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I am submitting herewith a dissertation written by Roy David Spiceland Jr. entitled "The Fairness Doctrine, the Chilling Effect, and Television Editorials." I have examined the final copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Communications

Sam Swan, Major Professor

We have read this dissertation
and recommend its acceptance:

Accepted for the Council:

Associate Vice Chancellor
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THE FAIRNESS DOCTRINE, THE CHILLING EFFECT, AND TELEVISION EDITORIALS

A Dissertation

Presented for the

Doctor of Philosophy

Degree

The University of Tennessee, Knoxville

Roy David Spiceland, Jr.

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DEDICATION

This dissertation is dedicated to my mother,

Hazel Lamew Spiceland Thompson,

who encouraged me to continue with my education.

to my father,

Roy Spiceland,

who encouraged me to find the truth,

no matter where it led or at what price.

and to my wife,

Jo Spiceland,

and

children,

Rachel Elizabeth Spiceland and Joshua David Spiceland,

who are a constant encouragement and blessing,

and who did without my full attention and assistance

for six and a half years.

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ABSTRACT

The First Amendment acknowledges the importance of a marketplace of ideas to facilitate the function of government, and guarantees freedom of speech for both the individual and media. Two very different points of view have emerged. One gives the public a right of access to media in order to encourage a multiplicity of views that would not have been available through traditional media structure. The second view is that media is responsible for programming content that would be compromised by citizen access. Broadcasters have had to accept a limited amount of citizen access as a price for licensing by the Federal government.

The Federal government was unprepared to effectively regulate broadcasting and the ineffectiveness of early wireless legislation led to subsequent and authoritative broadcast legislation. The Radio Act of 1912 had not anticipated: 1) the explosive growth of broadcast radio, 2) non continuous transmission reducing the number of stations able to broadcast within available frequencies, and, 3) a service, unlike common carrier, responsible for the messages and content sent to the public.

On air confusion resulted in 1927 when legal decisions ruled that the Secretary of Commerce did not have the power to regulate broadcasting under provisions of the 1912 Radio Act. Several broadcast stations operated beyond the scope of their license by changing frequencies and times of

operation.

The Radio Act of 1927 was a reaction to the confusion following the breakdown of the 1912 Radio Act. The scarcity of frequencies became the rationale for the "public interest, convenience, or necessity" standard that originated from provisions of public utility laws. Early regulators also feared the possible monopolization of media ownership that might exclude divergent viewpoints.

Subsequent court decisions and rulings by the Federal Radio Commission and Federal Communications Commission further refined the definition of "public interest." A logical outgrowth of the public interest standard was the Fairness Doctrine's requirement that broadcasters devote "a reasonable percentage of time to coverage of public issues; and [the] coverage of these issues must be fair in the sense that it provides an opportunity for the presentation of contrasting points of view" (Federal Communications Commission, In the Matter of the Handling of Public Issues under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC 2d 1, 1974). The Federal Communications Commission took this charge so seriously that they said the Fairness Doctrine was "...the single most important requirement of operation in the public interest--the sine qua non for grant of a renewal of license" (FCC, 1974, p. 1). However, by 1985 a frustrated FCC issued an inquiry calling for alternatives to the

Fairness Doctrine (FCC, 1985). In August 1987 the FCC said the Fairness Doctrine inhibited the presentation of controversial issues of public importance and had a "chilling effect" on the broadcast industry. That is, because of the threat of government interference many broadcasters have decided not to air controversial programs. The Commission's choice was not to enforce the Fairness Doctrine (FCC, 1987, p. 5273).

Several accounts by broadcasters including testimony at several congressional hearings appears to demonstrate that there has been some kind of "chilling effect" on the production of controversial programming among commercial television stations in the United States. Using Tedford's (1985) definition of chilling effect, the effect of the Fairness Doctrine on controversial programming seems to have developed from confusion over the Fairness Doctrine, difficulty in adhering to its requirements and the imposition of unusually severe punishments, such as the loss of a license.

The production and airing of controversial programs is one measure of a station's operation in the public interest, convenience and necessity as required by the Communications Act of 1934. Are television stations now engaging in the robust discussion of controversial issues the Fairness Doctrine was designed to encourage?

Using editorials as one measure of that commitment to

public affairs, this research surveyed television stations with network affiliation in the United States to measure attitudes toward the Fairness Doctrine and to determine the extent of editorializing by those television stations. This dissertation asks: What are the attitudes of Television station managers towards the Fairness Doctrine and what has happened since the repeal of the Fairness Doctrine? Because they are controversial in nature, editorials are considered an extension of the Fairness Doctrine. Are television stations increasing their coverage of controversial issues, specifically editorials?

For this research a mail survey was conducted among commercial television stations in the United States with network affiliation to determine: 1) management attitudes toward the Fairness Doctrine, and 2) editorializing practices at those stations. Of the 694 stations surveyed, 306 stations responded representing a return rate of 44.1%.

This dissertation found the following:

1) Station managers surveyed are overwhelmingly (77.1%) opposed to the Fairness Doctrine and more than half (57.8%) believe it had a chilling effect on broadcasting.

2) It appears that the repeal of the Fairness Doctrine had a mixed effect on television editorializing. Of the 306 stations surveyed, twenty-three stations (7.5%) began editorializing after July 1, 1987. But only two of those stations did so because the Fairness Doctrine had been

lifted. Twenty stations (6.5%) stopped editorializing after the FCC repealed the Fairness Doctrine. Nine stations said budgetary or resource problems caused their editorial policy shift. Only three stations cited external pressures for their termination of editorializing.

3) Although the number is down from previous research, 33% of the television stations surveyed continue to editorialize.

4) Most television stations do not editorialize and the primary reason (40.5%) continues to be budget and resources.

This dissertation indicates that there was not a mass effort by broadcasters to begin or cease editorializing after the Fairness Doctrine was set aside by the FCC in 1987. Since the Fairness Doctrine has not been completely abolished, stations may be hesitant to engage in additional controversial programming until the fate of the Fairness Doctrine is determined.

Those stations that did produce editorials tended to be owned by a newspaper or magazine, be a traditional network affiliate (ABC, CBS or NBC), be located in a larger market, operate in the VHF band, and have an aggressive news effort.

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CHAPTER I

INTRODUCTION

In August 1987 the Federal Communications Commission discontinued enforcing the Fairness Doctrine, a doctrine that was designed shortly after World War II to encourage the broadcast of controversial programming. After almost forty years of enforcement, the Commission said the Fairness Doctrine actually inhibited the presentation of controversial issues and "chilled" speech (FCC, Memorandum Opinion and Order, 1987). That is, because of the threat of government interference many broadcasters had decided to avoid airing controversial programs.

Friends and foes of the Fairness Doctrine reacted to the FCC announcement. Broadcasters were glad to see the passing of the Fairness Doctrine. Elmo Ellis, general manager of WSB-AM-FM in Atlanta, predicted that stations would increase their coverage of the issues (Ellis, 1987). Perry (1989) said the FCC's action "sent a shock wave through the broadcast industry" (p. 1221). Dr. Craig R. Smith of the Freedom of Expression Foundation saw the decision as a step toward giving broadcasters parity with the print media (Smith, 1988). Supporters of the Doctrine, many of whom were members of Congress, were critical of the FCC. Representative John Dingell (D-Mich), a member of the

House Communications Subcommittee, called the action an "outrage." Senator Ernest Hollings (D-S.C.) termed the decision a "threat to public discourse." Ralph Nader said it was an assault on the Constitution (Perry, 1989, p. 1246). Mark Conrad (1989) said the continued enforcement of the Fairness Doctrine would ensure "the public access to all ideas in order that a free and open encounter between truth and falsehood may truly take place" (p. 194).

Massachusetts Congressman Edward Markey said at the time: "That contention [that the Fairness Doctrine chills speech] is just plain wrong" (Markey, 1988). To prove his point, Markey quoted a 1969 Supreme Court decision that sustained the constitutionality of the Fairness Doctrine. But the Congressman was unable to cite research conducted among broadcast stations to determine if the Fairness Doctrine has exerted a chilling effect on broadcasters.

Former FCC Chairman Rosel Hyde criticized the FCC's action and denied that the Fairness Doctrine had any chilling effect on broadcasters. Hyde's criticism referred to the FCC's "1985 Fairness Report" (FCC, Federal Communications Commission Report, 1985) that initiated the Fairness Doctrine investigation. Hyde said "...the methods used do not even purport to suggest that an investigation was undertaken. There was no research employing scientific methods of study and analysis; the procedure employed was a

notice inviting comment and counter-comment, followed by oral argument" (Hyde, 1987b, p. 1185). Hyde continued:

> The Commission record, while replete with opinions, offers no basis upon which a sound judgment could be made as to the effect of the fairness doctrine. Specifically, whether the doctrine increased or decreased the coverage of controversial issues of public importance remains unknown. (p. 1186)

The Problem

The concept of a "marketplace of ideas" and freedom of speech has been key to media regulation since the founding of this country. The First Amendment guarantees freedom of speech for both individuals and media. The development of broadcasting brought with it a special problem for regulators: How should broadcast stations be allowed to operate and how much freedom of speech should broadcasters be given and still protect the diversity of ideas and the public well being?

Out of the "public interest" standard that originated with the Radio Act of 1927 came the Fairness Doctrine. The provisions of the Communications Act of 1934 borrowed much from the Radio Act of 1927, and current statute still requires broadcasters to operate in the "... public interest, convenience, and

necessity" (Communications Act of 1934, June 19, 1934). The telecommunications philosophy of the Reagan administration in the early 1980s was for less government regulation, and the Fairness Doctrine was an early target of former FCC Chairman Mark Fowler (Fowler & Brenner, 1982, p. 207).

Surprisingly, there was little systematic research of the Fairness Doctrine and the alleged chilling effect when the FCC announced it would no longer enforce the Fairness Doctrine in 1987.

The Rise of Editorializing

The announcement of the Fairness Doctrine in 1949 resulted after a complaint against a Boston station in 1939 that had aggressively editorialized (FCC, In the Matter of the Mayflower Broadcasting Corporation and the Yankee Network, Inc. WAAB, 8 FCC 333, 1941). Even after the FCC approved the production of controversial programs and editorials, few stations actively programmed editorials (Cusak, 1959, p. 1).

Beginning in the 1960s stations began to increase editorial production (Darlington, 1967; National Association of Broadcasters, 1967; Fang & Whelan, 1972; Wolf, 1972; Meeske, 1978). However, during the last ten years there has been a serious decline in broadcast editorializing (Gale, 1988, p. 37). Several large

television stations have reduced or eliminated editorializing (Editorializing falling out of favor? Broadcasting, February 6, 1989, p. 45). Many television stations have laid off editorial writers in the last few years. In June 1986 two new officers of the National Broadcast Editorial Association (NBEA) were dismissed by their television stations because of a reduction or elimination of on-air editorials (Dick Gage Ousted at WHBF, 1987, p. 9; Editorializing Under Assault, 1987, p. 4). The membership of the NBEA decreased fifty percent during the 1980s, and in 1991 the NBEA recommended to its members that they merge with the National Conference of Editorial Writers, composed primarily of print editorial writers. If the production of editorials represents a commitment to produce controversial programs and increase the diversity of ideas, this might represent a failure to live up to the public interest standard mandated in the Communications Act.

Research Question

This dissertation will determine the attitudes of television station managers toward the Fairness Doctrine and will use editorials as an extension of the Fairness Doctrine's requirement that broadcasters produce controversial programming.

This dissertation chose editorials to represent controversial programming for several reasons:

1. Editorials, by their nature, are controversial and precipitated the Fairness Doctrine concept. In its 1949 "Report on Editorializing by Broadcast Licensees" the FCC defined editorializing as:

> The use of radio facilities by the licensees thereof for the expression of the opinions and ideas of the licensee on the various controversial and significant issues of interest to the members of the general public afforded radio (or television) service by the particular station. (FCC, 1949, p. 1252)

Thus, controversial programs, especially editorials that are by nature advocating a position, should attract and channel public reaction or feedback. Since the FCC considers editorials controversial, editorials should be a good indication of a station's desire to engage in controversial programming.

It is important to distinguish between editorials and commentaries. Editorials are usually the official position of a broadcast station and are often delivered by a member of upper management such as the general manager or news director. Commentaries are the expressed opinion of an individual and do not necessarily reflect the opinions of the radio or television station.

2. Another reason for studying editorials is that they are locally produced public affairs programming. Television stations might be prone to cite syndicated talk shows that usually do not deal with local issues and require minimal effort by the local station. Editorials, on the other hand, require a conscious effort by a broadcaster to produce programming that the FCC considers public affairs and controversial in nature. Although editorials are not the only form of programming that is controversial, they represent a commitment to local programming which is an important licensing consideration to the FCC (National Broadcasting Co., Inc. et al. v. United States et al., 319 U.S. 190, 1943).

Importance of the Study

There are several reasons for this research.

1. The Fairness Doctrine has not been abolished and still is an important issue in broadcast regulation. In early 1988 the FCC reaffirmed its 1987 "...decision to end enforcement of the fairness doctrine" (FCC, FCC Reaffirms Decision to End Enforcement, 1988). At this writing it is unclear how the Clinton administration will view the Fairness Doctrine. The Democratic leadership in Congress has tried several times to codify fairness and J. Laurent Scharff, legal counsel to the Radio-Television News Directors Association, expects the Fairness Doctrine to be a

"high priority issue" in the months ahead (Scharff, 1992, p. 1).

Several corollaries of the Fairness Doctrine, including the personal attack rule and political editorializing, are still being enforced by the Federal Communications Commission (Baker, 1992).

2. This dissertation is the first nationwide academic study of broadcast editorializing in almost twenty years.

3. There have been several anecdotal stories as to how the Fairness Doctrine has supposedly chilled speech. This dissertation will survey stations to measure attitudes toward the Fairness Doctrine and determine if they have increased or reduced controversial programming as a result of the Fairness Doctrine.

4. Much of the previous research is dated or is of a limited sample. This dissertation will be able to generalize its findings to many more commercial television stations in the United States. Much of the previous research tried to generalize to only VHF stations in the top 50 markets (Wolf, 1972) or VHF stations only (Fang, 1972).

The remainder of this dissertation is organized as follows: Chapter 2 will review the literature and study the historical roots behind the Fairness Doctrine and television editorializing. Chapter 3, the methods and procedures, explains the methods used for this research, including the

research design, sampling frame and data analysis. Chapter 4 studies the survey's results and chapter 5 gives conclusions and implications for further research.

CHAPTER II

LITERATURE REVIEW AND HISTORY OF THE FAIRNESS DOCTRINE

The First Amendment

The founding fathers knew well the excesses of government against individual liberty when they suggested a series of changes to the Constitution that had not yet been approved by the recently freed colonies (Holsinger, 1991, p. 11). The first of those changes became the First Amendment to the Constitution and guaranteed: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (U.S. Const. Amendment 1). The First Amendment recognized a freedom of expression for individual and press alike. It is on that cleavage that broadcast regulation resides and contends.

Thomas Emerson (Carter, 1989) writes that freedom of expression in a democratic society is based on four premises: 1) Freedom of expression facilitates self-fulfillment; 2) It is an essential tool for advancing knowledge and discovering truth; 3) It is a way to achieve a more stable and adaptable community; 4) It permits individuals to be involved in the democratic decision-making

process (p. 15).

The Marketplace of Ideas

American democracy has long maintained that a multiplicity of information sources will best serve the electorate. After being found guilty of publishing without a license, English poet and writer John Milton wrote Areopagitica in 1644. He had hoped that the British government would allow unlicensed printing. He anticipated the response that unlicensed printing would overwhelm the government and wrote: "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?" (Franklin, 1987, p. 15). Milton's point was that if people were left to decide the facts for themselves, good would win in the end.

British writer and philosopher John Locke believed in the power of rational thinking. In 1689 he wrote that "...Truth certainly would do well enough if she were once left to shift for herself" (Franklin, 1987, p. 15).

In this country Justices Holmes and Brandeis developed their "free trade of ideas" in the early part of this century (Abrams v. United States, 250 U.S. 616, 630, 1919). A precursor to the marketplace of ideas, they said that

public discussion of competing ideas encourages a discovery of truth.

The FCC has encouraged the marketplace of ideas among broadcasters by diversifying ownership to a multiplicity of viewpoints. That is, the more broadcast voices, the more opinions for the public to hear. The Commission's multiple ownership rules include: 1) Those forbidding multiple ownership of facilities in the same community or area; 2) Those limiting ownership of broadcast facilities by single entities no matter where the facilities are located; and 3) Those forbidding newspapers from owning television stations in the same community in which they publish (Zuckman, 1988, p. 399).

In 1969 the Supreme Court said:

> It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee....It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.... (Red Lion, p. 367)

The Commission discourages broadcasters from using their station to advance their own political, social,

or economic views. Instead they should use their station to appeal to all segments of the audience. All points of view should be given a reasonable airing to let audience members choose and reject what they wish.

Censorship

Important to the marketplace of ideas is a repugnance of censorship that impedes the free flow of information important to a democracy. If citizens are to make informed and intelligent decisions, they should be able to receive information from a variety of sources and decide for themselves what is correct and best. But history has shown the government is the worst offender in restricting the flow of information.

In seventeenth century England it was common for the government to restrict, or censor, the free flow of information. Printers were indirectly controlled by the government that issued a license allowing them to print. If they offended the status quo, the right to print, and to exist, was revoked (Francois, 1990, p. 4).

Sir William Blackstone, one of England's foremost legal authorities, developed the idea of discouraging prior restraint (censorship before the fact) and making media accountable after the point of publication (Francois, 1990, p. 7). This idea (forbidding prior

restraint by the government) was incorporated into the Communications Act of 1934 that now regulates broadcasting stations (Communications Act of 1934, Public Law 416, 73rd Congress, June 19, 1934, § 326).

Broadcasters are free to control the flow of information to the general public as they see fit. Government impedence of this information is forbidden. The problem for broadcasting is maintaining the balance between individual rights and media rights as guaranteed by the Constitution. Powell says: "...the broadcaster is left with the uneasy task of pleasing the community audience, answering to federal regulation, and operating a business" (Powell, 1988, p. 6). To offset this possible balance, some have suggested media access as a remedy.

Citizen Access

Beginning in the turbulent 1960s a concept of citizen access was developed. Citizen access would require media outlets to give the public time or space to respond to controversial issues when requested.

Jerome Barron, Professor of law at George Washington Law School, has been a leading spokesman for citizen media access. Barron believes the traditional view of the marketplace of ideas is antiquated because the media and society have changed so much since 1791.

He says that starting a newspaper or broadcast station is difficult because of the prohibitive cost or limited spectrum space. Barron says the media are the censors because they limit the views they disseminate and permit few new or unpopular ideas to be heard widely (Franklin, p. 19). Barron argues for: "1) a nondiscriminating right to purchase editorial advertisements in daily newspapers, and 2) a right of reply for public figures and public officers defamed in newspapers" (Barron, 1973, p. 6).

Central to this argument is that commercialism and the profit motive have moved broadcasters away from a public service standard. Jacklin (Brenner & Rivers, 1982) says that media access is difficult, not because of a scarcity of frequencies, but for economic and sociological reasons (p. 250). Writing in 1975, he says that newspapers enjoy a monopoly in many markets. Furthermore, newspaper publishers control 80% of all print communications on local and state issues.

Media access advocates point to the concentration of media power they say is in the hands of a select few. The same is true for television stations that are affiliated with the three major television networks. Jacklin says: "Broadcasters are typically large corporations, not crusading journalists, not people at

all. Corporate broadcasters program as to generate the largest possible audiences. Then they rent these audiences to advertisers at the rate of four dollars per thousand per minute" (Brenner & Rivers, 1982, p. 252).

Barron said the news media, print and broadcast alike, had become big businesses pursuing an audience. This pursuit made media managers cautious of making people angry, lest they lose part of their audience and their advertisers. The result of this caution is bland media that largely ignore the evils of society. Barron thought the violence of the 1960s was in part a reaction to the media's indifference. Jacklin (Brenner & Rivers, 1982) says the diversity of opinions is reduced because "...the most powerful media are commercial and business-oriented. There is competition, but it is a competition for the advertiser's dollar and not a competition of ideas" (p. 251).

