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F.C.C. Tries to Abolish TV Fairness & Decency Rules

Do you think the TV networks are biased in favor of policies and personalities that are leftwing, pacifist, anti-conservative, anti-defense, and anti-Reagan? Do you think that TV network programming is biased against traditional moral and religious values and in favor of illicit sex and violence?

TV and radio stations (but not networks) are today subject to gentle rules of fairness and decency. But the F.C.C. now wants to eliminate all such obligations and give TV and radio total freedom to promote their own policies, candidates and values, and to be just as unfair, biased, profane, and obscene as they choose.

What about the rights of the people who disagree with leftwing, pacifist, or sex-and-violence programming? The F.C.C. Chairman replies: "Let them buy a radio station." (That's the 20th century equivalent of Marie Antoinette's "Let them eat cake.")

In 1981 the F.C.C. asked Congress to abolish the Fairness Doctrine, but Congress declined to do so. Now the F.C.C. is trying to do an "end-run" around Congress and the law by "rulemaking" to accomplish the same goal. The public has until January 5, 1984 to file objections. The following letter was filed by Eagle Forum.

Eagle Forum

316 Pennsylvania Ave., S.E., Suite 203, Washington, D.C. 20003 (202) 544-0353

October 31, 1983

Mr. William J. Tricarico, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC 83-313
MM Docket No. 83-670

Dear Mr. Tricarico:

Please include this statement on behalf of Eagle Forum, a national organization that has been leading the pro-family women's movement since 1972, as part of your Notice of Proposed Rulemaking in the Matter of the Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, adopted June 29, 1983, and released August 4, 1983. I have enclosed eleven additional copies, as required, for distribution to all members of the Commission.

In the opinion of Eagle Forum, which has taken the lead among activist organizations around the country in using the F.C.C. Fairness Rules to gain access to the media, this proposed change in policy represents a shocking abrogation of responsibility to the public on the part of the Federal Communications Commission. Here are some reasons why the Commission's arguments are unpersuasive and irresponsible:

I. The First Amendment Does Not Belong to Broadcasters Alone

The rationale for this entire Rulemaking proceeding, as described in the introductory statements that describe it to the public (June 30 news release) indicates that the Commission is primarily concerned with the convenience of broadcasters and *their* rights, with little or no concern shown for the rights of other parties who have just as great an interest in F.C.C. policies with regard to programming, ascertainment, etc.

A. Today's Fairness Rules were designed to preserve and extend First Amendment principles into our

electronic age. They carefully balance the constitutional rights of three parties:

1. Broadcasters;
 2. Individuals and candidates who wish to get their message on the air; and
 3. Members of the general public, who have a right to be informed about the issues and candidates of the day.
- B. In its concern for creating an "unregulated, competitive marketplace environment for the development of telecommunications," the Commission is being over-solicitous of the preferences of broadcast licensees, while showing little or no

concern for those who need access to the media, and members of the general public who need access to a variety of opinions in order to be informed citizens.

- C. In spite of complaints from broadcasters, who would rather have a license to use the airwaves without any accountability to those who are denied the same privilege, the fact is that Fairness Rules do *not* impose unfair burdens on broadcasters.
1. Censorship is strictly forbidden by Section 326 of the Communications Act.
 2. There is an essential difference between print and electronic media.
 - a) The medium of print is accessible to almost anyone. A person can start one's own publication, or buy space in an existing one, or even pass out handbills on a streetcorner.
 - b) Pages can be added to a given newspaper or magazine, but there is no way to expand the broadcast day, or to provide frequencies for all those who apply for them. New broadcast technologies which are *not* used by the majority of people do not change this fact.
 - c) No one can get air time unless it is given or sold by a station manager.
 - d) Station owners are given the enormously valuable right to have exclusive use of a broadcast frequency; they therefore must have some responsibility to members of the public who are denied the same privilege. Newspapers, on the other hand, are accountable only to their owners and the people who buy the papers.
 3. Broadcasters are *not* required to surrender their facilities to the government or to anyone who demands access, except in certain narrowly-defined circumstances such as personal attack.
 - a) Anyone who understands the Fairness Rules, and who does not have an interest in exaggerating their true meaning, knows that with regard to the coverage of issues and/or candidates, the F.C.C. does *not* have the power to substitute its editorial judgment for that of the station manager.
 - b) The right to decide which issues will be discussed on which programs, by whom, and at what times, resides solely with the station management.
 4. The business of broadcasting is not entirely private.
 - a) For over a century, the American ethic has rejected an absolute laissez-faire philosophy.
 - b) Ever since the Sherman Anti-Trust Act, our national concept of private enterprise has included the restraining hand of government to prevent monopoly control of any industry.
 - c) Any broadcaster who does not want to comply with minimal obligations to serve the public may sell his station to one of the many companies waiting to take his place as a licensee.

