise its licensee judgment in connection with its continuing program. As stated in paragraph 6, *supra*, the effectiveness of the June 2d ruling will not be the basis for action against any licensee, including WCBS-TV, until publication of this memorandum opinion and order in the *FEDERAL REGISTER*. In the circumstances, and particularly the fact that we have fully considered the comments submitted by CBS on reconsideration, we conclude that WCBS-TV has not been prejudiced by the procedures followed in this matter.

57. It is true that other interested persons were not accorded an opportunity to be heard prior to the ruling. It is not the Commission's normal procedure or usual practice to accord the public in general an opportunity to be heard with respect to fairness complaints against a particular licensee, even though the complaint may involve an important issue of policy (see e.g., *Cullman Broadcasting Company*, FCC 63-849; *Times Mirror Broadcasting Co.*, 24 R.R. 404 and 407 (1962)). We thus followed long established procedures in this respect. In any event, we have now heard at length from the three television networks, numerous individual broadcast licensees, the NAB, and representatives of the advertising and tobacco industries. We have given extensive consideration to the arguments raised in support of their positions, and have found them without merit. Moreover, the ruling is not effective as to any broadcast licensee until publication of this opinion in the *FEDERAL REGISTER*. In the circumstances, we conclude that petitioners have been adequately heard and have suffered no prejudice.

58. Further, we are unable to conclude that any useful purpose would be served by affording petitioners a further opportunity for written comment or oral argument. The viewpoints of petitioners on the legal and policy issues are fully and amply set forth in the pleadings already filed, and nothing has been presented which would indicate the need or desirability of further study or proceedings; thus we are not persuaded that any public purpose would be served by initiating rule making in this area, as requested by the law firm of Smith, Pepper, Shack and L'Heureux. We note that the petition for rule making does not propose the adoption of any rules, but only the provision of a forum for consideration of the legal and policy arguments urged by petitioners and discussed herein. We do not think that a rule making proceeding is either needed or appropriate for their resolution.³¹

59. And, finally, we point out that we could not in any event conclude that stay relief would be warranted pending any such further proceedings. This is not only because we believe that petitioners have not shown any substantial likelihood of ultimately prevailing on the merits of their position, either before this Commission or the courts, but also because the public interest would require denial of such relief on injury grounds. We have already set forth the basis for our belief that compliance with the ruling will not cause any substantial adverse impact on the broadcasting or advertising industries. We have not been shown that any irreparable injury will flow to petitioners. In any event, in view of the strong public interest in adequately informing the public, and particularly teenagers, as to the health hazard involved in the cigarette habit which broadcast facilities are encouraging them to adopt and continue, we think, that any injury to the affected industries is outweighed by the danger of irreparable injury to the public. Indeed, if our ruling will contribute to the avoidance of one untimely death, the public interest would not be served by any delay in its effectiveness.

60. In connection with this latter point, we have taken into account the further studies which have been undertaken since the Advisory Committee Report by persons competent in this field. Most important, of course, is the recent HEW

³¹ As set forth in par. 43 above, we agree with the CBS position that licensee responsibilities under the Fairness Doctrine, in this as in other areas, should not be subject to per se guidelines, ratios or other rigid rules prescribed by the Commission. Accordingly, we would not undertake rulemaking to prescribe such standards in the absence of some compelling showing leading us to revise our present judgment (see par. 43) and to conclude that rulemaking in this particular area would be appropriate and would serve a useful purpose.