Jacklin (Brenner & Rivers, 1982) calls for a passive media. He says, "Journalists are supposed to be objective and non partisan. They themselves are not supposed to participate in the competition of ideas, or to lead people to action. The press sustains a competition of ideas only to the extent that it provides access to spokesmen who are not themselves

journalists" (p. 252).

Jacklin would have media operate as a common carrier with little regard for the message being sent. Common carriers, such as a telephone company, have no editorial discretion. That is, they do not control or care about programming content (Carter, 1989, p. 437). A phone company provides citizens with phone service and does not control what is said from one party to another. But broadcasters are not considered to be a common carrier and are required to be responsible for their programming content.

The Fairness Doctrine, discussed in detail later in this chapter, requires broadcasters to cover controversial issues (In the Matter of the Handling of Public Issues under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC 2d 1, 1974). In this regulation Barron saw the potential for his concept of access. Electronic media should be forced to accept all shades of opinion. This would encourage an aggressive marketplace of ideas.

In 1966 the courts recognized increased status for special interest groups at station renewal hearings (Office of Communication of the United Church of Christ, 1966). Red Lion went further and said: "It is the right of the viewers and listeners, not the right

of the broadcasters, which is paramount..." (Red Lion, 1969, p. 390). Communications attorney Jerome Barron and others have used these and other cases to argue for broadcast access by all who want it (Barron, 1967, p. 1641). Access would take the form of product advertisements or general programming that might provoke a controversial issue (Canby, 1976, p. 85).

Courts at every level have rejected Barron's argument for access as it pertains to privately owned media for two reasons:

1) Most media, including broadcasting, are privately owned. Thus, any attempt by government to tell an owner that an article or advertisement must be accepted and used could be taking of property without due process of law. This would violate the Fifth Amendment.

2) Further, an attempt by the state to tell media owners that they must accept an article or advertisement violates the freedom of the press protected by the First Amendment (Holsinger, 1991, p. 538). The Supreme Court rejected an outright "right of access" for citizens by saying that broadcast stations are not common carriers and are not required to open their facilities on demand (Columbia Broadcasting System, 1973).

Right-of-Reply for Print

The turning point for print regarding media access was Miami Herald versus Tornillo (Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 1974). In the early 1970s, Pat Tornillo, a candidate for the Florida legislature, thought he had been personally attacked by an editorial in the Miami Herald. The editorial called him a "czar" and a lawbreaker. Tornillo relied on Florida's right-of-reply law and asked the newspaper to publish his defense of his own actions. The editors refused, and Tornillo asked the county court to order the paper to publish his reply. The court also refused Tornillo's request and said that the law violated the newspaper's First Amendment rights. On appeal, Florida Supreme Court reversed the county court. On further appeal, the U.S. Supreme Court unanimously held that the right-of-reply law was unconstitutional.

The high court effectively denied political candidates access rights to newspapers on the First Amendment grounds of freedom of the press. The Supreme Court argued that requiring a newspaper to print replies interfered with the editorial discretion of the publisher and had a chilling effect on the publisher's First Amendment rights:

Faced with the penalties that would accrue to any

> newspaper that published news or commentary arguably within the reach of the right-of-access statute, editors might well conclude that the safe course is to avoid controversy. Therefore, under the operation of the Florida statute, political and electoral coverage would be blunted or reduced. (Miami Herald, 1974, p. 241)

In Tornillo the Supreme Court drew no parallels with Red Lion which had come five years earlier. Tornillo had no effect on the editorial discretion of broadcasters.

Broadcasters and the First Amendment

The net effect of media access arguments is that broadcasters do not have the same protection as the print media. Broadcasters are given the:

> ...exclusive control over [their] channel of communication, the public having, in effect, ceded its right of access to the airways in return for an enforceable promise by the licensee that he offer service in the public interest. Thereby, the First Amendment rights of both parties are served--the broadcaster through his power of access, and the public through its right to know. (Geary, 1977)

Media access arguments for broadcasters maintain

that broadcasting is inherently different from print and should be treated as such. This "varying standards approach" says that "differences in the characteristics of news media justify differences in the First Amendment standards applied to them" (Red Lion, 1969, p. 386). Emord (1991) reverses the argument and says that "...the substantive commonalities between the various media forms militate against affording each evaluation under a different constitutional standard" (p. 279). They have more similarities than differences.

In the early part of this century, the government very quickly confronted a new form of technology. From the first legislation affecting what would later be known as "broadcasting," the government has had to fit this unique form of communication into the rubric of the First Amendment. But first the government had to decide how to regulate it.

Justification for the Regulation of Broadcasting

The Federal government is empowered to regulate electronic communications because of the Constitution's "commerce clause." The Federal government considers electronic communications as interstate because they can and do cross state lines. Congress regulates telegraphy, telephony and broadcasting in the same manner as the transportation of goods and services

(U.S. Const. Article 1 § 8, cl. 3).

Before broadcasting and wireless telegraphy numerous cases established the right of the Federal government to regulate the electronic media as commerce. The Federal Communications Commission places the beginning of Federal regulation of interstate electrical communication by wire with the Post Roads Act in 1866. This enabled the Postmaster General to fix annual rates for government telegrams (Federal Communications Commission, Evolution of Wire and Radio Communication, 1988, p. 6).

In 1877 the Supreme Court said, "It is not only the right, but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State Legislation" (Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U.S. 1, 1877). In 1881 the Supreme Court said telegraphic communications were a form of interstate commerce and subject to Congressional jurisdiction. "A telegraph company occupies the same relation to commerce as a carrier of messages, that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their...ways, and their liabilities are in some respects different, but they are...commercial

pursuits" (Telegraph Co. v. Texas, 105 U.S. 464, 1881). Later in that decade the highest Federal court explained the rationale behind the Congressional power to regulate commerce: "The object of vesting power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting state regulation" (Western Union Telegraph Co. v. Pendleton, 122 U.S. 347, 358, 1887).

In 1929, eight years after the Federal government had licensed the first broadcast station, the Appeals Court in Washington, D.C., said broadcasting was an item of commerce: "The authority of Congress extends to every instrumentality by which commerce is carried on, and the full control of Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations" (United States v. American Bond and Mortgage Co., 31 F.2d 448, 1929).

Within the last decade, even in the midst of deregulation fervor, the Supreme Court has reaffirmed the right of the Federal government to regulate broadcasting.

Congress, acting pursuant to the Commerce Clause, has power to regulate the use of the

> broadcast medium. In the exercise of this power, Congress may seek to assure that the public receives through this medium a balanced presentation of information and views on issues of public importance that otherwise might not be addressed if control of the medium were left entirely in the hands of the owners and operators of broadcasting stations. (Federal Communications Commission v. League of Women Voters of California, 468 U.S. 364, 1984)

Radio Act of 1912

Early wireless telegraphy was a crude form of communication initially used for maritime purposes. Guglielmo Marconi, an Italian, refined the work of previous inventors and showed the effectiveness of using radio waves for communication. Later he founded a British company with the goal of establishing a monopoly in the wireless business. His company in America carried the name "American Marconi."

After the effectiveness of wireless was demonstrated, Congress enacted the first radio law, the Wireless Ship Act of 1910, a decade before the rise of broadcasting (Public Law 262, 61st Congress, June 24, 1910). The law required ships carrying more than fifty passengers to have a wireless aboard.

Motivated by public outcry after the sinking of the Titanic in April 1912, Congress passed the Radio Act of 1912 (Act of August 13, 1912, Pub. L. No. 62-264, 37 Sta. 302). The 1912 Act also complied with the obligations of a treaty adopted after the Berlin International Radiotelegraphic Convention in London in 1912 (Federal Communications Commission, Evolution of Wire and Radio Communication, 1988, p. 8). The 1912 Radio Act gave responsibility to the Secretary of Commerce and Labor (later the Secretary of Commerce) to license stations and specify wave lengths for various types of stations.

After World War I the Federal government held the patent rights to radio. In 1919 the assets of American Marconi were liquidated and assumed by the Radio Corporation of America (RCA) in a patent pooling arrangement. Another reason for the liquidation of American Marconi was its foreign ownership. The government felt that an American company should manage American patents.

The Rise of Broadcasting

The initial development of broadcasting (as opposed to point-to-point communication) was almost by accident. Early radio broadcasting developed out of wireless telegraphy circa 1920 and the Federal

government considered it a new form of telephony (Head, 1990, p. 43). Initially the government classified the first broadcast stations as "limited commercial stations." The music and voices heard over what were previously dots and dashes of wireless telegraphy caught the attention of early radio listeners. Early amateurs unexpectedly became popular by playing music over the new broadcast service, then called radio telephony. KDKA in Pittsburgh is generally recognized as the first broadcast station in the United States, although a few stations had been broadcasting sporadically before its inception.

R. Franklin Smith (1975) differentiates between wireless telegraphy, which grew out of the efforts of Marconi to establish a wireless monopoly, and the unique broadcast services that developed after 1920. He identified five distinguishing characteristics of broadcasting: a station that (1) utilizes radio waves, (2) to send non-coded sounds by speech or music, (3) in the form of a continuous patterned program service, (4) intended to be received by the public, and (5) is licensed by the government (Smith, American Broadcasting, p. 117).

Characteristics two, three and four differentiated broadcasting from telegraphy while the "continuous

patterned service" created the most problems with the new broadcast service. Broadcasting required continuous transmission to attract a consistent audience, but the assumption under the Radio Act of 1912 was that wireless services would briefly send point to point transmissions. In the early years of wireless few anticipated a broadcast service that would use one frequency continuously. This caused a scarcity of available frequencies.

Broadcasting grew out of a common carrier service as the antithesis of point-to-point service. Wireless telegraphy operated as a common carrier and was not concerned with the messages transmitted or received. Many of the first broadcast stations were owned by common carriers or manufacturers. Prominent among those were AT&T, Westinghouse and General Electric. Their entry into the telegraphy business was a business decision to increase revenue. In Pittsburgh, the growth of radio set sales encouraged Westinghouse to open KDKA (Head, 1990, p. 41).

The period from 1921 through 1927 was marked by weak federal jurisdiction over broadcast programming. Acting under the authority of the Radio Act of 1912, the Department of Commerce developed and enforced technical standards for the rapidly increasing number

of broadcasting stations.

Government control over the development of broadcasting was designed to alleviate the chaotic situation that had developed by the late 1920s. From only three broadcast stations in 1920, the number grew to 578 by 1925, with more going on the air continually (Bensman, American Broadcasting, 1975, p. 1955). With that rapid rise came the problem of interference. Stations in the same city would often go on the air simultaneously and on the same frequency. The rapidly increasing number of broadcast stations put a tremendous burden on Commerce Secretary Herbert Hoover and his staff. Hoover and the new broadcast industry soon realized that the Radio Act of 1912 would not keep pace with the technical developments (Bensman, American Broadcasting, 1975, p. 555).

More stations going on the air within the limited frequencies resulted in the reception of multiple signals by a confused public. Between 1922 and 1925, four annual radio conferences met in an attempt to solve the interference problem. Although the conferences allowed a discussion on the technical matters, Congress passed no legislation.

At the fourth and final radio conference in 1925, Commerce Secretary Herbert Hoover (later President

Hoover) told the conference that the airwaves were becoming increasingly jammed. An argument that would later be used by the Supreme Court and FCC as a basis for the Fairness Doctrine was presented:

> We hear a great deal about freedom of the air, but there are two parties to freedom of the air, and to freedom of speech for that matter. Certainly in radio I believe in freedom for the listener....Freedom cannot mean a license to every person or corporation who wishes to broadcast his name or his wares, and thus monopolize the listener's set. (Fourth National Radio Conference, Proceedings and Recommendations for Regulation of Radio, 1925, p. 7)

Hoover also raised the issue of the public interest:

> The ether is a public medium, and its use must be for public benefit....Consideration in the radio field is, and always will be, the great body of the listening public, millions in number, country wide in distribution. There is no proper line of conflict between the broadcaster and the listener...their interests are mutual.... (Fourth National Radio Conference, Proceedings and

Recommendations for Regulation of Radio, 1925, p. 7)

The problem of too many operating stations was compounded by the Radio Act of 1912's failure to grant the Secretary of Commerce sufficient discretionary power to create and enforce new rules of operation required to meet growing numbers of stations. As early as 1912 the Attorney General's office noted that the Secretary had no "regulative power" (29 Op. Att'y Gen. 579, 581, 1912).

In 1923 the Commerce Secretary's authority was restricted by the District of Columbia Circuit Court of Appeals which said that the Secretary had no discretion to refuse a license to a radio applicant within the designated classifications (Hoover v. Intercity Radio Co., Inc., 286 F. 1003, 1923). In 1926 a District Court in Illinois ruled that Secretary Hoover could not penalize the Zenith Radio Corporation for broadcasting on an unauthorized frequency (United States v. Zenith Radio Corporation et al., 12 F.2d 614, N.D. Ill. 1926). The Secretary's powers were finally sterilized after Acting Attorney General William J. Donovan, responding to Hoover's request for an advisory opinion, ruled that under the 1912 act operating power, times for station operation and the allocation of frequency were not

under Hoover's general authority (35 Op. Att'y Gen. 126, July 8, 1926).

Bensman (1970) states that some broadcasters, aware that federal enforcement powers had been effectively muted, took advantage of the situation. The result was confusion for broadcasters and the public alike. Broadcasters changed frequencies and power at will (Bensman, "The Zenith-WJAZ Case and the Chaos of 1926-27," Journal of Broadcasting, p. 423). One writer said, "In the period of less than a year that elapsed between this decision [Zenith] and the passage of the new Radio Act [of 1927], 200 new broadcast stations took advantage of the moratorium on regulation, and crowded on the air, compounding the bedlam that already existed" (Head, 1956, p. 129).

Until *Zenith* (1926) Congress had been unable to pass a comprehensive broadcasting bill. In late 1926 President Calvin Coolidge urged Congress, as part of his Congressional message, to step in and correct the disorder in the airwaves (H.R. Doc. 483, 69th Congress, 2d Session, December 7, 1926). Faced with an emergency, Congress formulated a new radio bill.

As evidenced by the 1927 Radio Act debates, Congress feared that radio would become monopolistic and restricted to the wealthy and influential; thus,

some legislators felt they should exercise tight control over radio. After World War I the Federal government considered confiscating all receivers and transmitters then in use and restricting broadcasting to the government. Others wanted to avoid any government censorship or intervention.

Senator Clarence Dill, a cosponsor of the 1927 Radio Act, said in the debates:

> It is our desire and purpose to keep them [radio broadcasters] free so far as it is possible to do so in conformity with the general public interest and the social welfare of the great masses of our people. It is this combination and purpose that complicates the problem of legislation on this subject....We must steer the legislative ship between the Scylla of too much legislation and the Charybdis of the grasping selfishness of private monopoly. (67 Congressional Record, 1926, p. 12335)

In February 1927, the Radio Act of 1927 became law and demonstrated a willingness by the Federal government to enact strong National guidelines for the operation of the broadcast industry (Public Law 632, 69th Congress, February 23, 1927).

Significance of the Radio Act of 1912

The Radio Act of 1912 was the first domestic law for general control of radio communication (Federal Communications Commission, 1988, p. 1). However, the Radio Act of 1912 had several inherent weaknesses:

1) Its purpose was not to regulate broadcasting but to control the wireless industry. Congress passed the Act eight years before the development of broadcasting.

2) Court decisions decided that the Secretary of Commerce had no discretionary power under the 1912 law to determine the qualifications of a station owner.

3) Additional court decisions weakened the discretionary authority of the Secretary of Commerce by maintaining he was not empowered to revoke licenses. This would be similar to a state issuing a driver's license to an individual but being powerless to revoke that license after the driver deliberately killed a group of pedestrians.

The period from 1921 through 1927 showed that some broadcasters, when unregulated, acted irresponsibly. The confusion of the airwaves caused by a scarcity of frequencies confirmed that strong Federal regulation was needed to regulate broadcasters.

The Radio Act of 1927 and the Public Interest

Well aware of the chaos during the early 1920s,

Congress was determined to end the confusion brought on by broadcasters unwilling to operate within their allocated frequencies. Unique to the 1927 legislation was the phrase "public interest, convenience, or necessity" used five times throughout the Act: twice in section four, and once in sections nine, ten and twenty-one. Congress wanted to give broad discretionary powers to the government and prohibit an individual broadcaster from having any property right to a frequency.

Some disagreement exists regarding the origin of the phrase "public interest" in broadcast legislation. The idea of "public interest" originated in the latter part of the nineteenth century by the U.S. Supreme Court (Munn v. Illinois, 94 U.S. 113, 1876). Darrell Holt (1967) traced the development of the phrase "public interest, convenience, and [or] necessity" and writes that in the late nineteenth century government and society came to believe that "some types of business undertakings acquire a relationship to society which is significantly more vital than others" (p. 15). This is similar to public utilities, such as water or electricity, that are government regulated to protect consumers against over pricing and exploitation.

Surface carriers in the late nineteenth century

were required to obtain a "certificate of convenience and necessity" to extend their service or cease operations. The State of New York required such certificates for railroads and street railways. The Transportation Act of 1920 appears to have first used the "public interest" phrase (Holt, 1967). An almost identical wording found its way into the Radio Act of 1927 after having been first proposed in 1924 by Congressman Wallace H. White (HR 7357).

Late in the nineteenth century business monopolies had come under government scrutiny. This resulted in the breakups of Standard Oil and other largely unregulated businesses. The 1920s were a time of increased conservationism. Members of Congress were concerned over the private exploitation of natural resources, especially after the Teapot Dome scandal. Nebraska Senator George W. Norris viewed America's natural beauty as belonging "to all of us, a source of human happiness" (Barnouw, 1966, p. 196) and felt that its development should be a public responsibility. This issue found its way into the 1927 Radio Act.

Addressing the public utility rationale, Justice Burger (later Chief Justice of the Supreme Court) rebuked the FCC in 1966 for renewing the license of a Mississippi television station.

> The argument that a broadcaster is not a public utility is beside the point. True it is not a public utility in the same sense as strictly regulated common carrier or purveyors of power, but neither is it a purely private enterprise like a newspaper or an automobile agency. A broadcaster has much in common with a newspaper publisher, but he is not in the same category in terms of public obligations imposed by law. A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. A newspaper can be operated at the whim or caprice of its owners; a broadcast station cannot. After nearly five decades of operation the broadcast industry does not seem to have grasped the simple fact that a broadcast license is a public trust subject to termination for breach of duty. (Office of Communication of the United Church of Christ v. Federal Communications Commission, 359 F.2d 1003, 1966)

Newton Minow, a former FCC Commissioner, has a slightly different explanation of the origin of the public interest standard. He writes that Senator

Clarence Dill, sponsor of the 1934 Communications Act, once told him he had borrowed the phrase "public interest" from public utility laws (Simmons, 1978, page x). Minow (1964) writes that a staff member from the Interstate Commerce Commission was on loan to the Senate and suggested that because the "public interest, convenience, and necessity" words "had provided the regulatory standard in the Interstate Commerce Act, the same words could be used in communications as well" (p. 8).

Thus, communication systems received their regulatory standing from transportation systems. The comparison is not coincidental and was later used by the Supreme Court in 1943 to justify the content regulation of broadcasting by equating the operation of the FCC to traffic control (National Broadcasting Company v. United States, 319 U.S. 190, 1943).

However, one primary difference between the wireless telegraphy industry and broadcasting was that telegraphy was regulated as a common carrier. The Federal government was primarily concerned with regulating telegraphy rates and not the content between parties. However, as the public interest standard for broadcasting developed, government took an active role in overseeing broadcast station content.

Another more complicated public interest rationale is frequency scarcity that recognizes the limited number of frequencies available for broadcasting. The Federal government considered radio frequencies a natural resource that would not be surrendered to private ownership since they belong to the public at large. An extension of this principle was that, because the number of broadcast channels was limited, not everyone could operate a broadcast station. Some reasoned that anyone can publish a newspaper, but because broadcasting is time based, operates continuously, and has a limited number of frequencies available to use not everyone can operate a radio station.

