Chapter 1 : Radio regulation in the United States - Wikipedia

Red Lion Broadcasting Co. v. Federal Communications Commission, U.S. (), while strongly suggesting that broadcast radio stations (and by logical extension, television stations) are First Amendment speakers whose editorial speech is protected, upheld the equal time provisions of the Fairness Doctrine ruling that it was "the right of.

Red Lion Broadcasting Co. Radio Television News Directors Assn. Syllabus The Federal Communications Commission FCC has for many years imposed on broadcasters a "fairness doctrine," requiring that public issues be presented by broadcasters and that each side of those issues be given fair coverage. After the commencement of the Red Lion litigation the FCC began a rule-making proceeding to make the personal attack aspect of the fairness doctrine more precise and more readily enforceable, and to specify its rules relating to political editorials. The fairness doctrine and its specific manifestations in the personal attack and political editorial rules do not violate the First Amendment. It is not necessary to decide every aspect of the fairness doctrine to decide these cases. Problems involving more extreme applications or more difficult constitutional questions will be dealt with if and when they arise. The Federal Communications Commission has for many years imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine, which originated very early in the history of broadcasting and has maintained its present outlines for some time. It is an obligation whose content has been defined in a long series of FCC rulings in particular cases, and which is distinct from the statutory [] requirement of of the Communications Act [note 1] that equal time be allotted all qualified candidates for public office. Two aspects of the fairness doctrine, relating to personal attacks in the context of controversial public issues and to political editorializing, were codified more precisely in the form of FCC regulations in The two cases before us now, which were decided separately below, challenge the constitutional and statutory bases of the doctrine and component rules. A book by Fred J. Cook entitled "Goldwater - Extremist on the Right" was discussed by Hargis, who said that Cook had been fired by a newspaper for making false charges against city officials; that Cook had then worked for a Communist-affiliated publication; that he had defended Alger Hiss and attacked J. Edgar Hoover and the Central Intelligence Agency; and that he had now written a "book to smear and destroy Barry Goldwater. After considering written comments supporting and opposing the rules, the FCC adopted them substantially as proposed, 32 Fed. Twice amended, 32 Fed. As they now stand amended, the regulations read as follows: The fairness doctrine is applicable to situations coming within [3], above, and, in a specific factual situation, may be applicable in the general area of political broadcasts [2], above. See, section a of the Act, 47 U. The categories listed in [3] are the same as those specified in section a of the Act. Provided, however, That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion. C Believing that the specific application of the fairness doctrine in Red Lion, and the promulgation of the regulations in RTNDA, are both authorized by Congress and enhance rather than abridge the freedoms of speech and press protected by the First Amendment, we hold them valid and constitutional, reversing the judgment below in RTNDA and affirming the judgment below in Red Lion. A Before , the allocation of frequencies was left entirely to the private sector, and the result was chaos. This doctrine was applied through denial of license renewals or construction permits, both by the FRC, Trinity Methodist Church, South v. After an extended period during which the licensee was obliged not only to cover and to cover fairly the views of others, but also to refrain from expressing his own personal views, Mayflower Broadcasting Corp. The broadcaster must give adequate coverage to public issues, United Broadcasting Co. When a personal attack has been made on a figure involved in a public issue, both the doctrine of cases such as Red Lion and Times-Mirror Broadcasting Co. Likewise, where one candidate is endorsed in a political editorial, the other candidates must themselves be offered reply time to use personally or through a spokesman. But insofar as there is an obligation of the broadcaster to see that both sides are presented, and insofar as that is an

affirmative obligation, the personal attack doctrine and regulations do not differ from the preceding fairness doctrine. The simple fact that the attacked men or unendorsed candidates may respond themselves or through [] agents is not a critical distinction, and indeed, it is not unreasonable for the FCC to conclude that the objective of adequate presentation of all sides may best be served by allowing those most closely affected to make the response, rather than leaving the response in the hands of the station which has attacked their candidacies, endorsed their opponents, or carried a personal attack upon them. B The statutory authority of the FCC to promulgate these regulations derives from the mandate to the "Commission from time to time, as public convenience, interest, or necessity requires" to promulgate "such rules and regulations and prescribe such restrictions and conditions. Moreover, the FCC has included among the conditions of the Red Lion license itself the requirement that operation of the station be carried out in the public interest, 47 U. This mandate to the FCC to assure that broadcasters operate in the public interest is a broad one, a power "not niggardly but expansive," National Broadcasting Co. United States, U. It is broad enough to encompass these regulations. The fairness doctrine finds specific recognition in statutory form, is in part modeled on explicit statutory provisions relating to political candidates, and is approvingly reflected in legislative history. In the Congress amended the statutory requirement of that equal time be accorded each political candidate to except certain appearances on news programs, but added that this constituted no exception "from the obligation imposed upon them 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. This language makes it very plain that Congress, in , announced that the phrase "public interest," which had been in the Act since , imposed a duty on broadcasters to discuss both sides of controversial public issues. Subsequent legislation declaring the intent of an earlier statute [] is entitled to great weight in statutory construction. Thirty years of consistent administrative construction left undisturbed by Congress until , when that construction was expressly accepted, reinforce the natural conclusion that the public interest language of the Act authorized the Commission to require licensees to use their stations for discussion of public issues, and that the FCC is free to implement this requirement by reasonable rules and regulations which fall short of abridgment of the freedom of speech and press, and of the censorship proscribed by of the Act. The section applies only to campaign appearances by candidates, and not by family, friends, campaign managers, or other supporters. Without the fairness doctrine, then, a licensee could ban all campaign appearances by candidates themselves from the air [note 13] and [] proceed to deliver over his station entirely to the supporters of one slate of candidates, to the exclusion of all others. In this way the broadcaster could have a far greater impact on the favored candidacy than he could by simply allowing a spot appearance by the candidate himself. It is the fairness doctrine as an aspect of the obligation to operate in the public interest, rather than , which prohibits the broadcaster from taking such a step. The legislative history reinforces this view of the effect of the amendment. Even before the language relevant here was added, the Senate report on amending noted that "broadcast frequencies are limited and, therefore, they have been necessarily considered a public trust. Every licensee who is fortunate in obtaining a license is mandated to operate in the public interest and has assumed the obligation of presenting important public questions fairly and without bias. See also, specifically adverting to Federal Communications Commission doctrine, id. Rather than leave this approval solely in the legislative history, Senator Proxmire suggested an amendment to make it part of the Act. This amendment, which Senator Pastore, a manager of the bill and a ranking member of the Senate Committee, considered "rather surplusage," Cong. In explaining the language to the Senate after the committee changes, Senator Pastore said: Senator Scott, another Senate manager, added that: It is true that the personal attack aspect of the fairness doctrine was not actually adjudicated until after , so that Congress then did not have those rules specifically before it. The statutory authority does not go so far. But we cannot say that when a station publishes personal attacks or endorses political candidates, it is a misconstruction of the public interest standard to require the station to offer time for a response rather than to leave the response entirely within the control of the station which has attacked either the candidacies or the men who wish to reply in their own defense. When a broadcaster grants time to a political candidate, Congress itself requires that equal time be offered to his opponents. It would exceed our competence to hold that the Commission is unauthorized by the statute to employ a similar device where

