

Broadcasting's 'Fairness Doctrine' Is Upheld by U.S. Court of Appeals

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The U.S. Court of Appeals yesterday upheld the much-disputed fairness doctrine of the Federal Communications Commission, ruling that broadcasting stations must give comparable time to opposing sides on controversial issues.

The FCC thus survived an opening round of the first direct challenge of the doctrine's constitutionality brought by the Red Lion Broadcasting Co., which operates suburban Philadelphia radio station featuring politically conservative evangelist Billy James Hargis.

It was not immediately known if attorneys for the station will appeal to the Supreme Court.

42-Page Opinion

The appellate court ruling, contained in a heavily footnoted, 42-page opinion by Judge Edward A. Tamm, rejected Red Lion's contention that the fairness doctrine is unconstitutionally vague and suppresses free speech by conditioning controversial or critical programs on the availability of persons to present opposing views.

The doctrine in no way re-

stricts speech, Tamm observed, but positively asserts the right to a broader selection of political and social views for the listening public.

"A broadcast station . . . having both the duty and the right of determining whether a controversial program is in the public interest, must, after having exercised that determination by broadcasting a particular program, in the public interest afford equal opportunity for the broadcast of the other side of that controversial issue," Tamm wrote. "This burden exists equally well when the initial broadcast consists of a personal attack upon a person or organization.

"The crucial consideration is the public interest in hearing both sides."

Began in 1964

The Red Lion case arose when Mr. Hargis, in a 1964 broadcast, claimed that author Fred J. Cook, a critic of Barry Goldwater, was fired from the New York World-Telegram when he made a "false charge" against an unnamed New York City official.

Cook asked Red Lion for

equal time to respond to Mr. Hargis's claim. Red Lion refused. Cook complained to the FCC, which ordered the station to comply with Cook's request. Red Lion then came to the Court of Appeals.

Red Lion contended that it was required to give free time to reply to paid broadcasts only if commercial sponsorship was unavailable. The FCC countered that the fairness doctrine does not require Cook to show that he is financially unable to buy the time, and the burden falls fully on the station to provide the time, either sponsored or free.

Upholding this position with Judge Tamm yesterday was senior Judge Charles Fahy. Senior Judge Wilbur K. Miller, the third member of the Court panel, did not participate.

The FCC extended the fairness doctrine just last week to cigarette advertising, holding that such advertising should be balanced by public service announcements about cancer hazards and other anti-smoking commercials.