Metzger and Burrus (1965) recognized the electromagnetic spectrum as a natural resource that was limited and that deserved to be protected by government regulation (p. 1). Another author explained the technical nature of scarcity within the electromagnetic spectrum (Crisis in Electromagnetic Frequency Spectrum Allocation: Abatement through Market Distribution, 1967, p. 437). A former FCC Commissioner presented an overview of government frequency allocation relating to the Radio Act of 1927 (Robinson, 1969, p. 1179).

Federal regulators thought of radio waves, like

national parks, as a natural resource belonging to no one but available for private use under government licensing. Thus the radio spectrum can and must be protected by the Federal government in much the same way that parks are protected from private encroachment. Private companies are thus regulated by the government in a fiduciary relationship. That is, the government allows the broadcaster to use the radio spectrum as a trustee. The government regulates the business to protect the public from exploitation (Holt, 1967).

Congress was concerned about media ownership. The Congressional debates preceding the Radio Act of 1927 often discussed propaganda stations. Some thought monopolies might restrict the flow of information to the American public.

Congress was unwilling to insist on government ownership of broadcasting such as the British system; therefore, the Radio Act of 1927 recognized that private enterprise would operate the broadcast spectrum for the public at large. However, Congress did insist that the public interest not be subordinated to private interests. The Act specified freedom of speech and prohibited prior restraint by the government. Broadcasters interpreted this as a total prohibition against government control of content. Beyond

allocating frequencies, the federal government also had the authority to determine the eligibility of a licensee and use programming content as a criterion for keeping a license. Thus began the conflict between a guarantee of free speech and a mandate by Congress to operate in the "public interest."

The Radio Act of 1927 created the Federal Radio Commission (FRC) as an independent regulatory agency. Its responsibility was to enforce the provisions of the 1927 radio legislation. Initially the FRC had two problems. One was the interference problem caused by multiple stations transmitting on the same frequency. The Commission had to develop a rationale and method to reduce the number of stations to match the number of frequencies already available. Beyond the interference problems, some broadcasters were using their stations for propaganda purposes to express private views or develop commercial enterprise. The Federal Radio Commission was working to assure that all stations served the "public interest," which was still to be determined. Of the stations on the air in 1927, between 60 and 150 went off the air or faced major changes, mostly for technical violations.

Initially, there were few frequencies available to broadcasters. Because of the technology available in

1927, only ninety channels were available for the allocation of stations (Federal Radio Commission Second Annual Report, 1928, pp. 88-116). The frequencies ranged from 550 to 1500 kilocycles (kilohertz), almost the same frequencies used on the AM band today. Because of the overcrowding, many stations were forced to stagger their schedules and share time with stations in adjacent cities or states.

On August 23, 1928, the Federal Radio Commission announced its interpretation of the public interest, convenience, and necessity standard (Federal Radio Commission, Second Annual Report, 1928, p. 166). Before the announcement the agency had made some difficult decisions regarding who would stay on the air and considered the public interest standard in their decisions. The complexity of their work was compounded by the "Davis Amendment" that had been passed by Congress in March 1928 to insure equal distribution of stations across the country.

The FRC was determined to remove from the airwaves stations they felt served private interests and violated the terms of their licenses. Not all broadcasters took the Commission seriously, and some appealed after the Commission revoked their licenses. Those appeals set precedents and detailed the

regulatory power of the Federal Radio Commission. In doing so, the constitutionality of the 1927 Radio Act was tested and verified in court. This strengthened the role of the Federal government in regulating the allocation and content of broadcast stations.

An examination of the cases challenging the authority of the FRC shows a Commission initially concerned with engineering and programming considerations. The Commission's determination of "public interest" went beyond technical considerations. From 1927 through 1934 the Federal courts heard 60 cases appealed from the FRC. The public interest standard in the 1927 Act was vague and untested in the courts. However, among the cases appealed, the "public interest" standard was widely applied and endorsed by the courts. Don R. Le Duc and Thomas A. McCain (Journal of Broadcasting, 1974) concluded that the "federal judiciary, during the period in which it considered appeals from Federal Regulatory decisions, generally supported the regulatory authority of the agency and, by providing such support, enhanced its ability to supervise the broadcasting industry" (p. 406).

In 1929, the Federal Radio Commission cited the Great Lakes Broadcasting Company for a violation of the public interest:

> ...the emphasis is on the listening public, not on the sender of the message. It would not be fair, indeed it would not be good service to the public to allow a one-sided presentation of the political issues of a campaign. In so far as a program consists of discussion of public questions, public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies not only to addresses by political candidates but to all discussions of issues of importance to the public. (Federal Radio Commission, Great Lakes Broadcasting Co., Third Annual Report, 1932, p. 32)

The Commission considered representatives of particular viewpoints. This was an allusion to part two of what would later be called the Fairness Doctrine:

> In the present state of the art there is no way of increasing the number of stations without great injury to the listening public, and yet thousands of stations might be necessary to accommodate all the individuals who insist on airing their views through the microphone. If there are many such persons, as there undoubtedly are, the results would be, first to crowd most or

> all of the better programs off the air, and second, to create an almost insoluble problem, i.e., how to choose from among an excess of applicants who shall be given time to address the public and who shall exercise the power to make such a choice. (Federal Radio Commission, Great Lakes Broadcasting Co., Third Annual Report, 1932, p. 33)

Broadcasters were also discouraged from excluding other points of view, an obligation no doubt new to the broadcasters of that era. Stations that would exclude opposing viewpoints were put on the defensive:

> ...there is no room for the operation of broadcasting stations exclusively by or in the private interests of individuals or groups so far as the nature of the programs is concerned. There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some it gives them an unfair advantage over others, and results in a corresponding cutting down of general public-service stations. It favors the interest and desires of a portion of the listening public at

> the expense of the rest. Propaganda stations (a term which is here used for the sake of convenience and not in a derogatory sense) are not consistent with the most beneficial sort of discussion of public questions. As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience, or necessity, particular doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public-service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well founded complaint will receive the careful consideration of the commission in its future action with reference to the station complained of. (Federal Radio Commission, Great Lakes Broadcasting Co., Third Annual Report, 1932, p. 34)

Another case that further established the public interest standard using frequency scarcity as a rationale was KFKB at Milford, Kansas, that was owned by Dr. John T. Brinkley (KFKB Broadcasting Association, Inc., v. Federal Radio Commission, 47 F.2d, 1931, p. 670). After a record of over-the-air medical quackery and an almost successful campaign for

governor, the Federal Radio Commission decided not to renew Dr. Brinkley's license. The Appeals Court affirmed the right of the FRC to deny Brinkley's license "because the number of available broadcasting frequencies is limited..." (KFKB, 1931, p. 672).

In 1934 Congress passed the Communications Act and borrowed much of the language and philosophy from the 1927 Radio Act (Communications Act of 1934, Public Law 416, 73rd Congress, June 19, 1934). Also carried over was the "public interest, convenience, and necessity" mandate for broadcasters (Communications Act of 1934, Section 308, 1934). The Federal Communications Commission (FCC) was created to replace the Federal Radio Commission.

Origins of the Fairness Doctrine

The purpose of the Fairness Doctrine was to encourage the discussion of issues by giving the public access to more than one side of a controversial topic. The requirements of the Fairness Doctrine were twofold:

1. Broadcasters should give adequate coverage to controversial issues of public importance.

2. Stations must fairly reflect contrasting viewpoints in that coverage (FCC, 1974, p. 1).

The Fairness Doctrine grew out of the practice of editorializing. Throughout the 1930s several stations

aggressively editorialized. In 1941 the Federal Communications Commission discouraged broadcast editorializing by ruling on the license renewal of Boston radio station WAAB. The Mayflower Broadcasting Corporation had filed against WAAB and had pressed the issue of WAAB's editorial policy (Kahn, 1984, p. 120). Many of WAAB's editorials were not popular with the political establishment. Hugh Carter Donahue (1989) says that the station "...blasted politicians relentlessly, sometimes unfairly and, at least once, foolishly..." (p. 33). Although the station's license was renewed, the Federal Communications Commission noted that it felt many of the editorials produced were not objective or impartial. In its decision, commonly referred to as "Mayflower," the FCC chided the station's practice of editorializing and discouraged other stations from doing the same. Citing the limited number of frequencies available for broadcast use, the Commission said:

> Radio can serve as an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his

> friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be an advocate. (FCC, In the Matter of the Mayflower Broadcasting Corporation and the Yankee Network, Inc. (WAAB), 8 FCC 333, 1941)

Although the FCC never forbade editorializing, many broadcasters interpreted *Mayflower* that way. Houser (1972) wrote that the intent of *Mayflower* was actually to increase discussion of various issues of public importance and to present all sides of public issues (p. 557).

Shortly after *Mayflower* the country was plunged into World War II and its attention was focused on winning the war effort. Houser (1972) and Kahn (1984, p. 121) point out that the wartime atmosphere probably discouraged broadcasters from challenging *Mayflower*. Radio stations faced programming curtailment that would be unthinkable today. Houser, quoting T. Koop's 1946 book Weapon of Silence, said it was unlawful during World War II for stations to play requested music fearing that they might contain coded messages for saboteurs. Additionally, radio "weather reports [were] forbidden as a precaution against air raids, and as a means of inhibiting the enemy's ability to forecast his

own future weather conditions" (Houser, 1972, p. 557, footnote 51).

FCC decisions after *Mayflower* demonstrated to broadcasters that the discussion of controversial opinions was not an option but an obligation if one wanted to operate a station. Many broadcasters saw the trend as an intrusion into the ability of broadcasters to make programming decisions.

In 1945 the FCC ruled that overall program scheduling, including controversial public affairs programming, was a criterion for renewing a license. "The Commission...is of the opinion that the operation of any station under the extreme principles that no time shall be sold for the discussion of controversial public issues...is inconsistent with the concept of public interest established by the Communications Act as the criterion of radio regulation..." (United Broadcasting Co. (WHKC), 10 FCC 515, 518, 1945).

Two related decisions followed in 1946 as the Commission elaborated on what they felt to be broadcaster obligations to promote fair discussions of controversial issues. In the Morris case the FCC reasserted that overall programming, including controversial public affairs programming, was a criterion for license renewal (Sam Morris, 11 FCC 197,

1946). Shortly afterwards the FCC upheld standards that controversial public affairs belonged within a station's news programming (FCC, Petition of Robert Harold Scott for Revocation of Licenses of Radio Stations KOW, KPO and KFRC, 11 FCC 372, July 19, 1946). The FCC expected stations to be responsive to controversial issues of public importance and not to avoid them because they were unpopular.

Throughout the 1930's the power of networks increased to the point that stations were required to sign exclusive contracts that required programs to be run at the network's discretion. The FCC saw this as an erosion of the concept of localism that required each station to be responsible for its own programming. In 1941 the FCC curtailed the power of the networks as a result of its chain broadcasting investigation and eventual rulemaking (Kahn, 1984, p. 124). The networks appealed and in 1943 the Supreme Court decreed that the regulatory powers of the FCC were not limited to the engineering and technical aspects. Writing for the majority, Judge Felix Frankfurter said that the government had a right to decide not only who would operate a facility, but how that facility would operate. The High Court said that the Federal Communications Commission was not limited to a "traffic

officer," policing the wave lengths to prevent stations from interfering with each other (National Broadcasting Co., Inc. et al. v. United States et al., 319 U.S. 190, 1943). The 1934 Communications Act puts upon the Commission the burden of determining the composition of the traffic (Federal Communications Commission, 1974, p. 1).

Shortly after World War II the FCC issued the "Blue Book" that said the FCC would closely examine the programming practices of stations at renewal time. Many broadcasters interpreted this as censorship. Though the FCC never repudiated the findings of the "Blue Book," they never really enforced it either (Kahn, 1978, p. 148).

In 1949 the FCC, building on decisions following *Mayflower*, reasserted its commitment to the free expression of controversial issues of public importance by modifying *Mayflower* and saying broadcasters could provide controversial programming if the presentation was balanced. By the early 1960's this concept became known as the Fairness Doctrine (FCC, Report on Editorializing by Broadcast Licensees, 13 FCC 1246, June 1, 1949). In its 1949 report, the Commission allowed broadcast facilities to editorialize if they presented all sides of a controversy. The new

requirement was twofold: 1) Stations should provide adequate coverage of important public issues to the community of license, and 2) all sides of controversial issues should be presented to avoid the exclusive views of the licensee (FCC, Report, 1949, p. 1257). The FCC surprised broadcasters by asserting that stations had an obligation to discuss controversial issues.

The FCC said in the 1949 report:

1) Past regulatory cases established the fact that the FCC may oversee the content of broadcast programming. The FCC cited several cases including KFKB (1931) and Trinity Methodist Church (1932).

2) Citing the 1943 Supreme Court decision upholding the FCC's network regulations, the Commission said the licensee should decide what issues were important. The FCC also said that no broadcast facility should be used "as an outlet for the purely personal or private interests of the licensee" (FCC, 1949, p. 1257).

3) Any restriction on the programming practices of broadcast licensees was not an "abridgment of the right of free speech" (FCC, 1949, p. 1256).

Although most of the Commissioners voted for the report (the vote was four to one), most were unhappy with the final draft. Commissioner Webster said the

Editorializing Report left him in a "quandary and state of confusion" as to what was required (FCC, 1949, p. 1258). Commissioner Jones said the report did not reject the 1941 Mayflower decision (FCC, p. 1262). In a dissent, Commissioner Freida Hennock questioned the wisdom of the decision. Among her objections was the difficulty of enforcement, also the problem of determining whether a criterion of fairness had been breached in case of a complaint. However, her solution was to continue to prohibit broadcasters from editorializing until "we can substitute for it some more effective method of insuring fairness" (FCC, p. 1270).

Elements of the Fairness Doctrine

The Fairness Doctrine applied to public affairs programs (including editorials), commercial advertising, and political advertising or appearances. Broadcasters were required to balance the presentation of any controversial subject of public importance in the overall programming (American Security Council, 1983). But the Fairness Doctrine also required that broadcast stations take the initiative to produce controversial programming (Mink, 1976). Thus, it was not only a matter of balancing viewpoints, but the federal government compelled stations to give a

reasonable opportunity for the presentation of contrasting viewpoints.

The second part of the Fairness Doctrine involves an element of fairness to insure that the public hears all sides of an issue. The FCC gives the licensee a great deal of discretion for time to be devoted to the controversy, the issues covered, viewpoints presented, appropriate representatives, format of the program and other programming decisions (FCC, 1974, paragraphs 41 and 42):

> The broadcaster has considerable discretion as to the format of programs, the different shades of opinion to be presented, the spokesperson for each point of view, and the time allowed. He is not required to provide equal time or equal opportunities; this requirement applies only to broadcasts by candidates for public office. The doctrine is based on the right of the public to be informed and not on the proposition that any particular person or group is entitled to be heard. (FCC, Public and Broadcasting, 1974, paragraph 12)

Although the Fairness Doctrine amounted to limited citizen access, the FCC gave stations some discretion to determine the extent of a fairness complaint and the format for program balance including guests, time allocation, and

procedures (FCC, 1964, p. 606).

However, there were limits placed on licensee discretion.

1. Broadcasters must encourage the presentation of opposing views, even to the point of seeking them out (FCC, 1964, paragraph 9). The broadcaster cannot say that no one has asked to reply. If the station believes that there is an identifiable group or person who would speak out on an issue had it been informed of the broadcast, the licensee must seek that group out (Columbia Broadcasting System, 1972).

2. Demonstrating only news coverage of an issue may not be sufficient to comply with the first part of the Fairness Doctrine (Mink, 1976).

The Fairness Doctrine and Advertising

Some broadcast advertising has triggered the Fairness Doctrine. The environment, nuclear power plants, public referendums and the nuclear test ban treaty have all been the subject of broadcast advertising. In 1963 the FCC ruled that if sponsored programs were considered controversial they should be balanced by opposing groups. The FCC also required that if the group holding the opposing viewpoint could not pay for comparable time, the station must give time to the group. The FCC also said that if the station or network cannot find sponsors willing to pay for the expression of opposing views, it must sponsor such

expression itself (Cullman, 1963). The net result of this ruling was that stations avoided highly controversial advertising that might result in opposing groups requesting air time for response. *Cullman* required that the time would have to be given free if the opposing group could demonstrate that they did not have the funds to pay for the air time. Thus, controversial issues were avoided because broadcasters would have lost revenue.

During the early 1960s the issue of tobacco smoking and its effects on the public health began to generate a great deal of public discussion. In 1966 the FCC determined that the broadcast of cigarette commercials was a controversial issue and required anti-cigarette advertising in some reasonable proportion to the number of cigarette advertisements presented (Banzhaf v. FCC, 1968).

Folowing the cigarette decision, product advertisements for cars, snowmobiles, public utilities and gasoline engines were attacked by environmentalists and others who said some advertising raised controversial issues, even if the controversy was not addressed in the advertisement. The FCC reversed itself in 1974 and said that its decision on cigarette advertising was in error (FCC, 1974, paragraphs 66-70).

In later years the FCC upheld the right of broadcasters to refuse advertising. The Supreme Court said that requiring

stations to sell advertising might undermine their decision making ability and responsibility for content aired over their stations (Business Executives, 1970; Democratic National Committee, 1970).

Personal Attack Rule

Because broadcasting is not a common carrier, members of the public do not have unlimited access to broadcast facilities. However, with the formalizing of the Personal Attack Rule the FCC gave limited access to those who have been personally attacked on the air. The Personal Attack Rule allows a person attacked on the air to gain access to the broadcast facility to defend him or herself.

Stations are required to notify and give reasonable opportunity for reply to:

1. An individual who has been attacked during a broadcast discussion of controversial public issues.

2. A political candidate against whom the station has editorialized.

3. All candidates running against a candidate who has been endorsed by the station (47 CFR 73.123, 73.300, 73.598, 73.679).

Revision of Section 315

Throughout the 1950's the Fairness Doctrine failed to attract a great deal of attention by the Commission and broadcasters. Broadcast editorializing was not aggressively

practiced. Ward (1947) studied public attitudes toward radio editorializing. Most of the respondents approved the production of editorials by radio stations and associated radio news with personalities, not radio stations or networks. The significance of this study was that it came six years after the 1941 *Mayflower* decision when the FCC discouraged broadcast editorializing. Markland (1951) analyzed radio editorial practices shortly after the Report on Editorialization. Cusak (1959) concluded ten years after the FCC's 1949 Report on Editorializing that broadcasters had failed to take advantage of that privilege (p. 1).

In 1959 Congress amended the 1934 Communications Act to exempt broadcast newscasts, documentaries and interview programs from political "equal opportunity" requests. At the same time Congress inserted the phrase in Section 315 of the 1934 Communications Act requiring stations to "...afford reasonable opportunity for the discussion of conflicting views on issues of public importance" (Public Law, 86-274).

The constitutionality of the Fairness Doctrine was eventually upheld by the Supreme Court in 1969. WGCB in Red Lion, Pennsylvania, broadcast a program moderated by the Reverend Billy James Hargis who reviewed a book about Barry Goldwater, then the Republican nominee for President. Hargis personally attacked the author, Fred J. Cook. Cook asked stations that carried the program for free reply time. WGCB

sent Cook their rate card and maintained they were not required to offer free time to Cook. Citing the personal attack rule, Cook went to the FCC which supported Cook. In *Red Lion* (1969) the high court said that the concept of fairness, as interpreted by the FCC, was constitutional since it was based on the scarcity of available frequencies that limited the number of broadcast facilities.

For almost two decades after *Red Lion* legal scholars thought the Fairness Doctrine's constitutionality was beyond question (Geller, 1973, The Fairness Doctrine in Broadcasting, p. 6). However, in 1984 the FCC ruled that WTVH-TV, a New York television station owned by the Meredith Corporation, failed to comply with its obligation to present fair and balanced programming relating to a series of advertisements concerning the soundness of public investment in a nuclear power facility. The Commission rejected the licensee's claim that the actual issue involved was U.S. dependence on foreign oil and the need for electricity and that its coverage of that issue was sufficiently balanced. WTVH-TV presented compensatory or additional balanced programming, and appealed (Syracuse Peace Council, 1984).

