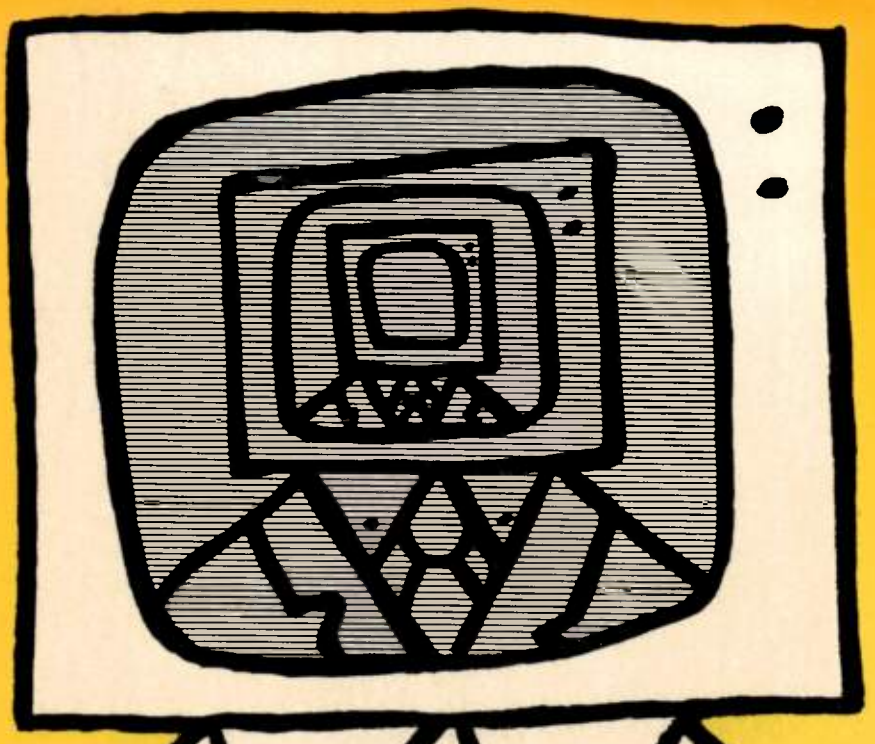
PUBLIC MEDIA CENTER'S GUIDE
TO BROADCASTING AND THE FAIRNESS DOCTRINE
FOR PEOPLE WHO ARE MAD AS HELL
AND AREN'T GOING TO TAKE IT ANY MORE.

TALKING BACK



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TALKING BACK

4/19/84

So you think TV is really dumb?

Talk Back!

love, B

Project Director and Editor
Michael Singsen

Chief Writer
Jonathan Polansky

Legal Research
Phil Tymon

Contributors
Kathy Galvin
Barbara Grob
David Hamlin
Judith Robinson
Sharon Seidenstein
Jane West

Design
Patricia Koren

Executive Editor
Herbert Chao Gunther

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Foreword

PUBLIC MEDIA CENTER is a different sort of advertising agency. We're not in the business of selling soap. Instead, we help others communicate *ideas* as vividly as possible to as many people as possible at the lowest possible cost.

Most of our clients are themselves non-profits long on ingenuity and commitment but short on money. They are activists who have a great deal to contribute to the free and vigorous debate fundamental to a working democracy. Long and hard experience has taught them that it takes time, expertise, and dedication to convey their points of view to a wider audience, to define urgent social issues in the most constructive and compelling way, and to influence the outcome.

As part of our work at Public Media Center, we help our clients take full advantage of all avenues of communication—and struggle to open even more by challenging the corporate and regulatory obstacles standing in the way. Making the system more accessible to all shades of opinion is the first step toward creating a society capable of addressing its most basic problems and achieving its highest ideals.

This book is one small part of that effort. If it convinces you that we need not be passive and frustrated spectators in our own nation—that instead we can become active and effective participants in the controversies which concern us—it will have fulfilled its purpose.

On behalf of everyone at Public Media Center, I would like to thank the C.S. Fund, Carol Bernstein Ferry, W. H. Ferry, Ann Roberts, Philip M. Stern and the Sunflower Foundation for their support of this project. In addition, both Andrew Schwartzman of Media Access Project and Tom Kinder of the Fund for a Secure Earth deserve special acknowledgment for all their help.

Herbert Chao Gunther
Executive Director

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V. Learning From Experience

"... and, when we want contrasting opinions, we'll ask for them. Until then, sit back and shut up."

Introduction

WHO RULES America's airwaves?

It's a question of more than sociological interest. Television and radio are the most pervasive—and persuasive—ways of communicating the world has ever known. They are instantaneous media, carrying words and pictures to millions at the speed of light. They knit the world in common experience, creating what Marshall McLuhan called a "global village." But broadcasting isn't a cottage industry.

It's business—Big Business. Every year, billions of dollars are invested in equipment, programming, advertising schedules. The return is astronomical. Dollar for dollar, the business of broadcasting consistently ranks as one of the most spectacularly profitable.

Maximizing the bottom line and serving the public interest are, however, two quite distinct pursuits. They sometimes coincide; they often collide head-on. Because the broadcast business traffics in a product called information, the potential for conflict has always been extremely high. The problem is summed up in a couple of familiar truisms: ***knowledge is power*** and ***money talks***.

The men who wrote our Bill of Rights were graduates of the European Enlightenment. They knew that knowledge is power. They also knew that those in power are constantly tempted to restrict the flow of knowledge, censor dissent, silence disagreement, thus making the job of leadership less complicated and more secure. To keep the government from interfering in the free exchange of information, freedom of speech was made a basic, inalienable right.

The First Amendment is vital to the workings of democracy. It grants us all the right to hear and discuss all sides of important public questions. It lets us decide for ourselves. In this way, men like Thomas Jefferson hoped to block the rise of tyrannical government. What they could not have foreseen was the tyranny of concentrated economic power.

Because it costs so much to make so much in broadcasting, the business is becoming an exclusive corporate reserve. Many radio and television stations are now links in chains spanning the continent. The programming they carry originates in a handful of networks and production companies. The networks choose programs that appeal to mass marketers. The mass marketers are, themselves, gigantic corporations.

The economic interests of these corporations are acutely competitive. But their political and social interests—dictated by the bottom

line—are practically monolithic. Can we realistically expect the broadcast industry to champion diversity? Walk down any American street at dusk and you'll see within every home the blue flickering of identical images. You'll hear the oily murmur of monotonous, inhuman speech. Money talks. It has, of course, paid for the privilege.

But what happens when this privilege conflicts with the rights that belong to the rest of us? To paraphrase A. J. Leibling, freedom of speech doesn't mean much if you can't afford a microphone.

Alarm over the power of broadcasting to stack the democratic deck is nothing new. Sophisticated politicians—from Franklin Roosevelt to Adolf Hitler—quickly realized the potential of radio to sway public opinion. Herbert Hoover, among others, feared that commercial exploitation of the medium would turn the "marketplace of ideas" into a bargain basement of damaged goods. In *1984*, George Orwell predicted that Big Brother would invent a TV which couldn't be turned off.

Different countries dealt with the challenge in different ways. In Great Britain, the BBC was handed a virtual monopoly. In France, the newscasters are government employees. The United States chose early on to minimize government involvement, merely parceling out the broadcast bands and granting licenses for their use.

But America didn't stop there. To act as a traffic cop of the electromagnetic spectrum, the U.S. Congress first had to declare that the airwaves were a public resource. American broadcasters don't own their frequencies. They're licensed to use something that, in law, belongs to all of us. According to the Communications Act of 1934, every station owner in the United States must act as a *trustee* for listeners and viewers. The broadcaster is permitted to use the airwaves only in "the public interest, convenience and necessity."

This peculiarly American arrangement—public ownership of the airwaves, private license to use them—gives broadcasters certain obligations and the public certain rights. By and large, most broadcasters fulfill their obligations in letter, if not in spirit. Few Americans, however, know what rights they have. Fewer still know how to use them. And rights, like muscles, begin to atrophy unless they're exercised regularly.

At stake is the success of the democratic experiment. Freedom of speech isn't worth the paper it's written on if it's limited to words on paper. Broadcasting is now the primary source of information for millions of Americans—people called upon to decide everything from the future of nuclear power to the name of their next President.

Unless you exercise your broadcast rights, the broadcast business will continue to be business-as-usual. Corporate interests will continue to rule the airwaves, shaping public perceptions and narrowing public debate by plain default.

What rights *do* you have? How can you help your local broadcaster serve the public interest as it deserves?

These are questions you will rarely hear addressed on the air. And that's the best argument we can make for reading this book. After all, who knows what else you haven't been told?

We'll make the reading as non-technical and pleasant as possible. First, we'll tell you what your rights are and how you got them. Then we'll tell you how to exercise your rights step-by-step. Last, we'll tell you some stories about people who learned about their rights the hard way . . . and used them to win free access.

Through it all, remember that you're the one who owns America's airwaves. Who actually rules them is ultimately up to all of us.

CHAPTER I

YOUR BROADCAST RIGHTS AND HOW YOU GOT THEM

The Reluctant Regulator

MOST AMERICANS ASSUME they have as little say in broadcasting as they do in the way other huge businesses operate. In fact, the broadcast industry works by a certain set of rules and regulations developed over the last fifty years.

In theory, at least, the airwaves belong to all of us. Broadcasters use them with our permission. Every radio and television station in the United States must have a "license to operate" from the Federal Communications Commission (FCC). The licenses are applied for, last for a set period of time, and then expire. The station must then ask that the license be renewed.

"In effect, the broadcaster is given a federally protected monopoly over a valuable piece of public property. In return, broadcasters are required to act not just in their private interests, but in the public interest."

A broadcast license is like a driver's license. If the broadcaster breaks the rules of the road, the license can be revoked. Although this rarely happens, broadcasters tend to take their obligations more or less seriously. They know very well that they operate only as "trustees" for the public and must act responsibly. The only way they can stay in business is to "serve the public interest, convenience and necessity." The FCC is the judge.

This arrangement came into being because of the nature of broadcasting itself. There are only so many positions on the electromagnetic spectrum. Each frequency can accommodate only one broadcast signal at a time. Otherwise, interference garbles the transmission and nothing intelligible can be heard or seen.

To prevent interference, the U.S. government evolved a regulatory system which grants a particular frequency to one broadcaster in an area, denying the channel to all others. In effect, the broadcaster is given a federally protected monopoly over a valuable piece of public property. In return, broadcasters are required to act not just in their private interests, but in the public interest.

This scheme gives the public important rights, which can be exercised in several different ways. First, the public has the right to *intervene* whenever a broadcaster applies for a license or asks for a renewal or transfer. Second, the public has the right to *participate* when the FCC establishes new rules for broadcasters. Some of the rules are technical; others are concerned with the way broadcasters fulfill their obligations to the public interest defined less narrowly. The public can even *initiate* "rulemaking" proceedings by petitioning the FCC. Finally, the public has the right to file a variety of *complaints* with the FCC during the term of the broadcaster's license.

When a broadcaster applies for a license renewal, proof must be offered that certain standards have been met. Television stations, for example, must show that they have "ascertained" community needs and programmed to address those needs (covering critical issues, or aiming programs at children, minorities, and other special audiences).

Television broadcasters are also required to "log" every program aired and make these logs available to the public, and all broadcasters must maintain a "public file" of specific documents, operate according to "ethical" business practices, and—of course—follow rules about identifying themselves on the air at set intervals, staying on frequency, and so on.

To protect the public interest, the FCC has also set a number of other guidelines, including equal employment opportunity and limits on "cross-ownership" between stations, newspapers, phone companies and cable systems.

Any of these broadcast obligations can become issues at license renewal time. If the station has failed to perform as required in a particular area, it gives the public powerful leverage in negotiating a responsive agreement with a station at *any* time. As every media activist knows, negotiations under such circumstances often win more than court action or formal appeals to the FCC.

It should be recognized that the FCC richly deserves its sobriquet, "the reluctant regulator." Despite carefully crafted rules designed to guide broadcasters and protect the public, the FCC rarely sanctions licensees because they fail to live up to their public service obligations. Like the Supreme Court, the agency avoids broad, sweeping interpretation and enforcement of its own rules in favor of narrow, highly qualified determinations. Only in the case of the most egregious situations will the FCC deny a broadcaster's license renewal. And with few exceptions the violations that have led to denial or revocation have been technical: misrepresentation of facts before the FCC, conviction of a federal crime, or repeated and willful disregard of technical rules.

"It should be recognized that the FCC richly deserves its sobriquet, 'the reluctant regulator.'"

Equal opportunity guidelines, provision for children's programming, and the limits on cross-ownership have all been established through FCC rulemaking. The public played a major role in these proceedings, submitting written comments on proposed rules, testifying in public hearings, in some cases initiating the proceedings in the first place. These are important rights you should be aware of.

But none of these rights deal with the core problem: the lack of public "access" to the broadcast media.

The same regulatory arrangement which grants you the right to intervene, complain and influence the rules of the broadcast game also forbids everyone but a select group from actually broadcasting. And our

limited rights themselves are under severe challenge from the broadcast industry, Congress, and the FCC itself.

Already, radio stations have gained exemption from some of the rules we've outlined, calling them "burdensome regulation." Broadcasters would like nothing better than to give up the burden of serving the public interest entirely, overturn the licensing system, and treat their frequencies as private property.

One of their prime targets is a set of FCC rules which together comprise the Fairness Doctrine. When you understand the rights given to the public under the Fairness Doctrine you'll see why.

The Fairness Doctrine

THE FAIRNESS DOCTRINE protects some of the most important broadcast rights you enjoy. These rights have been successfully exercised by concerned citizens across America, with far-reaching political consequences.

The Fairness Doctrine is a law that has been adopted indirectly by Congress. In essence, it is a set of principles for broadcasters to follow. It gives them vital responsibilities, legally known as "affirmative obligations." If these obligations go unfulfilled you have the right to protest to the station, and ultimately the FCC, and force the station to serve the public interest in a very real way.

The Fairness Doctrine gives broadcasters two major and interrelated responsibilities:

1. To provide programming which addresses controversial issues of public importance.

2. To ensure that, overall, such programming is balanced, providing a "reasonable opportunity for the presentation of contrasting views."

In effect, the Fairness Doctrine gives you the right to expect serious, open coverage of important public questions, no matter how controversial they are. It also gives you the right to expect that what you hear or see will not be consistently one-sided.

The Fairness Doctrine effectively forbids a broadcast station from operating as a powerful propaganda outlet for a particular point of view. It guarantees that broadcasting will serve as a forum for open and free debate. In itself, it obligates broadcasting to exist as a vehicle for the exercise of the public's First Amendment rights.

It does not, as broadcast lobbyists like to assert, restrict the First Amendment rights of station operators. There's nothing in the Fairness Doctrine which gives the FCC—or, indeed, anyone—the power to censor station editorials or dictate program content. All the Doctrine does is require the station's programming on controversial issues of public importance be fair and balanced overall. It actually encourages open and unrestricted exchange of fact and opinion, countering broadcasting's innate tendency to avoid controversy at all costs.

To put it most simply, the Fairness Doctrine requires that a broadcast station be more than a money-machine pumping out mindless entertainment in exchange for advertising millions. And it requires the station to possibly air points of view which may not be shared by gigantic commercial interests. Both of these requirements are naturally resisted by broadcasters whose primary concern is maximizing profits.

In view of the fact that broadcasters are granted a monopoly on a public resource, however, the Fairness Doctrine's recognition that the public interest must be served is just what its name suggests: fair.

From Goat Glands to Strip Mining

"It is inconceivable that we should allow so great a possibility for service to be drowned in advertising chatter."

Herbert Hoover, 1922

Before we guide you step by step through negotiating with stations to win fair coverage of public issues, you should know exactly how the Fairness Doctrine was established. It didn't spring full-grown from the mind of a public-spirited FCC commissioner. Rather, it was built up over a period of time from precedents set while the FCC confronted a whole range of problems.

A brief history will also help you distinguish between the Fairness Doctrine and related rules—Equal Time, Personal Attack, Political Editorial—so you can deal with broadcasters and their lawyers on a secure footing. The history of the Fairness Doctrine is the history of broadcast regulation itself.

The first federal broadcast laws—the Wireless Ship Act of 1910 and the Radio Act of 1912—treated radio as a purely maritime concern, since ship-to-ship and ship-to-shore were the first applications of the new technology. So the law was unable to cope with the chaos which

occurred soon after the first commercial radio station (KDKA in Pittsburgh, PA) went on the air in 1920. By 1922, Secretary of Commerce Herbert Hoover had issued 670 licenses to "broadcast," as the startling new business was called. Some of the new stations wandered across the spectrum at will, boosting and cutting their power as whim (or experimental equipment) moved them. There was so much interference that listeners were often hard-pressed to bring in a clear signal for any length of time.

Broadcasters clamored for a rational allocation of frequencies. The result was the Radio Act of 1927 and a modern Constitutional crisis.

"...To perpetuate in the hands of comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course."

Up to that year, no communications medium in the United States —newspapers, magazines, movies, theater, sound recording—had ever been subject to a comprehensive regulatory and licensing scheme. First Amendment protections of free speech and a free press forbade it.

But broadcasting, as we've noted, was a medium with a difference. The electromagnetic spectrum is a scarce resource: anyone can use a certain frequency, but two people can't occupy the same frequency without jamming each other. How could the government allocate frequencies without abridging the First Amendment rights of millions of people? The American solution, as we've seen, was to grant a limited license to a "trustee" who would act in the public interest.

The conflict between commercial operation and public trusteeship has been sharp ever since. The profit motive has overwhelmed the public interest aspect to a degree unpredicted when Congress inserted Section 18 into the Radio Act of 1927. Section 18 explicitly required that if a broadcaster gave or sold airtime to a political candidate, an equal opportunity to purchase or use airtime must also be granted to all other candidates for the same office. (This "equal time" rule is still in force today, though narrowed in scope.)

