

5/18/70 Broadcasting

Programing

New fairness strictures ahead

Broadcasters who deal with controversial issues must seek out spokesmen with contrasting views

With the Supreme Court's landmark decision in the Red Lion case providing the spur, the FCC last week moved to tighten up the obligations its fairness doctrine imposes on broadcasters.

It proposed that licensees who present a series of broadcasts on controversial issues, or who editorialize, be required to invite specific spokesmen for contrasting views to state their position ("Closed Circuit", April 6). Except for the first program in a series, the commission said, the licensee would not be permitted to rely solely on a broadcast announcement offering time for the presentation of contrasting views.

The proposal was contained in a combined notice of inquiry and notice of rulemaking, which the commission said was issued in light of the Supreme

Court's Red Lion decision last June upholding the legality of the fairness doctrine (BROADCASTING, June 16, 1969), as well as its experience in administering the doctrine. The proposal was issued on a 6-to-1 vote, with Commissioner Robert Wells the lone dissenter.

The "basic thrust and spirit" of the Red Lion decision, the commission said, is that a broadcaster "who can and should be as outspoken and hard-hitting as he wishes in presenting his view of an issue should be equally vigorous in getting the other side before the public."

The doctrine, which requires broadcasters to afford a reasonable opportunity for the discussion of conflicting views of controversial issues of public importance, evolved as policy, was expressed in a policy statement in

1949 and was incorporated in the Communications Act in 1959. The commission said the doctrine has been interpreted as requiring broadcasters to make an affirmative effort to be fair, giving him considerable discretion in determining how he is to achieve fairness.

The Supreme Court in the Red Lion decision, however, gave a new dimension to the obligation that the doctrine imposes on broadcasters. The commission noted that the court said that broadcasters are required not only to give adequate coverage to public issues but to do so at their own expense, if sponsorship is not available, and to provide programing on their own initiative if no other source is available.

The commission would apply its proposed requirement in cases where a licensee has presented only one side of a controversial issue in a series of broadcasts within a "reasonably close" period of time (six to nine periods or less), and has no plans to present opposing views.

If broadcast invitation to present a contrasting view fails to attract an appropriate spokesman for the other side,

the licensee would then be required to contact specific persons to present the contrasting view, the commission said. Along with a report of at least the essence of what has been broadcast, the licensee would be expected to provide the proposed spokesmen a "clear and unambiguous" opportunity reply.

The commission said broadcasters are not limited to their immediate area in seeking appropriate spokesmen; they may choose the most suitable person wherever located. It also said that many broadcasters already routinely seek out spokesmen for contrasting views.

The commission is not proposing to go the point of requiring a broadcaster who takes a position on a controversial issue to present the opposing side himself. If several spokesmen decline to present the contrasting view and no one responds to an over-the-air offer to respond, the commission said, the broadcaster will have discharged his obligation to make a good-faith effort to afford reasonable opportunity for the presentation of conflicting viewpoints.

The commission said it labeled the proceeding a notice of rulemaking as well as a notice of inquiry to alert interested parties to the possibility that it may adopt a rule, and afford them a full opportunity to comment. The commission normally develops policy in the fairness field through policy state-

ments, and it said it tentatively believes it should follow that course with respect to its new proposal.

It did adopt fairness-doctrine rules once before, when it codified the obligations broadcasters assume when they broadcast personal attacks or endorse or oppose political candidates. These rules, as well as the fairness doctrine itself, were upheld in the Red Lion decision.

The commission last week asked for comment on whether a rule would be desirable as a means of delineating the broadcaster's responsibilities in seeking out spokesmen for opposing views. It also asked for suggestions as alternative to its own on how broadcasters are to meet their affirmative obligations under the fairness doctrine.

Comments in the proceeding are to be filed by June 22, reply comments by July 6.