Concurrently, the FCC sent a report to Congress in 1985 recommending Congress abolish the Doctrine. The FCC said the Fairness Doctrine had not served the public interest and was questionable on several grounds (FCC, 1985). The

Commission's conclusion was that the Fairness Doctrine's reason for existence, scarcity, was suspect. The FCC said the Fairness Doctrine was no longer necessary due to competition within each market and thereby relieved broadcasters of the requirement that they present controversial issues of public importance in a balanced fashion (FCC, 1987). The FCC report drew several conclusions:

1. The Fairness Doctrine decreased the number of diverse viewpoints available to the public because broadcasters believed the Fairness Doctrine imposed significant time and financial burdens. Therefore, fewer stations covered controversial issues because of the Fairness Doctrine.

2. The administration of the Fairness Doctrine inhibited the expression of unorthodox opinions.

3. The government became an overseer of program content, a constitutionally questionable practice.

4. The Fairness Doctrine allowed government officials to intimidate broadcasters.

5. Economic burdens were unnecessarily placed on broadcasters by the Fairness Doctrine.

6. The diversity of media made the Fairness Doctrine unnecessary.

Several decisions by the judiciary and the FCC followed. WTVH-TV (Meredith) appealed and the U.S. Court of Appeals reversed the FCC decision and remanded it for further consideration (Meredith, 1987). The Appeals court reminded the Commission that in *Telecommunications* (1986) (also called *TRAC*) it held that the Fairness Doctrine was not mandated by Congress. That decision came after the FCC had issued a report stating that none of the political access rules, including the Fairness Doctrine, would apply to teletext. The Telecommunications Research and Action Center and Media Access Project asked the U.S. Court of Appeals for the District of Columbia Circuit Court to review the order. The appeals court said that teletext was broadcasting as defined in the Communications Act. The court also said that the Fairness Doctrine was not codified in Section 315 during the 1959 amendment to the Communications Act. The appeals court held that the Fairness Doctrine was a creation of the Commission and its enforcement was left up to the FCC by Congress. The FCC was free to enforce it or eliminate it. The Appeals court also suggested that the Commissioners would be violating their oath of office if they continued to enforce the Doctrine despite their belief (as stated in their 1985 Fairness Report) that it was inconsistent with the First Amendment. Shortly after the appeals court reversal the FCC ruled in Meredith's favor

(Syracuse Peace Council, 1987).

Until the reversal of Meredith by the Court of Appeals, the FCC was unsure of its responsibilities under the Fairness Doctrine. In August 1987 the FCC said it would no longer enforce the Fairness Doctrine (FCC, 1987). The FCC said that the Fairness Doctrine had "chilled speech" and "disserve[d] the public interest.... Accordingly, we...conclude that the Constitution bars us from enforcing the fairness doctrine..." (FCC, 1987, pp. 5057-5058).

Congress objected to the Commission's action and passed legislation to codify the Fairness Doctrine. President Reagan vetoed that bill and threatened to veto another attempt to attach a "fairness" provision to a funding bill (President, 1987).

Fairness Corollaries

With the lifting of the Fairness Doctrine it was unclear if the FCC would enforce a number of fairness corollaries such as the personal attack rule and the endorsement of candidates and referendums. The Commission responded to Congressman John Dingell and said the 1987 decision to no longer enforce the Fairness Doctrine related only to the Fairness Doctrine and "...did not affect any obligations codified by the Congress, such as the equal opportunity provisions under § 315 or the reasonable access provisions of § 312(a)(7)" (FCC, 1987, Letter to the

Honorable John D. Dingell). The Commission said that all Fairness Doctrine corollaries would be enforced.

Ballot Propositions or Referendums

Though ballot propositions, such as initiatives or referendums, might be part of an election campaign, commercial announcements concerning them are not subject to the "equal opportunities" rules under Section 315(a) of the Communications Act. The only exception would be if a *bona fide* candidate makes an "appearance" in the announcement. Until early 1992 ballot propositions were considered a part of the Fairness Doctrine if they invoked a controversial issue. On January 6, 1992 the Commission voted to repeal the ballot-issue corollary saying it was based solely on the 1987 decision that the Fairness Doctrine was no longer in the public interest.

Endorsing Candidates

Although the Fairness Doctrine grew out of the practice of editorializing, it was later extended to political candidates. Broadcasters are still required to give equal opportunities to legally qualified candidates for public office under a variety of conditions. For instance, federal candidates are guaranteed air time ("reasonable access") upon request (Communications Act of 1934, Section 312(a)(7), 1934).

But the FCC also requires that when a station endorses

a candidate, or opposes a candidate for public office, the broadcaster must, within 24 hours after the editorial: 1. Notify the opponents of the endorsed candidate, or the opposed candidate, of the date and time of the editorial; 2. Transmit a script or tape of the editorial; and 3. Offer a reasonable opportunity to reply (FCC, The Law of Political Broadcasting and Cablecasting: A Political Primer, 1984, p. 64).

Zapple Doctrine

In 1970 the FCC determined that when a station allowed supporters or representatives of a candidate time on behalf of the candidate, "comparable time" must be given to supporters of other candidates for the same office. Also known as the "Zapple Doctrine," this ruling gave "quasi-equal opportunities" to a candidate's supporters, even if the candidate did not personally appear (FCC, 1970, Letter to Mr. Nicholas Zapple in re Request by Nicholas Zapple, Communications Counsel, Committee on Commerce, for Interpretative Ruling Concerning Section 315 Fairness Doctrine, FCC 70-598, 23 FCC 2d 707). The Commission considers *Zapple* applicable only during formal campaign periods. Political discussion outside of campaign periods would be subject to general Fairness Doctrine principles (FCC, The Law of Political Broadcasting and Cablecasting: A Political Primer, 1984, p. 71).

Present Status of the Fairness Doctrine

At the time of the administration of the survey for this dissertation most of the Fairness Doctrine corollaries were still in place, including the personal attack rule, political editorializing, and the *Zapple Doctrine* (Baker, 1992). Only the Ballot Proposition corollary had been recently reversed by the Commission.

The Fairness Doctrine and a Possible Chilling Effect

Although the Fairness Doctrine required that stations cover controversial issues, the evidence suggests that controversial programming, including editorials, by broadcast stations is in decline (Editorializing falling out of favor? Broadcasting, February 6, 1989, p. 45). One reason cited is the Fairness Doctrine and the federal regulations and court cases stemming from it. Fairness Doctrine opponents cite instances in which the policy has actually discouraged broadcast discussion and caused a "chilling effect." Thus, broadcasters avoid the presentation of controversial programming because of possible repercussions from government, the public or advertisers (Broadcast Editorials Healthy Despite 'Chilling Effects.' Editorialist. September/October 1983, p. 1).

Lashner (1984, p. 1) says that the U.S. Supreme Court first applied the term "chilling effect" to a First Amendment issue in the case of Dombrowski v. Pfister (380

U.S. 479, 1965). Thomas Tedford defines "chilling effect" as "...the threat imposed upon communication by some laws, regulations, or court actions that, because they are unclear, difficult to obey, or impose unusually severe punishments, have a 'chilling' influence upon one's willingness to speak. To intimidate so as to silence" (Tedford, 1985, Appendix III). Tedford's definition identifies three tests to determine the presence of a chilling effect on broadcasters: 1) clarity, 2) difficulty in adhering to regulation and 3) the imposition of unusually severe punishments.

The first test is clarity that asks if the regulation under consideration is ambiguous. Many have criticized the vagueness of the Fairness Doctrine. Former FCC Commissioner Thomas J. Houser attributed the reduction of editorialization in the 1940's to a "state of confusion" created by the FCC and to "...the absence of a ruling as to exactly what constituted a fair presentation..." (Houser, 1972, p. 556).

Canon (1967) found the FCC's Fairness Doctrine guidelines for broadcasters to be vague and with few specifics; it left many broadcasters confused and frustrated. He also found that the FCC lacks aggressive enforcement and displays timidity in punishing stations that have obviously violated the provisions of the Fairness

Doctrine. Many Wisconsin broadcasters who were interviewed for the study "...expressed excessive fear of FCC displeasure and, thus, were overly-compliant or, more often, eschewed controversial issue programming as much as possible." Canon cites the doctrine's "imprecision" as being largely responsible for broadcasters' exaggerated fears. Canon concludes, "...because many fearful broadcasters avoid controversial programs, it is likely that the doctrine hinders open communication of ideas almost as much as it helps it."

Other studies have shown the lack of clarity pertaining to Commission regulations. Krueger and Corrigan (1991) studied broadcasters' understanding of political rules and found "confusion among broadcasters over most access regulations." Broadcasters interviewed desired from the FCC "...clearer, more specific political regulations" (p. 303).

The development of the Fairness Doctrine itself has been inconsistent and has often been a function of political orientation (Fairness Doctrine: Byzantine tapestry, Television-Radio Age, August 17, 1987, p. 18). Confusion is compounded by the fairness complaints that have resulted in differing opinions from the Commission and the Courts. The 1972 NBC television documentary "Pensions--The Broken Promise" resulted in a complaint that the network had been unfair and one-sided in its handling of the subject. The FCC

agreed with the complaint and ordered NBC to provide balance. The Court of Appeals reversed the Commission and said it was for the network to decide the nature of the program and the FCC could reject the network's characterization only if it was found to be unreasonable (National Broadcasting Co., Inc. v. Federal Communications Commission, 516 F.2d 1101, D.C.Cir. 1974-75).

A second test to determine the presence of a "chilling effect" is the difficulty in adhering to regulation. In 1972, then NBC News President Julian Goodman spoke at the University of Southern California and detailed the inhibiting influence of the Fairness Doctrine:

> Complaints under the...doctrine, regardless of their substance, compel the broadcaster to search his files, review reams of broadcast material to show 'balance,' probe the memories of his newsmen, consult his lawyers and prepare defensive responses. In a minor case affecting NBC...three months of effort and correspondence were involved before the FCC acknowledged that the news judgments we made were within our discretion as journalists." (Francois, 1990, p. 570)

Only one station has ever lost its license in a fairness complaint, although the station's troubles extended beyond the Fairness Doctrine. WXUR radio at Media,

Pennsylvania, was owned by Dr. Carl McIntire who broadcast a decidedly religious and conservative viewpoint. Citing misrepresentation and several additional issues including fairness, the FCC refused to renew the license in 1970. The U.S. Court of Appeals upheld the Commission but did so primarily on the misrepresentation issue. Chief Judge Bazelon dissented and cited the difficulty of a small station with limited resources to monitor its total programming (Brandywine-Mainline Radio, 1970). Bazelon also raised the question of a chilling effect (Brandywine-Mainline Radio, 1970, p. 77).

A third test of a chilling effect is the imposition of unusually severe punishments. This can be broadened to include acts of intimidation or sanctions by the government or public that are often intangible and difficult to identify empirically.

Sig Mickelson, former President of CBS News, recalls the May 1957 production of "Face the Nation" featuring an interview with Soviet leader Nikita Krushchev. During the program Krushchev uttered the phrase "We will bury you" which generated a great deal of criticism. Mickelson attended a meeting with the upper management of CBS to discuss the criticism. "Of course, there always was that overriding fear that something might be done to the licenses of the five CBS-owned television stations, which constituted

a principal source of net revenue to the corporation" (The First Amendment, 1973, p. 55). Joseph W. Bellacosa, an Associate Judge of the New York State Court of Appeals, said the Fairness Doctrine had a "chilling restraint-of-speech because of the cost in time, money and controversy imposed on licensees..." (Bellacosa, 1987, p. 71).

In 1984 the National Association of Broadcasters (NAB) submitted research to the FCC that questioned the wisdom of the Fairness Doctrine and cited several cases it felt demonstrated a "chilling effect." Although the information is a collected account and far from systematic, it does represent a number of stations who felt they faced severe punishment when trying to respond to fairness complaints. Personal interviews, FCC files, Congressional hearings, and quotes from the trade press identified those who felt stifled by the Fairness Doctrine. Several news directors and station managers were hesitant to use their names fearing government interference at renewal time (National Association of Broadcasters, September 6, 1984).

Several cases brought to the FCC have involved countless hours of staff work, excessive legal fees, and often inconsistent results in the appeals process. Ed Hinshaw, Manager of Public Affairs at WTMJ in Milwaukee, testified that his station was required to defend itself before the FCC and the Seventh Circuit Court of Appeals over

editorials critical of the official behavior of the mayor and other government officials. The costs included legal fees of more than $17,000 and two months of staff time before the FCC exonerated the station (NAB, 1984, p. 21).

Contesting fairness complaints can be costly. A 60-second editorial endorsement of Expo 74 by KREM-TV in Spokane, Washington, resulted in a small environmental group requesting response time. When General Manager Eugene Wilken refused, the environmentalists complained to the FCC whose investigation cost the station $20,000 in legal fees, 480 hours of executive time, a delay in license renewal and four years of hearings. Although the FCC renewed the station's license, the controversy ruined Wilken's career (NAB, 1984, p. 19).

Newton Minow, a longtime Fairness Doctrine advocate, admitted the difficulty of responding to outside groups:

> Certain groups can and have harassed stations by convincing scores of individuals who have been criticized on the air to request reply time under the Fairness Doctrine. Inevitably, stations react by trying to avoid such critical programs. Walter Cronkite has testified that, "It is only natural that station management should become timid, and newsmen should sidestep controversial subjects rather than face the annoyance of such harassment." (Simmons, 1978, p. xi)

Howell (1964) points out that the present system of fairness enforcement depends on "political appointees in the position of being the final arbiters as to when a licensee has been 'fair'" (p. 322).

Particularly troublesome are the covert acts by government officials to stifle political thought they find disagreeable. The imposition of the *Mayflower* editorial deterrent had political implications. The Yankee Network, owned by John Sheppard III, operated WAAB in Boston and aired a host of conservative programs, including Father Coughlin, that were antagonistic to the Roosevelt Administration. The FCC, led by Chairman J. Lawrence Fly, a Roosevelt appointee, renewed WAAB's license provided it would not editorialize. Powe calls it a "painless trade." "The Yankee Network kept its Boston stations; broadcasters kept away from partisan politics" (Powe, 1987, p. 111).

Government has acted in the past to harass broadcasters by threatening the license of a station. Marilyn Lashner (1984) reviewed the excesses of the Nixon White House against journalists. She notes that the Administration intimidated a television network to reduce the aggressiveness of its White House commentaries and the Washington Post's broadcast properties were under discussion by the White House as a way to threaten the newspaper (p. 13).

Another example of a lesser known "chilling effect" relates to the Red Lion Supreme Court case. Fred Friendly, former CBS News President, reveals that the *Red Lion* case had been encouraged by the Democratic National Committee as part of its effort to discourage the rise of conservative commentators (Friendly, 1976). Bill Ruder, Assistant Secretary of Commerce during the Kennedy administration, said: "Our massive strategy was to use the Fairness Doctrine to challenge and harass right-wing broadcasters and hope that the challenges would be so costly to them that they would be inhibited and decide it was too expensive" (Friendly, 1976, p. 39). Powe documents a series of efforts by political leaders dating back to Franklin Roosevelt to discourage programming, including editorials, that would have been embarrassing (Powe, American Broadcasting and the First Amendment, 1987).

But many in Congress are quick to support the Fairness Doctrine. Speaking before the American Advertising Federation, Congressman Dingell said the Fairness Doctrine was an "...essential use of state power to protect a fundamental democratic right" (Dingell, 1987, p. 153). But the FCC said the Fairness Doctrine forced government intrusion into editorial judgments and was inappropriate. Quoting the 1974 Fairness Report, the Commission said in 1987 that determining the extent of fairness "...requires

active government intrusion into the judgments of broadcast editors, and thereby directly causes the chilling effect of the fairness doctrine as a whole" (FCC, 1987, paragraph 124).

The Chilling Effect on Public Affairs Programming

In the past ten years there appear to have been fewer editorials and controversial programs by commercial television stations. Some have attributed this to a "chilling effect."

In 1989 a Washington, D.C., public interest group, Essential Information, analyzed the content of television stations across the United States. The author, Jim Donahue, said there had been a 51% decrease between 1979 and 1988 in the average percentage of issue-oriented public affairs programming between 6 a.m. and midnight on 217 television stations in 50 markets. The average percentage of time devoted to local public affairs decreased 39% over the same period. At the news conference announcing the study's findings, Ralph Nader, founder of Essential Information, said the study refuted earlier FCC claims that "repeal of the Fairness Doctrine would remove an impediment to presenting issue-oriented public affairs programming on television" (Repeal of Fairness, Broadcasting, April 10, 1989, p. 76). The study was a content analysis of 217 commercial television stations in 50 randomly selected

markets ranging from the top 50 to the bottom 63 (markets 151-213) in the 50 states and the District of Columbia. The author based his study on material from local editions of TV Guide in each market and compared it to FCC data from 1975, 1978 and 1979.

The research was immediately attacked by FCC representatives who cited an increase in network public affairs and news programming. Edward Cohen at the National Association of Broadcasters faulted the methodology. He said that with conclusions based on percentages of time, the study could have overlooked an increase in total number of hours devoted to various categories of programming (Repeal of Fairness, Broadcasting, April 10, 1989, p. 76). As has been noted, the National Broadcast Editorial Association (now merged with the National Conference of Editorial Writers) has noticed a decrease in editorialization by member stations over the last ten years.

Arguments for the Fairness Doctrine

Some research diminishes the influences of any "chilling effect" on broadcasters. Dr. Vernon Stone at the University of Missouri at Columbia has conducted research for the Radio-Television News Director's Association since 1972. A 1972 survey by Stone revealed that the Fairness Doctrine "was rated a day-to-day problem only for a minority of news operations, and was less likely a problem in radio

than TV" (Stone, October 1983, p. 30).

In 1968 a questionnaire was sent to all broadcasters by a U.S. Senate Communications Subcommittee to determine their attitudes toward the Fairness Doctrine. Only 25% of the television stations surveyed thought the Fairness Doctrine should be discarded (U.S. Congress. Senate. Fairness Doctrine. 90th Congress. 2nd Session. 1967. p. 81).

Some writers have denied the existence of any "chilling effect" and argue that government vigilance is needed to ensure the diversity of opinions on broadcast stations. Many groups support enforcement of the Fairness Doctrine, including the American Civil Liberties Union, the American Lung Association, United Auto Workers, People for the American Way and the Media Access Project, among others (Coalition formed to fight for retention of Fairness Doctrine, Broadcasting, February 11, 1985, p. 61). Congress conducted several hearings into the Fairness Doctrine and afterward concluded that there was not a chilling effect on broadcast speech (U.S. Congress. House. Broadcasters and the Fairness Doctrine, April 7, 1987).

In its 1974 report the FCC admitted that the "affirmative use of government power to expand broadcast debate would seem to raise a striking paradox, for freedom of speech has traditionally implied an absence of governmental supervision or control" (FCC, 1974,

paragraph 4). But the Commission said that "...the continuing evolution of the media of mass communications--both technologically and in terms of concentration of control--has led gradually to a different approach to the First Amendment. This approach--an affirmative one--recognizes the responsibility of government in maintaining and enhancing a system of freedom of expression" (paragraph 4). The FCC concluded that the Fairness Doctrine did not place an undue burden on broadcasters and was not "inhibiting" (FCC, 1974, paragraphs 18-20).

The central rationale for the Fairness Doctrine has been the scarcity of frequencies and the conferring of an exclusive license by the government to protect broadcasters from others who might want to use the frequency. Fairness proponents argue that the Doctrine has protected the public interest by allowing access to divergent and minority viewpoints. The Supreme Court said in *Red Lion* that the application of the Fairness Doctrine enhanced rather than abridged freedom of speech and press and in doing so protected the First Amendment. Thus, the Fairness Doctrine should increase discussion, not inhibit it.