Congressmen and Senators debating the Radio Act clearly appreciated that their own interests were at stake in the Equal Time rule. But they also wondered if the same provision should be made for "all political questions and issues." Sen. Howell of Nebraska declared:

> ...[T]o perpetuate in the hands of comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course... If any public question is to be discussed over the radio, if the affirmative is to be offered, the negative should be allowed upon request also, or neither the affirmative nor the negative should be presented.[1]

Similar concerns were expressed in the House. A far-sighted Congressman Johnson stated his belief that broadcasting could "mold and crystallize sentiment as no agency in the past has been able to do."

> If the strong arm of the law does not prevent monopoly ownership and make discrimination by such stations illegal, American thought and politics will be largely at the mercy of those who operate those stations.[2]

The Senate version of the Radio Act, in fact, included a provision mandating non-discrimination in "the discussion of any question affecting the public."[3] It disappeared in joint committee, however, and only "equal time" for political candidates was preserved. First the Federal Radio Commission and later the FCC would be forced to rely on its broader mandate to regulate in "the public interest, convenience, and necessity" to establish any other public rights.

Congressional hearings soon revealed that Congress felt the FRC *was* authorized to require balance in the discussion of controversial issues. The issue was balance only, not the obligation to cover public issues in the first place. This responsibility was addressed only later and remains the weaker half of the Fairness Doctrine even now, as far as enforcement goes.

Finally, in 1932, Congress passed an amendment to the Radio Act explicitly requiring "equal opportunity for the presentation of both sides of public questions."[4]

Fairness again was an issue in debates over passage of the Communications Act of 1934—the basic law of telecommunications today. The Senate version of the bill echoed the language of 1927 and 1932. The Act, as passed, again omitted it.

If the Fairness Doctrine isn't in the law, where does it come from?

The "official" history of the Fairness Doctrine, promulgated by the FCC and accepted by the Supreme Court, maintains that both parts of the Doctrine—the obligation to cover public issues and the obligation to do so in a balanced fashion—have been regulatory policy from the very beginning. Here are your rights in the making:

Great Lakes Broadcasting (1928).[5] In this case, the FRC laid out the criteria it used for awarding licenses. Among them was the requirement that if a public issue is discussed on the air there must be "ample play for the free and fair competition of opposing views"—a clear call for balance. The first whisper of a call for coverage in the first place can be discerned in the requirement that "particular doctrines, creeds, and beliefs must find their way into the market of ideas by existing public service stations." The case also illustrates for the first time that the FRC would act on "well-founded complaints from the public" and consider the "content" of programs in licensing decisions.

Trinity Methodist Church (1932).[6] In this case, the FRC refused to renew the license of a Los Angeles station that had "attacked

judges and tried to influence the outcome of various trials, made unsubstantiated charges against a labor organization and the Board of Health... and made disparaging remarks about Catholics and Jews." KGEF's licensee, the Rev. Dr. Shuler, appealed to the courts, claiming that his rights of free speech had been violated. The Court of Appeals upheld the FRC's decision.

KFBK Broadcasting (1931)[7] involved the radio license of a Dr. Brinkley, who prescribed goat-gland transplants over the air. The Court of Appeals agreed with the FRC's basis for refusing to renew his license, stating that "the Commission had to consider the character and quality of the radio service being rendered."

Chicago Federation of Labor (1929).[8] When the Federation asked the FRC to increase its station's transmission power, it supported its application by stating that it would be broadcasting programs of exclusive interest to organized labor. The FRC rejected the idea that a station could serve a single, special constituency and not be required to balance its programming. It became policy—still controversial today—that *every* station must present balance. A balance of stations each presenting a special viewpoint could not be relied upon.

Young People's Association for Propagation of the Gospel (1938)[9] applied for a license for a station solely devoted to preaching fundamentalism. Relying on the FRC's cases concerning balance, the four-year-old FCC turned the group down.

In its 1940 *Annual Report* the FCC made the clearest statement up to that time about the obligation to provide balanced coverage of public controversy. "Stations," it said, must "furnish well-rounded... discussions of public questions." But the FCC made clear that selecting the speakers was the broadcaster's prerogative. No specific individual or group had a right to speak.

Mayflower Broadcasting (1941).[10] When Yankee Network asked to renew its license on WAAB in Boston, Mayflower Broadcasting filed a competing application for the frequency. The FCC decided in favor of Yankee, but severely chastised it for airing partisan political editorials without allowing opposing views. Broadcasters nationwide interpreted the ruling as a ban on all editorializing, but what the FCC said is that "the licensee has assumed the obligation of presenting all sides... fairly, objectively and without bias." The broadcasters were playing it safe.

United Broadcasting (1945).[11] Local labor organizations chal-

lenged United's application to renew its license on WHKC in Columbus, Ohio. They claimed that WHKC had refused to sell them time to solicit members and discuss controversial issues. The unions and United reached an agreement and petitioned the FCC to renew WHKC's license on the basis of what they had negotiated. In granting the petition, the FCC declared that stations must "be sensitive to the problems of public concern in the community and . . . make sufficient time available . . . for full discussion." This was the first time that the first part of the Fairness Doctrine, obligating broadcasters to set aside time for the discussion of public issues, clearly emerged.

During 1946, the FCC issued the *Blue Book*, a major policy statement entitled "Public Service Responsibility of Broadcast Licensees." The *Blue Book* solidified the United Broadcasting ruling, discussing at some length the requirement that broadcasters provide "an adequate amount of time . . . for the discussion of public issues."

Robert Harold Scott (1946)[12] challenged the licenses of three San Francisco stations which had refused him time to respond to their religious programming with the atheist point of view. The FCC dismissed Scott's challenge for procedural reasons but used the occasion to define a Fairness Doctrine issue as a "controversial issue of public importance" as opposed to an issue on which there exists no *substantial* disagreement or having no *general* impact on the community. This definition is still in use today.

The FCC's 1949 *Report on Editorializing*[13] was the first comprehensive exposition of the Fairness Doctrine we refer to today. It reversed the apparent ban on editorializing in the Mayflower ruling and laid down some Fairness groundrules for the first time.

It reaffirmed that licensees must provide "a reasonable percentage" of their airtime for programs "devoted to the consideration and discussion of public issues of interest in the community" served by the station. The licensee was held responsible for balance on all programming including network "feeds." Fairness is evaluated in the context of "overall" programming, not just one or a few programs. Every program need not be balanced in itself.

The broadcaster is given broad discretion in choosing what issues to cover, the format used, and representative speakers; but at least some spokespersons for a particular view must be genuine supporters of that view. News may not be deliberately slanted or distorted.

The FCC declared that there could be no "all-embracing formula" for fairness. Each case would have to be judged by a broad, "reasonable" standard.

In one of the few Fairness cases considered in the 1950s, the FCC

added the concept that broadcasters have an affirmative obligation to actually seek out and air opposing points of view.

Finally, in 1959, the Fairness Doctrine was inserted in the Communications Act. It happened almost as an afterthought. A minor candidate for mayor in Chicago demanded equal time after a local TV station showed a film clip of Richard Daley greeting the President of Argentina at O'Hare Airport. When the FCC granted his request, Congress quickly amended Section 315, the "equal time" provision, to exempt most news programming from the rule.

But fearing that the amendment might somehow be misinterpreted as a blow against the Fairness Doctrine evolved in the cases we've cited, Congress added an explicit reminder to broadcasters of

> ... the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for discussion of conflicting views on issues of public importance.[14]

Since then, while the FCC can modify specific aspects of the Fairness Doctrine, Congressional action is needed to eliminate the Doctrine itself.

By 1960, broadcasting had reached maturity. Radio was forty years old. Television, a post-war baby, had zoomed to dominance in just fifteen years. The next two decades would see crucial battles to preserve the interests of the public in a fast-growing, increasingly complex medium.

Cullman Broadcasting Company (1963).[15] Syndicators of a radio program called "Life Line" assured a number of stations paid to carry it that they were "not required to give free time to a group wishing to express viewpoints opposed to those aired on a sponsored program." When the Citizens Committee for a Nuclear Test Ban Treaty asked two Alabama stations to broadcast a tape responding to "Life Line" criticism of the proposed treaty, the stations' owner, Cullman Broadcasting, asked the FCC for an opinion.

The FCC told Cullman that both paid and unpaid programming had to be considered in the overall balance required under the Fairness Doctrine. If no sponsored program could be obtained to balance another sponsored program, the station was obligated to air an opposing viewpoint free. The keystone of the Doctrine, said the FCC, was "the right of the public to be informed."

> [W]here the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue... and has been unable to obtain paid sponsorship for the appropriate presentation of the opposing viewpoint, he cannot reject a presentation otherwise suitable to the licensee—and

> thus leave the public uninformed—on the ground that he cannot obtain paid sponsorship for that presentation.

The FCC further refined the obligations of broadcasters and spelled out the Constitutional roots of the public's broadcasting rights in a case specifically concerned with personal attacks. It ultimately reached the Supreme Court.

Red Lion Broadcasting v. FCC (1969).[16] In 1964, radio station WGCB in Red Lion, Pennsylvania broadcast a "Christian Crusade" program in which Rev. Billy James Hargis denounced investigative reporter Fred J. Cook—author of *Goldwater: Extremist of the Right*—as a "professional mudslinger."

> "... who is Cook? Cook was fired from the New York *World-Telegram* after he made a false charge publicly on television against an unnamed official.... After losing his job, Cook went to work for the left-wing publication, *The Nation,* one of the most scurrilous publications of the left which has championed many communist causes over many years.... Now this is the man who wrote the book to smear and destroy Barry Goldwater!"

WGCB was just one of a number of stations around the country that regularly aired the syndicated "Christian Crusade" programs. Cook and his colleagues chose to challenge WGCB because they knew that it was a small operation with a relatively unsophisticated management and, thus, an easy target. When WGCB refused Cook free time to respond to Hargis' attack unless he offered "proof of indigency," Cook complained to the FCC. Specifically, he cited the Personal Attack rule of the Fairness Doctrine, which required that the station notify him that his honesty, character and integrity had been impugned during a presentation of views on a controversial issue of public importance; that he be supplied with a transcript, tape or summary of the attack; and that he must be offered time to reply. The FCC ruled in Cook's favor, but the station's owner appealed to the courts.

The U.S. Court of Appeals for the District of Columbia upheld the FCC. The stage was now set for the first Supreme Court test of the Fairness Doctrine's constitutionality. In a unanimous decision, the nine justices affirmed the FCC's mandate:

> It is the right of viewers and listeners, not the right of the broadcasters, which is paramount.... 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 the 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. That right may not be constitutionally abridged either by Congress or by the FCC.

The Red Lion case dealt primarily with the Personal Attack rule, but the Court's judgment that the public's First Amendment rights supersede those of broadcasters operating as public "trustees" forms the legal basis for activist attempts to reclaim the airwaves as a national resource. Also, by letting stand the rule's provision for free response time, the Court underscored the FCC's position in Cullman.

Red Lion also reiterated the FCC's 1949 *Report on Editorializing* dictum on coverage of important public issues, the first half of the Fairness Doctrine. The Court expressed concern that the FCC's requirement of balanced coverage on controversial issues not lead broadcasters to avoid coverage of controversial issues because "the purposes of the doctrine would be stifled." Moreover, broadcasters "given the privilege of using scarce radio frequencies, [could be required] to give suitable time and attention to matters of great public concern."

CBS v. Democratic National Committee (1973).[17] The Democrats, planning to buy airtime in advance of the 1974 elections and aware that many stations and the major networks would refuse to sell it, asked the FCC to declare that:

> . . . a broadcaster may not, as a general policy, refuse to sell time to responsible entities . . . for the solicitation of funds and for comments on public issues.

In a second, simultaneous case, the Business Executives Move for Vietnam Peace (BEM) complained that Washington, D.C. station WTOP had refused to sell them time for anti-war spot messages. The FCC ruled against both the Democrats and BEM; broadcasters are not required to *sell* time for the discussion of controversial public issues.

The D.C. Court of Appeals reversed the FCC, finding that the public must have some right of access to the airwaves. But the Supreme Court finally decided in the FCC's favor. Moneyed interests have no inherent right to buy their way on to the air. At the same time, the Court did not contradict the Cullman precedent favoring free response time once a controversial issue was introduced to the air.

Opinion programming and so-called "advocacy advertising" clearly fall within the Fairness Doctrine's territory. But what about advertising to sell products? The question soon appeared on the FCC's agenda.

Banzhaf v. FCC (1968).[18] In 1966, attorney John Banzhaf III filed a Fairness Doctrine complaint against New York station WCBS-TV, charging that cigarette advertising addressed only one side of the controversial idea that "smoking is desirable." Banzhaf claimed stations should also air balancing programming—in effect, "counter-commercials."

Surprisingly, the FCC agreed. But the ruling was expressly limited

to cigarettes, pointing out that they were a "unique" and "officially recognized" health hazard.

Having opened the door a crack, however, the FCC was immediately deluged with complaints seeking mandatory counter-programming to balance commercials which raised—at least in the complainants' view—a controversial public issue.

Retail Store Employees Union Local 880 v. FCC (1970).[19] The union complained that a radio station aired commercials for a local department store but refused to accept paid union ads calling for a boycott. The FCC denied the complaint, but the D.C. Court of Appeals reversed the ruling, finding no difference between this Fairness Doctrine issue and the one raised in Banzhaf.

Friends of the Earth v. FCC (1970).[20] The environmental group claimed product commercials for large cars and leaded gasoline advocated one side of a controversial issue of public importance. The FCC again denied the complaint, maintaining the facts in Banzhaf were unique; again, the FCC was reversed in the Court of Appeals.

Faced with the prospect of future reversals on appeal, the FCC sought to resolve the question of product commercials in its 1974 *Fairness Report*. The FCC reversed itself on Banzhaf (Congress having outlawed cigarette commercials in 1970, the case was moot) and said that, henceforth, standard product commercials which did not explicitly discuss a controversial issue of public importance could not be an issue in a Fairness Doctrine complaint. This new policy was upheld by the courts in two subsequent cases brought by the National Citizens Committee for Broadcasting and the Public Interest Research Group.

The story of the Banzhaf case gives us an exemplary—and discouraging—diagnosis of the current state of the Fairness Doctrine. Banzhaf exercised his rights to raise disturbing questions about the social impact of broadcasting. Instead of dealing with the central issue, however, the FCC resolved the difficulty by limiting the public's right to raise the same questions in the future. Whether it's a matter of product advertising or institutional advertising or "objective" news, broadcasting remains the single most powerful force in America today. It can form our expectations, define what's important, tell us how to behave, condemn or legitimate movements. Like a one-way mirror, it reflects the way we live while it allows special interests to manipulate our common reality.

The 1974 *Fairness Report* also sought to clarify the Commission's interpretation of the first half of the Fairness Doctrine, the obligation to provide coverage of important and controversial public issues. Such clarification was greatly needed following a series of confusing and con-

tradictory rulings in several cases after Red Lion. Unfortunately, the *Fairness Report* did little to remedy the FCC's pattern of inconsistency.

The *Fairness Report* paid lip service to the public's need to be informed and the government's obligation to see to it that broadcasters serve their communities with informational programming. The Commission noted that the coverage requirement was the "most basic" part of the Fairness Doctrine and that there was an "affirmative responsibility on the part of broadcast licensees to provide a reasonable amount of time . . . devoted to the discussion and consideration of public issues."[21]

"In essence, the FCC had created a disincentive for broadcasters to provide coverage of controversial issues."

Moreover, the Commission stated that it considered "strict adherence to the Fairness Doctrine—including the affirmative obligation to provide coverage of issues of public importance—as the single most important requirement of operation in the public interest—the 'sine qua non' for grant of a renewal of license."[22]

But the Commission provided no guidelines to help broadcasters or citizens determine what is a "reasonable" amount of time, much less what is a "controversial issue of public importance." The FCC also made it clear that it had no interest in trying to determine for licensees what issues should be selected for coverage, preferring to leave that to the licensee's discretion. Finally, the Commission said nothing about enforcement of the first half of the Fairness Doctrine; the *Fairness Report* only discussed complaints and enforcement in terms of the balancing requirement.

In essence, the Commission had created a disincentive for broadcasters to provide coverage of controversial issues. Because of the failure to articulate clear criteria for "reasonable" coverage of public issues and provide an appropriate mechanism for complaints, licensees could reasonably conclude that avoidance of coverage presented less of a risk than controversial coverage.

This contradiction in policy was soon revealed in PCI v. Networks[23] where the FCC sought to limit its role in the identification of "critical issues" that must be covered; the FCC stated that not all controversial issues of public importance that trigger the balancing requirement of the Fairness Doctrine would also trigger the coverage requirement.

A year later, the Committee for Open Media filed a license challenge against KGO-TV in San Francisco, partly on the grounds that the station had failed to provide enough time for issues of local concern. The FCC rejected the petition stating that the coverage requirement applied only to a failure to provide coverage of a specific issue, not an overall lack of informational programming.[24]

Finally, in 1976, the Commission actually ruled against a broadcaster for non-coverage of an issue. In Patsy Mink,[25] radio station WHAR in West Virginia refused to allow any discussion of strip-

mining legislation pending in Congress, despite the importance of strip-mining to the citizens in its audience. The FCC concluded that the issue was of critical importance to the region, and, therefore, the licensee had to make "some attempt to inform the public of the nature of the controversy." The FCC ordered the station to provide coverage. This has proved to be the only time that the FCC has taken such action.