personal attacks or political editorials are broadcast by a radio or television station. The Communications Act is not notable for the precision of its substantive standards and in this respect the explicit provisions of , and the doctrine and rules at issue here which are closely modeled upon that section, are far more explicit than the generalized "public interest" standard in which the Commission ordinarily finds its [] sole guidance, and which we have held a broad but adequate standard before. Their contention is that the First Amendment protects their desire to use their allotted frequencies continuously to broadcast whatever they choose, and to exclude whomever they choose from ever using that frequency. No man may be prevented from saying or publishing what he thinks, or from refusing in his speech or other utterances to give equal weight to the views of his opponents. This right, they say, applies equally to broadcasters. For example, the ability of new technology to produce sounds more raucous than those of the human voice justifies restrictions on the sound level, and on the hours and places of use, of sound trucks so long as the restrictions are reasonable and applied without discrimination. Just as the Government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the Government limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound truck, or any other individual does not embrace a right to snuff out the free speech of others. When two people converse face to face, both should not speak at once if either is to be clearly understood. But the range of the human voice is so limited that there could be meaningful communications if half the people in the United States were talking and the other half listening. Just as clearly, half the people might publish and the other half read. But the reach of radio signals is [] incomparably greater than the range of the human voice and the problem of interference is a massive reality. The lack of know-how and equipment may keep many from the air, but only a tiny fraction of those with resources and intelligence can hope to communicate by radio at the same time if intelligible communication is to be had, even if the entire radio spectrum is utilized in the present state of commercially acceptable technology. It was this fact, and the chaos which ensued from permitting anyone to use any frequency at whatever power level he wished, which made necessary the enactment of the Radio Act of and the Communications Act of , [note 16] as the Court has noted at length before. It was this reality which at the very least necessitated first the division of the radio spectrum into portions reserved respectively for public broadcasting and for other important radio uses such as amateur operation, aircraft, police, defense, and navigation; and then the subdivision of each portion, and assignment of specific frequencies to individual users or groups of users. Beyond this, however, because the frequencies reserved for public broadcasting were limited in number, it was essential for the Government to tell some applicants that they could not broadcast at all because there was room for only a few. Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If persons want broadcast [] licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum. This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech. By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves. This is not to say that the First Amendment is irrelevant to public broadcasting. On the contrary, it has a major role to play as the Congress itself recognized in , which forbids FCC interference with

"the right [] of free speech by means of radio communication. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. Radio Station, U. Chafee, Government and Mass Communications It is the purpose of the First Amendment to preserve an uninhibited market-place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC. B Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of ,,, the Government could surely have decreed that [] each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week. The ruling and regulations at issue here do not go quite so far. They assert that under specified circumstances, a licensee must offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station. The expression of a political endorsement, or of a personal attack while dealing with a controversial public issue, simply triggers this time sharing. As we have said, the First Amendment confers no right on licensees to prevent others from broadcasting on "their" frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use. In terms of constitutional principle, and as enforced sharing of a scarce resource, the personal attack and political editorial rules are indistinguishable from the equal-time provision of , a specific enactment of Congress requiring stations to set aside reply time under specified circumstances and to which the fairness doctrine and these constituent regulations are important complements. That provision, which has been part of the law since , Radio Act of , 18, 44 Stat. The constitutionality of the statute under the First Amendment was unquestioned.

Chapter 2 : Red Lion Broadcasting Co., Inc. v. FCC :: U.S. () :: Justia US Supreme Court Center

Radio regulation in the United States was enforced to eliminate different stations from broadcasting on each other's airwaves. Regulated by the Federal Communications Commission, standardization was encouraged by the chronological and economic advances experienced by the United States of America.

After the commencement of the Red Lion litigation, the FCC began a rulemaking proceeding to make the personal attack aspect of the fairness doctrine more precise and more readily enforceable, and to specify its rules relating to political editorials. The fairness doctrine and its specific manifestations in the personal attack and political editorial rules do not violate the First Amendment. It is not necessary to decide every aspect of the fairness doctrine to decide these cases. Problems involving more extreme applications or more difficult constitutional questions will be dealt with if and when they arise. JUSTICE WHITE delivered the opinion of the Court The Federal Communications Commission has for many years imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine, which originated very early in the history of broadcasting and has maintained its present outlines for some time. It is an obligation whose content has been defined in a long series of FCC rulings in particular cases, and which is distinct from the statutory Page U. Two aspects of the fairness doctrine, relating to personal attacks in the context of controversial public issues and to political editorializing, were codified more precisely in the form of FCC regulations in The two cases before us now, which were decided separately below, challenge the constitutional and statutory bases of the doctrine and component rules. Red Lion Page U. A book by Fred J. Cook entitled "Goldwater -- Extremist on the Right" was discussed by Hargis, who said that Cook had been fired by a newspaper for making false charges against city officials; that Cook had then worked for a Communist-affiliated publication; that he had defended Alger Hiss and attacked J. Edgar Hoover and the Central Intelligence Agency, and that he had now written a "book to smear and destroy Barry Goldwater. After considering written comments supporting and opposing the rules, the FCC adopted them substantially as proposed, 32 Fed. Twice amended, 32 Fed. As they now stand amended, the regulations read as follows: The fairness doctrine is applicable to situations coming within [3], above, and, in a specific factual situation, may be applicable in the general area of political broadcasts [2], above. See section a of the Act, 47 U. The categories listed in [3] are the same as those specified in section a of the Act. Provided, however, That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion. C Believing that the specific application of the fairness doctrine in Red Lion, and the promulgation of the regulations in RTNDA, are both authorized by Congress and enhance, rather than abridge, the freedoms of speech and press protected by the First Amendment, we hold them valid and constitutional, reversing the judgment below in RTNDA and affirming the judgment below in Red Lion. A Before , the allocation of frequencies was left entirely to the private sector, and the result was chaos. Without government control, the medium would be of little use because of the cacaphony of competing voices, none of which could be clearly and predictably heard. This doctrine was applied through denial of license renewals or construction permits, both by the FRC, Trinity Methodist Church, South v. After an extended period during which the licensee was obliged not only to cover and to cover fairly the views of others but also to refrain from expressing his own personal views, Mayflower Broadcasting Corp. The broadcaster must give adequate coverage to public issues, United Broadcasting Co. When a personal attack has been made on a figure involved in a public issue, both the doctrine of cases such as Red Lion and Times-Mirror Broadcasting Co. Likewise, where one candidate is endorsed in a political editorial, the other candidates must themselves be offered reply time to use personally or through a spokesman. But insofar as there is an obligation of the broadcaster to see that both sides are presented, and insofar as that is an affirmative obligation, the personal attack doctrine and regulations do not differ from the preceding fairness doctrine. The simple fact that the attacked men or unendorsed candidates may respond