II. Elimination of Fairness Rules Means A Drastic Shift of Power

Adoption of Options I or II under "Programming Policy and Guidelines" would, in effect, give broad-

casters the "freedom" to be as unfair, partisan, or obscene as they desire.

- A. Paragraph No. 51 of the recommendations suggests that "The determination of . . . how to address the issues would be left to the . . . discretion of the broadcaster."
1. This statement sounds reasonable and harmless enough, but the paper is misleading because it doesn't mention that the broadcaster already has "reasonable discretion" under present Fairness Rules.
 2. The Commission is being incredibly cavalier — even smugly sarcastic — in suggesting that it "would review a renewal applicant's programming in response to a *Petition to Deny* . . . [Such *Petitions to Deny*] based on programming considerations would be expected to present *specific facts* demonstrating the failure of a licensee to provide issue responsive programming." (emphasis added)
 - a) This statement is tantamount to suggesting that no member of the public can expect *fairness and balance* in the presentation of controversial issues of major public importance unless he or she is willing to pursue the most extreme, expensive, and cumbersome of legal devices — the *Petition to Deny*.
 - b) The statement is doubly ironic when coupled with further recommendations by the Commission that record-keeping requirements be scrapped along with other programming requirements.
 - c) Even under present Fairness Rules, only a tiny percentage of complaints, much less *Petitions to Deny*, have been accepted for action or even consideration by the F.C.C.
 3. The Option of eliminating program content guidelines would dislocate the balance between the First Amendment rights of the three groups concerned in the matter: that is, (a) broadcasters, (b) those who would gain access to the airwaves, and (c) members of the general public.
 - a) If absolute power to control what goes on the air is placed in the hands of a few media moguls (those few who own or operate a broadcasting station), it follows that absolute power would corrupt absolutely.
 - (1) The trend toward all-out unabashed advocacy journalism has already become more obvious in recent months, perhaps in response to the current move to eliminate Fairness Rules.
 - (2) As columnist Patrick Buchanan put it: "Eliminate equal time and the fairness doctrine and the nation's networks have been given unrestricted license to savage candidates they oppose, to silence opinions they detest, to shut off the microphones to Middle America." (4/13/82)
 - b) Statements in favor of concepts like objectivity in journalism, professional ethics, fairness, and responsibility of broadcasters to serve the public interest by allowing conflicting viewpoints to be heard on controversial issues, are *conspicuously absent* from this proposed rulemaking.
 - (1) Broadcasters who have deliberately flaunted

the rules in the past will find it even easier to do so if this policy change is adopted.

