

THE FCC: ITS IMPACT ON ADVERTISING
AND OTHER NON-ESSENTIALS

Article for Television/Radio Age

2/13/76
for publication
in 3/15/76 issue

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I recently made a speech to a group of advertising agency people where I discussed with them the impact of the Federal Communications Commission in broadcast advertising. The title of that speech and this article was developed from a time-worn advertising technique of first getting the attention of the target audience and then delivering the message aimed at that audience. The title, in other words, was contrived with tongue-in-cheek. The message, however, was intended to be instructive and useful just as are all good advertising messages.

Actually, there is little direct FCC impact upon broadcast advertising since the Commission is generally constrained by a reluctance to become more deeply involved in programming decisions; a constraint engendered, primarily, by the First Amendment and Section 326 of the Communications Act of 1934. The rules, policies and actions of the FCC do, of course, have considerable indirect impact upon the kind of advertising seen and heard on our broadcasting stations. The Prime Time Access Rule, the Family Viewing Concept, the Fairness Doctrine, the N. A. B. Code of Good Practice and other formal and informal policies and doctrines inevitably influence the creation and scheduling of broadcast advertising, I hope in a positive fashion.

You may have noticed that some of the restraints mentioned above are generally in the category of self-regulation. And, I think it's fair to say that self-regulation in the broadcasting industry is on trial.

It is claimed in some quarters that attempts at self-regulation by the industry have proven unsuccessful and that the Commission's past encouragement of self-regulation is akin to charging the fox with the responsibility of guarding the hen house. That argument, as far as it goes, seems to have some public appeal. And, the threat of public dissatisfaction with self-regulation is precisely what makes the fox/hen house analogy a poor one. While the fox can afford to be concerned solely about his next meal, the broadcaster must be concerned with continuing needs. While the fox doesn't realize that a raid upon the hen house might well bar him from future access, the broadcaster does understand the likely results of improvident behavior.

There are influential groups of citizens in Washington, and elsewhere, who sincerely believe that advertising, particularly radio and television advertising, is often socially harmful. They claim, with some statistical support, that certain advertising practices promote anti-social behavior, waste valuable national resources, encourage unnecessary reliance on drugs and nostrums and unreasonably exploits our children and our own hopes and fears. Those who hold such views might reasonably contend that our system of broadcasting is failing in its responsibility to serve the public. Instead of providing a service that is informative, entertaining and socially positive, they claim that broadcasting has degenerated into an over-commercialized business for the benefit of station licensees and those with products to sell at the expense of the general public. The argument continues that broadcasting is using some of the most creative talent of our nation merely to sell soap, cars, underarm deodorants and vaginal antiseptics while failing to meet its primary statutory obligation of public service.

The courts have been perceived to share this critical view upon occasion. In 1968, the U.S. Court of Appeals for the District of Columbia Circuit, in affirming the FCC decision to apply the fairness doctrine to cigarette advertising noted:

"Promoting the sale of a product is not ordinarily associated with any of the interests the First Amendment seeks to protect. As a rule, it does not affect the political process, does not contribute to the exchange of ideas, does not provide information on matters of public importance, and is not, except perhaps for the ad-men, a form of individual self-expression.... Accordingly, even if.... (such) commercials are protected speech, we think they are at best a negligible part of any exposition of ideas, and are of ... slight social value as a step to truth."

More recently, in a speech to the Federal Communications Bar Association in November of 1974, David Bazelon, Chief Judge of the Court, observed:

"The broadcast media know--or should know--when programming is simply and only mass-appeal pabulum designed to titillate a sufficiently large majority to enable the broadcaster to sell the most advertising."

And, Judge Bazelon warned:

"The programming executives and their advertiser clients must stop their single-minded purpose to achieve higher ratings, more advertising and greater profits, and stop to consider what greater purposes television should serve. And they must do it soon if we are to preserve our First Amendment values for telecommunications."

The Federal Communications Commission has only tangential responsibility for regulating advertising practices. The Federal Trade Commission bears most of this regulatory burden. I think it's clear, however, that for our system of broadcasting to survive and prosper in its present form, the FCC must necessarily keep a watchful eye on possible advertising abuses which threaten the system. The Communications Act of 1934 created the Commission "For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges..." It was pretty well determined, prior to the Act, that our broadcasting system should be supported by advertising.

The FCC's predecessor, the Federal Radio Commission, concluded back in 1929 that "The Commission... must recognize that, without advertising, broadcasting would not exist, and must confine itself to limiting this advertising in amount and in character so as to preserve the largest possible amount of service for the public." The FCC has continued this philosophy down to the present time.