What rights do we, the captive audience, have? On paper, from the very beginning, we've had the right to expect that the "public interest" will be served. The Supreme Court has explicitly confirmed that our rights on the air take precedence over the broadcaster's private interests. But the Fairness Doctrine is the result of a compromise between human rights and property rights. Only in America would we expect that two such contradictory claims could get along with a little "regulation." It was only a matter of time before the conflict spilled over into politics.

Fairness Under Fire

Throughout the 1960s, activated by the broadly based social movements for civil rights and peace, the public built up pressure on broadcasters to fulfill their public interest obligations. The broadcasters, in turn, marshalled their stupendous forces to resist. They argued that the Fairness Doctrine was counterproductive, that it discouraged them from airing hard-hitting investigative reports and documentaries that explored controversial issues, that it was, in fact, *their* First Amendment rights which were threatened by a flood of Fairness Doctrine complaints.

But with the Supreme Court's ruling in Red Lion, the Fairness Doctrine's constitutionality became impregnable. The broadcasters had, in effect, been kicked off the high ground they had fought so bitterly to win from the media activists.

By the early 1980s, however, the political winds were blowing the other way. Ronald Reagan won the Presidency promising to "get the government off our backs," by which it was soon clear he meant unleashing concentrated economic interests and rolling back the rights won by the public during the last fifty years. And broadcasters and other telecommunications corporations have not been neglected.

Infused with the spirit of "deregulation," Congress, the Court, and the FCC have already eliminated many key communications regula-

tions. For example, cable television operators are no longer required to allocate channels for educational, governmental or community access uses. Radio stations have been relieved of any obligation to air news and public affairs programming or "ascertain" the most pressing issues of community concern, and may now sell commercials in whatever length and number they choose. Advertising on cable television and public television has also been substantially deregulated. And in the summer of 1981, Congress extended license renewal terms for radio and television stations from three years to seven and five years respectively.

Both Democrat and Republican Senators and Representatives have proposed legislation to replace the half-century-old concept of public trusteeship of the airwaves with a new concept of spectrum ownership—a concept that relies on a free-for-all in the competitive marketplace to protect the public interest in telecommunications.

In the fall of 1981, the FCC proposed that Congress enact a sweeping legislative package designed to get rid of the Fairness Doctrine and the "equal time" rules for federal candidates. The FCC called on Congress to reflect a new reliance on "relevant marketplace forces." In the words of its chairman, Mark Fowler, the FCC is the last "of the New Deal dinosaurs. And we are going to change that. Today we strike a blow for freedom."

The FCC and the broadcasters it represents are proclaiming that the Age of Scarcity is over. We are now entering the Age of Abundance, they say, in which the profits promised by cable television, pay TV, satellites, video discs, fiber optics, videotex, and two-way television will entice new companies into the marketplace and provide for every taste and viewpoint—without government intervention.

"In the words of its chairman, Mark Fowler, the FCC is the last 'of the New Deal dinosaurs.'"

Broadcasters complain that the Fairness Doctrine makes them "second class citizens" compared to the print media, which are not subjected to fairness obligations. They argue that there is already a far greater diversity in broadcasting than in the ever-shrinking newspaper industry.

It is true that in the San Francisco Bay Area, for example, there are more than forty radio and television stations, yet only a handful of daily newspapers. But there are dozens of other flourishing publications representing the entire spectrum of communities in the area, while there is little real diversity among the television stations and most of the radio stations. Those who use this argument ignore or fail to grasp the essential difference between print media and broadcasting: all you need to start up your own newspaper or magazine is a bit of vision and enough money, but a prospective broadcaster needs a license—a federal monopoly for use of a publicly owned resource.

Those who would eliminate the Doctrine also argue that it is no

longer necessary given the new diversity of the Age of Abundance. Unfortunately, most people have somehow failed to notice its onset. Less than 35% of American homes are wired for cable, and even the most optimistic industry forecasters don't expect the number to surpass 50% by 1990. For the present, broadcasting—primarily network television—remains the dominant form of broadcast communication.

Broadcast channel scarcity is still with us, too. When the FCC announced that it would begin accepting applications for new low-power television licenses, for example, it was swamped by more than 5,000 requests and had to impose a freeze on further applications. It is likely that as few as three or four hundred licenses will actually be granted.

As for diversity, the predominant trend in both cable and broadcasting is increasing concentration of ownership. The cost of buying a television station in most major markets runs to tens of millions of dollars. Cable is such a capital intensive industry that only the largest and wealthiest companies can afford to own a franchise in the larger cities. Industry analysts expect that less than a dozen companies will own every cable system in America by 1990. So while there may be more channels in the future, we will actually have fewer sources of information, tighter control of access, and less diversity.

The broadcasters' major argument against the Fairness Doctrine is that it violates the First Amendment and abridges their right to free speech. This contention might appeal to journalists and civil libertarians rightly concerned about attempts by the state to restrict freedom of speech. But the Fairness Doctrine does not restrict broadcast journalists', station managements', or anyone else's right to express any point of view. All it requires is that broadcasters provide the opportunity for *someone* to present contrasting opinions.

As the Supreme Court has ruled on several occasions, most notably in the unanimous Red Lion decision, "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." Preserving an uninhibited marketplace of ideas does more than protect the individual's right to free expression. It also safeguards the public's right to be informed.

The fate of the Fairness Doctrine in Congress is still unclear. Senator Robert Packwood (R–OR), Chairman of the Senate Commerce Committee, recently told the National Radio Broadcasters Association that the time might be right for a "frontal assault" on the Doctrine. "When the time is right," he said, "come to me. I think you'll find me not only a willing ally, but a willing leader." Other key senators like Barry Goldwater (a former broadcast station owner) are also strongly opposed to the law. There appears to be little support for the Fairness Doctrine in the Republican-controlled Senate.

On the House side, there may be some hope. The current Chairman of the House Subcommittee on Telecommunications, Timothy Wirth (D–CO), is a strong supporter of the Fairness Doctrine for television and is prepared to protect it. As of this printing, he is less convinced that the Fairness Doctrine is still needed for radio, at least in the largest market areas, due to the relatively large number of radio stations. Many media activists fear that Wirth will be willing to nullify the Doctrine for radio sometime in the near future.

Still, according to Andrew Schwartzman, Director of the Media Access Project, "the Fairness Doctrine has fairly wide, but not deep, support in the House. But unless [House] members see a strong constituency for it, they might be willing to let it go or trade it for other items on the legislative agenda. Once a bill gets before a joint Conference Committee, anything can happen."

Schwartzman is somewhat hopeful that this may be "one of those rare issues where Members of Congress will really act on the basis of principle. There is a gut-level feeling that nobody should have as much power as broadcasters would without the Fairness Doctrine."

Congress has already agreed to deregulate license renewal terms, Schwartzman says, "but to completely let them off the hook—it may be too hard to stomach. They just don't trust them."

Ultimately it will be up to Congress and the courts to decide if the Fairness Doctrine will be preserved or erased. All citizens concerned about the future of fairness on television and radio should let their representatives in Congress know how they feel about this issue. But in the meantime, you have another way to strengthen the rights you still have.

Use them.

CHAPTER II

YOUR BROADCAST RIGHTS AND HOW TO USE THEM

How to Make Friends and Influence Stations

YOUR LOCAL BROADCAST STATION is no more nor less than a local business operating under a set of national rules. It differs from most businesses where you live in that it exercises a great deal of influence on the way you and your neighbors view the problems you confront in common and the way you go about solving them.

If you're a community activist—a person who helps organize a constituency of concern about specific issues and mobilizes this constituency to action—you have a natural stake in maintaining close and cordial relations with the reporters and editors of your local newspaper. The same goes for those in charge at radio and television stations. But while many activists have little trouble rubbing elbows with print reporters and arranging for at least basic publicity, most hesitate to make contact with the news and public service directors who work at broadcast stations.

The result is that many non-profit groups fail to take advantage of the power of the broadcast media. Lacking the most elemental relations between their leaders and the broadcast decision-makers, it's no wonder that these groups feel left out when the 6 o'clock news comes on. Your opponents certainly don't make the same mistake.

"Many non-profit groups fail to take advantage of the power of the broadcast media."

The first step toward helping your local broadcasters respond to community concerns, then, is to make and maintain contact with them. You can hardly blame broadcasters for neglecting your point of view on an issue if you haven't told them what it is and why it's important. Once they realize you're well organized and represent a legitimate position on community affairs, many stations will be quite willing to respond to your needs as they fulfill their explicit public service obligations. And if somewhere down the line a fairness problem arises, you've laid the foundation for a quick and informal resolution.

Your broadcast rights are powerful levers. The secret (if there is one) is to seek a relationship with your local station in which you never need to threaten to throw the lever, file formal complaints, and end up talking through lawyers. Broadcasters know as well as you do that they can be judged against a public service standard. Their primary interest is in avoiding situations that cost them money or jeopardize their license renewal. In addition, chances are you'll find that station news and public service directors have a sincere desire to act responsibly if only

for professionalism's sake. If you act in good faith, so will they. If they don't, you always have a recourse to legality.

When establishing a cooperative relationship with local stations, you have to remember that *no* specific group or individual has the right to demand a place on the broadcast schedule. As a representative of a legitimate point of view, you *do* have the right to expect that any coverage "your" issue gets will be balanced. Your strategy is simple. You need to convince the station that you're prepared to help them do their job. You can help them choose issues and stories to cover. You can help them present both sides. By helping them, you'll be helping yourself.

"Your goal should be to feel that you've had an effect on the attention the station pays to problems of concern to you and your group."

To convince a station that you're going to be helpful (not improperly demanding or confrontational) you'll need to be clear, direct, and reliable—in other words, professional. Don't make their jobs harder, make them easier. Remember, there are a lot of groups in your community who want media attention, from the mayor's staff to unions to anti-abortionists to the Chamber of Commerce. No group is ever completely satisfied with the amount of time and attention it gets. Keep this competition in mind and put yourself in the broadcaster's shoes.

Your goal should be to feel that you've had an effect on the attention the station pays to problems of concern to you and your group. If you've helped define an issue, won it some visibility, and earned the station's respect as a reliable source of information, you've come a long way.

To start, arrange to meet with the stations' news director and public service or public affairs director. At very small stations, you might ask to meet with the station manager directly.

Keep this introductory meeting brisk and to-the-point. Identify yourself and the organization you represent. Explain your group's positions on issues with a local emphasis. Express an interest in helping to develop programming that responds to widespread interest in your issue. You can round up articulate spokespeople, give reporters leads to human-interest feature stories, keep the station updated on your activities and community developments in brief and topical press releases.

Ask the public service director about the possibility of taping a short Public Service Announcement (about an upcoming event or continuing service you provide) or a Free Speech Message (a "talking head" editorial giving your viewpoint on an important public issue). Does the station have a talk show you can participate in? Would the station accept some brief progamming you've produced yourself, if it meets their technical standards? Is the station willing to help you produce a simple segment? (If you have a good idea, give them a treatment of the idea for review, but don't expect "yes" for an answer.)

When talking to news directors, alert them to upcoming events they might want to cover. When planning events, keep television's visual needs in mind—banners, props and vivid locations give cameras something to show. Let the news director know whom to contact for a quick, authoritative comment on a breaking news story. You're a source of news, facts, angles and "quotable quotes."

Once you've made contact, stay in touch with timely press releases and occasional follow-up phone calls. Know what's news and what's not. Monthly chapter meetings aren't news; mass demonstrations are. If you do receive coverage, try to cultivate a personal relationship with the reporter who did the story. Thank-you notes are almost always in order, even if you have some quibbles. But be careful not to abuse the relationship by demanding attention or making excessive requests for coverage.

And make the distinction between hard news and public affairs. Hard news is momentary; what's news today won't be news tomorrow. Public affairs coverage, on the other hand, can concern itself more with issues than events. It takes time and care to become a recognized spokesperson for a particular point of view. Always be factual and accurate, never cry wolf. Broadcasters act as gatekeepers, picking which messages among hundreds will reach their large—and largely passive—audiences. Nagging will get you nowhere. Recognizing the professional needs of broadcast journalists and public affairs staffers, and doing your best to earn their trust and respect, is the only way to go.

"Broadcasters act as gatekeepers, picking which messages among hundreds will reach their large – and largely passive – audiences."

No matter how warm and friendly your relations with broadcasters start out, however, the potential for conflict always exists.

Station managers may be less sympathetic to your viewpoint than the people they employ. On critical issues, especially at smaller stations, owners and managers may exercise a significant but tacit influence on day-to-day coverage.

More often, it's the economics of broadcasting which account for a station's "benign neglect" of the community concerns you represent. Many managers view public affairs programming as something between a burden and a luxury. Unwilling to commit the station's production resources to make the public interest interesting enough to attract large audiences, they prefer to exile public affairs to hours when the audience (and potential advertising revenue) is smallest.

Even PSA's—those 30-second spot announcements for non-profit organizations—seldom run in prime-time hours. They're almost universally used as last-minute filler when an advertising slot has gone unsold. Insomniacs may benefit; the rest of us don't.

The seriousness with which stations take their public service responsibilities varies widely. This may be frustrating, but it may not be

strict grounds for complaint. Helping stations become more sensitive to community needs is a long-term process of education and persuasion. Helping the public become aware that they have a right to expect fair and balanced coverage of questions important to their daily lives is a step in the right direction.

But what if a station behaves so badly that an immediate remedy must be sought? How can you be sure your complaint is valid? How can you present your concern so it gets acted on? If the station refuses to act, what then?

Cause for Complaint

IF A RADIO OR TELEVISION STATION appears decidedly one-sided in its coverage of a controversial issue of public importance, you may have cause for complaint under the Fairness Doctrine.

That doesn't mean you should immediately call the FCC and complain. In fact, the FCC won't even consider your complaint until you've tried to work things out with the station itself. If you've already built a cordial relationship with the station, working things out may take no more than a phone call or letter. If the station doesn't know you, misinterprets its responsibility in the matter, or outright resists acknowledging that your complaint is legitimate, you may be in for some hard bargaining.

The point of your negotiations is, of course, to gain serious and balanced coverage of the issue in question, not to express your resentment or threaten the station with penalties. Always assume good faith on the station's part going in. Persist in your assumption even if the station's first take leaves much to be desired. You're the one with the grievance, so you can afford to have a conciliatory attitude: "We have a problem here . . . let's cooperate to solve it."

Before you raise an issue with the station, recall three important facts:

1. *A single "unbalanced" program usually is not a good cause for complaint.* Consider the station's programming as a whole. This is, after all, the station's first line of defense against a charge of imbalance. Has your point of view been covered on the news, talk shows or Free Speech Messages? Has the network with which the station is affiliated

touched on the issue in news or public affairs programs? Will you be able to disprove the station's claim that its programming is balanced "overall"?

2. *No individual or organization has a "personal" right of access to the airwaves.* Unless you're running for office or have been personally attacked during the discussion of a controversial issue of public importance, you have no right to demand ANY time. While you may successfully convince the broadcaster that a balancing view is needed, the broadcaster is under no obligation to invite you to present it. If you're recognized as a legitimate spokesperson for a viewpoint and have friendly relations with the station, your chance of being invited naturally improves. Offer your help; don't demand an appearance.

3. *The broadcaster has wide discretion in choosing how to fulfill Fairness obligations.* Once you've persuaded the station that your complaint deserves a remedy, the station will most likely suggest some remedies of its own. Try to negotiate an arrangement that serves your interests best. You can only complain to the FCC if the broadcaster's actions are "unreasonable." Convincing the FCC that a station is "unreasonable" is always more difficult than negotiating an acceptable compromise directly with the broadcaster. Only go to the FCC if you need a new interpretation of the Doctrine to fit your circumstances or if the broadcaster proves totally recalcitrant.

Defining the Issue

WHAT *IS* a "controversial issue of public importance"?

If you're forced to complain to the FCC, you'll be required to cite the specific issue, so when negotiating with stations, you should define the issue with the FCC in mind. And there are strategic considerations to your answer.

Some issues are clear-cut. For example, if the station has aired paid spots urging the public to vote "no" on a ballot initiative, you can define the issue as whether one should vote for or against, say, Proposition 11.

But frequently the issue is less obvious.

Let's say Proposition 11 would require all soft-drink bottles to be returnable for deposit. If soft-drink bottlers run a campaign saying "Vote no on Prop 11," the issue is clear.

But what if, instead, they run a spot trumpeting the success of their voluntary glass recycling program? Is the issue still the ballot vote?

Or what if a guest on a talk show discusses a variety of topics touching on conservation, recycling and resource use—without once mentioning the upcoming vote. Would the FCC say the discussion significantly related to Prop 11? Probably not.

The reason you should define the issue carefully is that you always want to hold the option of complaining to the FCC open. Negotiating with the station is your first recourse; the FCC is the back-up that makes the station pay attention to your concerns. How specific would the FCC want your complaint to be? In one case, the FCC decided that a full-length program titled "Hunger: A National Disgrace" didn't address the issue of whether or not hunger was a national disgrace. The FCC saw the issue as how to end hunger.

"In one case, the FCC decided that a full-length program titled 'Hunger: A National Disgrace' didn't address the issue of whether or not hunger was a national disgrace."

Sometimes there's an advantage in defining the issue quite narrowly. The narrower your definition, the less likely it is that the broadcaster will be able to prove that overall coverage has been balanced.

Defining an issue *too* narrowly, however, can cause you problems. The FCC may find that your issue simply isn't important enough to merit a complaint. Or it may classify the question as a "sub-issue" of a larger question which the broadcaster can prove to have covered fairly.