- (2) Without the Fairness Rules, station managers would have no responsibility whatsoever to air commercials or programs they don't agree with.
 - (3) Although the F.C.C. rarely steps in with punitive measures to enforce the rules, the existing rules do provide a useful standard and a basis for cooperation between a station and the public.
- B. On September 17, 1981, the F.C.C. voted to ask Congress to do away with the Fairness Doctrine and Equal Time rules, by amending the Federal Communications Law that governs the broadcasting industry. (Report No. 5068). The June 29, 1983 Notice of Proposed Rulemaking amounts to an attempt by the F.C.C. to "get around" the will of Congress, which did not follow the F.C.C.'s 1981 recommendation.
1. It is not reasonable to suggest that the Communications Law alone would be sufficient to protect the public interest when the F.C.C. is, in effect, suggesting that the law be rendered meaningless because of a lack of implementing guidelines.
 2. Nor is it acceptable to expect candidates who have been unfairly denied access to the media, or members of the general public who have not been allowed to hear the "other side" on important issues, to pursue their complaint with the Department of Justice. The overburdened court system in this country could not handle an additional burden of this kind — nor should it be expected to take over the F.C.C.'s responsibility in this area.
 - a) If the Commission's 1981 recommendations had been adopted by Congress, candidates for public office — even for Congress or the Presidency — would have no recourse if, for instance, broadcasters sold all their available time in the week just before an election to one candidate to the exclusion of the other.
 - b) In the same way, elimination of the programming guidelines in the Communications Law would leave people who want to hear or express ideas that conflict with those of the "media elite" without any leverage to gain access to the airwaves.
 3. Broadcasters who complain that the Fairness Rules amount to "censorship" or "government control" ignore the fact that the power to decide what will be on the air *already* resides in the hands of a tiny minority, that is, those who own TV stations and networks.
 - a) "Censorship" cannot be called "freedom of the press" just because it is done by private hands and not by the government.
 - b) Broadcasters do not own the First Amendment. The free speech rights of some, namely the "media elite," should not be "more equal" than the rights of others.
 - c) Without reasonable Fairness Rules to protect the public interest, station owners and a few networks would be able to make time available only to the highest bidders, or only to those who agree with their own views.
- C. This proposed Rulemaking proceeding makes several references to the desirability of allowing broadcasters to "innovate" in their programming, the better to "compete with alternative technologies." (Paragraph 54) But only two "innovations" come to mind that have not *already* been tried by conventional broadcasters:
1. One of these is explicit unedited versions of popular movies, plus pornographic movies and the fare offered by cable stations and channels such as the Playboy Channel. Networks have long envied the "freedom" of cable owners and operators to air films which include obscenities, explicit violence, unedited sex scenes, and other "adult" programs which could never be aired under today's standards.
 2. The other kind of "innovative programming" that the networks seem eager to produce could be described as all-out, full-length editorial advertisements that are thinly disguised as "entertainment."
 - a) The most obvious forerunner of this new genre of advocacy journalism is the planned ABC film "The Day After" to be aired November 20, 1983. The film has received an enormous amount of free publicity because it graphically portrays the destruction of Lawrence, Kansas by a nuclear bomb.
 - b) ABC's own Vice President Alfred Schneider was quoted by the *New York Times* as saying (with regard to "The Day After"), "Graphically, you are showing the core of the argument of those who are for a nuclear freeze." To date, ABC network has refused to air any pro-defense film, or even to sell time for a 30-second spot, which explains the space defense concept (which, in the words of President Reagan, would "make nuclear weapons obsolete").
 - c) ABC has said that it will run the film even if it doesn't sell a single commercial spot. This is tantamount to the network's saying that it is willing to take a \$7 million loss — the equivalent of a \$7 million political contribution to the nuclear freeze/pacifist movement.
 - d) The film is even more "innovative," in that it is incredibly graphic and visually horrible. It recognizes the hazard for children by a disclaimer advising "parental discretion." But ABC deliberately encouraged a children's audience by (1) showing the film in prime time, and (2) mailing a promotional study guide to every school in the country in order to maximize viewing by children. The parent's role and judgment are therefore undermined by pressure from the school.
 - 3) This film will greatly distort public knowledge, understanding, and discussion of the controversial issues surrounding nuclear deterrence, but the ABC network is hiding behind the technicality that the networks are not legally bound by the Fairness Doctrine. Some network affiliate stations, however, are allowing "fair time" to balance the impact of this one-sided film, in response to grassroots pressure. Elimination of Fairness Rules would, in effect, close the doors to even this option.

- D. Instead of repealing Fairness Rules, or rendering them meaningless by these new regulations, we believe they ought to be *extended* to the broadcasting networks, and that enforcement should be *strengthened*, not weakened.