Former FCC Commissioner Rosel Hyde wrote that scrapping the Fairness Doctrine would cause the American system of broadcasting to crumble. The resulting system would be based on auctions, lease fees or periodic lotteries. Subsequently,

the protection of an exclusive government license would be removed (Hyde, 1987a, p. 59). Hyde does not believe that there ever was a chilling effect on broadcasters and refers to it as "so-called," "allegedly" and "suspect." He cited broadcast owners such as Westinghouse and the ABC network that have supported the Fairness Doctrine (Hyde, 1987a, p. 66).

However, even *Red Lion* recognized the possibility of a chilling effect of broadcasters' free speech rights. "...If experience with the administration of these doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications" (Red Lion, 1969, p. 392-393).

Supporters of the Fairness Doctrine mention enforcement problems. Dingell (1987) said, "Viewers benefit from the Fairness Doctrine because it enables them to receive opposing sides of controversial issues. The public benefit would be even greater if the Fairness Doctrine were more vigorously enforced" (p. 153). Jerome Barron (1964) says that "broadcasting suffers more from a lack of rigorous enforcement of the 'fairness' doctrine than any defect in the doctrine itself" (p. 36).

Responding to the charge that frequencies are no longer scarce, Hyde (1987a) said the value of broadcast properties

continues to build because fewer can purchase stations (p. 66). Others call this "economic scarcity" and a result of market forces that work the same with newspapers and other print media (Smith, 1988, p. 73).

Some Fairness Doctrine advocates say that broadcasters do only what is required by government regulation and no more. They argue that rigorous government enforcement will force broadcasters to cover controversial issues and thus alleviate any "chilling effect." Stone (1983, May, p. 10) found that about 400 radio stations reduced public affairs programming after radio deregulation in 1981.

The extension of this principle is that the FCC's refusal to enforce the Fairness Doctrine should result in fewer stations airing controversial opinions after 1987. But NAB President Eddie Fritts writes: "where are the journalistic disasters that have befallen our nation in its [the Fairness Doctrine's] absence?" (NAB's Fritts, Broadcasting, July 1, 1991, p. 49). RTNDA General Counsel, J. Laurent Scharff, said that since the Fairness Doctrine was repealed "we have not seen any report that credibly claims a significant new level of unfairness or that shows that the Fairness Doctrine would cure the perceived problem" (NAB, Broadcasting, July 1, 1991, p. 49).

Some argue that broadcasters should be programming fairly regardless and that the Fairness Doctrine is a legal

articulation of that level of ethical behavior. Congressman Dingell (1987) says "...the Fairness Doctrine merely gives legal recognition to the ethical obligations of journalists to be balanced" (p. 153). Milton Gross of the FCC's Political Broadcast Office quoted former FCC Chairman Charles Ferris and told this writer that the Fairness Doctrine was "...just good journalism" (Gross, 1980).

An underlying theme in Fairness Doctrine defenses is that broadcasting is supported by advertisers and that commercial pressures cause stations to avoid covering controversial topics. Speaking before a group of advertising executives, Congressman Dingell (1987) blamed the pressures of advertising for broadcasters' reluctance to cover controversial topics (p. 153).

Some believe that broadcasters are intrinsically selfish and entertainment oriented. Talk show host Larry King blames the profit motive. "A lot of group broadcasters just look at the accounts and don't give a damn about anything else. They only care about what the station netted and 'can we get rid of three more employees this month?'" (Loftus, 1988, p. 48). In 1959 one writer asked, "Must the interests of licensees and commodity sellers drive us to the lowest common denominator?" (Smead, 1959, p. vi).

By the 1970s and 1980s, authors were increasingly critical of the Fairness Doctrine. Simmons (1978) detailed

the historical origins of the Fairness Doctrine and recommended continuing diversity of media, dropping the "balance" requirement and slightly modifying the requirement that stations program controversial programming (p. 222).

Rowan (1984) came to many of the same conclusions as Simmons and noted the confusing nature of the regulation. He also concluded that "the Political Editorialization Rule has drastically chilled the expression of opinion by broadcasters" (p. 203).

One of the most up-to-date reviews of the Fairness Doctrine and political access was written by Donahue (1989) who believes that politics drove the major Fairness decisions. He has an extensive review of the legislative history that led to the Radio Act of 1927 and Communications Act of 1934.

Editorializing

By the late 1950s and 1960s television editorials had matured to the point that they were a topic for study. Doods (1957) made a descriptive analysis of broadcast editorials from 1946 to 1955. Ripley (1961) surveyed radio and television stations in the late 1950s to determine the nature of controversial programs including editorials. Strong (1967) analyzed television editorial policies and practices. Boyd (1972) studied the FCC and its regulation of television editorializing.

Most of the scholarly research analyzes the output of broadcast stations and station policies regarding editorializing. Crossland (1959) surveyed television stations to determine methods used to get "information to the public..." (p. 159). Courson (1959) described the history leading to the right of broadcasters to editorialize. Several Master's theses have described general editorial trends within a state including Tennessee (De Los Santos, 1970), Alabama (Patterson, 1967), Illinois (Schroeder, 1972), and West Virginia (Maisel, 1964; Highland, 1967). By the early sixties many stations were editorializing, and Crum (1964) surveyed television stations in the United States to determine editorial practices on issues and candidates.

Most Master's theses on editorializing tend to be of a particular radio or television station's editorial output or a regional study. Master's theses studied editorial output in cities such as New York (Printz, 1968), Philadelphia (Venit, 1968), Indianapolis (Davidson, 1971), or a region of the country (Ohlemeier, 1965). A few dealt with a specific station such as WBZ, Boston (Lewallen, 1968) and WMRN, Marion, Ohio (Mathews, 1965). Flannery (1966) analyzed the editorials of Ralph Renick, Vice President in charge of News at WTVJ-TV, Miami, Florida. Ashdown (1975) used WTVJ-TV as a case study for the period 1965 through 1973.

Broadcast Editorializing Trends

Several surveys of commercial television stations determined the extent of editorializing. For almost twenty years Broadcasting Yearbook collected data on the number of stations editorializing. Those figures showed an increase of editorial production (26% to 58%) among television stations from 1958 to 1976. (See Table II-1.)

The National Association of Broadcasters reported 56% of television stations were editorializing in 1966 (NAB, 1967, Radio and Television Editorializing). Wolf (1972) surveyed commercial television stations in the top fifty markets in 1966 and 1971 and found an editorializing rate of 52% and 78% respectively. (See Table II-2.) Television magazine surveyed stations through the 1960s and found that television editorializing hovered around 50% through that period. Fang and Whelen surveyed VHF stations in 1972 and reported 69% editorializing (Fang, 1972). The last systematic survey of commercial television stations was conducted in 1977 by Milan Meeske when he found 61% editorializing (Meeske, 1978). Vernon Stone, who conducts regular research for the Radio-Television News Directors Association, reports that only 45% of commercial television stations editorialize (Stone, 1983, p. 33).

The National Association of Broadcast Editorialists conducted a survey of broadcast stations in 1984 and found

Table II-1

U-S TELEVISION STATIONS EDITORIALIZING ACCORDING TO BROADCASTING MAGAZINE

YEAR	TOTAL ON THE AIR	TOTAL EDITORIALIZING	- % -
1958	508	131	26.4%
1959	522	157	30.1%
1960	535	170	31.8%
1961	545	203	37.2%
1962	(No data available)		
1963	567	212	37.4%
1964	576	189	32.8%
1965	582	185	31.7%
1966	383	208	54.3%
1967	445	223	50.1%
1968	444	215	48.4%
1969	426	213	50.0%
1970	449	219	48.8%
1971	361	180	25.9%
1972	390	205	52.6%
1973	349	167	47.8%
1974	410	210	51.2%
1975	428	220	51.4%
1976	463	270	58.3%

Source: Broadcasting Magazine

Table II-2

U-S TELEVISION STATIONS EDITORIALIZING

YEAR	- % -	SOURCE
1961	44.0%	TV Magazine
1962	48.0%	TV Magazine
1963	55.0%	TV Magazine
1964	57.0%	TV Magazine
1965	56.0%	TV Magazine
1966	56.0%	NAB
1966	54.1%	TV Magazine
1966	52.0%	Wolf
1967	53.0%	TV Magazine
1970	65.0%	TV/Radio Age
1971	78.0%	Wolf
1972	69.0%	Fang/Whelen
1977	61.0%	Meeske
1982	45.0%	Stone
1984	14.0%	National Broadcast Editorial Association

Note: "Year" indicates when the research was conducted, not the year of publication.

14% of the television stations surveyed editorialized on a regular basis (at least once each month). The survey was conducted by including a survey with mailings from the National Association of Broadcasters (NAB) and was administered to broadcasting stations (including radio) that claimed to have editorialized at least once during the previous year (NBEA Surveys Broadcast Stations in Concerted Effort, 1984, p. 8).

Most of these surveys suggest an increase in editorializing by television stations from the early 1960s through approximately 1975. It also appears that there was a dramatic increase in broadcast editorialization after Newton Minow became FCC Commissioner in 1961. Minow, appointed by President Kennedy in 1961 to head the Federal Communications Commission, became an activist chairman who is best known for his "vast wasteland" speech to broadcasters in 1961.

Previous studies have cited several factors that best distinguish television stations that editorialize:

1) Television stations with larger staffs tend to editorialize more (Darlington, Television/Radio Age, 1970). The inverse is that smaller television stations tend to editorialize less (Stone, 1983).

2) VHF stations tend to editorialize more than UHF stations (Meeske, 1978). This is probably because VHF stations tend to have larger audiences, are usually network

affiliated and have greater financial resources available.

3) Television stations in top fifty markets appear to editorialize more, possibly because those stations have increased resources and are better staffed (Wolf, 1971).

4) The larger the news staff, the more likely a station would be to editorialize (Stone, 1983, p. 33).

5) The ownership position of the station and the position of station management can determine editorial policy (Meeske, 1978).

6) Network affiliation appears to be important. Although there was not much difference between network affiliates, CBS affiliates did tend to editorialize more and NBC affiliates were the least likely to editorialize among the traditional three networks (Darlington, 1967, p. 33). Not surprisingly, independent stations tended not to editorialize. This was probably because they had less revenue and a modest news effort. However, with the diminishing influence of networks, network affiliation might not be as important a factor today.

7) The geographical region of the country appeared to be an important indicator of a station's editorializing commitment. The greater percentage of stations in the East tended to editorialize (Meeske, 1978).

Summary

The First Amendment recognized the importance of a

marketplace of ideas to the function of government, and guarantees freedom of speech for both the individual and media. Two very different points of view have emerged. One gives the public a right of access to media in order to encourage a multiplicity of views that would not have been available through traditional media structure. The second view is that media is responsible for programming content that would be compromised by citizen access. Broadcasters have had to accept a limited amount of citizen access as a price for licensing by the Federal government.

The Federal government was unprepared to effectively regulate broadcasting and the ineffectiveness of early wireless legislation led to subsequent and authoritative broadcast legislation. The Radio Act of 1912 had not anticipated: 1) the explosive growth of broadcast radio, 2) non continuous transmission reducing the number of stations able to broadcast within available frequencies, and, 3) a service, unlike common carrier, responsible for the messages and content sent to the public.

On air confusion resulted in 1927 when legal decisions ruled that the Secretary of Commerce did not have the power to regulate broadcasting under provisions of the 1912 Radio Act. Several broadcast stations operated beyond the scope of their license by changing frequencies and times of operation.

The Radio Act of 1927 was a reaction to the confusion following the breakdown of the 1912 Radio Act. The scarcity of frequencies became the rationale for the "public interest, convenience, or necessity" standard that originated from provisions of public utility laws. Early regulators also feared the possible monopolization of media ownership that might exclude divergent viewpoints.

Subsequent court decisions and rulings by the Federal Radio Commission and Federal Communications Commission further refined the definition of "public interest." A logical outgrowth of the public interest standard was the Fairness Doctrine's requirement that broadcasters devote "a reasonable percentage of time to coverage of public issues; and [the] coverage of these issues must be fair in the sense that it provides an opportunity for the presentation of contrasting points of view" (FCC, In the Matter of the Handling of Public Issues under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 FCC 2d 1, 1974). The Federal Communications Commission took this charge so seriously that they said the Fairness Doctrine was "...the single most important requirement of operation in the public interest--the sine qua non for grant of a renewal of license" (FCC, 1974, p. 1). However, by 1985 a frustrated FCC issued an inquiry calling for alternatives to the Fairness Doctrine (Federal Communications Commission,

1985). In August 1987 the FCC said the Fairness Doctrine inhibited the presentation of controversial issues of public importance and had a "chilling effect" on the broadcast industry. The Commission decided not to enforce the Fairness Doctrine (Federal Communications Commission, 1987, p. 5273).

An examination of anecdotal evidence including testimony at several congressional hearings appears to demonstrate that there has been some kind of "chilling effect" on the production of controversial programming among commercial television stations in the United States. Using Tedford's (1985) definition of chilling effect, the effect of the Fairness Doctrine on controversial programming seems to have developed from confusion over the Fairness Doctrine, difficulty in adhering to its requirements and the imposition of unusually severe punishments, such as the loss of a license.

Chapter III will review the methodology utilized for this dissertation.

CHAPTER III

METHODS AND PROCEDURES

Research Question

This dissertation measures the attitudes of television station managers toward the Fairness Doctrine and editorial policy after the repeal of the Fairness Doctrine.

Much of the evidence gathered thus far on the "chilling effect" has been anecdotal and not systematic. For this research a mail survey was conducted among commercial television stations in the United States with network affiliation to determine: 1) management attitudes toward the Fairness Doctrine, and 2) editorializing practices at those stations. When properly conducted, mail surveys can adequately reach the population under study and allow the results to be generalized to that population (Dillman, 1978, p. 2). Survey research is ideal for this project because face-to-face or telephone interviews would have been financially prohibitive for the researcher to conduct.

Sample

This research surveyed United States commercial television stations with network affiliation. The author compiled a computer database of commercial television stations with network affiliation in the U.S. using the 1991 Broadcasting Yearbook and the 1992 Cable-Television

Factbook. Station data collected included call letters, market size, channel assignment, ownership, address, and station manager's name.

A letter was constructed describing the study and assuring the station that the information gathered would be kept confidential and that individual stations or comments would not be identified. Six hundred ninety-eight commercial television stations were initially identified as being network affiliated. Four of the 698 stations were removed because they are co-owned or semi-owned satellite stations duplicating the programming of another station and are not likely to originate their own programming.

A pilot study was conducted in November 1991 among all commercial television stations in Arkansas, Dallas and Detroit to determine the effectiveness of the survey instrument. As a result, several questions were refined, and the responses formed a database to improve data analysis techniques.

The survey was conducted in early 1992. A mail questionnaire was sent to the station manager listed in Broadcasting Yearbook or Cable-TV Factbook. Because the station manager (sometimes referred to as the general manager) serves as the chief executive officer of a television station, he/she would be most likely to be able to answer the questions. Of the 694 stations contacted, 314

questionnaires were returned. A few stations from large markets returned the survey and indicated they did not want to participate. Among these were all stations owned and operated by the CBS network. Three hundred six surveys were considered usable amounting to a 44.1% return.

Stations were coded by ownership, network affiliation, geographic region, market size, whether the station operated in the VHF band (channels 2 through 13) or UHF band (channels 14 through 83), and if the station staffed a news department.

A number of television stations are licensed to media companies that also publish newspapers or magazines. Print ownership was determined by the list of stations in Broadcasting Yearbook (Broadcasting Stations Associated with Newspaper or Magazine Ownership, 1991, p. A-64).

The country was divided into four geographic regions: East, South, Midwest and West. The division by states was identical to that used by Meeske (1978, p. 751) and Fang and Whelan (1972, p. 366). Appendix B lists the division by state.

Market size was determined using Arbitron's rankings as published in the 1991 edition of Broadcasting Yearbook. Arbitron calculates market size by "Areas of Dominant Influence" (ADI). In doing so "each county is attributed to the television city to which most of its viewing is

directed" (Howard and Kievman, 1983, p. 162).

This research is limited by the nature of mail surveys. The obvious strength of mail questionnaires is the availability of a wide sample at the lowest possible cost. Personal contact of each television station identified for this study would have been financially prohibitive. Mail surveys also provide anonymity, allowing subjects to answer questions candidly. Interviewer bias is also reduced because there is no personal contact with the respondent.

However, there are several weaknesses inherent with mail questionnaires. One is the problem of control. Once the survey instrument is mailed the researcher cannot determine who will answer the questions and under what conditions. This can also affect reliability and validity of the results. The survey must be self-explanatory since elaboration by the researcher is non-existent. Researchers are at the mercy of the respondent's time availability and interest in the project. It is easy for a respondent to set aside the survey and forget to complete it on time. Several strategies were utilized to avoid nonresponse.

The design of the research, sometimes called a one-shot survey, makes it difficult to establish cause. For instance, does the programming of local news affect editorial policy or does editorial policy cause a station to become more involved in news?

To increase the response rate, a letter was produced on a letter quality printer and included the station's call letters, address and channel assignment within the body of the letter. The letter included the station manager's name to avoid the "computer" look.

Each station was encouraged to return the survey regardless of their editorial stance. A self addressed stamped envelope was included. A copy of the letter sent to stations is included as Appendix A.

Mail surveys are also the slowest form of data collection. Respondents were asked to return the forms by January 31. 1992. This strategy seemed to work because the return of the surveys peaked immediately prior to that date.

Structure of the Survey

Appendix B contains a copy of the survey that included 32 multiple choice and several open ended questions. To reduce the apparent number of questions, related questions were numbered identically and a letter coupled (example: 6-A and 6-B). The physical size of the survey was reduced to make it easier to mail and to encourage response. The color green was chosen to make it prominent yet easy to read.

Most of the questions on editorializing were based on previous research conducted by Meeske (1978), Wolf (1972), and Fang and Whelan (1972).

1) The first section (questions 1 through 3-B) measured

attitudes toward the Fairness Doctrine.

2) The second section (questions 4-A through 10) asked if the station aired controversial programming, including editorials; if they editorialized before or after July 1, 1987; if they produced their own news; if they currently broadcast commentaries or editorials, and employment information.

3) Stations that did not editorialize advanced to question 24 to answer why they did not editorialize. Stations that did editorialize continued with questions 11 through 23 to determine editorial frequency, length, time of day, topics discussed, nature of editorials and any public feedback received. All respondents completed the last page of the survey detailing ownership and network affiliation.

The data were crosstabbed to identify differences between variables. Because survey data tend to be categorical, significant differences between variables were determined by using a Chi Square (χ^2) statistical test using a probability level of five percent (.05).

As the surveys were returned, responses were inputted by the researcher using a database program on an IBM compatible computer. The data were transferred to a spreadsheet program for analysis. Chapter IV will present the results of this study.

CHAPTER IV

SURVEY RESULTS

This dissertation surveyed commercial television stations in the United States with network affiliation to determine the attitudes of station managers toward the Fairness Doctrine and to determine if television stations are increasing their coverage of controversial issues, specifically editorializing. Television station managers were asked a variety of questions about the Fairness Doctrine and the extent of editorializing at their station. Survey questions focused on several areas:

1) What are station manager's attitudes toward the Fairness Doctrine now that it is no longer enforced?

2) What are the station's policies concerning controversial programming and news?

3) Does the station editorialize? If so, why and what are the nature of those editorials?

4) If the station does not editorialize, what are the reasons for that policy?