themselves or through Page U. B The statutory authority of the FCC to promulgate these regulations derives from the mandate to the "Commission from time to time, as public convenience, interest, or necessity requires" to promulgate "such rules and regulations and prescribe such restrictions and conditions. Moreover, the FCC has included among the conditions of the Red Lion license itself the requirement that operation of the station be carried out in the public interest, 47 U. This mandate to the FCC to assure that broadcasters operate in the public interest is a broad one, a power "not niggardly but expansive," National Broadcasting Co. United States, U. It is broad enough to encompass these regulations. The fairness doctrine finds specific recognition in statutory form, is in part modeled on explicit statutory provisions relating to political candidates, and is approvingly reflected in legislative history. This language makes it very plain that Congress, in , announced that the phrase "public interest," which had been in the Act since , imposed a duty on broadcasters to discuss both sides of controversial public issues. Subsequent legislation declaring the intent of an earlier statute Page U. The section applies only to campaign appearances by candidates, and not by family, friends, campaign managers, or other supporters. Without the fairness doctrine, then, a licensee could ban all campaign appearances by candidates themselves from the air [Footnote 13] and Page U. In this way, the broadcaster could have a far greater impact on the favored candidacy than he could by simply allowing a spot appearance by the candidate himself. The legislative history reinforces this view of the effect of the amendment. Every licensee who is fortunate in obtaining a license is mandated to operate in the public interest, and has assumed the obligation of presenting important public questions fairly and without bias. See also, specifically adverting to Federal Communications Commission doctrine, id. Rather than leave this approval solely in the legislative history, Senator Proxmire suggested an amendment to make it part of the Act. This amendment, which Senator Pastore, a manager of the bill and a ranking member of the Senate Committee, considered "rather surplusage," Cong. In explaining the language to the Senate after the committee changes, Senator Pastore said: Senator Scott, another Senate manager, added that: It is true that the personal attack aspect of the fairness doctrine was not actually adjudicated until after , so that Congress then did not have those rules specifically before it. The statutory authority does not go so far. But we cannot say that, when a station publishes personal attacks or endorses political candidates, it is a misconstruction of the public interest standard to require the station to offer time for a response, rather than to leave the response entirely within the control of the station which has attacked either the candidacies or the men who wish to reply in their own defense. When a broadcaster grants time to a political candidate, Congress itself requires that equal time be offered to his opponents. It would exceed our competence to hold that the Commission is unauthorized by the statute to employ a similar device where personal attacks or political editorials are broadcast by a radio or television station. Their contention is that the First Amendment protects their desire to use their allotted frequencies continuously to broadcast whatever they choose, and to exclude whomever they choose from ever using that frequency. No man may be prevented from saying or publishing what he thinks, or from refusing in his speech or other utterances to give equal weight to the views of his opponents. This right, they say, applies equally to broadcasters. For example, the ability of new technology to produce sounds more raucous than those of the human voice justifies restrictions on the sound level, and on the hours and places of use, of sound trucks so long as the restrictions are reasonable and applied without discrimination. Just as the Government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the Government limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound truck, or any other individual does not embrace a right to snuff out the free speech of others. When two people converse face to face, both should not speak at once if either is to be clearly understood. But the range of the human voice is so limited that there could be meaningful communications if half the people in the United States were talking and the other half listening. Just as clearly, half the people might publish and the other half read. But the reach of radio signals is Page U. The lack of know-how and equipment may keep many from the air, but only a tiny fraction of those with resources and intelligence can hope to communicate by radio at the same time if intelligible communication is to be had, even if the entire radio spectrum is utilized in the present state of commercially acceptable technology. It was this fact, and the chaos which ensued from permitting anyone to use any frequency at whatever power level he wished, which made

necessary the enactment of the Radio Act of and the Communications Act of , [Footnote 16] as the Court has noted at length before. It was this reality which, at the very least, necessitated first the division of the radio spectrum into portions reserved respectively for public broadcasting and for other important radio uses such as amateur operation, aircraft, police, defense, and navigation, and then the subdivision of each portion, and assignment of specific frequencies to individual users or groups of users. Beyond this, however, because the frequencies reserved for public broadcasting were limited in number, it was essential for the Government to tell some applicants that they could not broadcast at all, because there was room for only a few. Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If persons want broadcast Page U. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum. This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech. By the same token, as far as the First Amendment is concerned, those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves. This is not to say that the First Amendment is irrelevant to public broadcasting. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. Radio Station, U. Chafee, Government and Mass Communications 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 that market, whether it be by the Government itself or a private licensee. It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC. B Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of ,,, the Government could surely have decreed that Page U. The ruling and regulations at issue here do not go quite so far. They assert that, under specified circumstances, a licensee must offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station. The expression of a political endorsement, or of a personal attack while dealing with a controversial public issue, simply triggers this time-sharing. As we have said, the First Amendment confers no right on licensees to prevent others from broadcasting on "their" frequencies, and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use. The constitutionality of the statute under the First Amendment was unquestioned. There is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all. Such a result would indeed be a serious matter, for, should licensees actually eliminate their coverage of controversial issues, the purposes of the doctrine would be stifled. At this point, however, as the Federal Communications Commission has indicated, that possibility is, at best, speculative. The communications industry, and, in particular, the networks, have taken pains to present controversial issues in the past, and even now they do not assert that they intend to abandon their efforts in this regard. And if experience with the administration of these doctrines indicates that they have the net effect of reducing, rather than enhancing, the volume and quality of coverage, there will be time enough to reconsider the constitutional implications. The fairness doctrine in the past has had no such overall effect. That this will occur now seems unlikely, however, since, if present licensees should suddenly prove timorous, the Commission is not powerless to insist that they give adequate and fair attention to public issues. To condition the granting or

renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press. Congress need not stand idly by and permit those with licenses to ignore the problems which beset the people or to exclude from the airways anything but their own views of fundamental questions.