III. The Ascertainment Process Should Be Improved, Not Eliminated

Options I and II under "Ascertainment" would, in effect, absolve broadcast licensees of any responsibility to the community. This proposed action is apparently in response to broadcasters who complain of "excessive paperwork." Instead of pursuing this recommendation, the Commission could protect the public interest by another approach:

- A. Instead of eliminating ascertainment interviews, their purpose should be made more realistic and helpful to members of the community who are concerned about the media.
1. Instead of determining "community problems" and listing programs that deal with those problems, broadcasters should actively solicit and record the views of people in the community on whether or not the station is being fair, responsive, and responsible in its overall programming.
 2. Ascertainment questions of the kind that deal directly with the station's programming efforts, instead of the "problems" of the community, would encourage more direct input from the viewers, both with regard to news/information and entertainment programming.
- B. This revision of the *purpose* of ascertainment interviews would do more to serve the local public interest than any possible action by the Washington-based F.C.C. It would also help to cut down on "paperwork."

IV. Commercial Interests Should Not Prevail Over Those of the Community

Options I and II under "Commercialization" have nothing to offer the viewers of television; they are designed only to serve the financial interests of broadcasters.

- A. Adoption of this policy would only serve those broadcasters who want to make maximum profits. The element of competition is lost when other broadcasters are free to do the same thing.
- B. Paragraph 58 proposes that television licensees be allowed "the utmost discretion in trying new or unconventional commercial techniques." The only "innovations" that come to mind in this regard are:
1. All-out editorial advertisement campaigns (without fair response time); or
 2. Nude advertising for "adult" films, liquor, lingerie, contraceptives, etc.

V. Program Logs/Reporting Requirements/Other Options

The overall trend of F.C.C. actions to de-regulate the broadcasting industry ignores economic realities and the trend toward monopolization of the media.

- A. The same giants that have dominated the communications industry to date, such as Time, Inc., Warner-Amex, Westinghouse, and networks such as ABC are now using their considerable economic clout to take over cable TV and other systems, in

the same way that newspaper conglomerates have swallowed up dozens of independent newspapers.

- B. "Free" conventional TV will likely remain as the primary information source for most Americans for a long time.
1. Less than 30% of American homes today are wired for cable. Some large cities, like Detroit, may not be wired for years because of the high cost in an economically-distressed area. Not everyone can afford cable, over-the-air subscription TV, or a satellite dish-antenna.
 2. We cannot afford to become a nation of information "haves" and "have-nots."
 3. Low-power, low-budget TV stations will not be protected by the F.C.C. from domination by more powerful stations. They are not the "answer."
 4. Local "community access" cable channels serve a useful purpose, but they cannot begin to compete with the impact of network news and public affairs programs, not to mention "entertainment" offerings such as ABC's "The Day After."
- C. The right of "access" is not the same as the *public's right to be informed*, which is the foundation stone of the Fairness Rules.
- D. The *commercial* marketplace of broadcasting must not be confused with the *marketplace of ideas* concept that is embodied in the First Amendment.
1. As the U.S. Supreme Court stated in its 1969 *Red Lion* decision:
"It is the purpose of the First Amendment to preserve an uninhibited *marketplace of ideas* in which truth will ultimately prevail, rather than to countenance monopolization of the market, whether it be by the government itself or a private licensee." (emphasis added)
 2. In Fairness Rules and reasonable requirements to protect the public interest, such as the responsibility to maintain program logs, are unnecessarily sacrificed on the altar of the commercial marketplace, the true marketplace of *ideas* would be narrowed to serve the interests of only those with power, influence, or popularity among the media elite.

In summary, the recommendations of this Proposed Rulemaking proceeding are hopelessly skewed to serve the special interests of broadcasters, to the detriment of those who would gain access to the media, and members of the general public who wish to be informed on the issues of the day. The interests of all three groups are equally important; the rights of one should not be sacrificed for the sake of the other. Therefore, the Proposed Rulemaking proceeding should be rejected.

Respectfully submitted,
Elaine Donnelly
Special Projects Director, Eagle Forum

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