For example, a private pilot's association once charged that an NBC program on air safety gave a one-sided view of the issue "whether private pilots are a major safety hazard." The FCC declared the question a sub-issue of the problem "congestion over large airports"—a problem NBC was able to show it had treated in a balanced way.[1]

Defining an issue too *broadly,* on the other hand, not only grants the broadcaster an advantage but also risks an FCC finding that you weren't specific enough in your complaint. "National Security"[2] and "Humanism," for example, have both been declared "umbrella issues" by the FCC, which found the complainants had failed to raise a "particular well-defined issue." Their complaints were dismissed on procedural grounds.

According to the U.S. Court of Appeals, the test for whether an "umbrella issue" can be the subject of a Fairness Doctrine complaint is if "the separate issues comprising it are so indirectly related that a view on one does not . . . to the average viewer or listener . . . support or contradict a view on another." Helpful? Not very.

Obviously, you need to strike a happy medium between narrow and broad in your definition of an issue. If your choice of definition is less than obvious, legal counsel is a must.

Gray Areas

IN LESS-THAN-OBVIOUS CASES, you may find cause for complaint in a passing reference to an issue or feel the issue is implicit in entertainment programming, commercials for products, or campaigns designed to shape a corporation's public image. But that doesn't mean the FCC will share your concern.

The regulators have ruled that "a fairness response is not required as a result of offhand or insubstantial statement." Passing references to fluoridation, school prayer, God, and the Subversive Activities Control Board made in programs largely devoted to other topics have not been found to raise a Fairness question.

A passing reference is usually judged on the basis of the time it occupied proportional to the program as a whole. A fifteen-second remark in a half-hour broadcast is likely to be dismissed as a passing reference. The same point made during a frequently aired sixty-second spot, on the other hand, may give you legitimate grounds. Only in rare cases has the FCC granted that a remark's importance outweighed its brevity.

Grayer still is the area of implicit messages: programming which seems to bear on a controversial issue of public importance without ever addressing the issue overtly. The FCC is hesitant to grapple with the subtlety of such complaints and generally refuses to recognize that entertainment programs, commercials, and corporate image campaigns fall under the Fairness Doctrine's strictures.

You'll be asked to prove that such programming raised the issue in an "obvious and meaningful fashion" or "obviously and substantially... in the context of...ongoing community debate."[3] Few complainants are able to do so.

"The FCC is hesitant to grapple with the subtlety of such complaints and generally refuses to recognize that entertainment programs, commercials, and corporate image campaigns fall under the Fairness Doctrine's strictures."

Entertainment. Unless an entertainment program discusses an issue explicitly, the FCC won't think your complaint holds water. For instance, programs depicting women in stereotyped roles don't address the issue of women's oppression in American society, according to the FCC. Nor do programs with gunplay raise the issue of gun control. Violent programs don't touch on the question of their effect on children. Programs depicting Native Americans, Blacks, Latinos, Jews and Italians do not raise issues concerning these ethnic groups, the FCC has ruled.

Commercials. The FCC briefly flirted with the idea of requiring counter-commercials to provide contrasting viewpoints, specifically in the case of cigarettes. But in the wake of the Banzhaf case, as we've

seen, the regulators reversed themselves. Today, a product commercial must discuss a controversial idea of public importance in an "obvious and meaningful" way before it's deemed worthy of a Fairness challenge.

That goes for image and institutional ads, too. Many of the large corporations develop ad campaigns to project the image of a responsible corporate citizen. It's an oil company recounting the battle against the elements fought by the brave men on the off-shore oil rigs. Maybe it's the local utility reminding viewers that it "cares" about them. But unless the ads address an issue head-on, the FCC is unlikely to rule that the Fairness Doctrine has been triggered.

Sometimes it happens though. Utilities and industry associations have directly advocated the need for more nuclear power plants or higher electrical rates. The oil companies have railed against the proposed break-up of energy conglomerates. Other corporate ads have called for less regulation of business. Many broadcasters, notably the networks and their affiliates, refuse to air ads that state a point of view because they don't want to deal with the Fairness implications. But most of the independents and more and more affiliates are now willing to air such ads, presenting new opportunities for the exercise of your fairness rights.

Gathering Evidence

THE FAIRNESS DOCTRINE applies only to so-called "controversial issues of public importance." Unfortunately, there's no hard and fast way to know—or to prove—which issues are controversial and which controversial issues are important enough to merit a Fairness complaint.

The FCC gives broadcasters wide discretion in determining the question for themselves. It will only overturn the broadcaster's determination if it finds the broadcaster's position unreasonable.

Your difficulties are compounded by the vagueness and inconsistency of the FCC over the years. In its *Fairness Report* (1974) the FCC deals with public importance and controversiality as two distinct concepts. Yet rulings generally lump the two together, making it hard to tell precisely why a complaint was rejected. Expert observers also note that the FCC's decisions on what constitutes a controversial issue of public importance are extraordinarily unpredictable.

The best you can do is gather the best evidence you can find to support a claim that the issue is both controversial and of public im-

portance. Your task is easy if you're concerned with an issue on a ballot. Even the FCC admits a ballot issue carries a strong presumption of controversiality and public importance. In any case, these FCC definitions may help:

Controversiality. According to the *Fairness Report*, a controversial issue is "the subject of vigorous debate with substantial elements of the community in opposition to one another."

The controversy must be current. Demonstrate that the issue was controversial at the time of the original broadcast, and that it continues.

In special situations, the programming itself may have created the controversy where none existed before. If so, you'll need to explain in detail when you write the broadcaster and complain to the FCC.

For example, then-Governor Ronald Reagan of California announced a four-day closing of state campuses after the Kent State shootings in 1970—and also called for the closing of all private colleges in the state. His broadcast was found to have initiated the controversial issue of whether or not all California colleges should be closed.[4]

When you demonstrate controversiality, you'll also need to define the "community" involved. Is it local, statewide, national? An issue generating controversy on the state or national level is probably controversial on the local level, even in places where no direct evidence of controversy is available. The college-closure issue was found to be controversial in communities without a college campus, for instance.

An issue can be locally controversial even though there's no evidence the controversy extends to the state or national level. The FCC decided that the United Way's fundraising practices were controversial in Dayton, Ohio, although the same methods hadn't caused controversy anywhere else.[5]

Programming that presents informational or educational material in a neutral context may be considered non-controversial even if controversy surrounds the issue. For example, Planned Parenthood spots about family planning were found to be merely informative and not to advocate any position.[6]

Similarly, broadcast religious services have been found not to raise any controversy over religious issues.[7]

It should be noted that the FCC's requirement that a "substantial" segment of the community be engaged in the controversy tends to limit the ability of individual dissenters and small minority-opinion groups to use the Fairness Doctrine.

What evidence do you need to prove that an issue is controversial? The FCC counts as a major factor "the degree of attention paid to the issue by government officials, community leaders, and the media." You

should be able to provide some of the following to the FCC:

- Newspaper and magazine editorials
- Letters to the editor
- News stories indicating controversy
- Transcripts of public speeches
- Evidence of rallies, demonstrations, etc.
- Pending referenda
- Pending legislation

You may wish to append some of this evidence to the letter you send to the broadcaster first raising the isssue of fairness. A more extensive showing will be necessary only if the broadcaster disputes the issue's controversiality or if you're forced to carry your complaint to the FCC.

Evidence of *organized* and *active* opposition to the broadcast viewpoint may prove most persuasive to the FCC, as opposed to the sort of academic debate and mere differences of opinion often culled from newspaper columns.

And you should show evidence of an ongoing, substantial debate concerning the issue. An article which simply describes a public health problem may be useful in proving an issue is important but may fail to show it's a roaring controversy.

Public Importance. An issue can clearly be controversial without having public importance. But what's important is, the FCC grants, a subjective judgment.

The requirement that a controversial issue also possess public importance was primarily intended to keep purely private arguments from triggering the Fairness Doctrine. The issue must have a potentially real impact on the community at large. Issues of only academic or historical interest, or affecting a foreign country but no local community, are excluded. The FCC might grant that which high school has the best football team in the state is hotly controversial, but would not grant that it's a question of public importance for purposes of the Fairness Doctrine.

The firing of a broadcast employee[8] and the outcome of a criminal trial[9] have both been ruled to be essentially private matters without public importance in the FCC's view. Whether or not there was a Holocaust during World War II is a historical question lacking public importance, it decided in another case.[10]

Determining public importance, says the FCC, requires a "subjective evaluation of the impact that the issue is likely to have on the community at large." The broadcaster is free to make this determination by him- or herself, at least initially.

If the issue involves a social or political choice, the broadcaster must

consider "whether the outcome of the choice will have a significant impact on society or its institutions," according to the FCC. But this formulation is only the approach the FCC *suggests*. It's not the only method the broadcaster can use. "These judgments can be made only on a case-by-case basis," the FCC declares.

Still, gather your evidence. The "degree of attention the issue has received from government officials and other community leaders" and "the degree of media coverage" remain two major factors. As when demonstrating controversiality, act in good faith and use common sense.

And cross your fingers. In a recent case, the Mayor of Milwaukee was told by the FCC that his complaint failed to adequately indicate "the degree of attention the issue has received from government officials. . . ."

The case is on appeal.

The Balancing Act

IT MAY SEEM as if FCC has placed most of the burden of fairness on the public, not the broadcaster. After all, to demonstrate imbalance you need to prepare your complaint carefully, gather evidence to support your position—and hope to prove that the broadcaster's response to your concern was unreasonable.

But the fact is, your broadcast rights are based on obligations the broadcaster is impelled to live up to. It's only when the station has failed in its responsibilities that a problem arises. To negotiate a reasonable solution, you should clearly understand the burden placed on the broadcaster by the FCC.

A Duty to Balance. First, of course, it's the broadcaster's obligation to see that overall programming on controversial issues of public importance is balanced. The station must actively seek out representatives of opposing points of view.

According to the FCC, this obligation can't be met "merely through . . . a general policy of not refusing to broadcast opposing points of view where a demand is made. The licensee has a duty to play a conscious and positive role in encouraging the presentation of opposing viewpoints."

This means, for example, that a station can't depend on call-in shows or similar formats as a general balancing mechanism.

And each broadcaster is completely responsible for *all* the program-

ming carried on the station—even programs produced and distributed by the networks and syndicators. A station can't blame the network for imbalance. If the network doesn't provide balancing programming, each affiliate is responsible for doing so.

A broadcaster failing to present contrasting viewpoints must "demonstrate that he has made a diligent, good-faith effort to communicate to . . . potential spokespersons his willingness to present their views. . . ."

There's no exact standard to determine how far a station has to go in seeking out representatives of opposing viewpoints. And enforcement in this area has been less than rigorous. Over-the-air announcements at the beginning or end of a public affairs segment have been found to be sufficient—you'll often hear an open invitation to "responsible" parties at the end of a management editorial.

In the 1974 *Fairness Report* the FCC indicated that unbalanced *in-depth* discussions of *major* issues might require a more diligent search for contrasting spokespeople, including offers of time to specific individuals. To our knowledge, however, this has never been enforced.

Even if a spokesperson comes forward, the broadcaster can reject him or her as inappropriate. No individual, as we've noted, has a personal claim to present a balancing viewpoint on the air. Where a speaker has been rejected, the broadcaster is supposed to make an intensive search for a representative who *is* appropriate.

"The Cullman Doctrine says that viewpoints expressed in paid programming (for example, issue-ads by utilities and oil companies) impel the station to provide a 'reasonable' opportunity for opposing views, even if it can't find representatives willing or able to pay for the time."

In a recent case, a station claimed it hadn't aired a contrasting viewpoint because the organization it gave airtime to didn't deliver promised tapes. The FCC found the station still had an obligation to present some contrasting views; the obligation wasn't relieved just because one spokesperson had failed to come through with balancing programs.[11]

Paid *v.* Free Programming. The most useful aspect of the station's affirmative duty to provide balanced programming is expressed in the so-called "Cullman Doctrine," a corollary to the ruling in the Cullman Broadcasting case (see page 23).

First stated in 1963, the Cullman Doctrine says that viewpoints expressed in paid programming (for example, issue-ads by utilities and oil companies) impel the station to provide a "reasonable" opportunity for opposing views, even if it can't find representatives willing or able to pay for the time.

In such cases, contrasting viewpoints must be aired for free.

The Cullman Doctrine is most important when backers of a certain position launch a major campaign of paid editorial spot announcements—often during a ballot battle on a referendum or initiative. Typically, industry-supported campaign committees have sufficient funds

to buy massive amounts of radio and TV time. Their public-interest opponents, using the Cullman Doctrine, can gain valuable time to respond without having the money to pay for it.

In the past, some stations have demanded that the group seeking response time *prove* that it can't pay. But this is a misunderstanding of the Cullman Doctrine. There's no requirement that those with contrasting views be unable to pay, only that they be unwilling.

Of course, if you refuse to prove you're unable to pay, the station is free to seek out another representative who is. You may get no time at all. It's usually advisable to show *why* you can't pay.

The situation can get sticky if your organization does have a publicity or advertising budget—particularly if you've aleady bought ads in the local paper or on other stations. The Cullman Doctrine still holds; the broadcaster is ultimately responsible for providing balance, even if it's free. But station management can hardly be expected to look favorably on your request for free time if there's evidence you could buy it and have, in fact, already bought it from a competitor.

Despite these complications, the Cullman Doctrine is an extremely powerful tool when strategically applied during a hard-fought ballot campaign. It clearly articulates an important principle: Broadcasters cannot allow their coverage of a controversial issue to be determined and dominated by paying sponsors. The people's right to know, not your ability to pay, is paramount.

"Broadcasters cannot allow their coverage of a controversial issue to be determined and dominated by paying sponsors. The people's right to know, not your ability to pay, is paramount."

More than two sides. Few controversial issues can be reduced to a battle between Good and Evil. Every question has two sides; most have more than two. The FCC's *Fairness Report* recognized that there might be a "spectrum" of opinion about a single issue and actually requires broadcasters "to identify the major viewpoints and shades of opinion being debated in the community and make provision for their presentation."

Only those opinions which are "of sufficient importance to warrant coverage" need be aired, however. And the FCC has undercut the possibility of gaining a fully-rounded discussion of public issues by declaring, "In many, or perhaps most, cases, it may be possible to find that only two viewpoints are significant enough to warrant coverage." Many thoughtlessly worded FCC and judicial opinions have encouraged this narrowing of discourse by referring to "both" sides of an issue.

A few cases have raised the question of multiple viewpoints, but it doesn't appear that the FCC has ever enforced this aspect of the Fairness Doctrine. In our judgment, a complaint seeking coverage of a "third" viewpoint where the broadcaster can show that contrasting

views have already been accommodated would have to be extraordinarily strong to win.

Who speaks for you? While a reporter can present your point of view, or an impartial commentator can articulate your position, neither can speak for you for purposes of balance. The FCC says that the broadcaster must make a reasonable effort to have contrasting views expressed by "genuine partisans who actually believe in what they are saying."

As we've noted, the broadcaster is free to pick and choose responsible representatives of your viewpoint. No individual or organization has an inalienable right to airtime. All you can do is show that a contrasting view is needed, and offer yourself as an appropriate spokesperson for it.

The FCC's 1949 *Report on Editorializing* warned stations not to "stack the cards" when selecting people to speak out. Proving bad faith is difficult, of course, given the broadcaster's wide discretion, and there have been few complaints brought to the FCC concerning the selection of spokespeople.

The Metropolitan Community Church case-study in this book describes how the owner of television stations in Los Angeles, San Francisco, and Hartford chose someone representing the Hartford homosexual community to rebut anti-homosexual programming aired on all three stations. While the San Francisco gay community would have preferred to have a local spokesperson respond, the station was well within its rights to use the Hartford representative for balance.

It should be clear to you by now that the broadcaster has an obligation to cover issues of community concern in a balanced way. The broadcaster also has quite a bit of leeway in doing so. You should expect your legitimate complaints will be listened to and acted on if you've prepared carefully, show familiarity with the burden on the broadcaster, and present yourself as a responsible representative of an organized segment of the community. What you're after, naturally, is time. But how much time, and when?

CHAPTER III

WINNING FAIRNESS ON THE AIR

Playing for Time

THE GOAL of all your negotiations with the broadcaster is to win time for your point of view. But all time is not alike. It's not always enough to win a minute to make a statement. The name of the game is balance. And balance can't be achieved simply by adding up minutes on a clock.

Commercial advertisers carefully plan their broadcast campaigns to reach a specific audience as often as possible. They don't air their ads in half-hour blocks; they intersperse them with entertainment. They don't schedule their commercials for 3:00 AM; they search out the programs with the largest number of viewers. They don't run one commercial every few weeks; they run them every few minutes.

What does this have to do with balance? Say that an industry-supported campaign committee, advised by a commercial ad agency, airs twenty 60-second TV spots over a two-week period. You convince the station that a contrasting viewpoint is necessary and that you're the one who can represent it best. The station offers you a thirty-minute talk-show appearance at 9:00 Sunday morning. Should you accept?

The question is—has the broadcaster provided a "reasonable opportunity for opposing viewpoints" as required by the Fairness Doctrine?

In its *Fairness Report,* the FCC set out three main factors to consider:

1. Total amount of time afforded each side
2. Frequency with which each side is presented
3. Size of the audience during broadcasts

By offering you a half-hour on a Sunday morning public affairs program, the station has matched—indeed, exceeded—the total time sold to the opposition. But there's no way you could expect to reach the same number of people they did, with the impact of frequent repetition. In fact, the station's offer falls far short of actual balance.

Let's look at these factors one at a time.

Total time. Total time includes all the time in which a given viewpoint was discussed. Thirty- and sixty-second spots, full-length programs, station editorials, and news must be taken into account. Programming by genuine partisans of the issue and by everybody else is lumped together.

In the typical situation, when there are two contrasting viewpoints, providing a "reasonable opportunity" includes establishing a ratio of time.