Chapter 3 : Red Lion Broadcasting Co. v. FCC ()

A Pennsylvania radio station, WGCB, was operated by the Red Lion Broadcasting Co. It broadcasted a minute presentation by the Reverend Billy James Hargis in its Christian Crusade Series, during which Hargis discussed a book by Fred J. Cook entitled Goldwater--Extremist to the Right.

Red Lion Broadcasting Company, et al. Federal Communications Commission, et al. Chief Lawyer for Petitioner: Roger Robb Chief Lawyer for Respondent: Archibald Cox Justices for the Court: Hugo Lafayette Black, William J. White writing for the Court Justices Dissenting: Justice White delivered the opinion of the Court and came to the conclusion that the federal government could place restrictions on broadcasters that could not be placed on ordinary individuals. He stated that "without government control, the medium would be of little use because of the cacophony of competing voices, none of which could be clearly and predictably heard. Justice White also explains that it is the rights of the viewers and listeners that is the most important, not the rights of the broadcasters. The Court did not see how the Fairness Doctrine went against the First Amendments goal of creating an informed public. The Fairness Doctrine required that those who were talked about be given chance to respond to the statements made by broadcasters. The Court believed that this helped create a more informed public. He claims that these frequencies should be used to educate the public about controversial issues in a way that is fair and non-biased so they can create their own opinions. Decision[edit] "Even where there are gaps in spectrum utilization, the fact remains that existing broadcasters have often attained their present position because of their initial government selection in competition with others before new technological advances opened new opportunities for further uses. Long experience in broadcasting, confirmed habits of listeners and viewers, network affiliation, and other advantages in program procurement give existing broadcasters a substantial advantage over new entrants, even where new entry is technologically possible. These advantages are the fruit of a preferred position conferred by the Government. Radio Television News Directors Association] reversed and the causes remanded for proceedings consistent with this opinion. Cook , and ordered it to send a transcript of the broadcast to Cook and provide reply time, whether or not Cook would pay for it. After the commencement of the Red Lion litigation the FCC began a rule-making proceeding to make the personal attack aspect of the fairness doctrine more precise and more readily enforceable, and to specify its rules relating to political editorials. The fairness doctrine and its specific manifestations in the personal attack and political editorial rules do not violate the First Amendment. It is not necessary to decide every aspect of the fairness doctrine to decide these cases. Problems involving more extreme applications or more difficult constitutional questions will be dealt with if and when they arise.

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Red Lion Broadcasting challenged the application of the fairness doctrine with respect to a particular broadcast. In a companion case (United States v. Radio Television News Directors Association (RTNDA)), the fairness doctrine's requirements concerning any broadcast were challenged.

Service to minority groups. The FCC noted that the categories were not intended as "a rigid mold or fixed formula for station operations," but rather were "indicia of the types and areas of service which, on the basis of experience, have usually been accepted by broadcasters as more or less included in the practical definition of community needs and interests. In the years following the Programming Policy Statement, the FCC adopted guidelines for minimum amounts of news, public affairs, and other non-entertainment programming, 31 and primetime access rules to encourage non-network and local programming. As new media industries arose and a new set of FCC Commissioners took office, the FCC made a major policy shift by adopting a marketplace approach to public interest goals. Pursuant to its marketplace approach, the FCC embarked on a sweeping program of deregulation, eliminating a number of long-standing rules designed to promote program diversity, localism, and compliance with public interest standards. These rules included requirements to maintain program logs, limit advertising time, air minimum amounts of public affairs programming, and formally ascertain community needs. Yet market forces have not necessarily generated the kinds of quality, noncommercial programming that Congress, the FCC, and others envisioned. Although Congress gave broadcasters broad editorial control of the airwaves under the Communications Act, it retained two common-carrier-like provisions to ensure access for legally qualified candidates for Federal office. The "equal opportunities" provision of the Act -- often referred to as "equal time," or Section -- gives candidates the legal right to airtime if their opponents are given or buy airtime. It enacted Section a 7 of the Communications Act, the practical effect of which is to give candidates the right to buy at least some airtime and to specify the format and placement of their ads. This unexpected use of Section prompted Congress to amend it, exempting four categories of news programs from equal-opportunity requirements. Another complication arose in when Congress decided to suspend the rules to allow the Kennedy-Nixon debates to proceed without networks having to grant airtime to minor candidates. This exception for candidate debates was formalized and broadened in , when the FCC ruled that candidate debates are "bona fide news events" and therefore covered by Section exemptions. For instance, the Zapple rule requires that if a broadcaster gives or sells airtime to supporters of one candidate, it must give or sell similar airtime to supporters of opposing candidates. Democratic National Committee held that broadcasters have total discretion over whether to accept or reject editorial advertisements. But this editorial control was justified in part, the Court noted, because the Fairness Doctrine discussed below and broadcast news otherwise ensure that the public can hear diverse perspectives on contro- versial issues. Citizen Access to the Airwaves. For many years, the chief legal vehicle for citizens to gain direct access to the airwaves -- or hear diverse viewpoints on controversial public issues -- was the Fairness Doctrine. In an effort to be even-handed, the FCC held in the Mayflower ruling in that a broadcast station could never editorialize because it would flout the public interest mandate that all sides of a controversial issue be fairly presented. Licensees, the FCC said, must present "all sides of important public questions fairly, objectively and without bias. It had two prongs. One required that broadcasters devote a reasonable amount of time to cover controversial issues of public importance. In the s, procedures for enforcing the Fairness Doctrine were fortified. In addition, existing principles of the Fairness Doctrine were enforced more aggressively, particularly with respect to commercial advertising, news coverage, and personal attacks. In , the FCC formally articulated the principle that the presentation of only one side of an issue during a sponsored program such as an attack on the proposed Nuclear Test Ban Treaty required free airtime for opposing views -- a rule known as the Cullman Doctrine. Cook an opportunity to reply to a personal attack on him during a paid program. Cook sued, citing the Fairness Doctrine, and prevailed in the Supreme Court. FCC decision in upheld the constitutionality of the public interest standard in general and the Fairness Doctrine in particular. For their part, broadcasters complained that the rule had a "chilling effect" on their free speech by

