

TV Must Air Paid Ads On Issues, Court Rules

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Radio and television stations must accept paid advertising on controversial public issues, the U.S. Court of Appeals here ruled yesterday.

The court declared that "a flat ban on paid public issue announcements"—such as one approved by the Federal Communications Commission last year—violates the First Amendment.

"It may unsettle some of us to see an antiwar message or a political party message in the accustomed place of a soap or beer commercial," wrote Judge J. Skelly Wright in a 54-page opinion for the court.

"But we must not equate what is habitual with what is right—or what is constitutional. A society already so saturated with commercialism can well afford another outlet for speech on public issues. All that we may lose is some of our apathy. That is a small price to pay," Wright said.

His opinion, joined in by Judge Spottswood W. Robinson III, could drastically transform the FCC's traditional fairness doctrine, extending it to paid as well as public airtime.

See FCC, A12, Col. 4

late decision a "phenomenal breakthrough."

"We are going to open television to political discussion and the political parties," Califano said.

Equal-Time Suit

Still pending before the FCC is another Democratic suit asking that the fairness doctrine be extended to provide equal time for the opposition party to answer the broadcast declarations of a President.

Thomas R. Asher, the attorney who argued the case for the antiwar businessmen's group, suggested that the decision would keep control over discussion of public issues on the air from "the sole discretion of powerful broadcasting interests."

The decision was the second in six weeks in which the federal appellate court here,

FCC, From A1

In the words of Judge Carl McGowan, who dissented from the decision of the three-judge panel, the court has put the FCC "in a constitutional straitjacket" that will bring enormous practical difficulties.

Wright's opinion came on two appeals from 1970 FCC decisions.

The Democratic National Committee had sought, but failed to obtain from the commission a declaration that it was entitled to buy time for comment on political issues as well as for soliciting funds. Some stations, the DNC said, refused to sell it time.

At the same time, the Business Executives Move for Peace (BEM) specifically complained that Washington radio station WTOP-AM had refused to sell it time for antiwar statements.

The all-news station, owned by The Washington Post Company, argued that advertising time could not be used for such purposes since the Vietnam war had received bal-

anced and adequate news coverage.

Media Judgment

But Wright said yesterday that the judgment of the media about what is "balanced" and "adequate" would not suffice.

"The marketplace of ideas protected by the First Amendment," he said, "is not governed by the tastes and intellectual standards of the universities or the broadcast newsroom—or even of judicial chambers."

To insure "robust, wide-open debate" on public issues, the judge wrote, the Constitution must be considered to protect even "misleading and overly simplified political expression."

General counsel Joseph A. Califano Jr. of the DNC, who began the legal battle on the issue shortly after taking office last year, called the appel-

which has jurisdiction over direct appeals from the FCC, struck down a major national communications policy.

In another opinion by Wright, the court of appeals in June invalidated the FCC's new two-step broadcast license renewal procedure, which put community groups at a disadvantage in challenging a broadcaster's performance.

Johnson's Position

Both times, the appeals court adopted the position of the FCC's sole dissenter, Commissioner Nicholas Johnson.

Wright and Robinson, at the conclusion of an opinion which lambasted the "commercialism" of radio and TV, sent the DNC and BEM cases back to the FCC for development of "reasonable regulatory guidelines to deal with editorial advertisements."

They stressed that stations were required to accept

"some," but not necessarily all, paid comment on public issues. Under the fairness doctrine, the judges said, broadcasters must also attempt to achieve a balance of viewpoints in the advertisements accepted "free of charge if necessary."

Wright scolded the FCC and the major TV networks for predicting that "administrative apocalypse" would result from the acceptance of editorial advertisements.

Broadcast media Wright said, have become "our primary means of communication" and therefore cannot be treated like private enterprise.

"The soap box orator and the leafleter are becoming almost obsolete," he wrote. "Their Saturday afternoon audiences have increasingly moved indoors—in front of their television sets."