There is, however, no set formula for calculating what ratio is reasonable. While total time has often been the FCC's major consideration in Fairness cases, the decision has usually been made on the basis of all factors, including audience size and frequency. The total time factor can't be broken out.

A number of observers feel comfortable in asserting that the FCC would find a ratio of 10 to 1 (ten minutes of "pro" to a minute of "con") unreasonable. In a recent case, the representative of an opposing viewpoint was offered a ratio of 5 to 1 in total time, with no other factors mentioned. The FCC stated that a 5 to 1 ratio "without more, does not appear to be reasonable."[1]

"The FCC has explicitly stated that a campaign blitz of spot announcements presenting one point of view does not require a broadcaster to arrange a similar blitz for the opposing view."

Experience suggests that a 4 to 1 ratio is the least a station can offer and be judged reasonable by the FCC. Strategically, aim for a 2 to 1 ratio (one minute of airtime for your viewpoint to two minutes of the opposition), all other factors being equal. Always keep in mind that nothing entitles you to so-called "equal time" under the Fairness Doctrine—don't even mention it.

Frequency. When establishing the frequency the "pro" side has enjoyed, all presentations of their viewpoint (including news and editorials) are to be counted. Again, it's hard to tell what the FCC would consider reasonable because the regulators seldom analyze a case so finely.

The 5 to 1 offer "without more" gives some idea. In another case decided at about the same time, the FCC found that an overall 5.4 to 1 ratio created "some imbalance," but not one great enough to constitute a Fairness Doctrine violation. The reason: "during the twenty-day period immediately preceding the June 3 ballot proposition, it appears that KABC will present balanced contrasting views on the issue so that the public will not be left uninformed."[2]

The FCC has explicitly stated that a campaign blitz of spot announcements presenting one point of view does not require a broadcaster to arrange a similar blitz for the opposing view—"blitz" being the advertising term for extremely frequent spots broadcast in a short period of time. The broadcaster is obliged to present a reasonable ratio, but how to achieve it remains within the station's discretion.

In a case out of Montana, a group called Nuclear Vote protested that four TV stations—all licensed to the same owner—had run a major spot-advertising campaign by opponents of a nuclear safety referendum. One station ran more than eighty "anti" spots in just four weeks. Nuclear Vote claimed that only a similar blitz could achieve an effective balance.

The FCC disagreed, noting that the stations had adopted the highly unusual policy of providing news coverage exclusively to supporters of

the referendum. The FCC said the frequent "pro" news segments balanced the frequent "anti" spot announcements.[3]

Still, you should aim for a 2 to 1 ratio in total time and frequency. Some groups have received 1 to 1 ratios. If the station offers 3 to 1, it's best to take it. You should certainly not be satisfied with anything less than 4 to 1.

Audience size. Over the years, it sank in at the FCC that time wasn't the only measure of balance; that, in fact, the size of the audience exposed to the balancing programming was at least as important.

This means that the balancing ratios for total time and frequency must be placed within a context of high and low listenership. Make the distinction between "prime time" and all others. Prime time for television is 7–11:00 PM, seven days a week. Prime time for radio is the morning and evening commute hours, called "drive time," between 7–10:00 AM and 4–7:00 PM, five days a week.

As early as 1970, the FCC drew a hard line on audience size when it declared that it would be "patently unreasonable for a licensee to consistently present one side in prime time and to relegate the contrasting viewpoint to periods outside prime time."[4] In 1979, the broadcaster was given room to maneuver. In the case of John H. Bickel, NBC broadcast a special called "Danger! Radioactive Waste" during prime time, drawing a rating of 5.8. (Program ratings represent the percentage of TV homes nationwide tuning in to a particular broadcast; a 5.8 rating indicates that 5.8% of all TV homes were watching the special.) In response to a Fairness Doctrine complaint, the network cited three episodes of the "Today Show" and five segments of the "NBC Nightly News" carrying contrasting viewpoints. The "Today Show" broadcasts had an average 4.9 rating; the "Nightly News"—on the air just before prime time began—drew an average 15. The FCC accepted NBC's position, declaring that the Prime Time Rule was not intended to be "rigid" and that the network had demonstrated "comparable viewership" even though one side of the controversy never appeared in 7–11:00 PM prime time.[5]

So how does the FCC factor audience size? If one side has more prime time exposure than the other, the FCC will probably presume that an imbalance exists. But the broadcaster can overcome this presumption by showing that both sides have been afforded "comparable viewership."

Clearly, you should seek equivalence in your negotiations so the total time and frequency ratios will have some meaning. If you can't achieve strict equivalence in audience size in terms of "prime time for prime time," try to negotiate exposures that give you at least a comparable audience reach.[6]

"Most stations are interested in resolving well-founded complaints in the most clearly balanced way and may be more open to the stricter sorts of equivalence than the FCC might require."

Other factors. The FCC has referred to other factors in addition to the Big Three named above. But the record is unclear on how much weight they carry in judging "reasonable opportunity."

For example, the FCC has—in a few unusual cases—considered the format of balancing programming. Airtime sold to a utility for broadcast of a film extolling nuclear power has in the past been balanced by programs with a discussion or debate format.[7] The broadcaster still enjoys wide discretion in deciding what balances what, as long as total time, frequency and audience time appear reasonable.

Varied audiences may also be a slight factor. If a series of TV spots advocating decontrol of natural gas prices appears in prime time *and* during weekend sports programming, you may feel justified in asking that your balancing time include the same mix. The audience for baseball may not, after all, be the same as for comedy sitcoms. The FCC has recognized this sort of discrepancy, but it has never appeared to be a major consideration.

And what about production quality? Is the station responsible for making sure that your viewpoint is as slickly packaged as the opposition? The FCC has consistently said no.

In Californians Against Initiative Fraud (1980), the supporters of a ballot proposition bought time for twenty professionally-produced spots on KGO-TV in San Francisco. The station claimed it had met its Fairness obligations through editorials and public affairs programming. Proposition opponents complained to the FCC that such programming was not sufficient to balance professionally-produced spots and asked for time to air their own professionally-produced campaign. The FCC denied the complaint, stating that the broadcaster had considerable discretion in matters of production and format.

While the FCC considers format, production values, and varied audiences to be minor factors, that doesn't mean you shouldn't make them bargaining points with the stations themselves. You should work toward balance in effect, not just *pro forma*. Most stations are interested in resolving well-founded complaints in the most clearly balanced way and may be more open to the stricter sorts of equivalence than the FCC might require. You may not get everything you ask for, but there's no harm in asking as long as you know what you can reasonably expect.

Always be prepared to concede minor issues for substantive gains. And if you plan to rely on any factors other than the Big Three in pursuing a complaint to the FCC, you'd best have expert legal counsel.

Negotiation for Keeps

NOW THAT YOU have a general understanding of what the Fairness Doctrine provides for, where it comes from, what constitutes good grounds for complaint, how broadcasters and the FCC think, and what you should reasonably expect, you're ready to tell the station that you have a problem.

If you have a cordial relationship with the station already, finding a solution acceptable to both parties should be fairly straightforward. If your complaint is the first business you've had with the station, on the other hand, proceed with caution. You'll need to establish a cooperative relationship on very short notice and since you represent nothing but trouble, it's in your own best interest to be diplomatic.

Case studies show that your first contact with the station is the most crucial step in the entire Fairness process. Unless you're under an extremely tight deadline, don't call or drop in personally; this often causes confusion or alarm. Instead, write a letter clearly stating the issue and the legal basis for your concern. Here's what to say.

The initial letter. Before you sit down to write your letter, do your research and make sure of your facts. If you're at all unsure of your legal standing but are quite sure there's a problem, get legal help in advance. Call Media Access Project or Public Media Center for advice. Or ask a local lawyer to give you a hand. If you ask a lawyer to help who is unfamiliar with the Fairness Doctrine and broadcast law, make sure that they take the time to study this manual before they contact broadcasters. They must be prepared. If they don't know the relevant law, then they really won't be able to do any better than you could on your own.

There are differences of opinion about whether your legal counsel should intervene directly or—at least initially—provide you with background support. ACORN in Arkansas found that station management preferred to deal on an informal, personal basis and resented getting letters from lawyers. On the other hand, the PUD coalition in Oregon thought that being represented by an attorney bolstered their credibility and facilitated the negotiations.

You can decide right now who's going to sign the letter. If at all possible, form a coalition around the issue. Remember that you must persuade the station that you represent a responsible viewpoint shared by a significant segment of the community. Coalitions can only help reinforce this appearance.

Keep the tone of the letter serious, straightforward and non-rhetorical. You'll be giving the station the information it needs to eval-

uate its position and formulate a response. The station will also be getting a first impression of the people it now must deal with. Make sure the letter is clearly worded, well-organized and looks like it means business. Keep copies for later reference, and send a copy to interested parties.

First off, define the specific issue involved (see page 39). The definition you use here will have to last you through the entire negotiation and form the basis of any FCC complaint, so be careful in your wording.

Then identify the times and dates of the programming you believe has created an imbalance. If the program was syndicated or fed by a national network, try to obtain a tape or transcript so you can document its content. In the case of issue-oriented or initiative-related advertisements, try to obtain transcripts of the ads from the sales department. It's usually OK to call the sales manager to ask for transcripts before you send your initial letter. Tell the station that you and members of your constituency watch or listen to the station regularly and that you have not heard or seen programming to provide adequate balance on the issue.

Say why you believe the issue is both "controversial" and "of public importance" (see page 43). You may wish to attach some evidence supporting your contention, although it need not be extensive at this point.

"In the best of all possible worlds, the broadcaster will accept your claim and offer to give whatever you ask for."

Explain that the Fairness Doctrine obliges the station to provide overall balanced programming on such issues, that you are unaware of any balancing programs, and ask how the station intends to remedy the situation.

If your complaint concerns entertainment or product advertising, assert that this programming discussed the issue in a direct and explicit manner. If your complaint concerns paid advocacy advertising, mention the Cullman Doctrine (see page 23).

Close by declaring your desire to see the situation remedied in a timely way. It may be useful to ask them to respond within a set period of time. Ten days should be enough.

The station's response. In the best of all possible worlds, the broadcaster will accept your claim and offer to give whatever you ask for: say, two hours of prime time coverage or 100 thirty-second spot messages aired during the evening news.

Usually, however, you won't get such a generous response. Even if the broadcaster agrees that the Fairness Doctrine applies, you might be offered a remedy that falls short of what you consider reasonable. In such a situation, you should probably negotiate, assertively but cor-

dially, for a better deal. If your discussions reach an impasse, and you aren't prepared to take it to the FCC, then it may be best to accept their "final" offer. But if you do, be sure to let the station know that you're not satisfied. Reserve your right to carry the matter to the FCC.

Sometimes the broadcaster will just ignore your letter completely. If you haven't heard from a station within the time stipulated in your letter, send a carbon copy via registered mail. Add a note to the effect of, "We all know it's hard to keep up with our correspondence, and sometimes mail gets lost. But we view this matter with the utmost seriousness and if we don't hear from you within the next five days, we will have no choice but to go to the FCC." Unless they're on permanent vacation, only the most irresponsible of broadcasters will neglect to respond to this second message.

The broadcaster can also reject your contention on a number of grounds. Here are the most common and what to do about them:

1. *Controversiality or importance.* If the station management claims that its programming did not deal with an issue that is controversial enough or of sufficient public importance to warrant a remedy under the Fairness Doctrine, submit more extensive evidence and build your case. (See page 43 for ways to show controversiality and importance.)

2. *Irrelevance.* Broadcasters often argue that the programs in question don't really deal with the issue as you've defined it in your letter. Re-examine your definition of the issue and be sure that you've described it accurately. Re-read the section in this book on Defining the Issue (page 39) for additional guidance. If you eventually agree that the broadcaster is correct, then change your definition and try again. But if you were right the first time, write another letter restating your contention and request the opportunity to meet with station management. If they turn you down flat a second time, and you've got a good case, then you may have no choice but to head to the FCC with a complaint.

3. *Claim of balance.* If the broadcaster claims that sufficient balancing programming has been provided already, check it out. Ask for tapes or transcripts of the programs cited. Talk to people who appeared on the programs. Find out what was discussed and for what length of time. Many stations will point to an hour-long program of which less than five or ten minutes were taken up with a discussion of your opposing view. If the station refuses to give you the tapes or information you need, you might consider inspecting their public program logs. Remember—only television stations still have to keep public logs and make them available to you. And they don't have to show them to you until 45 days after the date of broadcast. You can ask to see a radio station's logs, too, but they can legally refuse to show them to you. In

any event, the program logs may not reveal much useful information. We've found that logs help most in paid advocacy advertisement situations when all you really need to learn is the airtimes of the one-sided spots. Logs generally won't tell you much about films, news and public affairs programming.

4. *Misinterpretation.* The station may misconstrue the issue as presented in its programs. If so, reiterate the issue as you've defined it, as clearly and precisely as possible. By shifting the issue or broadening its scope, the broadcaster may hope to demonstrate sufficient balance. By narrowing the issue, the broadcaster may be able to deny its controversiality or public importance.

5. *Misunderstanding.* Chances are, you'll know more about the Fairness Doctrine after reading this book than most broadcasters. So don't be surprised if the station management shows a lack of understanding. You'll need to patiently explain what the FCC requires. Suggest that they check with their attorneys, the Media Access Project or the FCC. You might even make a copy of certain sections of this book and include it with your letter.

The power of negotiation. If the broadcaster invites you to come in and discuss the matter, prepare for the meeting carefully. Select a team of two or three people; designate a main spokesperson. Be clear about what you are asking for, but be ready to compromise. Decide what you are willing to settle for in advance. Make sure you'll be meeting with the person with authority to make an agreement. Usually, this will be the general manager, program director, sales manager or the station's attorney. Public affairs directors generally have very little real authority.

Many groups feel that an attorney should accompany you to broadcaster negotiation sessions. But others feel that a lawyer's presence can inhibit the informal give-and-take needed to hash things out. Use your own judgment, but be sure to have someone on your team who is articulate and not easily intimidated. Dress well. Arrive a little early. And be prepared to discuss the situation and the Fairness Doctrine's requirements in a clear, calm and informed manner.

Shedding some light. If the station management responds to your concerns with irrational hostility or betrays a profound lack of knowledge about the Fairness Doctrine, you might try enlisting the station's own lawyers to shed some light.

Call or write the broadcaster's Washington law firm and convince them you're serious about taking the issue to the FCC unless the station cooperates in good faith. Make it clear that you know your rights.

Send along copies of your correspondence and suggest that they contact their client and confirm that you do have the rights you claim. If your complaint appears solid, the Washington lawyers may advise the station to negotiate a reasonable settlement where none appeared possible before.

You can find out who represents the station by checking the listing in the *Broadcast Yearbook* or *Television Factbook* at your library, or by asking the FCC.

Monitoring. If the broadcaster responds to your concerns by claiming that contrasting viewpoints will be aired on future broadcasts, by all means monitor news and public affairs programs to confirm it. Members of your organization can take turns logging or even taping the programs.

Monitoring can also help you back up your contention that programming has—up to that time—been unbalanced. In your initial letter, you need only state that you and members of your constituency watch or listen to the station on a regular basis and have neither heard nor seen adequate balance. To make sure your impression is correct, several weeks of monitoring and a search of (often uninformative) broadcaster's logs may be worthwhile. The FCC requires that stations make their logs available to the public, on request, 45 days after the programming was aired. Radio stations are no longer required to maintain logs, but most stations will have some record of what aired when.

Monitoring is least useful if you're concerned with an issue which gets rare mention. It's most useful if you're interested in a station's overall performance and seek evidence that it consistently fails to serve your community as the public interest requires.

Complaining to the FCC

FILING A COMPLAINT with the Federal Communications Commission is your last resort. It's a serious step to take, time-consuming and expensive. Experience shows that, in many cases, activists can negotiate a reasonable arrangement with broadcasters that actually exceeds what the FCC might require. You should only complain to the FCC if your complaint is unique and you need special clarificaton, or if the station has

denied what you—based on expert advice—believe is reasonable. While you don't need a lawyer to file a complaint, you might find it helpful to have legal assistance.

Taking your problem to the FCC naturally risks ruining whatever relationship you have with the station. From the date you file, it becomes a matter of confrontation. If your relations with the broadcaster are already at rock-bottom, of course, you have nothing to lose. In fact, failure to follow through with a complaint may spoil the chances of other groups in your community to gain a reasonable response on other issues. As with any formal action, balance the risks against the possible benefits before you proceed. It's always possible that filing a formal complaint will earn you the broadcaster's guarded respect and lead to major concessions.

"Taking your problem to the FCC naturally risks ruining whatever relationship you have with the station. From the date you file, it becomes a matter of confrontation. If your relations with the broadcaster are already at rock-bottom, of course, you have nothing to lose."

The FCC handles an enormous volume of Fairness Doctrine complaints every year. Those which display more righteous indignation than substance get nowhere. Your complaint has to be precise and specific. Vague and generalized charges of unfairness will not be given serious attention.

We've included a sample complaint to the FCC in Appendix A as a model to follow. You'll need to recite the facts as clearly as you can:

1. *Your identity.* State your name and address. If you represent an organization, give its name and briefly describe it. Particularly if your complaint carries urgent time-value, include a phone number where FCC staff can contact you directly.

2. *Broadcaster's identity.* Identify the broadcaster by call letters and location. If you're directing your complaint against a network, state the name of the network. If your complaint concerns programming originated by a cable system, give the name of the cable company and its address.

3. *The issue.* Only in the case of a ballot question will the issue be obvious; even so, describe the issue clearly. In less than obvious cases, your definition will be strategic (see page 39). Employ the definition you used in correspondence with the broadcaster.