discouraging them from airing programming on controversial issues. In , the FCC agreed and determined that the Fairness Doctrine was incompatible with the public interest. Court of Appeals for the D. The principle was adopted by the FRC and the FCC has cited it periodically as an important component of programming and the license renewal process. If he has accomplished this, he has met this public responsibility. But others have been less conscientious. Although some television stations criticized ascertainment procedures as empty and costly formalisms, many community leaders saw the procedures as a useful requirement that can lead to responsive local programming. In any case, the FCC removed formal ascertainment requirements from its books in as part of its new deregulatory approach. Localism was one reason why Congress enacted the "all-channel" law -- a law that required that all television receivers be capable of receiving both VHF and UHF signals. The idea, according to a House committee report, was to "permit all communities of appreciable size to have at least one television station as an outlet for local self-expression. A Circuit Court ruling in held that citizens have the right to participate in the FCC license renewal process. Localism has been such a central feature of broadcast television that Congress in declared: There is a substantial governmental interest in ensuring its continuation. Community programming and service are public interest responsibilities that distinguish broadcasting from most other electronic media. Moreover, it is difficult to define "quality" programming in an enforceable way. The Commission did, however, issue a Policy Statement in which it stated, "broadcasters have a special obligation to serve children. Still, the authority of the FCC to require programming to meet the needs of children was later upheld by the D. Circuit Court in ACT v. The Telecommunications Act of encouraged the television industry to develop a voluntary ratings system that allows parents to assess the suitability of programming for their children. This measure is designed for use in conjunction with the so-called V-chip in television sets, which will enable parents to block objectionable programming. Access by Persons with Disabilities Just as Congress has expanded choices for children and parents through Federal mandates, it has sought to expand television access for individuals with disabilities. These efforts have primarily focused on the expansion of closed captioning and the use of video descriptions. Since , the FCC has reserved Line 21 of the vertical blanking interval of analog television signals for the transmission of closed captioning. The captions, which parallel the audio content of television programming, are decoded and generated into visual characters which are displayed on TV screens. Since that time, the number of programs broadcast with captions has grown dramatically, and captioning has become widely used among the 28 million Americans who are deaf and hard of hearing, among individuals learning English as a second language, and among individuals seeking to attain literacy. Congress has recognized the public interest in expanding captioning access through two key legislative acts. The Television Decoder Circuitry Act TDCA , passed in , requires all television sets with screens 13 inches or larger manufactured or imported into the United States after July 1, , to display closed captions through a "decoder chip" built into the sets. The TDCA -- originally patterned after the All Channel Receiver Act of which mandated the inclusion of UHF tuners in all television sets -- was intended to expand the caption viewing audience, and thereby create the necessary economic incentives for networks to caption more of their programs. Anticipating the advent of digital television technologies, Congress also included a section in the TDCA requiring the FCC to ensure that, as these technologies are deployed, closed captions will continue to be available to viewers without the need for separate decoders. In order to address this situation, Congress enacted Section of the Telecommunications Act of , which sets forth extensive requirements for the provision of closed captions on television. An FCC rulemaking implementing this section requires percent of all non-exempt "new" programming, defined as programming first published or exhibited after January 1, , to be captioned over a period of 8 years. Seventy-five percent of older or "pre-rule" non-exempt programming, first published or exhibited prior to January 1, , must be captioned over a year period, by That section directed the FCC to conduct a study on the feasibility of requiring video descriptions on television programming. Video Descriptions consist of verbal descriptions of key visual elements in a video program, and offer, for example, information about settings, gestures, costumes, and actions. In the resulting Video Accessibility Report to Congress, the FCC concluded that the record was insufficient to assess appropriate methods and schedules for phasing in video description. The FCC continues to monitor this issue through its annual report on competition in video markets. Equal

Employment Opportunity Ensuring that equal employment opportunities exist at the workplaces of broadcast licensees is another important component of the public interest standard. Equal employment opportunity EEO is a well-established national policy. Similarly, the FCC, in implementing the public interest standard, has long sought to ensure that diverse viewpoints, including those of minorities, are expressed in programming and included in programming decisions. A licensee who discriminates in employment policies or practices is not likely to fulfill the ascertainment function well. Indeed, the very fact of discriminatory hiring policies may effectively cut the licensee off from success in such efforts. The FCC first issued EEO rules in when it prohibited discrimination among licensees and required that they review their employment policies and practices to identify any barriers to equal opportunities. Broadly speaking, FCC rules prohibit broadcasters from overt discrimination on the basis of race, color, national origin, religion, and gender. The FCC requires that broadcasters whose results fall below certain benchmarks demonstrate that they have sought to recruit members of minority groups and women. Circuit declared its minority recruitment rules unconstitutional. Conclusion Although some of its specific applications have been controversial, the public interest standard is widely accepted as integral to broadcasting. As the new era of digital television arrives, the times demand a thoughtful re-engagement with the meaning of the public interest standard. Many existing principles of public interest performance will likely need new interpretations in light of the new technology, market conditions, and cultural needs. In this spirit, the Advisory Committee turns now to some imaginative, flexible, and effective strategies that it believes will help ensure that the traditional public purposes of broadcast television will continue to be met in the digital era. Endnotes 1 Communications Act of , ch. It specifies that Commission may issue, modify, or renew a broadcast license if it determines that the "public interest, convenience, or necessity would be served" thereby. It also provides that broadcast licenses may not be transferred "unless the Commission shall, after securing full information, decide that said transfer is in the public interest. See also Radio Act of , ch. FRC quoted in John W. League of Women Voters U. Some constitutional law scholars, however, cite language in many of these cases to suggest that the Court might be willing to reconsider Red Lion under appropriate circumstances. United States, U. The Brandeis Opinion in Whitney v. Prentice Hall recounting history of the regulation of broadcast programming. In general, any renewal or assignment application that fell short of the guidelines had to be sent to the full Commission for action. These guidelines were adopted in and repealed by the FCC in The rationale for the rule was to allow non-network production houses to produce programming for the vacated time periods. Television Producers and Distributors v. The FCC repealed the rules in Fowler, aggressively pursued television deregulation. The major litigation on deregulation and repeal of program guidelines concerned the repeal of radio rules in , and was over before television deregulation was adopted in Deregulation of Radio, 84 FCC 2d , recon. Office of Communications of the United Church of Christ v. Black Citizens for A Fair Media v. Syracuse Peace Council v. In , the Commission announced it would no longer apply the doctrine to ballot issues.

