

Statement of
Commissioner James H. Quello
Federal Communications Commission

In Re Fairness Doctrine Complaint of Syracuse Peace Council
against Television Station WTVH, Syracuse, New York

Our decision in this case is of historic proportions.

Debate surrounding the benefits of a government imposed fairness obligation predates the Communications Act. See, e.g. Great Lakes Broadcasting Co., 3 F.R.C. Annual Rep. 32 (1929) Rev'd on other grounds, 37 F.2d 993 (D.C. Cir. 1930), cert. denied, 281 U.S. 706 (1930). Early Commission policy reflected an uncertainty over the need for a fairness doctrine. See e.g. Mayflower Broadcasting Corp., 8 F.C.C. 333 (1940), Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949). The scholarly literature devoted to this issue is voluminous.

My personal judgment in this area has always been tempered by the belief that the Fairness Doctrine was statutory. Recent decisions by the U.S. Court of Appeals for the District of Columbia, however, state that the doctrine is not statutory. Telecommunications Research and Action Center v. FCC, 801 F.2d 501 (D.C. Cir.) petition for rehearing en banc denied, 806 F.2d 111 (D.C. Cir. 1986) cert. denied, 55 U.S.L.W. 3821 (U.S. 1987).

Indeed the Court of Appeals in the case now before us, Meredith Corporation v. FCC, 809 F.2d 863, 874 (D.C. Cir.) held:

Federal officials are not only bound by the Constitution, they must also take a specific oath to support and defend it. U.S. Const. art. VI, cl. 3. To enforce a Commission-generated policy that the Commission itself believes is unconstitutional may well constitute a violation of that oath, but, in any event, the Commission must discharge its constitutional obligations by explicitly considering Meredith's claim that its enforcement of the fairness doctrine against it deprives it of its constitutional rights. The Commission's failure to do so seems to us the very paradigm of arbitrary and capricious administrative action.

Because the Fairness Doctrine raises such an important issue, we have proceeded cautiously. In 1985, we concluded perhaps the most extensive study ever conducted on the subject. See 1985 Fairness Doctrine Report, 102 F.C.C. 2d 143 (1985) appeal pending sub. nom., Radio and Television News Directors Association v. FCC, No. 85-1691 (D.C. Cir. Jan. 16, 1987).

In the case now before us, the Commission took the unique step of soliciting comment on the constitutionality of our enforcement of the Fairness Doctrine. After much deliberation, the Commission has concluded that the Fairness Doctrine "contravenes" the First Amendment and thereby disserves the public interest. I agree.

There are those who will argue that today's decision eviscerates all of a broadcaster's public interest responsibilities. I disagree. Our decision will not prevent

the Commission from licensing and regulating broadcasters in the public interest convenience and necessity. This fact is stated explicitly in the document. The Commission's existing programming requirements remain intact. Our decision in this proceeding does not absolve licensees of their public trust responsibilities to present programming that meets the needs of their communities. See generally Office of Communications of the United Church of Christ v. FCC, 707 F.2d 1413, 1429 n. 46 (D.C. Cir. 1983). Furthermore, licensees remain obligated to provide children's programming and refrain from activities such as news distortion and presenting false and deceptive programming.

Since my initial confirmation in 1974, I have gone on record supporting broadcast journalists in their quest for equal treatment with their counterparts in print. By eliminating government-imposed "fairness" obligations, our decision today achieves this goal in large measure. Broadcast journalists from around the country have cause to celebrate their new-found freedom. Concomitant with this freedom is increased responsibility. I would remind all licensees that our obligations to serve the public interests through programming remain. For me, these local service obligations which still allow broadcasters full editorial discretion in programming constitute the cornerstone of the public interest standard. This decision has not removed this bedrock obligation.