4. *Programming.* It is vitally important that you include the date and time of any programming involved in your complaint. Any other relevent information—the name of the program, who spoke, etc.—will be helpful. If at all possible, submit an exact transcript of the program; otherwise, include a summary of the program that pinpoints the most pertinent statements.

5. *Controversiality and public importance.* Unless the issue involved is on the ballot, it's your responsibility to demonstrate that it's controversial and of public importance. Submit a significant amount of evi-

dence (see page 42) but don't inundate the FCC staff—just enough to make a solid case. Indicate if more evidence is available.

6. *Overall imbalance.* Regular monitoring of the station gives you the strongest evidence of imbalance, but it's not necessary. What *is* necessary is that you (and your co-complainants) state that you are a "regular viewer" or "regular listener"—that is, a person who consistently and as a matter of routine attends to the news, public affairs and other non-entertainment programming carried by the station involved in your complaint.

You must provide some details to back up your claim. The FCC now requires regular viewers to "specify the nature and extent" of their viewing habits and "indicate the period of time during which they have been regular members of the station's audience." A complaining organization should identify at least one member who regularly views or listens to the station and obtain documentation that they have, for example, "watched KXYZ-TV's evening news program 'Live at Six' and the station's regular public affairs program 'Citywatch' for seven years."[9]

It also helps to submit subsidiary evidence, such as any list of purportedly balancing programs given to you by station management and evidence from the broadcaster's log. The FCC is not receptive to newspaper or *TV Guide* program listings because of their inaccuracy and lack of details on program content. All your evidence should serve to establish reasonable grounds for your assertion that no programs presenting contrasting viewpoints have been aired.

7. *Broadcaster's plans.* You must show that you tried to resolve the problem before you brought your complaint to the FCC. Say if the station has offered, or plans to offer, any opportunity for the presentation of contrasting views. Submit copies of your correspondence. If you're objecting to a certain element in the broadcaster's plans (for example, the choice of spokespersons or program scheduling), specifically discuss and support your objections.

Complaint procedure. Address your letter to the Fairness/Political Programming Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, N. W., Washington, D.C. 20554.

To make telephone inquiries into the status of your complaint, call the Fairness/Political Programming Branch at (202) 632-7586 or the FCC's main switchboard number: (202) 655-4000.

Send a complete copy of your complaint to each station, network, or cable system involved.

The FCC will review your complaint. If they find it insufficient in some respect, they'll return it to you and ask for more information or

comment on a change you need to make. Often you'll simply receive a form letter and a copy of the 1974 *Fairness Report*.

If your complaint establishes a *prima facie* case (meeting all requirements "at first glance") the FCC will forward it to the broadcaster for comment. You should tell the FCC that you plan to respond to the station's comments within two weeks—or in a matter of hours or days if the issue bears on a fast-approaching election or legislative deadline. After evaluating the station's comments, the FCC staff may rule for or against your complaint, or they may seek more information to render a ruling.

If the staff rules against you, you have thirty days to appeal to the full FCC. If the FCC rules against you, you can either ask for a reconsideration before appealing to the courts or take the case directly to the U.S. Court of Appeals in the District of Columbia. If you do appeal, you'll need an expert communications lawyer to file your application for review. Appeals proceedings have special procedures that must be followed; you could lose your case merely on technical mistakes. Be sure to check with Media Access Project if your case goes this far.

A negative ruling by the Court of Appeals can only be overturned by the U.S. Supreme Court, which need not decide to accept the case for review. Very few Fairness Doctrine cases ever reach the courts, let alone the Supreme Court. The Red Lion case is the most notable and important exception.

Get help and follow through. Once you've initiated a complaint to the FCC, be sure to follow through. Failure to pursue a complaint a reasonable distance will damage your credibility with the broadcaster. You can avoid a lot of legal hassle if you can reach a negotiated settlement with the station before you file. But leave the door open to negotiation even after you file. It may have been the proof of your seriousness the broadcaster was waiting for.

If it looks like negotiations are going nowhere and complaining to the FCC is a real possibility, that's the time to get qualified legal help—as soon as possible. Even if you have an attorney, he or she should call the Media Access Project to check on strategy and find out the FCC's latest mood. Work to win. If your complaint is a loser, you may do real damage by setting a precedent that will hamper other complainants in the future.

Expedited complaints. Plan carefully to avoid filing your complaint with the FCC at the last minute. When time is critical, however, your complaint may need immediate attention if it's to have any effect. If election day is four weeks away, you can file an "expedited com-

plaint" but keep in mind that the FCC staff is not superhuman.

To file an expedited complaint, explain your situation, give the crucial deadline, and specifically ask that your complaint be expedited.

Send your complaint by the fastest means available to you—express mail, telegram, electronic document transmission. In emergency situations you may even be able to telephone the essentials of your case so the FCC staff can start evaluating it immediately.

Tell the FCC how you would like to get a response—by phone or telex or telegram—and give them a phone number where you can be reached with requests for more information or clarifications.

If you don't receive a response within a day or two, telephone and check on the staff's progress. Be patient and understand that they are doing the best they can as fast as they can. Under no circumstances abuse your right to request expedited handling of your complaint; exercise it only under extraordinary circumstances when time is at an absolute premium.

CHAPTER IV

SPECIAL REPORT: INITIATIVE CAMPAIGNS

Your Best Defense

IN THE LAST DECADE, a dramatic political phenomenon has made its mark on American life and government: the initiative campaign. Across the country, controversial public issues have by-passed the legislative route and found their way to the popular ballot. Progressives and conservatives alike have used initiatives and referenda to force major shifts in public policy impossible to obtain in any other way.

"With a minimum investment of staff and resources, you too can amplify your voice at election time."

Does this mean that America is entering a new democratic era in which the best-educated electorate in history is free to take direct political action? In which special interests lose their ability to sway the outcome of State House horse-trading? In which money no longer talks?

Far from it.

If anything, the move toward popular politics only underscores the immense power of concentrated wealth to shape public debate.

In dozens of initiative campaigns, corporate spending on "pro" and "con" initiative campaigns swamped the grass roots opposition by as much as 100 to 1. Most of the millions went for television and radio time. Corporate campaigns against public power, beverage container litter laws, stricter rules for the handling of radioactive wastes, no-smoking zones in public places spared no expense to win voters. In some cases, it turned out they'd spent *$10–13 per vote*—all for advertising.[1]

Does heavy spending guarantee victory for the heavy spenders? It's difficult to draw a direct conclusion in every case, but it's unarguable that multi-million dollar campaign budgets do have an impact. Carefully orchestrated media campaigns have shifted voter support up to 40 percent in a matter of months.

Responding to woefully lop-sided campaigns, a number of state and local governments enacted limits on corporate contributions to initiative campaigns in the 1970s. These measures were dealt a possibly fatal blow in 1978, however, when the U.S. Supreme Court declared the Massachusetts law unconstitutional.[2]

For activists faced with corporate opposition, the Fairness Doctrine may be the only defense.

Our case studies show that methodical use of Fairness issues has won significant amounts of time for public-interest organizations battling the odds—time they had no way of obtaining if it came down to cash. With a minimum investment of staff and resources, you too can amplify your voice at election time.

The first principle? If you don't ask, you won't get.

Many stations actually expect requests for balancing time when they've sold mega-buck advertising schedules to corporate campaigners. Despite their affirmative obligation to seek out opposing views, however, few bother to. Don't be shy of spoiling a wonderful relationship by bringing up a Fairness problem with local stations. Most are prepared to respond in a reasonable way. In fact, if the station has a backlog of unsold advertising inventory, your request for free time really won't cost them much.

Be comforted by the fact that many of the subtle ins-and-outs of the Fairness Doctrine we've described in this book don't apply to you. If the issue is on the ballot, for example, you don't have to go out of your way to prove its controversiality and public importance. And the issue will usually define itself as "whether the voter should say 'yes' or 'no' to issue 'X'," so you don't have to worry about the broadcaster wiggling out from under by broadening or narrowing the definition.

Your main task is to be prepared. Time, not the broadcaster, is your nemesis. Election day is your deadline and there's no way you can fudge it. Organize now. Draw up your strategy. Decide what it is you're prepared to fight for if negotiations get sticky. If you have reason to think that one or more stations in your state will prove unresponsive, get some legal advice and be ready for the FCC if all else fails.

You may also want to start thinking about what you will say on the air. Who will speak for you? If you hope to run campaign spot announcements of your own, who's going to write them? Produce them? Pay for them? How does your broadcast media push coordinate with the rest of your campaign, in print, through the mail, door-to-door? When you get the time you ask for, make sure you can take full advantage of it.

After all, winning the vote is what this is all about.

On the Spot

MOST NON-BALLOT FAIRNESS ISSUES concern one or a few full-length programs. That's not the case for you. You'll probably be up against an extremely well-financed and slickly packaged series of thirty- or sixty-second campaign spots—a broadcast blitz designed to reinforce an extensive direct-mail, billboard, newspaper and telephone solicitation campaign.

The broadcaster airing the opposition's blitz is required to take them into account when planning programs to balance their impact. The total time sold, the frequency of the spots and the size of the audience are all important factors.

The broadcaster is *not* required to air spots to counter spots. Nor must the station present professionally-produced programming to balance professionally-produced programming. That's according to the FCC. But in reality, most stations will be hard put to balance a blitz campaign (especially in terms of frequency) any other way.

If one side airs a hundred spots in two weeks, the station would have to program your contrasting view at least twenty-five times in the same period to achieve a reasonable 4 to 1 ratio. Since some of these views must be expressed by "genuine partisans," the station would have to find time for community voices in any editorial, news, and public affairs slots available. Rather than deal with all the scheduling and production headaches this would entail, most stations will prefer to run spots you've already prepared.

Critical Time Limits

IN MOST FAIRNESS CASES, there's no deadline by which balance needs to be achieved. In initiative campaigns, there obviously is. It's called election day. All your efforts must be geared toward this critical time limit.

As we've noted, the FCC will attempt to expedite complaints involving an upcoming vote, but there's no guarantee that your issue will be cleared up in time. Before the FCC can issue a ruling, it must ask the broadcaster to comment on your complaint. That's a week or two right there. And if it's a national election year, you can assume that the FCC has plenty of complaints as urgent as yours.

Further, the FCC has its own views on which time is critical and which isn't.

In a recent California election campaign, corporate campaigners ran an eighty-spot blitz on radio station KABC opposing an initiative to levy a special tax on oil companies. Citizens to Tax Big Oil, the initiative's sponsors, complained to the FCC that KABC should take this blitz into account when providing balance. The FCC said no. The blitz had aired nearly two months before election day. The FCC said that a "critical period" existed only twenty days before the election. Since the blitz

fell outside this period, KABC didn't need to balance the spots' impact.

It's too early to know if this startling decision will prove significant in future complaints. It may encourage corporate campaigners to run their blitzes outside the FCC's "critical period" so as to avoid Fairness complications. Your best strategy is to raise the question of response time with stations as soon as a corporate campaign breaks—and notify the FCC immediately. Don't back off.

Prepare to Win

IF YOUR ORGANIZATION is sponsoring an initiative on an upcoming ballot, start your Fairness organizing now. For best results, you need about six months lead-time. Even the most successful organizations in our case studies wish they had started their planning earlier. Draft letters, contact qualified attorneys, build a statewide list of broadcast stations, and begin planning production of your own spot messages.

Organize. In a statewide campaign, there are usually too many stations for one person or even one office to handle. To reach settlements with all stations you may need to develop a network of local "access organizers" in communities large and small.

Your access organizers need to have good writing and speaking skills and present a credible appearance. Coordinated by the central campaign committee office, they'll be responsible for negotiating Fairness time with any station in their area which doesn't respond to letters from the state headquarters. You should designate one person with overall authority to sign off on any negotiations to avoid confusion.

Even if your local organizers never need to sit down face-to-face with local station managers, they can serve as monitors, keeping track of your opponent's broadcast campaign and recording any time stations spend discussing the issue on news, editorial and public affairs programming.

Preemptive letters. Three to five months before the election, your campaign committee should send a letter to every station manager in the state explaining your position on the ballot issue. Offer to act as spokespersons for your viewpoint and request time, noting that you're prepared to help the broadcasters fulfill their Fairness Doctrine obli-

gations. Declare that the station has an affirmative obligation to provide balance, even if the advocates of contrasting views can't afford to pay for airtime.

Demonstrate your knowledge of the law by stating that the FCC considers total time, frequency, and audience size when determining balance and that a spot campaign raises specific problems (especially around frequency and audience size) difficult to resolve through normal news and public affairs programming.

Ask the broadcaster to inform you if the other side makes a "buy" of time for a campaign spot blitz. You might remind the broadcasters that they are *not* required to sell your opponents as much time as they request, or indeed any time at all.

Note in the lower left-hand corner of the letter that a copy is being sent to the FCC, Media Access Project, and any other concerned parties. The letter should be sent registered, return receipt requested—or delivered by hand.

Be sure to retain a copy of this letter and all further correspondence for your files. You should also keep a log of all phone contacts with stations.

Study carefully the sample pre-emptive letters we've included in Appendix A. These letters provide excellent models to follow. Bear in mind that few broadcasters will be thrilled to get your letter, and some will greet it with open hostility. You'll have to be diplomatic to get the information you need, so try to be sensitive to the station management's feelings.

Any stations which fail to acknowledge or respond to your letter should be sent a copy of the same letter, with a simple reminder note attached, in two weeks. While the station is under no obligation to respond to a preemptive letter, it does serve to put management on notice. If you later need to complain to the FCC, you'll have written proof that you informed the station of its responsibilities in plenty of time for it to prepare a reasonable response.

Calling sales managers. If the station doesn't respond to your request that you be informed of any time "buys" by the opposition, and you know the other side has bought ad time, it may be useful to call the station's sales manager.

Say that you have reason to believe the other side may have bought time and that you'd like to know how many spots were bought, with what frequency, in what time periods, so you can "plan your campaign strategy." Sales managers usually work on commission, so they'll be glad to give you any information which may lead you to decide to buy. Do *not* tell the sales manager whether you're planning to buy time

yourself. Stay uncommitted. Don't say you might buy time if you absolutely have no intention of doing so.

Try to establish a friendly rapport. Ask to be called back if the opposition increases its "buy" and call back yourself every week right up to election day.

We don't recommend that you buy time from some stations while trying to negotiate free time from others. If—for some reason—that's what you're doing, under no circumstances tell the stations while you're negotiating that you've bought time elsewhere. There's no question it will arouse resistance, and perfectly understandable resistance at that.

Monitoring. When your preemptive letter or calls to sales managers don't give you the "campaign intelligence" you need, you should arrange to monitor the station. It may be the only way to find out when the opposition begins its blitz. One group in Miami discovered through monitoring that a blitz was beginning only ten days before the election. They were prepared to take quick action and got their counterspots on the air just in time. The group reports that their preemptive letter played an important part in preparing the station for their urgent request for balancing time.

Negotiating. When you have determined that the other side has bought time on a station, in most cases you'll want to start the negotiation process immediately.

Send the station manager a letter (see page 55) making a direct request, unless time is so short a phone call is imperative. If the station's proposal appears less than reasonable, clarify your position. Aim for a 2 to 1 ratio in both total time and frequency. Accept no worse than 4 to 1 without reserving your right to pursue the issue with the FCC.

Call their lawyer. If the station proves totally unresponsive, or if negotiations take an unreasonably ugly turn, it may help to call the station's Washington attorney. The broadcaster's lawyer will usually be more sophisticated, less emotionally involved, and have more knowledge about the Fairness Doctrine's requirements. A call from the broadcaster's own attorney, attesting to your rights and advising a quick settlement, may convince the broadcaster to break the logjam.

Your last resort. All else failing, carry your expedited complaint to the FCC. Since you're concerned about an issue on the ballot, you don't need to prove the issue is controversial or of public importance—and the issue defines itself, greatly simplifying your complaint. It comes down to this question: Has the broadcaster provided a "reasonable

opportunity" for the presentation of contrasting views? Say no. Say why. Given the probable time-pressure at this point and the simplicity of your contention, you may wish to make your case in a telegram or mailgram.

Ahead of the Game

ONCE YOU'VE GAINED TIME, you need a spot campaign to fill it. Lay the groundwork early, assigning responsibility for budgeting and overseeing production even before you're sure you need to.

Try to prepare your spots in advance. If you produce them before it's certain you'll get time to air them, you run the risk of wasting your resources. If you wait too long, however, unless you have a large budget, chances are that you won't be able to achieve the glossy production values which weigh so much on public perceptions of your credibility. Broadcasters may also ask to review your spots to make sure they respond in a responsible way to the points raised in your opponent's campaign; if you don't have them ready, negotiations may be delayed. Our advice? Have your spot campaign ready to go at least a month, but no more than two months, before the election.

Our *best* advice? Prepare one spot well in advance so it's on hand for review. Hold your resources at the ready to make additional spots later to respond to a last-minute shift in your opponent's campaign or to address specific issues that your research says the public cares about.

Spot campaigns tend to peak in their effectiveness and then fall off quickly. While you won't have complete control over when your spots will run, try to have your counter-blitz occur in the last ten to fourteen days of the campaign. Your opponents may have started their campaign two months before and pass their peak by the time you hit the air, giving you a powerful advantage. Some organizers even suggest waiting until the last few weeks of the campaign to make your Fairness requests. It's risky because you might not have enough time to negotiate, but at least the airtime you do get will air in the critical final days before the election.

Targeting Stations

SOME ORGANIZATIONS FEEL it's best to target a few key stations with their Fairness Doctrine campaign rather than spread their efforts too thin. This may have some validity, especially in the early stages.