Chapter 5 : Red Lion Broadcasting Co. v. FCC | law case | calendrierdelascience.com

Find an answer to your question The case, red lion broadcasting company v. fcc, confirmed the fcc's regulation called.

Two musical selections, the reading of a poem, and a short talk apparently constituted the program, which was heard by ship wireless operators within a radius of several hundred miles. Following the relaxation of military restrictions on radio at the conclusion of World War I , many experimental radio stationsâ€”often equipped with homemade apparatusâ€”were operated by amateurs. The range of such broadcasts was only a few miles, and the receiving apparatus necessary to hear them was mostly in the hands of other experimenters, who, like the broadcasters, pursued radio as a hobby. Among the leading personalities of this early period was David Sarnoff , later of the Radio Corporation of America and the National Broadcasting Company , who first, in , envisaged the possibility of a radio receiver in every home. Growth of commercial radio From this beginning the evolution of broadcasting was rapid; many persons who wanted to hear music from the air soon created a demand for receivers that were suitable for operation by the layman. The increase in the number of listeners in turn justified the establishment of stations especially for the purpose of broadcasting entertainment and information programs. The success of the KDKA broadcast and of the musical programs that were initiated thereafter motivated others to install similar stations; a total of eight were operating in the United States by the end of The popularity of these early stations created two possible sources of financial support to offset the operating costs of broadcasting. First, there were possibilities for profit in the manufacture and sale of radio receiving equipment, and, second, the fame attained by the organizations operating the first broadcasting stations called attention to the value of broadcasting as an advertising medium. Advertising eventually became the principal means of support for broadcasting in the United States. Between and the sale of radio receiving sets and of component parts for use in home construction of such sets began a boom that was followed immediately by a large increase in the number of transmitting stations. Interconnection of stations The use of long-distance wire telephone lines in to connect a radio station in New York City with one in Chicago to broadcast a description of a gridiron football game introduced a new idea into radiobroadcasting. In the National Broadcasting Company purchased WEAF in New York and, using it as the originating station, established a permanent network of radio stations to which it distributed daily programs. Some of these programs were sponsored by advertisers and furnished revenue to both the network and its associated stations, while others were supported by the network, with a portion of the time being set aside for public-service features. Government regulation Although the growth of radiobroadcasting in the United States was spectacularly swift, in the early years it also proved to be chaotic, unplanned, and unregulated. Furthermore, business arrangements that were being made between the leading manufacturers of radio equipment and the leading broadcasters seemed to threaten monopoly. Congress responded by passing the Radio Act of , which, although directed primarily against monopoly, also set up the agency that is now called the Federal Communications Commission FCC to allocate wavelengths to broadcasters. The first initiatives after World War I were taken by commercial firms that regarded broadcasting primarily as a means of point-to-point communication. The first successful broadcasting of the human voice, from a transmitter in Ireland across the Atlantic in , led to the erection of a six-kilowatt transmitter at Chelmsford , Essex. From this spot two daily half-hour programs of speech and music, including a well-received broadcast by the opera singer Dame Nellie Melba , were broadcast for about a year between and Experimental broadcasts, the Post Office ruled, had to be individually authorized. Nevertheless, about 4, receiving-set licenses and amateur transmitting licenses issued by the Post Office by March were evidence of growing interest. When these amateurs, grouped into 63 societies with a total of about 3, members, petitioned for regular broadcasts, their request was granted in a limited form: The first of these authorized broadcasts, from a hut at Writtle, close to Chelmsford, took place on Feb. Shortly thereafter an experimental station was authorized at Marconi House in London, and its first program went on the air May 11, Other stations were soon to follow. Formation of the British Broadcasting Company By this time developments in the United States had demonstrated the commercial possibilities of radio but also suggested a need for greater order and control. The Post Office took the initiative in encouraging

cooperation between manufacturers, and on Oct. Only bona fide manufacturers were permitted to hold shares, and the directors of the firm, all of whom represented manufacturing interests, met under an independent chairman. Because the British Broadcasting Company was a monopoly and because British radio as a result developed in a more orderly manner than elsewhere, such problems and issues of broadcasting as control of finance, broadcasting of controversy, relations with government, network organization, and public-service broadcasting became apparent, and solutions were sought in the United Kingdom earlier than elsewhere. In , upon recommendation of a parliamentary committee, the company was liquidated and replaced by a public corporation, the British Broadcasting Corporation BBC , answerable ultimately to Parliament but with day-to-day control left to the judgment of the Board of Governors appointed on the basis of their standing and experience and not representing any sectional interests. A key figure, the chief executive of the original company and director general of the corporation, was John Reith later Lord Reith , whose concept of public-service broadcasting prevailed in Britain and influenced broadcasting in many other countries. The BBC experimented with local radio in the late s and expanded the number of local stations in the early s. In the ITA became the Independent Broadcasting Authority IBA , which assumed responsibility for establishing and regulating independent radio and television stations. Regional and network production companies are appointed by the IBA; the companies sell advertising time, but advertisers are not allowed to sponsor programs. Radio developments in other countries Even before the pioneer station in Pittsburgh commenced operations, regular broadcasts began from The Hague, running from November until In Canada the first regular broadcasts from Montreal began in , while in Australia a small station in Melbourne opened in , though the official start occurred in Sydney in In New Zealand several low-powered stations were operating in , though the Radio Broadcasting Company was not founded until In Denmark experimental amateur stations went on the air in , and the official State Broadcasting System was instituted in France began regular transmissions from the Eiffel Tower in , and the first Soviet station commenced broadcasts from Moscow in the same year. By the end of there also were radio stations established in Belgium, Czechoslovakia, Germany, and Spain. The list of countries lengthened rapidly, with Finland and Italy beginning broadcasts in and Norway, Poland, Mexico, and Japan in In most of these countries, the problem of control arose. In some countries private enterprise was given free rein, subject to licensing by a government department or agency and to agreement upon the wavelengths or frequencies to be used. In others there was closer control e. In Canada and France, state and private enterprise operated side by side. Private stations were well established in Canada, for example, before the Canadian Broadcasting Commission was formed in In France the Administration of Posts and Telegraphs handled early broadcasts; although a state monopoly was declared in and state broadcasting remained a department of the Administration of Posts and Telegraphs until World War II , some private stations were granted licenses, including Radio Normandy, which broadcast to the United Kingdom. Some of these private commercial stations continued operation, broadcasting under government control until , when their licenses were withdrawn and radio became a complete state monopoly, independent of the Administration of Posts and Telegraphs but answerable to the government. In Germany the Ministry of Posts controlled and owned all technical equipment, while private companies started programs in various cities. Soon the Reich Broadcasting Company acquired controlling interests in these companies; in all were nationalized. International conferences The wavelength problems that created so much confusion in the United States and provided a strong argument for monopoly in Britain also arose internationally, particularly in Europe, where the concentration of heavily populated and technologically advanced sovereign nations compelled international agreement. Telegraphy had led to an early conference in Paris in that created what later became the International Telecommunications Union. This event was followed by the Berlin conference of to discuss international telephone communications, two further conferences in Berlin in and on radiotelegraph, and still another in London in to cover the whole field of radio communications. An informal conference of 10 countries held in London in created the Union Internationale de Radiophonie. The union was based in Geneva, with a BBC representative as president and another as secretary-general, and was the first international broadcasting organization. The use of wavelengths , copyright problems, and international program exchanges inevitably were discussed, and a plan was drawn up. Agreement on wavelength allocation,

