

Court Prods FCC On TV Fairness

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The U.S. Court of Appeals here has ordered the Federal Communications Commission to reconsider its ruling that the broadcasting fairness doctrine does not apply to spot television advertisements for automobiles and gasoline products that allegedly pollute the atmosphere.

Were the fairness doctrine to apply, stations carrying such advertising would have to counterbalance it with either advertisements or other programs pushing the anti-pollution point of view.

In the most famous application of the doctrine, developed by the FCC in 1949 to bring program balance to controversial matters of public interest, stations were required in 1968 to carry enough anti-cigarette programming to counterbalance cigarette advertisements.

Depending heavily on the anti-cigarette precedent, a three-judge panel of the appellate court yesterday ordered the FCC to reconsider a complaint by Friends of the Earth that counterbalance was needed to advertisements for Ford's Mustang, "picturing the car on a lonely beach and stressing its 'performance'"; for Chevrolet's Impala, "stressing the great value of its size ('you don't have to be a big spender to be a big rider')," and one encouraging the use of high-test leaded-gasoline for cold-weather starting.

The ecology group charged, in its original complaint to the FCC, that none of these ads noted that these products were especially heavy contributors to air pollution.

But the FCC declined to hear the complaint, ruling that it did not involve a controversial issue and thus did not come under the fairness doctrine.

In a letter to the Friends of the Earth, the FCC said, "cigarettes are a unique product" because smoking them is a habit "which can fade away." It would not extend the cigarette ruling "generally to the field of product advertising" because this would "undermine the present system which is based on product commercials, many of which have some adverse ecological effects," the FCC declared.

Writing an opinion for himself and Judge Roger Robb, Judge Carl McGowan said that, "The distinction is not apparent to us, any more than we suppose it is to the asthmatic in New York City for whom increasing air pollution is a mortal danger."

Senior Circuit Judge Wilbur K. Miller dissented, but did not write an opinion.

Judge McGowan wrote that, "Commercials which continue to insinuate that the human personality finds greater fulfillment in the large car with the quick getaway . . . ventilate a (controversial) point of view . . ."

An FCC spokesman said that officials did not yet know what effect yesterday's ruling would have.

He said that the FCC is conducting a wide-ranging inquiry on the broad issues suggested by such cases, but that the inquiry "hasn't gotten too much beyond" the initial stages.