In Tulsa, however, a group targeted the two stations which it thought would prove most cooperative. And when these broadcasters found out that other stations were escaping the group's pressure, their attitude stiffened.

It doesn't take much extra time or energy or expense to send your preemptive letter to *every* station in the state. Your initial exchange of correspondence will quickly indicate which stations plan to cooperate and which will prove troublesome. That's the time to decide which recalcitrant broadcaster to go after. Arkansas activists appropriately chose to concentrate on negotiating with a major network affiliate and ignore a smaller hostile radio station.

If you're sure that you don't have enough time to negotiate with all stations you'll have to prioritize your work. Concentrate your efforts on the largest stations with the highest ratings.

To Pay or Not to Pay

THAT'S A MATTER you need to decide as you develop your campaign strategy. And you'd better have the answer by the time a broadcaster asks.

The Cullman Doctrine (see page 23) requires stations to provide balance even if they have to give the time away. But the broadcaster does have the right to seek out a paying sponsor before acceding to a request for time free of charge. And the broadcaster does have final say on who will be given a chance to speak. You may be asked to certify that you're unable to pay for time; the FCC has yet to rule on whether this is proper. So what should you do? To expedite a resolution with the station, provide enough information to verify your inability to pay for response time. To speed the process, submit an affidavit (see page 138).

If you really can't pay, your situation is clear. Just continue to remind the broadcaster of his or her obligations under the Fairness and

Cullman Doctrines. Do all you can to convince the station that your organization is the most appropriate representative of the contrasting view.

Sometimes broadcasters, or their staff, are genuinely misinformed about the Fairness Doctrine. They may tell you it's illegal for them to give you free time. Calmly explain that this is not the case. Suggest they check with their attorney, or call their Washington law firm yourself and explain the problem. If the broadcaster persists in the misconception, you can consider it a stalling tactic. Your next letter should go right to the FCC.

But what if you do have a budget for a media campaign, no matter how small it may appear? Should you spend your money on newspaper ads and billboards and try to get all your broadcast time for free? Should you buy time on some stations while negotiating free time on others?

Three of our case studies illustrate three different approaches.

In Washington state, the group had a relatively large campaign budget—though paltry compared to their opponents. They split up their money to buy a little bit of time on many stations. They found this made the stations more cooperative when they asked for additional balancing time, and they ended up with an overall 3 to 1 ratio. In fact, a couple of stations offered additional free time even before the group asked for it. Partly, the group feels, their good fortune was because the stations actually supported the group's point of view. But it's also clear that spreading their buying power around earned them significant good will.

"Some broadcasters, or their staff, are genuinely misinformed about the Fairness Doctrine. They may tell you it's illegal for them to give you free time."

If you have a budget, we heartily recommend the Washington group's approach. A further refinement might be to identify your target audience and increase the proportion of your budget going to stations reaching that particular group of voters, urban or rural, young or old.

An Ohio organization took another tack. They bought time on those stations which seemed unwilling to give them time free and still managed to negotiate gratis time on other stations. Although it worked in this particular case, such a decision is obviously risky. It may spoil your chances of gaining free time in a future campaign; those who gave you time for free may be justified in feeling suckered. And we offer another objection: You're rewarding the bad guys when you agree to buy what should have been free—and punishing the good guys for living up to the Fairness Doctrine. Hardly a blow for broadcast rights.

Are there hazards to buying newspaper ads while seeking free broadcast time? In Montana, a group was able to win Fairness time from a number of grudging stations. When the stations discovered the group was spending money on newspaper ads, they were incensed and re-

neged on their settlements. Many stations look on newspapers as equal competitors for advertising revenue. The last thing you want to do is remind broadcasters that federal regulation may hamper their chances to compete against their print rivals.

The lesson learned in Montana is two-fold. First, make sure the arrangement you negotiate with stations is in writing. This obviously helps if they renege and you need to complain to the FCC. Second, be candid about your campaign spending plans. Explain that your budget is so small that splitting it among all stations would have no effect, so you're planning to buy a few newspaper ads which cost less. At least you'll know if the station objects and won't have your campaign pulled off the air without warning.

"Here's the bottom line. No law says the station had to sell time to your opponents in the first place."

Technically, of course, your Cullman Doctrine rights don't change no matter how much money you have. The broadcaster is obliged to provide balance. But you have to be realistic. Negotiate with full knowledge of your rights while recognizing that a benefit to you is a cost to the broadcaster. They'll use their discretion to minimize their costs. You're using your rights to maximize your benefits. Both sides must be willing to compromise.

Here's the bottom line. No law says the station had to sell time to your opponents in the first place. Remind the station of the fact. Consider it a victory if the station ends up selling less time to your opponents than they were able to pay for. You've removed some of the advantages money can buy in public debate. And that in itself is in the public interest.

Make a Little History

IF YOU'RE IN THE MIDST of an initiative campaign, you're less interested in furthering the cause of media reform and more interested in winning your own battle.

But Fairness Doctrine issues are also a chance for you to make a little history. Once broadcasters have experienced a concerted application of the Fairness Doctrine they never forget it. The going is much easier in subsequent campaigns—for you and for others.

For this reason, we encourage your organization and your attorneys to follow up on Fairness Doctrine cases even after election day has come and gone.

In the Public Media Center case, a public interest advertising and media reform group was forced to take thirteen broadcast stations to the FCC and pursue a regulatory and judicial battle for five years before the issue was resolved. The group's groundbreaking efforts have made it possible for other activists in California to use the Fairness Doctrine with relative ease and assurance.

When you exercise your own rights you strengthen them for everyone.

CHAPTER V

LEARNING FROM EXPERIENCE

ENOUGH THEORY. How does the Fairness Doctrine work in the real world, under time pressure, with little or no experience to back you up?

We've collected twenty case histories to give you some idea. Each of the citizen groups involved faced problems you will encounter. Some managed to overcome, others were less successful—for a variety of reasons we've tried to analyze.

About half of these stories concern Fairness Doctrine issues raised during initiative campaigns. The others were a response to unbalanced programming around an important and controversial issue. Most of these deal with advocacy advertising campaigns. And for good reason. The most clear-cut applications of the Fairness Doctrine come in response to one-sided corporate spot announcements. Thus, the Cullman Doctrine plays a vital role.

We congratulate all the groups for fighting for their rights and ours. Those who failed to get what they were after will no doubt do better the next time out. There's no quicker (or more painful) way to learn than to actually do it yourself. Learn from the mistakes we've had the luxury of noting after the fact. Emulate the resourcefulness and spirit clearly evident in each struggle, successful or not.

We deeply appreciate the time people took to help us reconstruct these stories. Where we've made substantial errors, we invite correction. The experiences we describe are, we believe, typical even if the details themselves have not been nailed down with journalistic accuracy. Time has passed. Memories have dimmed. The issues involved and your right to see them fairly treated in the mass media are, of course, still alive and kicking.

There's never a shortage of problems. The solutions come from people like you. Who else? Who better?

Public Media Center v. KATY [1976][1]

MANY OF THE FAIRNESS DOCTRINE case histories which follow involve citizens' groups seeking to respond to advocacy advertising campaigns launched by corporations, utilities, and heavily-financed initiative campaign committees.

It's now common for such groups to propose that stations provide balance by airing "counter-ads"—a blitz for a blitz. But it wasn't until this landmark case, Public Media Center v. KATY, that the FCC recognized that counter-ads were a reasonable solution.

Before, the FCC had relied almost exclusively on the "total time" factor to determine balance. Now the FCC admits that an hour-long public affairs program on a Sunday morning is not equivalent in any meaningful way to sixty minute-long ads aired throughout the day, including prime time, over several weeks.

This case led the FCC to find a station in violation of the Fairness Doctrine in terms of other factors: frequency, audience size and prime-time scheduling.

The case began in 1974, when Pacific Gas & Electric launched a campaign on fifty-nine California radio stations describing nuclear power as "safe, clean, practical...the answer to the energy problem now." The campaign happened to coincide with attempts by California environmental groups to circulate petitions calling for a statewide referendum on nuclear power. PG&E, heavily committed to nuclear plants, naturally opposed such a referendum.

Responding to the utility's blitz, PMC organized a coalition of environmental groups demanding free airtime for the anti-nuclear position. Media Access Project (MAP), based in Washington, helped develop the strategy and ably represented the coalition at the FCC.

The first step was production of a set of anti-nuclear radio spots. PMC created the spots on a bare-bones budget and offered them to the stations which had aired PG&E's commercials. A list of the stations was obtained from a source within the ad agency responsible for the utility's own spots; the source also reported a complete breakdown of the amount of time sold by each station.

Armed with this information, PMC and MAP drafted a letter addressed to each station's General Manager. The letter portrayed PG&E's campaign as one-sided and unfair, outlined the station's Fairness Doctrine obligations, discussed the proposed anti-nuclear ballot initiative, and asked how the station intended to balance its coverage. PMC offered its counter-ads and asked for free air time. National news articles about nuclear power were attached to demonstrate controversiality.

PMC asked for a response within ten days and copies were forwarded to the FCC.

Ten days after the mailing, PMC held a news conference to announce its efforts to gain time for the counter-ads. The story was picked up by many of the state's newspapers and broadcast outlets.

Within ten days, many stations had negotiated an agreement by phone. Stations which did not respond were sent a second letter reminding them of their Fairness obligations and warning that formal complaints would be filed if satisfactory agreements to balance their programming were not forthcoming.

By early September, three months after PG&E launched its blitz, thirty stations had agreed to air counter-ads at a ratio of at least 3 to 1. Media Access Project played a persuasive role with stations which initially refused to provide time—a letter from MAP convinced several that PMC seriously intended to lodge formal complaints. A number of stations were able to show that they had balanced coverage of the nuclear power issue *without* the counter-ads through news and public affairs programs.

That month PMC (represented by MAP) did in fact file Fairness Doctrine complaints against sixteen stations that flatly refused to provide anti-nuclear programming or adequately balance PG&E's prime-time blitz.

PMC and MAP argued in their complaint that it's almost impossible for stations to fulfill their Fairness obligations when one side of a controversial issue has been presented in frequent, effective spots aired throughout the day (including prime-time) while another side is relegated to infrequent news coverage or public affairs programs aired during low-listening hours.

MAP urged the FCC to consider ten distinct factors when determining if balance had been provided:

1. Appearance of a viewpoint during drive time
2. Frequency with which a viewpoint appeared
3. Total amount of time a viewpoint appeared
4. Appearance of a viewpoint during periods of high listenership
5. Period of time over which a viewpoint regularly appeared
6. Presentation of a viewpoint on one-sided programming
7. Presentation of a viewpoint in short announcement format interspersed within regular programming
8. Presentation of a viewpoint in identical, repeated messages
9. Presentation of a viewpoint to varied audiences
10. Presentation of a viewpoint in professionally-prepared spots

MAP stressed that the FCC should consider more than just the total time given to each side of an issue when determining "reasonable" balance.

MAP cited the example of station KJOY, which broadcast forty-nine minutes of PG&E ads (plus 240 more minutes of pro-nuclear views in other formats) compared with about 360 minutes of anti-nuclear views. Was this balanced?

PG&E's ads aired in high-listenership periods, including twenty-three drive time minutes, while the anti-nuclear programs were broadcast on Sunday nights from 9:00 PM to midnight, notoriously low-listening hours.

Moreover, PG&E's spots were one-sided presentations, produced by a professional advertising agency, regularly repeated over twenty-eight days during entertainment programs reaching a diverse audience.

MAP argued that KJOY's performance could not be considered reasonable balance.

Twenty months later, in May 1976, the FCC found eight of the stations in violation of the Fairness Doctrine. Four stations, KJOY among them, were cleared. (PMC had settled with three of the stations before the FCC decided.)

In its Memorandum Opinion and Order, the FCC agreed that several factors need to be considered when judging if the public has been left uninformed—total time given each side, amount of prime and drive time, frequency with which the views are aired, and the size of the listening audience. The Commission ordered the eight stations found in violation to inform the FCC of their plans for balance within ten days.

For some this might have been victory enough, but PMC and MAP noted that the FCC had applied its own standards inconsistently. If total time wasn't the primary factor, then it was impossible to distinguish among some stations found in violation and others the Commission had cleared.

For example, the FCC declared in regard to KJOY that "it appears that the licensee of KJOY broadcast nearly five hours of programming presenting the viewpoints of advocates of nuclear power, and broadcast a total of six hours of programming presenting the viewpoints of opponents. . . . Thus, we cannot conclude that the public in KJOY's service area has been 'left uninformed'. . . ."

In this case, as in most of the others, the FCC had failed to evaluate Fairness in terms of anything but total time.

So PMC and MAP asked the Commission to reconsider its findings on the cleared stations. The FCC refused. PMC and MAP petitioned the U.S. Court of Appeals to review the FCC's orders. Nearly two years

later, in October 1976, the Court rendered its opinion:

> After reviewing the factors considered by the Commission, we are unable to determine the precise factual basis upon which it distinguished the eight stations that violated the fairness doctrine from the four that did not.
>
> Were it not for the Commission's own representations, we might conclude that the total time ratio was the sole criterion distinguishing those stations that met their fairness obligations from those stations that did not.
>
> [For these reasons] we cannot affirm a Commission order that does not clearly and explicitly articulate the standards which govern the behaviour both of licensees that have violated the fairness doctrine and those that have not.

The Court returned the case to the FCC, which finally concluded that the four stations it had cleared had not, in fact, "acted reasonably in fulfilling their obligations under the Fairness Doctrine with respect to the issues addressed by the PG&E 'nuclear power' advertisements."

The FCC ordered the stations to formulate plans for meeting their obligations. MAP negotiated with each and reached satisfactory agreements.

Thus it was, after five years of battle, that PMC and MAP set a vital precedent for dozens of citizens' groups frustrated and threatened by expensive one-sided issue-oriented advertising campaigns.

Environmental Defense Fund [1978][2]

"To KEEP THINGS RUNNING in the 1980's, we must begin new power plants today."

So PG&E claimed in a November 1978 campaign carried by twenty-four Northern California TV stations. The utility launched its $900,000 blitz shortly after the state Public Utility Commission opened an investigation of PG&E's $22 billion plans for ten new coal and nuclear power plants.

The Public Utilities Commission had fastened on PG&E's neglect of any alternatives to centralized power stations—choices like solar, geothermal, cogeneration, windpower and conservation. Perhaps for this reason, two of PG&E's commercials dismissed solar as an energy source until the end of the century: "until solar *electricity* is ready, we must build other kinds of power plants."

Official reaction to PG&E's campaign was indignation. Several Public Utility Commissioners felt the ads were misleading—confusing solar electricity (a future technology) with decentralized solar heating and cooling (working now). The Governor's Office fired off a letter to PG&E asking that the plug be pulled on the campaign "in the spirit of free enterprise and fair competition"; the ads might damage public perceptions of solar and torpedo the state's solar industry. Not surprisingly, the utility refused.

In search of a grass-roots solution, Environmental Defense Fund (EDF) and Public Media Center organized a coalition of environmental groups to oppose the campaign and pressure stations to provide balancing views.

"Another TV spot focused on a smoldering dollar and suggested 'your power company thinks you have money to burn.'"

In December 1978, EDF Regional Counsel David Roe wrote each of the twenty-four stations and advised them that PG&E's ads presented one side of a controversial issue of public importance. Citing PMC v. KATY and the Cullman Doctrine, he asked for free airtime to present a series of EDF counter-ads. He characterized the issue as a choice between a "hard" energy path (centralized power plants) and a "soft" path (appropriately scaled, renewable, diverse energy sources). EDF claimed that PG&E's ads implied that California had no choice, that only new power plants could serve the state. Roe asked the stations to respond within ten days (see Appendix A).

In the next few weeks PMC produced the counter-campaign. One spot featured a montage of alternative energy sources with this narration: "For years, the big power companies have told us that these alternative forms of energy are nice ideas, but impractical solutions ...What they haven't told you is that all these alternatives could meet our energy needs as well as the coal, oil and nuclear plants they want to build—but for less money." Another spot focused on a smoldering dollar and suggested "your power company thinks you have money to burn."

EDF had meanwhile begun negotiating with broadcasters by phone and in person. Ten stations quickly agreed to air the counter-ads at a ratio of 3 to 1. Five others had already aired significant amounts of balancing programming in news and public affairs formats, and agreed to broadcast more discussions in prime-time in lieu of the counter-ads. But nine stations refused the counter-ads and failed to show how they would balance their coverage in any other way.

A number argued that PG&E hadn't addressed a controversial issue. Others offered to sell time to EDF, but refused free time. Two stations agreed to run the counter-ads but refused to indicate when they aired; EDF had no way of knowing if balance had been achieved.

Unable to negotiate a settlement, EDF filed formal complaints

against the nine stations. Again, the issue was characterized as a choice between two energy paths—and PG&E's implication that no choice existed. EDF asked the FCC to find that the stations had failed to inform their viewers that such a choice does, in fact, await our decision. Bolstering its definition of the issue, EDF cited a President's Council on Environmental Quality discussion of "hard" and "soft" paths. Attached to the complaint were copies of all correspondence between EDF and station management; correspondence between the Governor's Office and PG&E; newspaper articles reporting PG&E's failure to implement conservation and cogeneration; and other articles examining the power plant controversy.

After reviewing EDF's complaint, the FCC asked six of the stations to submit formal responses. Few Fairness complaints make it even this far. EDF had already dropped its complaint against one station, and the FCC refused to consider complaints against two of the stations because EDF had incorrectly requested the scheduling information.

Several stations replied that the issues raised in PG&E's spots were not controversial in their service areas. Others tried to finesse the matter by asserting that PG&E had simply claimed more electricity was needed and hadn't discussed ways to generate it. One station maintained that while PG&E's ads did raise certain issues, they hadn't attempted a meaningful discussion.