Results

Of the 694 stations surveyed, 306 stations responded representing a return rate of 44.1%. Table IV-1 compares the percentages of those surveyed with television stations generally and indicates that the survey was representative

Table IV-1				
A COMPARISON OF SURVEY RESULTS WITH THE POPULATION UNDER STUDY				
TOTAL STATIONS SURVEYED	694			
TOTAL SURVEYS RETURNED	306			
PERCENT RETURNED	44.1%			
	POPULATION		SURVEYED	
	No.	-%-	No.	-%-
Newspaper Ownership				
Newspaper owned	231	33.3%	106	34.6%
Not Newspaper owned	463	66.7%	200	65.4%
Group Ownership				
Group owned	560	80.7%	251	82.0%
Single owner	134	19.3%	55	18.0%
Network Affiliation				
ABC	192	27.7%	86	28.1%
CBS	190	27.4%	82	26.8%
FOX	125	18.0%	48	15.7%
NBC	187	26.9%	90	29.4%
Region				
East	103	14.8%	41	13.4%
South	258	37.2%	115	37.6%
Midwest	196	28.2%	90	29.4%
West	137	19.7%	60	19.6%

Table IV-1 (Continued)				
Market (ADI)				
1-10	43	6.2%	14	4.6%
11-20	43	6.2%	17	5.6%
21-50	121	17.4%	56	18.3%
51-100	201	29.0%	95	31.0%
100+	274	39.5%	120	39.2%
None	12	1.7%	4	1.3%
VHF / UHF				
VHF	445	64.1%	203	66.3%
UHF	249	35.9%	103	33.7%
Do you air local news?				
Yes	Unknown		260	85.0%
No	Unknown		39	12.7%
No Answer	Unknown		7	2.3%
Degree of News (weekly)				
No News	Unknown		39	12.7%
1-10 hours	Unknown		85	27.8%
11-30 hours	Unknown		165	53.9%
31+ hours	Unknown		10	3.3%
No Answer	Unknown		7	2.3%

of the population under study.

Attitudes Toward the Fairness Doctrine

The first section asked: "I would like to see the Fairness Doctrine...." Of the 306 respondents, an overwhelming majority (77.1%) said "permanently done away with." (See Table IV-2.) Forty-two stations (13.7%) said "become law" or "modified in some way, then made law." Of the respondents, 4.6% were "not sure", 2.9% said "other" and 1.6% did not answer the question.

The second question asked if stations thought the Fairness Doctrine had a chilling effect on broadcasters. Chilling effect was defined as: "...did broadcasters avoid producing controversial programs because they feared government intervention?" More than half of the stations surveyed (57.8%) said they thought it did have a chilling effect. (See Table IV-3.) Exactly one-third (33.3%) said they did not think it had a chilling effect; 8.8% said they were not sure or did not answer.

Question 2-B was to be answered only by those who said there was a chilling effect. The question asked in what ways they thought there was a chilling effect. (See Table IV-4.) Checking as many responses as they wished, 127 stations (41.5%) said "public affairs or documentaries" and 40.2% indicated "editorials." About one-fourth indicated news stories (23.9%) and advertising (23.2%). Some additional comments

Table IV-2

Question 1: "I would like to see the Fairness Doctrine..."

No.	-%-	Response:
236	77.1%	Permanently done away with
30	9.8%	Modified in some way, then made law
12	3.9%	Become law
14	4.6%	Not sure
9	2.9%	Other
5	1.6%	No Answer
306	TOTAL	

Table IV-3

Question 2-A: "Do you think the Fairness Doctrine had a chilling effect on broadcasters? That is, did broadcasters avoid producing controversial programs because they feared government intervention?"

Response:	No.	- % -
Yes	177	57.8%
No	102	33.3%
Not sure	23	7.5%
No Answer	4	1.3%
TOTAL	306	100.0%

Title IV-4 Question 2-B: "If 'Yes,' [that the Fairness Doctrine had a chilling effect on broadcasters] in what way?" (Check as many as apply)		
No.	-%-	Response:
127	41.5%	Public affairs/documentaries
123	40.2%	Editorials
73	23.9%	News stories
71	23.2%	Advertising
16	5.2%	Others
6	2.0%	Made broadcasters overly cautious/fear of equal time requests from the public
3	1.0%	Political advertising or paid issues
2	0.7%	Commentaries
2	0.7%	Government backlash/more regulation
2	0.7%	Studio/talk shows/forums/panels
2	0.7%	Programming
1	0.3%	Print versus broadcast parity
1	0.3%	Potential lawsuits
306	TOTAL RESPONDING TO THIS QUESTION	

included "made broadcasters overly cautious" (2%), "political advertising or paid issues" (1%), "commentaries" (.7%), and "government backlash, more regulation" (.7%).

However, when stations were asked if they could "...think of programs rejected or modified by their station because they would have raised Fairness Doctrine concerns" a little more than half (51.6%) said "no." (See Table IV-5.) Only slightly more than a quarter of the stations (26.5%) said they had direct knowledge of the Fairness Doctrine concern causing the rejection or change in the content of a program, while 21.9% said they were not sure or did not answer the question. Some respondents who could not cite a fairness problem at their station added that they knew of a fairness problem at another station. The intent of the question was to see if there actually was a chilling effect on television programming or if the chilling effect was merely a perception. Much of the evidence seems to be anecdotal, and the question was designed to see if a fairness problem had occurred to the person being surveyed.

Stations indicating a Fairness Doctrine problem at their station were encouraged to cite examples. (See Table IV-6.) Eighteen of the 81 stations (22.2%) said fairness problems related to "political, ballot issues, candidates, or debates." This is surprising because political appearances and subsequent equal opportunity

Table IV-5

Question 3-A: "Before the Fairness Doctrine was rescinded in 1987, can you think of programs rejected or modified by your station because they would have raised Fairness Doctrine concerns?"

Response:	No.	- % -
No	158	51.6%
Yes	81	26.5%
Not sure	62	20.3%
No Answer	5	1.6%
TOTAL	306	100.0%

Table IV-6

Question 3-B: "If 'Yes' [to Question 3-A] can you give examples [of programs rejected or modified]...because they would have raised Fairness Doctrine concerns?"

No.	-%-	Response:
18	22.2%	Political/Ballot issues/Candidates or debates
17	21.0%	Other
9	11.1%	Advertising
9	11.1%	Issues: Abortion/nuclear energy, etc.
9	11.1%	No Answer
7	8.6%	Avoided issues/Pressure by minor groups
5	6.2%	Not able to recall
4	4.9%	Editorials
3	3.7%	News stories/panels
81	TOTAL	

issues owe their existence directly to Section 315 of the Communications Act and are not Fairness Doctrine issues. Less than half that amount (11.1%) listed "advertising" or "controversial issues" as being fairness concerns. The issues that were cited by several stations as being controversial included abortion and nuclear energy. Only four stations (4.9%) identified editorials as leading to an actual Fairness Doctrine problem.

Questions 4-A through 10 applied to all the respondents and asked a number of questions relating to policies and procedures. Less than half of the stations surveyed (43.8%) said they were airing controversial programs. But when asked to give examples on an open ended question, most stations identified the program sources and not the nature of the program. (See Table IV-7.) Most (64.9%) cited "local programs" but many of these listed locally produced news programs. (See Table IV-8.) Some stations (3.7%) cited network or syndicated talk shows and the same amount cited "advertising" as controversial. Because "controversial" was not defined on the survey it was left up to the respondent to determine the nature of controversy. The Fairness Doctrine is by its very nature controversial, and a common agreement among broadcasters what constitutes controversy is important before the Fairness Doctrine can be adequately understood.

Table IV-7

Question 4-A: "Are you now airing controversial programs? These might include, but are not limited to, editorials."

Response:	No.	- % -
No	159	52.0%
Yes	134	43.8%
No Answer	13	4.2%
TOTAL	306	100.0%

Table IV-8

Question 4-B: "If 'Yes' [to Question 4-A], please give examples [of controversial programs]."

No.	-%-	Response:
87	64.9%	Local programs
36	26.9%	No Answer
5	3.7%	Advertising
5	3.7%	Network or syndicated
1	0.7%	Both local and network
134	TOTAL	

Will the abolishment of the Fairness Doctrine encourage stations to engage in more controversial programming? Question five asked if stations might be more inclined now to editorialize. (See Table IV-9.) Twenty-three stations said they began to editorialize after July 1, 1987. Six of those stations (26.1%) said they did so because it was "necessary," a "public need," or to "exercise First Amendment rights." (See Table IV-10.) Five stations (21.7%) said their decision to editorialize was based on new ownership or management; five other stations said it was "to address issues" or "to stimulate the public." Only two stations (8.7%) said their decision to editorialize was based on the Fairness Doctrine being lifted.

Twenty stations ceased editorializing after July 1, 1987. (See Table IV-11.) Eight of those stations (40%) said "staffing," "staff reduction" or "lack of time" caused the shift in policy. Open ended comments indicated personnel problems at these stations because financial losses forced them to dismiss staff members or hold off new hiring. Five television stations (25%) cited a "corporate" or "management" decision but did not explain why the decision was made. Only two stations said their policy was because of "controversy" or "problems." Other stations (all 5%) cited "lack of resources", "viewer surveys or complaints" or "changed priorities."

Table IV-9

Question 5-A: "About July 1, 1987 was your station editorializing at all?"

Response:	No.	- % -
No	187	61.1%
Yes	81	26.5%
Not sure	22	7.2%
No Answer	16	5.2%
TOTAL	306	100.0%

Table IV-10

Question 5-B: Stations which began editorializing after July 1, 1987. Reasons given for initiating editorializing:

No.	-%-	Response:
6	26.1%	Necessary/To exercise First Amendment rights public need
5	21.7%	New ownership or management
5	21.7%	To address issues/To stimulate the public
2	8.7%	Fairness Doctrine lifted
2	8.7%	Sets us apart in the market We alone editorialize To be an opinion leader
1	4.3%	Policy change
1	4.3%	Easier to deal with issues
1	4.3%	Public or viewer interest
23	TOTAL	

Table IV-11

Question 5-C: Stations which terminated editorializing after July 1, 1987. Reasons given for terminating editorializing:

No.	-%-	Response:
4	20.0%	Staffing/lack of time
4	20.0%	Staff reduction
3	15.0%	Corporate or ownership decision
2	10.0%	Management decision
2	10.0%	Controversy/problems
2	10.0%	No Answer
1	5.0%	Lack of resources
1	5.0%	Viewer surveys or complaints
1	5.0%	Changed priorities
20	TOTAL	

Question seven asked: "How many hours of locally produced news do you air each week?" (See Table IV-12.) Thirty-nine stations (12.7%) said they did not produce any local news. The largest number of stations (42.5%) said they aired between 11 and 20 hours of news weekly, followed by "6 to 10 hours" (21.6%), "21 to 30 hours" (11.4%), and "31 to 40 hours" (2.6%). Only two stations broadcast more than 41 hours of local news weekly.

Question eight determined almost all the stations surveyed (97%) employed a sales director, followed by a news director (85.3%), sports director (81.4%), and public affairs director (74.5%). (See Table IV-13.) Very few

Table IV-12

Question 7: "How many hours of LOCALLY produced news do you air each week?"

No.	-%-	Response:
130	42.5%	11 to 20 hours
66	21.6%	6 to 10 hours
39	12.7%	We do not have local news
35	11.4%	21 to 30 hours
19	6.2%	One to 5 hours
8	2.6%	31 to 40 hours
7	2.3%	No Answer
2	0.7%	41 or more hours
306	Total	

Table IV-13

Question 8: "Do you employ the following personnel at your television station?"

No.	-%-	Response:
297	97.1%	Sales Director
261	85.3%	News Director
249	81.4%	Sports Director
228	74.5%	Public Affairs Director
37	12.1%	Editorial Board
30	9.8%	Editorial Director
306	TOTAL RESPONDING TO THIS QUESTION	

stations employed an editorial director (9.8%) or editorial board (12.1%). Those who did employ an editorial director tended to be owned by newspaper or magazines, to be located in the east or west regions of the country, and to operate a news department. About one-third of those stations surveyed indicated that they broadcast commentaries (30.4%) or editorials (33%).

Question 9 asked if stations broadcast commentaries which were defined as "individual opinions." (See Table IV-14.) This was important to help respondents distinguish between editorials and commentaries to increase the accuracy of the results.

Editorializing Stations

One hundred and one of the 306 respondents (33%) said they broadcast editorials, while 203 did not. (See Table IV-15.) The television stations indicated a number of reasons for editorializing. When allowed to choose multiple categories, almost all those who editorialized (96%) said they did it to "serve the community." (See Table IV-16.) A little less than half (44.6%) said it was "for station prestige," and a little more than one-third (37.6%) said "to attract viewers." But when asked to choose the primary reason for editorializing, stations were split between "others in the market editorialize" (19.8%), "for station prestige" (18.8%), "to satisfy FCC requirements" (15.8%),

Table IV-14

Question 9: "Does your station currently broadcast commentaries? (Individual opinions)"

Response:	No.	- % -
No	203	66.3%
Yes	93	30.4%
No Answer	10	3.3%
TOTAL	306	100.0%

Table IV-15

Question 10: "Does your station currently broadcast editorials? (Station opinions)"

Response:	No.	- % -
No	205	67.0%
Yes	101	33.0%
TOTAL	306	100.0%

Table IV-16

Question 12-A: "Why do you editorialize? (Check all that apply)

No.	-%-	Response:
97	96.0%	To serve the community
45	44.6%	For station prestige
38	37.6%	To attract viewers
19	18.8%	The owners expect it
18	17.8%	It makes good business sense
9	8.9%	Stimulate discussion and balanced thought
5	5.0%	Others in the market editorialize
5	5.0%	It needs to be done/It's the responsible thing to do
4	4.0%	To satisfy FCC requirements
3	3.0%	Other
101	TOTAL RESPONDING TO THIS QUESTION	

and "it makes good business sense" (14.9%). (See Table IV-17.)

The frequency of editorializing varied from earlier research. Almost one-fifth (19.8%) said they editorialized weekly; 18.8% editorialized daily, and 15.8% said they rarely editorialized. (See Table IV-18.) Meeske (1978, p. 752) found most stations (31%) editorialized daily, Broadcasting Yearbook (1976) found 13.2% editorialized daily and the 1966 NAB survey determined that 39% of the stations editorialized daily (p. 8). This suggests that although stations continue to editorialize, they do so less often.

Almost half (44.6%) said their editorials ran from one

Table IV-17 Question 12-B: "What is the PRIMARY reason your station editorializes?"		
No.	-%-	Response:
20	19.8%	Others in the market editorialize
19	18.8%	For station prestige
16	15.8%	To satisfy FCC requirements
15	14.9%	It makes good business sense
11	10.9%	No Answer
8	7.9%	The owners expect it
3	3.0%	Other
3	3.0%	It needs to be done It's the responsible thing to do
3	3.0%	Stimulate discussion and balanced thought
2	2.0%	To serve the community
1	1.0%	To attract viewers
101	TOTAL	

Table IV-18

Question 13: "How often does your station editorialize?"

No.	-%-	Response:
20	19.8%	Weekly
19	18.8%	Daily
16	15.8%	Rarely
15	14.9%	Twice weekly
9	8.9%	As needed
8	7.9%	Monthly
6	5.9%	Three to 4 times weekly
4	4.0%	No Answer
2	2.0%	Other
1	1.0%	Bi-monthly
1	1.0%	Two to 3 times monthly
101	TOTAL	

to one and a half minutes. (See Table IV-19.) The response was evenly split (22.8%) between those whose editorials ran thirty seconds to one minute and one-minute-thirty seconds to two minutes.

A little more than one third (37.6%) programmed editorials adjacent to newscasts while 33.7% ran their editorials during newscasts. (See Table IV-20.) Nineteen stations (18.8%) scattered their editorials throughout the day.

It is difficult with a mail survey of this type to examine and analyze editorial content and determine the degree that stations' editorials deal with controversial issues. Most stations (59.4%) said their editorials were informative with opinion, while about one-third (32.7%) said theirs were usually a call for action. (See Table IV-21.) Most editorials (62.3%) dealt with local issues. (See Table IV-22.)

When asked how controversial their editorials tended to be, responses were split (42.6%) between "usually" or "somewhat" controversial. (See Table IV-23.) Only 11 stations (10.9%) said their editorials were "always" controversial.

The station manager has an active role in the preparation and delivery of television editorials. Forty-one stations (40.6%) said the station manager decides the

Table IV-19

Question 14: "What is the typical length of your editorials?"

No.	-%-	Response: (In minutes/seconds)
45	44.6%	1:01 to 1:30
23	22.8%	0:31 to 1:00
23	22.8%	1:31 to 2:00
6	5.9%	2:01 to 2:30
2	2.0%	Thirty seconds or less
2	2.0%	No Answer
0	0.0%	2:31 to 3:00
0	0.0%	Over three minutes
101	TOTAL	

Table IV-20

Question 15: "When, during the broadcast day, does your station air its editorials?"

No.	-%-	Response:
38	37.6%	Adjacent to Newscasts (Before or after)
34	33.7%	During Newscasts
19	18.8%	Scattered throughout the daily schedule
4	4.0%	Adjacent to Newscasts and scattered throughout the schedule
3	3.0%	During Newscasts and Adjacent to Newscasts
2	2.0%	No Answer
1	1.0%	Other
101	TOTAL	

Table IV-21

Question 16: "What forms do the majority of your editorials take?"

No.	-%-	Response:
60	59.4%	Informative with opinion
33	32.7%	Call for action
6	5.9%	Informative: With opinion and call for action
2	2.0%	Informative: No opinion and with opinion
0	0.0%	Informative, No opinion
101	TOTAL	

Table IV-22

Question 17: "During the past year, overall, how would you characterize the topics of your editorials?"

No.	-%-	Response:
63	62.4%	Local
11	10.9%	State
11	10.9%	Local and State
4	4.0%	Local/State/National
3	3.0%	National
3	3.0%	Local/State/National/International
3	3.0%	Other
3	3.0%	No Answer
0	0.0%	International
101	TOTAL	

Table IV-23

Question 18: "Usually, how controversial are the issues you discuss in your editorials?"

No.	-%-	Response:
43	42.6%	Usually controversial
43	42.6%	Somewhat controversial
11	10.9%	Always controversial
3	3.0%	Neutral or not controversial
1	1.0%	No Answer
101	TOTAL	

issues, followed by an editorial board (31.7%). (See Table IV-24.)

The writing of editorials is shared equally (25.7%) by station managers and editorial directors. (See Table IV-25.) Eighteen stations (17.8%) let the news director write or prepare the editorials. Most stations left the approval or review of the editorials to the station manager (62.4%). (See Table IV-26.) About two-thirds of the stations surveyed (66.3%) said the station manager presents the editorials. (See Table IV-27.) Seventeen stations (16.8%) have the editorial director present the editorials.

Most stations (83.2%) use the traditional studio set to present their editorials. (See Table IV-28.) However, when given an opportunity to indicate any additional production methods more than half (58.4%) said they utilize videotape, followed by graphics (51.5%), chyron (51.5%), character

Table IV-24

Question 19-A: "Who usually DECIDES the issues covered in your editorials?"

No.	-%-	Response:
41	40.6%	Station Manager
32	31.7%	Editorial Board
9	8.9%	Editorial Director
7	6.9%	News Director
6	5.9%	Other
3	3.0%	Public Affairs Director
2	2.0%	Someone from parent company not at station
1	1.0%	No Answer
101	TOTAL	

Table IV-25

Question 19-B: "Who usually WRITES/PREPARES the issues covered in your editorials?"

No.	-%-	Response:
26	25.7%	Station Manager
26	25.7%	Editorial Director
18	17.8%	News Director
13	12.9%	Other
9	8.9%	Editorial Board
7	6.9%	Public Affairs Director
1	1.0%	Someone from parent company not at station
1	1.0%	No Answer
101	TOTAL	

Table IV-26

Question 19-C: "Who usually APPROVES/REVIEWS the issues covered in your editorials?"

No.	-%-	Response:
63	62.4%	Station Manager
13	12.9%	Editorial Board
11	10.9%	Other
4	4.0%	News Director
4	4.0%	Public Affairs Director
3	3.0%	Someone from parent company not at station
2	2.0%	No Answer
1	1.0%	Editorial Director
101	TOTAL	

Table IV-27

Question 19-D: "Who usually PRESENTS the issues covered in your editorials?"

No.	-%-	Response:
67	66.3%	Station Manager
17	16.8%	Editorial Director
8	7.9%	Other
7	6.9%	News Director
1	1.0%	Someone from parent company not at station
1	1.0%	No Answer
0	0.0%	Editorial Board
0	0.0%	Public Affairs Director
101	TOTAL	

Table IV-28

Question 20: "Where are MOST of your editorials produced?"

No.	-%-	Response:
84	83.2%	In the studio
9	8.9%	Away from the station premises
6	5.9%	On the station premises, but outside of studio
2	2.0%	Other
101	TOTAL	

generators (45.5%) and chroma key (41.6%). (See Table IV-29.)