implemented in November , was based on a formula involving area, population, and the extent of telephone and telegraph traffic. In spite of its dominating position, the BBC, which had been using 20 medium wavelengths, emerged with 1 long wavelength, 10 medium wavelengths, and 5 further medium wavelengths shared with others but below the Post Office limit range for broadcasting of between 1 megahertz and kilohertz and metres. Long waves range from 30 to kilohertz, medium waves from kilohertz to three megahertz, and shortwaves from 3 to 30 megahertz. All of the more advanced participating countries which had risen to Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom had to make some sacrifices, and some, such as the United Kingdom, had to persuade their post offices to agree to the use of wavelengths outside the broadcasting range, but the principle of international agreement had been established. The Washington Conference of widened the area of cooperation in respect to radiotelegraph, broadcasting, and the international allocation of wavelengths, or frequencies. It was followed by the Madrid Conference of , which codified the rules and established the official international frequency list. This agreement stabilized the situation until World War II, after which the European scene was substantially changed, and a conference in Copenhagen in reallocated frequencies in the European Broadcasting Area. A conference in Buenos Aires in prepared the text of the International Telecommunications Convention. The text was revised at Geneva in , where radio regulations were also revised. Geneva also was the site of the conference for the allocation of frequency bands for space and Earthâ€”space communications. International organizations The International Telecommunications Union , created in , has worldwide membership. In it became a specialized agency of the United Nations. Apart from the International Telecommunications Union, a number of organizations have been established, primarily on a regional basis, since World War II. When tensions between the East and West made the Union Internationale de Radiophonie almost unworkable, a strong organization, the European Broadcasting Union , was created by the countries of western Europe in , with its administrative headquarters in Geneva. It has a membership of more than 30 nations that includes not only all nations of western Europe but also others such as Algeria, Israel, Jordan, Lebanon, Morocco, Tunisia, and Turkey. In addition, it has more than 40 associate members, including the United States and most Commonwealth and former French colonial countries, as well as Japan and several Latin American countries. A parallel organization, the International Radio and Television Organization, was created in to serve nearly all communist countries excluding Yugoslavia and allies of the communist bloc. The Asia-Pacific Broadcasting Union, which was formally established in as a union of national broadcasting organizations in Asia and the Pacific, includes Japan, Australia, New Zealand, and the Philippines, as well as Iran, Turkey, Egypt, and most of the noncommunist countries of Asia; its headquarters are in Kuala Lumpur , Malay. The union is based in Dakar, Seneg. The Arab States Broadcasting Union was formed in as an intergovernmental organization within the framework of the Arab League; the secretariat is in Cairo, and the technical centre is located in Khartoum, Sudan. Its central office is in Montevideo, Uru. The Commonwealth Broadcasting Association, established in as a standing association of national public-service broadcasting organizations in the independent countries of the Commonwealth, bases its secretariat in London. The North American National Broadcasters Association, with its headquarters in Ottawa, began as an ad hoc group in and became a formal organization in Its members are Canada, Mexico, and the United States. The International Broadcasting Society was formed in to improve the information flow between Third World and advanced countries and to foster cooperation between developing countries. Its headquarters are in Seoul. The International Broadcast Institute, created in as a nonprofit and nongovernmental association supported by charitable foundations, with headquarters in London, fosters a free flow of communications for informational, cultural, and educational purposes. Radio Free Europe , based in Munich and financed by U. Television broadcasting Early developments Through a series of technical developments in Great Britain, Europe, the Soviet Union , and the United States, television reached a state of technical feasibility by In that year a research group was established in Britain under Isaac later Sir Isaac Shoenberg , an inventor with vast experience in radio transmission in the Soviet Union. He fostered the evolution of a complete and practical television-broadcast system based on a camera tube known as the Emitron and an improved cathode-ray tube for the receiver. Shoenberg saw the need to establish a system that

would endure for many years, since any subsequent changes in basic standards could give rise to severe technical and economic problems. He therefore proposed a system that, though ambitious for its day, was fully justified by subsequent events. So adequate were they that they formed the sole basis of the British service until , when they gradually were superseded by the European continental standard of lines. The first notable outside broadcast by the BBC was the procession of the coronation of King George VI from Hyde Park Corner in November ; a portable transmitter mounted on a special vehicle made its first public appearance. Several thousand viewers saw the transmission. Television developments were slower in the United States. The Columbia Broadcasting System and the Dumont network began telecasting in and , respectively. By mid there were 23 television stations in the United States. World War II, however, brought nearly all activity to an end as electronics factories were converted to wartime production. The Federal Communications Commission had authorized only limited commercial operation the first sponsored television broadcasts began in , and gradually stations closed down; only six were left with limited programs to serve the owners of about 10, sets.

Chapter 6 : Copyright (Technological Protection Measures) Regulations

The range of controls which have in fact been imposed over the last 40 years, without giving rise to successful constitutional challenge in this Court, is discussed in W. Emery, Broadcasting and Government: Responsibilities and Regulations (); Note, Regulation of Program Content by the FCC, 77 Harv. L. Rev. ().