While we generally remain reluctant to involve the Commission in judgments relating to advertising content, we regularly receive informal complaints from the public which describe various abuses. These complaints are tabulated periodically in an effort to provide some insights into the sources of public dissatisfaction with broadcast advertising practices. It may be significant that well over half of the informal complaints we received in fiscal 1975 related to commercials which were considered offensive or in bad taste. I have made no detailed analysis of these complaints and, therefore, I can't comment on their merits or even their substance. Their significance, in my opinion, lies merely in the fact that a substantial number of people felt sufficiently moved to complain to the government about what they perceived to be offensive commercial advertising. That does not suggest to me that the FCC should step in as arbiter of taste in advertising. What it does suggest is that

broadcasters and advertisers may be risking the continued sufferance of the public in presenting advertising messages which many consider beyond the pale.

The whole question of advertising to children falls into a special category. There is a fine line which must be drawn between legitimate attempts to persuade a relatively sophisticated adult audience to buy one product or another and mere exploitation of the lack of sophistication in children for profit. The Commission is continuing to study the special relationships between children and television and I sincerely hope that we'll make a contribution to the growing body of knowledge on this subject. But, even as we study the question, it is clear to me that broadcasters and advertisers alike have a special responsibility to approach advertising to children with caution and sensitivity.

More than a year ago, the press reported the establishment of the National Advertising Division by the Council of Better Business Bureaus. The purpose of that new division, according to the press report, is to "check advertising directed to children 11 years old and younger for truth, accuracy and fairness to children's perceptions. . . ." Other public and private citizens in this country are devoting a considerable amount of interest to this subject.

Back in 1972, the Canadian province of Quebec established strict advertising regulations barring commercials aimed at children which exaggerate the quality, performance or durability of a product. Furthermore, such advertisements are not permitted to directly urge a child to buy, or to request another person to buy, a specific product. Vitamin, drug and medicine advertisements are forbidden.

Under mounting pressure from groups in this country concerned about the problem the Television Code Review Board of the National Association of Broadcasters approved new guidelines aimed at curtailing certain abuses. Again, the Commission encouraged the self-regulatory approach and I am watching with considerable interest to determine whether that approach is having the desired effect.

While the critics would point to abuses in broadcast advertising -- and there have been abuses -- and call for dismantling the present system for something else, I believe the system remains viable. Granted, there are many opportunities for improvement which, if taken in time, should make it obvious to all that we can provide a superior broadcasting service without adding to the tax burden of our citizens. I assume that it's obvious to the critics of the present system that support must come from some quarter and that the alternatives are limited.

One suggested approach to discouraging real and imagined abuses in broadcast advertising has been the "counter-commercial" which purports to counter false or misleading statements contained in regular commercials with messages prepared by interested citizens or groups taking issue with certain claims. The Commission had a relatively brief flirtation with this concept when it determined that cigarette commercials triggered the fairness doctrine and required broadcast licensees to provide reply opportunity to opponents of cigarette smoking. In enunciating its policy back in 1967, the Commission naively attempted to limit its action to cigarette commercials despite a warning from Commissioner Loevinger that it was "establishing the principle that the fairness doctrine applies to (all) commercial advertising. . . ." Commissioner Loevinger was correct in his analysis of the situation, of course, insofar as the door to counter-advertising at least appeared to be ajar and there were many who were seeking entry. It wasn't until 1974 that the Commission attempted to slam the door shut by adopting the Fairness Report redefining its policy with regard to commercial advertising vis-a-vis the fairness doctrine.

In the Fairness Report, the Commission stated:

"In our view, an application for the fairness doctrine to normal product commercials would, at best, provide the public with only one side of a public controversy. In the cigarette case, for example, the ads run by the industry did not provide the listening public with any information or arguments relevant to the underlying issue of smoking and health."

The cigarette case should serve to alert the unwary that, although reluctant, the Commission has acted in the past to deal with what were perceived as advertising abuses. The fact that the Commission's zeal was in response to public pressure should further serve to alert those who profess to see no threat of government action.

I would be most reluctant to see the Federal Communications Commission become more involved in making judgments about advertising content. Such involvement, in my opinion, would inevitably lead further down the path traditionally blocked by the First Amendment.

As with all public policy, however, it is not the FCC nor even the Congress which has the last word. The public will demand and receive the kind of broadcasting service which it considers best serves its needs and interests. Those responsible for the production and distribution of broadcast advertising, who necessarily are closely attuned to the public mood, cannot fail to see the warning signs. They deserve careful attention by all of us who would preserve the present system of broadcasting.