An important part of editorializing is allowing audience feedback. About one-fourth of the stations (26.7%) reported they received letters or phone calls from audience members after "some" editorials. (See Table IV-30.) Another quarter of the stations (23.8%) said they received feedback after "many" of their editorials. Nineteen stations (18.8%) reported feedback after "almost every" editorial and 12 stations (11.9%) after "every" editorial. Only 17 stations (16.8%) received occasional feedback and none reported never receiving audience feedback. Seventy-three stations (72.3%) said they furnished copies of their editorials to the public and 38 of those stations submitted copies of their editorials with the survey. (See Table IV-31.)

Table IV-29

Question 21: "Do you ever use any of the following in your editorials?" (Check as many as apply)

No.	-%-	Response:
59	58.4%	Videotapes
52	51.5%	Chryon
52	51.5%	Graphics
49	48.5%	Talking head
46	45.5%	Character generator
42	41.6%	Chroma key
16	15.8%	Squeeze zoom
14	13.9%	Slides
1	1.0%	Other
1	1.0%	Interviews
1	1.0%	Props
101	TOTAL RESPONDING TO THIS QUESTION	

Table IV-30

Question 22: "Do you receive letters or phone calls commenting on your editorials?"

No.	-%-	Response:
27	26.7%	Yes. After SOME of our editorials (26-50%)
24	23.8%	Yes. After MANY of our editorials (51-75%)
19	18.8%	Yes. After ALMOST every editorial (76-100%)
17	16.8%	Occasionally (up to 25%)
12	11.9%	Yes. After EVERY editorial (100%)
2	2.0%	No Answer
0	0.0%	Never (0%)
101	TOTAL	

Table IV-31 Question 23: "Do you furnish copies of your editorials to the public?"			
Response:	No.	- % -	
Yes	73	72.3%	
	101	TOTAL POSSIBLE RESPONSES TO THIS QUESTION	

Non Editorializing Stations

Sixty-seven percent of the 306 stations responding said they did not editorialize. When indicating multiple reasons for their station not editorializing, more than half (51.7%) said "lack of budget for research and writing." (See Table IV-32.) Fifty-four stations (26.3%) said editorializing was "incompatible with [their] news operation." Additional reasons for not editorializing included: "others in the market do not editorialize" (10.7%), "desire not to offend listeners" (8.8%), "desire to avoid controversial programming" (7.8%) and "too many complaints from special interest groups" (7.8%).

When asked to choose one reason for not editorializing, 79 stations (38.5%) said "lack of budget," and 18.5% said "incompatible with our news operation." (See Table IV-33.) Only 17 stations (13%) said they were fundamentally opposed to editorializing. Those who were opposed to editorializing said so in blunt terms. A general manager in the West said "we are not in the opinion business." Several respondents

Table IV-32

Question 24-A: "If your station does NOT editorialize, what are the reasons for that policy? (Check all that apply)"

No.	-%-	Response:
106	51.7%	Lack of budget for research/writing
54	26.3%	It is incompatible with our News operation
22	10.7%	Others in the market do not editorialize
18	8.8%	Desire not to offend listeners
16	7.8%	To avoid controversial programming
16	7.8%	Too many complaints from special interest groups
15	7.3%	Strongly opposed to editorializing
13	6.3%	Just haven't done it/Not inclined to do so
12	5.9%	Not doing News or just begun News
10	4.9%	Lack of clarity of FCC rules
7	3.4%	Too many complaints from the public
7	3.4%	Other
7	3.4%	Resources/Staff needed
7	3.4%	Corporate/Ownership decision
7	3.4%	No time
6	2.9%	Hurts credibility/Desire to be neutral News can cover the issues
205	TOTAL RESPONDING TO THIS QUESTION	

Table IV-33

Question 24-B: "If your station does NOT editorialize, what is the PRIMARY reason for that policy?"

No.	-%-	Response:
79	38.5%	Lack of budget for research/writing
38	18.5%	It is incompatible with our News operation
15	7.3%	Strongly opposed to editorializing
12	5.9%	Just haven't done it/Not inclined to do so
8	3.9%	Other
8	3.9%	Not doing News or just begun News
7	3.4%	Others in the market do not editorialize
6	2.9%	Desire not to offend listeners
5	2.4%	Corporate/Ownership decision
5	2.4%	No time
5	2.4%	No Answer
4	2.0%	Lack of clarity of FCC rules
4	2.0%	Resources/Staff needed
4	2.0%	Hurts credibility/Desire to be neutral/ News can cover the issues
3	1.5%	To avoid controversial programming
1	0.5%	Too many complaints from the public
1	0.5%	Too many complaints from special interest groups
205	TOTAL	

said they did not think that the public cared what a station's editorial position would be. Several said they relied on local news to address community concerns and felt they should continue a neutral posture.

Most of those who did not editorialize indicated they would continue that policy for some time. Eighty-two percent said they did not anticipate editorializing within the next twelve months. (See Table IV-34.) But when asked "what must change before your station would begin editorializing" the responses were evenly split between "budget, funding, better economy" (13.2%), "fundamentally opposed to editorializing" (13.2%), and "no time, other priorities" (12.7%). Fifty stations (24.4%) did not answer the question. (See Table IV-35.)

A statistically significant difference (χ^2=4.19) exists between those owned by newspapers or magazines and non print owners. (See Table IV-36.) Most newspapers editorialize and have an opinion page with letters from readers featuring a number of controversial issues. One would expect this policy to carry over into their television operation.

Meeske (1978, p. 751) says that a station's ownership and position of station management would influence the amount of editorializing. It seems that group owners would have additional revenue to draw from to support editorializing. (See Table IV-37.) Some group owners

Table IV-34

Question 24-C: "If your station does not editorialize, do you anticipate doing so within the next 12 months?"

Response:	No.	- % -
No	169	82.4%
Yes	28	13.7%
Possibly	5	2.4%
No Answer	3	1.5%
TOTAL	205	100.0%

Table IV-35

Question 24-D: "If your station does not editorialize, what must change before your station would begin editorializing? Please be specific"

No.	-%-	Response:
50	24.4%	No Answer
27	13.2%	Budget, funding, better economy
27	13.2%	Fundamentally opposed
26	12.7%	No time/Other priorities/Must make a commitment News can cover issues Conflict with programming policy
23	11.2%	News
17	8.3%	Resources
11	5.4%	Corporate or management change in policy
10	4.9%	Staff
4	2.0%	Might begin editorializing soon
4	2.0%	Public must request it/People don't want it Public threats
3	1.5%	Broadcasting needs parity with print
2	1.0%	Commentaries now serve the same purpose
1	0.5%	Can't do it well
205	TOTAL	

Table IV-36: Chi-Square Table
Editorializing by Media Companies That Own Publishing Business As Well As Broadcast
Question 10: "Does this station editorialize?"

BY PRINT OWNERSHIP	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
Newspaper owned	43	40.6%	63	59.4%	106
Not Newspaper owned	58	29.0%	142	71.0%	200
Expected Chi-Square =	3.84				
Chi-Square =	4.19				
	p ≤ .05				
	* Difference is significant				

Table IV-37: Chi-Square Table
Editorializing by Group Ownership
Question 10: "Does this station editorialize?"

BY GROUP OWNERSHIP	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
Group owned	85	33.9%	166	66.1%	251
Single owner	16	29.1%	39	70.9%	55
Expected Chi-Square =	3.84				
Chi-Square =	0.46				
	p ≤ .05				
	* Difference is NOT significant				

(eg. Westinghouse) seem more inclined to engage in controversial programming. However, it is not statistically significant (χ^2=.46) between those stations group owned and those not owned by a group.

Affiliation with a traditional network (ABC, CBS or NBC) relates to a station's editorial policy. (See Table IV-38.) This dissertation found that ABC affiliates editorialized most (41.9%), followed by CBS affiliates (41.5%) and NBC affiliates (26.7%). Although 15.7% of the stations surveyed were affiliated with the FOX network, only seven of those stations (14.6%) editorialized. There was a significant difference (χ^2=14.7) for network affiliation.

Previous research found that a greater percentage of stations in the East editorialized. However, this dissertation did not show a significant difference (χ^2=2.93) based on region. (See Table IV-39.)

Market size appears to be a factor in editorial policy. The top fifty markets tended to editorialize more than smaller markets. Top fifty markets are important for broadcast regulation since the FCC sometimes designates those markets for additional rules. The net effect is that other stations will, by default, fall under those same regulations. One example is the Prime Time Access Rule (PTAR). This research found a significant difference (χ^2=12.53) based on market size. (See Table IV-40.)

Table IV-38: Chi-Square Table
Editorializing by Network Affiliation
Question 10: "Does this station editorialize?"

BY NETWORK AFFILIATION	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
ABC	36	41.9%	50	58.1%	86
CBS	34	41.5%	48	58.5%	82
NBC	24	26.7%	66	73.3%	90
FOX	7	14.6%	41	85.4%	48
Expected Chi-Square =	7.82				
Chi-Square =	14.70				
	p ≤ .05				
	* Difference is significant				

Table IV-39: Chi-Square Table
Editorializing by Geographical Region
Question 10: "Does this station editorialize?"

BY GEOGRAPHICAL REGION	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
East	18	43.9%	23	56.1%	41
West	20	33.3%	40	66.7%	60
South	37	32.2%	78	67.8%	115
Midwest	26	28.9%	64	71.1%	90
Expected Chi-Square =	7.82				
Chi-Square =	2.93				
	p ≤ .05				
	* Difference is NOT significant				

Table IV-40: Chi-Square Table Editorializing by Market using ADI Question 10: "Does this station editorialize?"					
BY MARKET (ADI)	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
1 - 10	7	50.0%	7	50.0%	14
21 - 50	27	48.2%	29	51.8%	56
51 - 100	29	30.5%	66	69.5%	95
Below 100	35	29.2%	85	70.8%	120
11 - 20	3	17.6%	14	82.4%	17
None	0	0.0%	4	100.0%	4
Expected Chi-Square =	11.07				
Chi-Square =	12.53				
	$p \leq .05$				
	* Difference is significant				

As shown in this study, television stations in the VHF band (channels two through thirteen) editorialized more than those in the UHF band (channels 14 and above). There was a significant difference (χ^2=4.23) between VHF and UHF stations. (See Table IV-41.) Historically, VHF stations have managed better financially than UHF because they tend to be network affiliated and have much more available programming and revenue. With the erosion of network viewership and the rise of the FOX network (which grew out of previous independents) this may not be as true today. A technical difference between VHF and UHF is the difficulty in UHF

Table IV-41: Chi-Square Table
Editorializing by Frequency Allocation
(VHF versus UHF)

Question 10: "Does this station editorialize?"

BY VHF / UHF	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
VHF	75	36.9%	128	63.1%	203
UHF	26	25.2%	77	74.8%	103
Expected Chi-Square =	3.84				
Chi-Square =	4.23				
	p ≤ .05				
	* Difference is significant				

reception. Also, until the mid-1960s most television sets were not equipped with UHF receivers.

Stations with a financial and moral commitment to covering news should also be committed to dealing with controversial issues in their community. Even with the deregulation of broadcasting during the 1980s, news continues to be a primary source of revenue for many local television stations.

This dissertation found stations programming local news editorialized more than stations without local news coverage. (See Table IV-42.) This relationship was statistically significant (χ^2=7.65) owing to the amount of news broadcast. This study tested an additional level of news commitment by comparing the amount of news programmed.

Table IV-42: Chi-Square Table
Editorializing by Those Who Air Local News
Question 10: "Does this station editorialize?"

DO YOU AIR LOCAL NEWS?	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
Yes (We do air local news)	91	35.0%	169	65.0%	260
No (We do not air local news)	5	12.8%	34	87.2%	39
No Answer	5	71.4%	2	28.6%	7
Expected Chi-Square =	3.84				
Chi-Square =	7.65				
	$p \leq .05$				
	* Difference is significant				

Stations which broadcast 11 to 30 hours of news weekly editorialized most (59.4%), followed by one to 10 hours of news weekly (26.7%). (See Table IV-43.) This difference was also significant (χ^2=22.68).

In summary, this dissertation found the following:

1) Station managers surveyed are overwhelmingly (77.1%) opposed to the Fairness Doctrine and more than half (57.8%) believe it had a chilling effect on broadcasting. Broadcasters were split between public affairs, editorials, news stories and advertising as to how the Fairness Doctrine chilled broadcast speech. When pressed for specific instances of programs rejected or modified by their station because of the Fairness Doctrine, most station managers (51.6%) were unable to do so. Most of the Fairness Doctrine

Table IV-43: Chi-Square Table
Editorializing by Degree of News
Question 10: "Does this station editorialize?"

HOW MUCH NEWS PROGRAMMED WEEKLY?	Yes		No		TOTAL
	No.	-%-	No.	-%-	No.
31 or more hours weekly	4	40.0%	6	60.0%	10
11 to 30 hours weekly	60	36.4%	105	63.6%	165
One to 10 hours weekly	27	31.8%	58	68.2%	85
No News weekly	5	12.8%	34	87.2%	39
No Answer	5	71.4%	2	28.6%	7
Expected Chi-Square =	7.82				
Chi-Square =	22.68				
	$p \leq .05$				
	* Difference is significant				

problems tended to relate to political issues. Only four stations said they knew of editorials causing Fairness Doctrine difficulties.

2) It appears that the repeal of the Fairness Doctrine had a mixed effect on television editorializing. Of the 306 stations surveyed, twenty-three stations (7.5%) began editorializing after July 1, 1987. But only two of those stations did so because the Fairness Doctrine had been lifted. Twenty stations (6.5%) stopped editorializing after the FCC repealed the Fairness Doctrine. Nine stations said budgetary or resource problems caused their editorial policy shift. Only three stations cited external pressures for

their termination of editorializing.

Almost eighty-five percent of those television stations surveyed (84.9%) continue to broadcast at least some news during the day. More than half (57.2%) broadcast eleven hours or more of news weekly. Not surprisingly, most of those stations were affiliated with one of the three traditional networks.

Almost all of the stations surveyed employed a sales director (97.1%). Most stations also employed a news director (85.3%), a sports director (81.4%), and a public affairs director (74.5%). However, a little less than ten percent of the stations surveyed said they had an editorial director on staff and only twelve percent of the stations retained an editorial board.

3) Although the number is down from previous research, a number of television stations continue to editorialize. This dissertation found 33% editorializing, and even less (30.4%) allowed commentaries by individuals. The primary reasons are diverse but less than altruistic. Most stations were split between "others in the market editorialize" (19.8%), "for station prestige" (18.8%), "to satisfy FCC requirements" (15.8%), and "it makes good business sense" (14.9%). Only two stations (2%) said they editorialize to "serve the community."

4) Most television stations do not editorialize and the

primary reason (40.5%) continues to be budget and resources. Although fifteen stations (7.3%) said they were firmly opposed to editorializing, several other stations indicated a philosophical opposition to the practice of editorializing. Thirty-eight stations (18.5%) cited an incompatibility with their news operation.

Chapter V will explore the implications of this research and make final recommendations.

CHAPTER V

FINAL RECOMMENDATIONS

This dissertation indicates that there was not a mass effort by broadcasters to begin or cease editorializing after the Fairness Doctrine was set aside by the FCC in 1987. Other reasons might account for this reticence. It has been stated earlier that the Fairness Doctrine has not been completely abolished. With the election of a Democratic president and a democratically controlled Congress, it is possible that the Fairness Doctrine will be codified. There may see a swing toward additional broadcast content regulation. Broadcasters might be waiting for events to change such as an eventual court decision that might support or reverse *Red Lion*.

Research Question

This dissertation measured the attitudes of television station managers toward the Fairness Doctrine and used editorials as an extension of the Fairness Doctrine's requirement that broadcasters produce controversial programming.

Most broadcasters are opposed to the Fairness Doctrine and apparently believe they can best make their own editorial decisions. Most television station managers surveyed are opposed to the Fairness Doctrine. More than

three quarters of those surveyed said they wanted it permanently done away with and more than half said they thought it had a chilling effect on broadcast content.

However, more than half of those who wanted the Fairness Doctrine eliminated said they could not cite instances of fairness "chilling" and most of the 26% who did give personal examples tended to focus on political or ballot issues that directly relate to section 315 and the equal opportunities for candidates. It was interesting that only four stations could cite fairness problems relating to editorials. This tends to discount the anecdotal evidence cited earlier for equal time requests that resulted from a station's editorial policy.

Although most station managers said there was a chilling effect, most said they were not aware of it happening at their station. Some who responded to this question said they knew of a Fairness Doctrine problem at another station.

One of the primary reasons for this research was to determine if stations would begin editorializing after the demise of the Fairness Doctrine. Question five appears to indicate that there were a few stations (two stations in this survey) that actually began editorializing as a result of the Fairness Doctrine's not being enforced. Twenty stations surveyed actually ceased editorializing after the

Fairness Doctrine was lifted in 1987. That number is not encouraging for those who thought the lifting of the Fairness Doctrine would increase public affairs programming.

Editorializing

Editorials are not the only form of controversial programming. Politicians are increasingly using talk shows to circumvent the traditional forms of reaching the public. This dissertation chose editorials to represent controversial programming for several reasons:

1. Editorializing led to the formulation of the Fairness Doctrine. The 1941 *Mayflower* decision resulted from an active editorial policy. The research on editorializing is extensive and goes back more than sixty years to the early days of broadcasting. Television talk shows, though controversial, have only recently received a great deal of attention by the public, media and politicians.

2. Editorials, by their nature, are controversial.

3. Another reason for studying editorials is that they are locally produced public affairs programming. The Federal Communications Commission has emphasized local programming as a criterion for license renewal (National Broadcasting Co., Inc. et al. v. United States et al., 319 U.S. 190, 1943). Many of the talk shows produced today are syndicated and usually do not deal with local issues. They require minimum production effort by station management. Editorials,

on the other hand, require a conscious effort by a broadcaster to produce programming that the FCC considers public affairs and controversial in nature.

3. Editorializing forces the station management to take a position on an important issue and become an advocate. By doing so, the station becomes responsible for the editorial content and must be ready to address any potential consequences.

Limitations of This Dissertation

There are several limitations to this dissertation including one pattern of nonresponse. Stations owned and operated by the CBS network refused to cooperate. This reduced the number of stations available to answer the survey. A few stations returned the survey and said they were too busy to cooperate. These stations tended to be in large markets. According to members at the National Conference of Editorial Writers, at the time of the survey several large markets were not editorializing. Among them were New York and Chicago.

Although a little less than half the stations indicated they were airing controversial programming, the wording of the question was not sufficient to determine the nature of that programming. When asked to give examples, most listed "local programs" and it appeared that many were relying on local news or syndicated programs. Question 4-A would have

been better worded if it had asked for specific examples of locally produced programs.

This Dissertation and Previous Research

Those stations that did produce editorials tended to be owned by a newspaper or magazine, be a traditional network affiliate (ABC, CBS or NBC), be located in a larger market, operate in the VHF band, and have an aggressive news effort.

There is no doubt that television editorializing is declining. One hundred and one of the 306 respondents (33%) said they broadcast editorials, while 203 did not. This percentage is less than half that reported by Meeske (61%) in 1978 (p. 751) and well below previous surveys reported by NAB in 1967 (56%) (Radio and Television Editorializing, 1967, p. 7), Television-Radio Age (65%) in 1970 (Editorializing: most stations are doing it, September 21, 1970. p. 32), and Broadcasting Yearbook (58%) in 1976 (p. C-300). Wolf (1972) reported editorializing by 78% of television stations in the Top-50 market stations he surveyed in 1971 editorialized (p. 80).

This dissertation indicates that stations editorialize because of pressures outside the station. Serving the community, acquiring or maintaining station prestige, and satisfying FCC requirements (question 12-B) indicate external pressures from other stations in that market, the government, and the public. In response to question 6-A, a

little less than half (41.1%) of the 306 stations participating in the survey said other stations in their market editorialized. The primary reason stations gave for their editorial policy indicates pressure from other stations led them also to editorialize. Even with the recent deregulation of programming content, including the Fairness Doctrine, some stations still feel pressure from the FCC to editorialize.