History[edit] Technology was the driving force in encouraging regulation of broadcast. In the beginning, the Department of Commerce providing minute oversight and eventually the FCC enforced harsher restrictions. Assigned to Congress by the U. Constitution, the clause was implemented to regulate interstate and foreign commerce. It regulates all radio communication; from how antennas are constructed to rights afforded broadcast employees and customers with disabilities. Regulations can also list out station classifications that determine what frequencies stations broadcast on and how much power a station can use in its broadcasts. Radio broadcasts consist of amplitude modulation AM and frequency modulation FM stations, noncommercial radio stations, and low-powered broadcast stations, to name a few, all are administrated by the policies in Title 47 of the Code of Federal Regulations. The most significant and controversial events occurred between and A significant revision was an increase in volume of informational programming. Non entertainment program regulation. The FCC eliminated "guidelines" indicating how much informational programming each station should carry to have its license renewed, replacing it with "a generalized obligation for commercial radio stations to offer programming responsive to public issues. Elimination of formal documentation of "community needs". Abolition of FCC guidelines on maximum commercial time allowed on radio stations. Elimination of program logs, to be replaced by "an annual listing of five to ten issues that the licensee covered together with examples of programming offered in response thereto. First, taken as a whole, there was a rapid growth in radio stations. Most of the expansion came from FM radio. This was as a result of public policy and market demand. Lastly, another momentous event that occurred through radio regulation was the abolition of the Fairness Doctrine in August The first international radio convention was assembled at Berne, Switzerland. Congress passed legislation placing telegraph, telephone, and cable companies doing interstate business under the jurisdiction of the Interstate Commerce Commission. The Radio Act of signed into law. A radio division was established by the Department of Commerce to govern the Radio Act of Congress passed the "Marine Act" to regulate communications. This was the first general US law to oversee the use of radio transmissions. Federal Radio Commission made permanent by Congress. The Communications Act was created. Establishing the Fairness Doctrine. Amendment of the Communications Act.

Chapter 7 : The Public Interest Standard in Television Broadcasting | Benton Foundation

Freedom of Expression and Broadcasting Regulation defends that regulatory policy must focus 22 November , in force 18 July Adopted 4 November , in.

This Act contained a regulatory framework which ensured broadcasters operated within their assigned frequencies, and at the appropriate time periods. It not only specified technical, but programming and licensing requirements as well. The Communications Act of expanded upon the Radio Act of to include the telephone and telegraph industries, and has been amended to accommodate subsequent telecommunications technologies, such as television and cable. The obligation to serve the public interest is integral to the "trusteeship" model of broadcasting--the philosophical foundation upon which broadcasters are expected to operate. The trusteeship paradigm is used to justify government regulation of broadcasting. It maintains that the electromagnetic spectrum is a limited resource belonging to the public, and only those most capable of serving the public interest are entrusted with a broadcast license. The Federal Communications Commission FCC is the government body responsible for determining whether or not applicants for broadcast license meet the requirements to obtain them and for further regulation of those to whom licenses have been granted. Interpretation of the "public interest, convenience and necessity" clause has been a continuing source of controversy. Initially, the Federal Radio Commission implemented a set of tests, criteria which would loosely define whether or not the broadcasting entity was fulfilling its obligation to the listening public. Secifications included program diversity, quality reception, and "character" evaluation of licensees. These initial demands set a precedent for future explications of the public interest. The pre-television "Blue Book", as it was popularly known, was developed by the FCC in to evaluate the discrepancy between the programming "promise" and "performance" of radio broadcasters. Since license renewal was dependent upon serving the public interest, program content became a significant consideration in this procedure. The "Blue Book" required licensees to promote the discussion of public issues, serve minority interests and eliminate superfluous advertising. Unpopular with commercial broadcasters, the "Blue Book" was rendered obsolete after five years because of the economic threat it posed. In response to assorted broadcasting scandals, the FCC issued this statement in order to "remind" broadcasters of how to serve the public interest. Although previous tenets of the "Blue Book" were rejected, this revised policy included the "license ascertainment" stipulation, requiring broadcasters to determine local programming needs through distribution and analysis of surveys. However, adherence to such programming policies has never been strictly enforced. The deregulatory fervor of the s seriously challenged the trusteeship model of broadcasting. Obviously, this same move toward deregulation subsequently challenged the means by which satisfaction of the "public interest, convenience and necessity" should be determined. The trusteeship model was replaced with the "marketplace" model which had always undergirded commercial broadcasting in America. It was now argued that the contemporary, commercially supported telecommunications environment could provide a multiplicity of voices, eradicating the previous justification for government regulation. Under this model the public interest would be defined by "market forces. Advocates of the marketplace argument reject the trusteeship model of broadcasting. It is no surprise that the Cable Act does not contain a "public interest, convenience and necessity" stipulation. However, because cable also falls under the regulatory scrutiny of the FCC, serving the public interest is encouraged through the PEG public, educational and government access requirement related to the granting of cable franchises. Perhaps most detrimental to the legal justification for the trusteeship model of broadcasting, however, was the abolition of the Fairness Doctrine. This action altered future interpretations of the "public interest, convenience and necessity. Congress declared it part of the Communications Act in to safeguard the public interest and First Amendment freedoms. Although the Fairness Doctrine was enacted to promote pluralism, eventually it produced an opposite effect. Concerned that advertising time would be squandered by those who invoked the Fairness Doctrine, broadcasters challenged its constitutionality claiming that it promoted censorship instead of diversity. Declared in violation of the First Amendment, the Fairness Doctrine was repealed, and attempts to provide constitutional protection for the doctrine were vetoed by President

Reagan in The obligation to serve the "public interest, convenience and necessity" is demonstrated through myriad broadcast policies. Licensing requirements, the equal-time and candidate access rules, the Fairness Doctrine and the Public Broadcasting and Cable Acts are just some examples of regulations which were implemented to safeguard the public from the possible selfish motives of broadcasters. History has proven that interpretation of the "public interest, convenience and necessity" is subject to prevailing political forces. The development of new technologies continues to test the trusteeship model of broadcasting and what the public interest epitomizes. A Survey of Electronic Media. Houghton Mifflin Company, ; 6th edition, Documents of American Broadcasting. Englewood Cliffs, New Jersey: Prentice-Hall, ; 3rd edition,

Chapter 8 : Copyright Regulations

On Nov. 3, , four public broadcasters, including the presidents of CPB and National Educational Television (NET), incorporated a new nonprofit organization to interconnect the public television stations, taking on those functions of NET.

Chapter 9 : Red Lion Broadcasting Co. v. FCC - Wikipedia

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