Most editorials (62.3%) dealt with local issues. Meeske (1978) discovered that 31% of his sample (108 stations) dealt with a balance of state and local topics and 29% were purely local issues (p. 752). The NAB (p. 11) found that 69% of television editorials were local in 1966, while Fang and Whelan determined that 59% dealt with local issues (1972, p. 367). This is in keeping with the focus of the Fairness Doctrine on local controversial issues.

Although this research did not systematically and directly examine typical editorial content, there are indications that the nature of many editorials continues to deal with controversial programming. Many stations report that their content is "usually" or "somewhat" controversial. Although self-reported data are suspect because they often cannot be corroborated, almost three quarters of the stations (73.3%) reported their editorial topics focused on local or state issues. If a station desired to avoid

controversy it would be much easier to deal with national or international matters that are farther away from home and less likely to arouse controversy.

The station manager continues to have an active role in the preparation and delivery of television editorials. Forty-one stations (40.6%) said the station manager decides the issues, followed by an editorial board (31.7%). Meeske (1978) found that station managers and news directors were both cited (27% each) as responsible for determining editorial topics (p. 752).

Affiliation with a traditional network (ABC, CBS or NBC) relates to a station's editorial policy. The study by Essential Information (Broadcasting, April 10, 1989, p. 76) found that traditional network affiliates schedule more public affairs programs. This dissertation found that ABC affiliates editorialized most (41.9%), followed by CBS affiliates (41.5%) and NBC affiliates (26.7%). Although 15.7% of the stations surveyed were affiliated with the FOX network, only seven of those stations (14.6%) editorialized. Wolf (1972), whose study suffers from a small sample, found similar results as did Meeske (1978), and Fang and Whelan (1972). There was a significant difference (χ^2=14.7) for network affiliation.

There are indications that the traditional network-station relationship is changing dramatically.

Because of the additional programming available and with satellite delivery, networks have less control over stations than they once had. With the continuing erosion of viewers among the three traditional networks it is questionable if stations will increase their editorializing in the future.

Fang and Whelan (1972) and Meeske (1978) found that a greater percentage of stations in the East editorialized. However, this research did not show a significant difference (χ^2=2.93) based on region.

Market size appears to be a factor in editorial policy. Meeske (1978) found that stations in larger markets editorialized more than stations in smaller markets. He reasoned this was due to the stations being better staffed (p. 751). The top fifty markets tended to editorialize more than markets below fifty. Top fifty markets are important for broadcast regulation since the FCC sometimes designates those markets for additional rules. The net effect is that other stations will, by default, fall under those same regulations. One example is the Prime Time Access Rule (PTAR). This research found a significant difference (χ^2=12.53) based on market size.

This dissertation found that stations with a financial and moral commitment to covering news are also committed to dealing with controversial issues in their community. Meeske established that non-network stations editorialize the least

because of a "modest" news effort (1978, p. 751). Even with the deregulation of broadcasting during the 1980s, news continues to be a primary source of revenue for many local television stations.

Non-Editorializing

There are several reasons why stations do not editorialize and most of them appear to be related to economics. Several stations cited the weak economy and said it would be impossible to editorialize until they could hire the necessary personnel.

Another reason stations give for not editorializing is a philosophical opposition to their station's taking a position. One station manager said, "We are not in the opinion business." Many who indicated an aversion to editorializing pointed to their news department as a means to satisfy their public service obligation and inform the public.

Recommendations to the Broadcast Industry

Stations that editorialize continue to receive public feedback. Although the nature of that feedback was not characterized by the stations, it might be expected that audience members do not react to editorials unless they strongly agree or disagree with the content.

But few stations utilize a feedback function. Almost all daily papers have a "letters to the editor" page where

citizens can react to the paper's editorial stance or various community issues. Broadcasters have long requested parity with print. However, parity requires that broadcasters imitate many of the feedback functions found in many newspapers.

Editorials are good business. Controversial programs, especially editorials that take a position, should attract and channel public reaction or feedback. Since the FCC considers editorials controversial, editorials should be a good indication of a station's desire to engage in controversial programming.

Recommendations to Government Regulators

Defenders and detractors of the Fairness Doctrine have made claims about the "chilling effect" with little research on which to base their claim. Broadcast regulation should be developed on the basis of rigorous and regular research.

Is it possible for broadcasters consistently to air controversial programming without the prodding of regulators? Should broadcasters be further regulated? The past ten years under a Republican Administration have seen a marked decrease in broadcast regulation. From program logs to the renewal process, the government has dramatically reduced broadcast regulation. But Congress has aggressively acted to reinstate some content regulation over broadcasting, including the Fairness Doctrine.

Should broadcasters editorialize, and if so, how should it be encouraged? Stations not editorializing have no great compulsion to editorialize and are not required or encouraged by the Federal government to do so.

One of the most disturbing things about this dissertation was the potential for abuse of the Fairness Doctrine. Several radio stations lost their licenses or faced government harassment because of the Fairness Doctrine. *Red Lion*, the landmark case that decreed the Fairness Doctrine to be constitutional, was precipitated by an underhanded effort by the Democratic National Committee. These events point out a serious chill in the marketplace of ideas. Another disturbing fact was a pattern by government to go after conservative stations. The effect of these cases of harassment is that conservative ideology is viewed as not appropriate in the marketplace of ideas.

The reimposition of the Fairness Doctrine might encourage a future administration or point of view to stifle opposition in a devious fashion. That is one abuse of power that must never be permitted in a free society.

Broadcast regulation is tied to political philosophy and is subordinate to the FCC, the President, Congress and the courts. Government should not have a role in the production of controversial programming by broadcasters. Journalistic decisions should not be made by government

bureaucracy. Broadcasters know their community and are best qualified to decide appropriate programming. What gives government special powers to best decide the merits of a fairness case? The excesses of power in the past should lead us away from more content regulation.

Broadcasting is a changing field and the technology is evolving continually. The *Red Lion* decision admitted that the future will demand a reconsideration of the basic assumptions made. Broadcast technology is making more channels available for cable, high definition television and compression that will give the public more channels and more diversity of voices.

Future Research

Additional research needs to examine the content of editorials. Particularly difficult is determining "controversial." Since controversy is based so much on context and location, future research might examine editorial content to determine how controversial it might happen to be.

Little has been done over the last fifteen years to measure the amount of television editorializing. Because of the cycle of government elections, this research should be replicated at least every two years to measure the growth or decline of broadcast editorializing and should eventually include independent television stations.

Additional research might examine the role of new forms of controversial programs. Among them would be the talk shows that have recently played a leading role in presidential politics.

Media access works best when citizens write or call local stations and insist that they fulfil a feedback function to the community. But forcing access should not be guaranteed or administered by the government or else broadcasters will become a common carrier and little more than a conduit of information.

Freedom of the press carries with it a responsibility that is not contained in any constitution. It requires an obligation to be responsive to the people served. Government should not need to prod broadcasters to do that. Surely the lesson of history is that in the affairs of people, it is humanity who can best decide truth.

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APPENDICES

APPENDIX A

Copy of cover letter to surveyed stations

January 10, 1992

Mr. Dick Wagschal
Box 40, Radio Building
Anniston, AL. 36202

Dear Mr. Wagschal:

WJSU has been selected as part of a nationwide survey to help gather information on Television Editorializing in the United States as part of my dissertation research at the University of Tennessee, Knoxville. Will you please assist me with the information gathering process by completing the enclosed questionnaire? This survey should take about five minutes to complete. Even if you do not editorialize, your input is needed.

I know this survey comes at a busy time for all of you at Channel 40, but your participation in this research would be greatly appreciated at your earliest opportunity. Would you please return the survey in the enclosed stamped, self-addressed envelope by January 31st?

Presently I am completing my doctoral studies while teaching at the University of Central Arkansas.

For further information concerning this research you may contact Dr. Sam Swan in the Broadcast Department at the University of Tennessee. His address is: 295 Communications, Knoxville, Tennessee, 37996-0323.

I hope to hear from you soon. Please check the last question on the survey if you desire a summary of my results when they become available.

Sincerely,

David Spiceland

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Enclosures

APPENDIX B

Geographic Regions

Geographic Regions

East (12 states and the District of Columbia): Connecticut, Delaware, Maine, Maryland, Massachusetts, Mew Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, and Washington, D.C.

South (12 states): Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

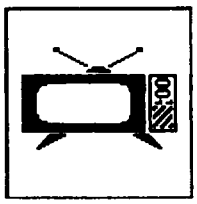
Midwest (13 states): Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin.

West (13 states): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Source: Fang, Irving E., & Whelan, John W., Jr. (1973, Summer). *Survey of Television Editorials and Ombudsman Segments*. Journal of Broadcasting. 17. p. 366.

APPENDIX C

Copy of Survey



The *Fairness Doctrine* was designed by the Federal Communications Commission to ensure that controversial issues of public importance would receive fair treatment. In August 1987 the FCC announced that they would no longer enforce the Fairness Doctrine.

1. Congress has been trying to make the Fairness Doctrine law. What is your preference? (Please check only one)
   "*I would like to see the Fairness Doctrine*..."
   [] A) PERMANENTLY DONE AWAY WITH
   [] B) BECOME LAW
   [] C) MODIFIED IN SOME WAY, THEN MADE LAW
   [] D) NOT SURE
   [] E) OTHER_____

2-A. Do you think the Fairness Doctrine had a chilling effect on broadcasters? That is, did broadcasters avoid producing controversial programs because they feared government intervention? (Please check only one)
   [] A) YES
   [] B) NO
   [] C) NOT SURE

   2-B. If "YES" in what way? (Check as many as apply)
      [] A) ADVERTISING
      [] B) EDITORIALS
      [] C) NEWS STORIES
      [] D) PUBLIC AFFAIRS/DOCUMENTARIES
      [] E) OTHER_____

   2-C. COMMENTS:

_____
_____
_____
_____

3-A. Before the Fairness Doctrine was rescinded in 1987, can you think of any programs rejected or modified by your station because they would have raised Fairness Doctrine concerns? (Please check only one)
   [] A) YES
   [] B) NO
   [] C) NOT SURE

   3-B. If "YES" can you give examples? These will be kept confidential.

_____
_____
_____
_____
_____

* The following is a definition of editorializing: "The expression of a *station's* opinions and ideas on various controversial and significant issues. These are usually not sponsored. They are distinguished from commentaries which are the express opinions of *individuals*."

4-A. Are you now airing controversial programs? These might include, but are not limited to, editorials. (Please check only one)
[] A) YES
[] B) NO

4-B. If "YES" please give examples?

_____
_____
_____
_____

5-A. About July 1, 1987 was your station editorializing at all? (Please check only one)
[] A) YES
[] B) NO
[] C) NOT SURE

5-B. If you have begun editorializing since July 1, 1987, why did you start?

_____
_____

5-C. If you have stopped editorializing since July 1, 1987, please explain why:

_____
_____

6-A. Are there any other television stations in your market that editorialize? (Please check only one)
[] A) YES
[] B) NO

6-B. If "YES", what are their call letters:_____

7. How many hours of locally produced news do you air each week? (Please check only one)
[] A) WE DO NOT HAVE LOCAL NEWS
[] B) ONE TO 5 HOURS
[] C) 6 TO 10 HOURS
[] D) 11 TO 20 HOURS
[] E) 21 TO 30 HOURS
[] F) 31 TO 40 HOURS
[] G) 41 OR MORE HOURS

8. Do you employ the following personnel at your television station? (Check as many as apply)

A) SALES DIRECTOR	YES []	NO []
B) NEWS DIRECTOR	YES []	NO []
C) SPORTS DIRECTOR	YES []	NO []
D) PUBLIC AFFAIRS DIRECTOR	YES []	NO []
E) EDITORIAL DIRECTOR	YES []	NO []
F) EDITORIAL BOARD	YES []	NO []

9. Does your station currently broadcast commentaries? (Individual opinions)
(Please check only one)
[] A) YES
[] B) NO

10. Does your station currently broadcast editorials? (station opinions)
(Please check only one)
[] A) YES
[] B) NO

IF YOU ANSWERED 'NO' TO NUMBER 10, GO TO QUESTION 24-A ON PAGE 6. IF YOU ANSWERED 'YES', PLEASE CONTINUE.

11. What year did your station begin to editorialize? _____

12-A. Why do you editorialize?
(Please check all that apply)
[] A) FOR STATION PRESTIGE
[] B) IT MAKES GOOD BUSINESS SENSE
[] C) OTHERS IN THE MARKET EDITORIALIZE
[] D) THE OWNERS EXPECT IT
[] E) TO SATISFY FCC REQUIREMENTS
[] F) TO SERVE THE COMMUNITY
[] G) TO ATTRACT VIEWERS
[] H) OTHER_____

12-B. What is the PRIMARY reason your station editorializes?
(Please check only one using Question 12-A)
A)____ B)____ C)____ D)____ E)____ F)____ G)____
H) OTHER_____

13. How often does your station editorialize?
(Please check only one)
[] A) DAILY
[] B) TWICE WEEKLY
[] C) WEEKLY
[] D) MONTHLY
[] E) RARELY
[] F) OTHER_____

14. What is the typical length of your editorials?
(Please check only one)
[] A) THIRTY SECONDS OR LESS
[] B) :31 TO 1:00
[] C) 1:01 TO 1:30
[] D) 1:31 TO 2:00
[] E) 2:01 TO 2:30
[] F) 2:31 TO 3:00
[] G) OVER THREE MINUTES
[] H) OTHER_____

15. When, during the broadcast day, does your station air its editorials?
(Please check only one)
[] A) DURING NEWSCASTS
[] B) ADJACENT TO NEWSCASTS (BEFORE OR AFTER)
[] C) SCATTERED THROUGHOUT THE DAILY SCHEDULE
[] D) OTHER_____

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16. What form do the *majority* of your editorials take?
(Please check only one)
[] A) INFORMATIVE, NO OPINION
[] B) INFORMATIVE WITH OPINION
[] C) CALL FOR ACTION
[] D) OTHER_____

17. During the past year, overall, how would you characterize the topics of your editorials?
(Please check only one)
[] A) LOCAL
[] B) STATE
[] C) NATIONAL
[] D) INTERNATIONAL
[] E) OTHER_____

18. Usually, how controversial are the issues you discuss in your editorials?
(Please check only one)
[] A) ALWAYS CONTROVERSIAL
[] B) USUALLY CONTROVERSIAL
[] C) SOMEWHAT CONTROVERSIAL
[] D) NEUTRAL OR NOT CONTROVERSIAL

Please use the following choices for the next four questions:
(Check only one for each)
[] A) STATION MANAGER
[] B) NEWS DIRECTOR
[] C) EDITORIAL DIRECTOR
[] D) EDITORIAL BOARD
[] E) PUBLIC AFFAIRS DIRECTOR
[] F) SOMEONE FROM THE PARENT COMPANY NOT LOCATED AT THE STATION
[] G) OTHER *(IDENTIFY WHO)*

19-A. Who usually *decides* the issues covered in your editorials?
A)____ B)____ C)____ D)____ E)____ F)____ G)_____

19-B. Who usually *writes or prepares* your editorials?
A)____ B)____ C)____ D)____ E)____ F)____ G)_____

19-C. Who usually *approves or reviews* your editorials?
A)____ B)____ C)____ D)____ E)____ F)____ G)_____

19-D. Who usually *presents* your editorials?
A)____ B)____ C)____ D)____ E)____ F)____ G)_____

20. Where are MOST of your editorials produced?
(Please check only one)
[] A) IN THE STUDIO
[] B) ON THE STATION PREMISES, BUT OUTSIDE OF A STUDIO
[] C) AWAY FROM THE STATION PREMISES
[] D) OTHER_____

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21. Do you ever use any of the following in your editorials?
(Check as many as apply)
[] A) SLIDES
[] B) VIDEOTAPE
[] C) CHROMA KEY
[] D) SQUEEZE ZOOM
[] E) CHYRON
[] F) TALKING HEAD
[] G) CHARACTER GENERATOR
[] H) GRAPHICS
[] I) OTHER _____

22. Do you receive letters or phone calls commenting on your editorials?

(Please check only one)	PERCENTAGE OF TIME:
[] A) YES. AFTER EVERY EDITORIAL	100%
[] B) YES. AFTER ALMOST EVERY EDITORIAL	76-100%
[] C) YES. AFTER MANY OF OUR EDITORIALS	51-75%
[] C) YES. AFTER SOME OF OUR EDITORIALS	26-50%
[] D) OCCASIONALLY	anywhere up to 25%
[] E) NEVER	0%

23. Do you furnish copies of your editorials to the public?
(Please check only one)
[] A) YES
[] B) NO

If "Yes" would you please send a sample of your most recent editorials?

IF YOUR STATION DOES EDITORIALIZE, PLEASE GO TO THE TOP OF PAGE 7.

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PLEASE COMPLETE THIS PAGE IF YOU DO NOT EDITORIALIZE:

24-A. If your station does NOT editorialize, what are the reasons for that policy?
(Check as many as apply)
[] A) OTHERS IN THE MARKET DO NOT EDITORIALIZE
[] B) IT IS INCOMPATIBLE WITH OUR NEWS OPERATION
[] C) LACK OF BUDGET FOR RESEARCH & WRITING
[] D) DESIRE NOT TO OFFEND LISTENERS
[] E) LACK OF CLARITY OF FCC RULES
[] F) DESIRE TO AVOID CONTROVERSIAL PROGRAMMING
[] G) TOO MANY COMPLAINTS FROM THE PUBLIC
[] H) TOO MANY COMPLAINTS FROM SPECIAL INTEREST GROUPS
[] I) OTHER_____

24-B. If your station does not editorialize, what is the PRIMARY reason for that policy?
(Please check only one and use the choices from 24-A)
A)____ B)____ C)____ D)____ E)____ F)____ G)_____

24-C. If your station does not editorialize, do you anticipate doing so within the next 12 months?
[] A) YES
[] B) NO

24-D. If your station does not editorialize, what must change before your station would begin editorializing? Please be specific.

_____

_____

_____

_____

_____

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_____

_____

_____

_____

PLEASE CONTINUE ---------->

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PLEASE TELL ME YOUR:

Call Letters_____ City_____ State_____

Present owner_____

25. How long has this station been owned by the current owner?
(Please check only one)
[] A) ONE YEAR OR LESS
[] B) ONE TO 3 YEARS
[] C) 3 TO 10 YEARS
[] D) 10 TO 20 YEARS
[] E) LONGER THAN 20 YEARS

26. What is your *primary* Network affiliation: (Please check only one)
[] A) ABC
[] B) CBS
[] C) FOX
[] D) NBC
[] E) INDEPENDENT

Thank you for your help in completing this survey! Check the box below if you'd like a summary of the results when they become available. Please return this form to the address below by using the enclosed stamped envelope. Feel free to use the last page for any additional comments.

David Spiceland, 6 Woodlawn, Conway, Arkansas, 72032-3435. (501) 329-0245 or 450-5603.

"Please send a summary of the survey results when they become available" YES []

Your Name_____ Title_____

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27. ADDITIONAL COMMENTS:

VITA

Roy David Spiceland, Jr. was born at Luke Air Force Base outside Phoenix, Arizona on November 23, 1951. At the age of nine months he moved to Michigan where he grew up in the Detroit suburbs.

After graduating from Taylor Center High School in June 1969, he attended Freed-Hardeman University at Henderson, Tennessee. In 1972 he graduated with an Associate of Arts Degree in Bible with a minor in Speech. After working at several radio and television stations in the Jackson, Tennessee area, he returned to Freed-Hardeman in 1976 and received a Bachelor of Arts Degree in Communication. He served as the Station Manager of WFHC-FM, the campus radio station, from 1976 through 1981.

In 1981 he received a Master of Arts Degree from Memphis State University with a Radio-TV-Film major. From 1981 to 1985 he was an Assistant Professor at Abilene Christian University in Abilene, Texas. He has taught at a number of universities and now teaches broadcasting at Appalachian State University in Boone, North Carolina.

His parents are Roy David Spiceland, Sr. and Hazel Spiceland Thompson. He has two brothers, Daniel and Stephen. He is married to the former Jo Stewart, and they have two children, Rachel and Joshua.