The stations not only disputed EDF's characterization of the issue, but also charged that "mere assertions" that EDF and its members monitor or regularly watch the station—without more explicit descriptions of their viewing habits—were insufficient for a formal Fairness complaint.

In April 1981, the FCC staff (rather than the full Commission) rejected EDF's complaint. While largely accepting EDF's definition of the issue involved ("hard" versus "soft"), the staff maintained that EDF had failed to show the issue was controversial in each community. News articles were dismissed because they inadequately discussed the issue EDF had defined. An *L.A. Times* article, said the staff, failed to demonstrate the issue was controversial in other areas.

The staff also ruled that EDF had failed to identify individual viewers in each station's service area who could state that coverage was unbalanced. "[M]ere recitations of 'monitoring' and/or 'regular viewing' of a station's programming, without supporting documentation indicating the *nature* and *extent* of such habits, are insufficient to support a fairness complaint.... In the future, we will insist that complainants indicate the nature and extent of their viewing and listening habits and the period of time during which they have been regular members of a station's audience."

EDF asked the full Commission to review its staff's ruling. In June 1982, the full FCC upheld its staff's denial, declaring that "reasonable men" could differ as to the exact issues raised by PG&E's ads and—in such circumstances—the FCC must allow each station to decide for itself whether a controversial issue was addressed.

The Commission also upheld its staff's ruling that EDF failed to show the issue was controversial or to specify its members' viewing habits.

This case displays the FCC's current anti-Fairness attitude. The ruling suggests that the threshold for enforcement is being raised to trip an increasing number of complainants. The FCC clearly expects groups to document a station's coverage of an issue in exhaustive detail in order to show imbalance. This means using program information supplied by the station and monitoring by group members. The FCC still expects stations to cooperate with you. A station's failure to give you programming information might look bad for the station when you file your complaint.

The worst stations will stonewall, but most will tell you what they've broadcast.

The FCC's dismissal of EDF's definition of the issue does not appear to set a damaging precedent—PG&E's ads were too ambiguous. If anything, the ruling reaffirms the need to characterize your issue in black-and-white terms, the blacker and whiter the better.

Oklahoma Coalition for Older People, et al [1976]

IN THE WINTER OF 1975-76, Oklahoma Gas and Electric (OG&E) launched a broadcast campaign in Oklahoma City to justify its pending request for a $30 million rate increase.

One ad blamed inflation. Another cited construction costs for new coal-fired power plants. A third revealed OG&E's plans to import more coal from Wyoming.

The Oklahoma Coalition for Older People, the Sierra Club and the Neighborhood Council of Oklahoma City opposed the utility's rate request and organized to gain response time under the Fairness Doctrine.

First they asked MAP for advice. Then, in January, their own attorneys sent a carefully drafted letter to the Station Managers of the stations involved.

The letter argued that the rate request was a controversial issue of public importance and that programming must be balanced. Public importance was demonstrated by listing individuals and organizations testifying in opposition to the rate increase before the Oklahoma Corporate Commission. The letter also cited an FCC ruling—Georgia Power (1973)—that rate hikes generally constitute a controversial issue of public importance.

The stations were asked to describe their plans to balance coverage. Pre-recorded spot announcements were offered. The stations were warned that complaints would be filed with the FCC if no reply was received within ten days.

Response was mixed. Station KOCO agreed to meet with the coalition and negotiated a settlement calling for two half-hour public affairs programs (one in prime time and the other immediately following special weekend Olympic coverage). The coalition understood the station manager planned to air other programs on the rate hike, but none appeared.

Station KTVY offered to produce a special featuring coalition members and OG&E officials. This offer was accepted, but the coalition pressed for spot time as well. The station agreed to air PMC-produced counter-ads two or three times a day, in fringe time, for two weeks.

Station KWTV refused to provide spot time, instead offering to produce a public affairs program with coalition representatives. The station went on to protest the Fairness Doctrine itself in editorials broadcast several times:

> Simply put, time is money. And when one group pays for time, and another group does not pay but cites the Fairness Doctrine as their payment . . . surely something in each of us says this is unfair.

Community response to the station's editorial was overwhelmingly in favor of free time for the coalition. A coalition member was allowed to rebut the station's editorial on the air. The station manager broadcast a second editorial against the Fairness Doctrine; again the public responded in favor of free time. The station felt no obligation to listen to its viewers—no more programs were scheduled to balance the rate hike issue.

No radio station accepted the counter-ads. KTOK refused to discuss the matter. WKY broadcast a discussion on Sunday night. KOCY chose to air a series of five-minute interviews with OG&E's opponents.

While the coalition was far from satisfied with what they got, they decided not to file formal complaints. If they'd been willing to follow through, the coalition might have won spot time and more news and

public affairs coverage. Instead, they accepted what was offered.

Some situations warrant taking whatever you can get. But the coalition clearly might have pressed harder for spot time and, inadvertently, may have reinforced the stations' recalcitrance by not carrying their challenge to the FCC.

If the stations believe they can evade their Fairness Doctrine obligations, they'll take an even harder line in the future—refusing to negotiate or proffering crumbs.

Pushing your demands, standing squarely on your rights, will quickly educate stations to the power traditionally disenfranchised groups can wield. That opens up the system for all of us.

Metropolitan Community Church [1977]

IN FEBRUARY 1977, fundamentalist Faith Broadcasting Network (Hartford, San Francisco, Glendale) broadcast two programs attacking homosexuals.

Anita Bryant, appearing on "PTL Club," asserted that homosexuals are immoral, emotionally unwell, and a threat to society. Reverend David Wilkerson, on "700 Club," denounced homosexuals and specifically attacked the Metropolitan Community Church, a predominantly gay church with nearly 100 chapters around the country. Both attacks aired several times on all three Faith Broadcasting stations.

Hartford Metropolitan Church members asked their pastor, Reverend Jay Deacon, to seek reply time on local affiliate WHCT-TV. Deacon phoned the FCC Political/Fairness Branch for help and was advised to ask WHCT for response time, under the Fairness Doctrine, in writing (see Appedix A). Deacon addressed WHCT's General Manager, requesting a tape or transcript of the two programs, a chance to reply to the statements made about homosexuals, and the opportunity to reply to Wilkerson's characterization of the Metropolitan Church.

As evidence that homosexuality was a controversial issue, Deacon cited a bill pending in the Connecticut State Legislature which prohibited discrimination on the basis of sexual preference.

Within two weeks, a Faith Broadcasting attorney visited Deacon at his church and verbally promised to give Metropolitan a reasonable

opportunity to respond to the two programs. The attorney promised that WHCT would arrange a recording session in the immediate future.

Nearly a month passed without a call from WHCT. Deacon wrote directly to Faith Broadcasting owner Reverend Gene Scott asking for reply time. Deacon also forwarded complaints to the FCC about the imbalance and WHCT's lack of response. His letter focused on Wilkerson's assault on the Metropolitan Church. The FCC wrote back to say that Deacon had failed to provide enough information about the nature of Wilkerson's attack and specific broadcast times; neither had he provided clear evidence that attacks on homosexuals constitute a "discussion of a controversial issue of public importance." The FCC asked for more detailed information.

Shortly afterward, however, WHCT arranged to tape an hour-long program in which Deacon defended the rights of homosexuals. WHCT aired the show in December 1977 and again in April 1978.

Deacon was not told that Faith Broadcasting also aired his program nine times on its San Francisco station, KVOF-TV, in an attempt to satisfy the FCC and a coalition of gay and lesbian groups in that city.

The coalition had filed a petition to deny KVOF's license renewal because of its regular anti-homosexual programming, while also attempting to gain reply time under the Fairness Doctrine. In its investigation the FCC uncovered several major flaws in Faith Broadcasting's operation of the station and began to build its own case against license renewal for all three stations.

It seems likely that this federal pressure—rather than a sincere desire to be fair—motivated Faith Broadcasting to give airtime to Deacon. It's also clear that his eventual success was due in large part to his unflagging persistence, and that's a quality we recommend to anyone seeking fairness.

American Security Council, Center for Defense Information [1979]

IN JANUARY 1979 the Center for Defense Information (CDI) produced "War Without Winners," an hour-long film promoting detente between the US and the USSR. To further this viewpoint, CDI offered the film to more than a thousand TV stations—for purchase, for rent, or for free as a public service.

Several months later CDI learned of an anti-detente film called "The Salt Syndrome" produced by the American Security Council (ASC) and distributed to more than a hundred TV stations, most of which aired it for a fee.

CDI wrote these stations, asserting that broadcast of "The Salt Syndrome" called for balancing programming and offering "War Without Winners" as the solution.

While a number of stations rejected CDI's Fairness Doctrine claims by citing general news coverage of the detente issue, more than two hundred eventually presented the CDI film—sometimes alongside the ASC film.

CDI continued to negotiate with recalcitrant stations over the phone but chose not to file formal complaints with the FCC. Marshalling its forces, CDI compiled a packet for local supporters describing how to get "War Without Winners" on the air in their own communities. One local group which put this knowledge to work was a church coalition, Interreligious Instruments for Peace (IIP) in Syracuse, N.Y.

Syracuse station WIXT-TV had aired "The Salt Syndrome" five times—in prime-time—in September and October 1980. IIP, complaining that the ASC film presented a single viewpoint on US defense policy, asked the station how it intended to meet its Fairness obligations.

At a 26 December 1980 meeting, WIXT's Program Director angrily claimed that the Fairness Doctrine didn't apply; in his view, "The Salt Syndrome" wasn't controversial. IIP persisted, offering "War Without Winners" for broadcast at least once. The Program Director countered with an offer to sell IIP the time to show CDI's film, refused to promise a free showing, hinted he "might consider" showing the film at 6:00 AM—*if* he was satisfied with the film's quality.

On 5 March 1981, IIP sent a follow-up letter to the Program Director expressing their concern that WIXT had yet to balance its overall progamming on national security. IIP cited the five showings of "The Salt Syndrome," the airing of another ASC film called "Attack on the Americas," and broadcast of "Wake Up America...We're All Hostages," a film produced by the James Robinson Evangelical Association. IIP again offered "War Without Winners" as a prime-time balance. The station did not respond in any way. A month later, IIP filed a Fairness complaint with the FCC; the Commission has yet to rule.

All in all, CDI pursued its goal of placing "War Without Winners" very successfully. Many stations decided to air it only because of the Fairness Doctrine and CDI's persistent advocacy. Correctly, CDI told local activists about "The Salt Syndrome" and guided them in their approach to stations.

IIP, on the other hand, didn't prove fully prepared to challenge WIXT. While it's possible the station would have resisted any Fairness Doctrine strategy, IIP might have upped its chances by (1) clearly demonstrating the controversiality of "The Salt Syndrome," and (2) once rejected, going directly to the station's Washington, D.C., attorneys.

Ozarkers for Responsible Energy [1979]

IN THE WINTER OF 1979, the Rural Electric Cooperative bought time for a series of pro-nuclear ads on NBC's Springfield, Missouri, affiliate KY-TV. The campaign's theme alarmed Ozarkers for Responsible Energy (ORE), a Missouri safe energy group, and they sought balance under the Fairness Doctrine.

ORE researched KY-TV's program logs to see how often the Co-op's spots had aired. They were not only able to make a fairly accurate estimate of the number of spots involved but also learned that no time had been provided for anti-nuclear views. They arranged a meeting with the Program Director.

The Program Director said that, based on the station's ascertainment surveys, nuclear power was not a major concern of his viewers. Thus, he said, nuclear power didn't qualify as a controversial issue. He stated that KY-TV was committed to balanced coverage of important issues nevertheless, and—informing ORE that a nuclear-issue program was slotted to air that very afternoon—refused to offer ORE time to present its own view.

The program to which he referred proved to be strictly pro-nuclear. ORE audiotaped the program as it aired and later obtained a videotape copy. Again, ORE set up a meeting with the Program Director—but this time they brought their attorney along. Confronted with the evidence of its one-sided programming, KY-TV agreed to grant airtime for anti-nuclear perspectives.

ORE, unable to produce new spot messages of its own or locate an appropriate film, accepted KY-TV's offer of thirty minutes on a prime-time Wednesday talkshow. ORE aired a fifteen-minute pre-recorded interview with soft-energy advocate Amory Lovins and finished off with an interview with ORE's own director.

Here again, the moral is a simple one: Persistence pays off. Re-

fusing to take rejection at face value, ORE secured a respectable settlement. Attention to detail, a cooperative attitude, and resourcefulness—all weighed heavily in ORE's favor.

National Coalition to Ban Handguns [1979]

In January 1979, the industry-financed Citizen's Committee for the Right to Keep and Bear Arms bought time on more than a hundred TV stations for an anti-handgun-control film called "The Gun Grabbers,"

Responding quickly, the National Coalition to Ban Handguns (NCBH) took a list of the stations from the Citizen's Committee newsletter and wrote letters requesting free response time under the Fairness Doctrine. The letters were sent certified and asked for an answer within three weeks.

More than fifty stations responded to the letter and eventually offered free time. MAP advised the gun control advocates to send seventy-five stations that didn't respond a follow-up letter enclosing a copy of the certified mail receipt from the first mailing. These follow-up letters indicated that copies were being forwarded to the FCC and MAP. Most of the stations took the follow-up letter seriously. NCBH contacted the Washington attorneys of those stations which didn't, and this gained even more time.

In total, gun control advocates were able to secure free time on nearly sixty stations. This time-in-hand enabled NCBH to raise money to produce "The National Handgun Test," a half-hour educational film. This was the balancing material broadcast by the cooperating stations.

Thirty other stations were able to demonstrate to NCBH's satisfaction that balance was being achieved in other ways. Thirty more simply refused to cooperate at all. NCBH chose not to file formal complaints against them.

NCBH succeeded for several reasons. "The Gun Grabbers" represented a single point of view on a clearly controversial issue. NCBH's first letter to stations followed the proper outline: evidence of controversiality, certified delivery and a deadline for response. NCBH sought expert advice from MAP. The follow-up letter was carefully prepared. The station's attorneys were contacted when necessary. And NCBH was able to hand stations an appropriate balancing program.

National Abortion Rights Action League [1980]

In November 1980, MAP alerted the National Abortion Rights Action League (NARAL) and the National Organization for Women (NOW) to plans by the Hosanna Ministry to air a sensationalistic anti-abortion film, "Whatever Happened to the Human Race," over Washington station WJLA-TV.

Representatives of NOW, NARAL, the Religious Coalition for Abortion Rights, Planned Parenthood and the ACLU called tha station to arrange a preview of the film. In a meeting wih WJLA's attorney and General Manager, the coalition urged cancellation of such one-sided, unfair and manipulative material. Management refused, but said if the groups wished to offer something to balance the anti-abortion view, WJLA would consider their request.

The coalition considered submitting a thirty-minute NARAL film, but decided the film by itself would be an incomplete response; they wanted to expand on the film's points in a follow-up discussion period.

Here's what was finally negotiated: "Whatever Happened to the Human Race" would air on Tuesday night, 30 December; a talk show featuring pro-choice advocates would air the following Friday; NARAL's film would air the next night in prime time. WJLA also agreed to broadcast sixty-second station-produced editorials presenting the pro-choice view. And WJLA's "Good Morning Washington" show invited NARAL's executive director to respond to the issues raised by the anti-abortion film.

MAP's advance notice gave NARAL and other members of the coalition the chance to preview the film and negotiate before it was broadcast. Station WJLA, familiar with its Fairness Doctrine obligations, responded well to the coalition's cordial approach and provided significant balance without protest.

Coalition for Fair Utility Rates [1980]

In summer 1980, the Public Service Company of Oklahoma (PSO) launched a campaign on a number of stations telling viewers "how much we care."

The campaign had three motives. First, PSO was seeking approval

for a new nuclear power plant. Second, the utility had a rate increase pending before the Oklahoma Corporation Commission. And third, PSO had recently suffered a public relations setback when it cut off service to many low-income households unable to pay their monthly bills. The cut-offs occurred during a searing heatwave, but PSO had refused to establish "average monthly billing" programs which would have allowed service to be restored. The utility definitely had an image problem.

A local coalition of people for Fair Utility Rates (FUR) was angered by the PSO's misleading ads and challenged the stations to provide time for contrasting views. With limited resources, FUR focused its challenges on a single TV station and a single radio station. It chose KOTV because it believed management would be amenable to FUR's request and KVOO radio because it had the highest ratings in Tulsa.

FUR hoped this selective strategy would lead to relatively easy settlements, setting the pace for negotiations with other stations involved in PSO's campaign.

FUR hired lawyer Carl Stevens, who had some Fairness experience, and he wrote the two stations to the effect that PSO's campaign didn't adequately inform the public about some controversial issues. The issues weren't defined. Stevens requested a meeting to discuss plans for balance.

Both stations refused to provide time. KOTV's General Manager insisted PSO's ads weren't controversial, noting that his station's parent company, New York's Corinthian Broadcasting, had reviewed the ads before they aired and concluded the same thing. When he learned that FUR had singled out KOTV for challenge, he grew quite hostile.

"PSO had recently suffered a public relations setback when it cut off service to many low-income households unable to pay their monthly bills."

KVOO radio's General Manager refused to meet with Stevens at all, citing a letter from the station's Washington attorney opining that PSO's campaign didn't trigger the Fairness Doctrine.

Daunted by these failures, FUR abandoned its efforts to gain balancing time on *any* station.

Their project was hampered from the start. PSO's ads did not appear to discuss specific controversial ideas of public importance in an obvious and meaningful way. The ads merely projected an "image" of PSO—an image FUR found objectionable. Since FUR couldn't define the issues involved, the stations knew they didn't have Fairness obligations in the matter.

FUR might nevertheless have used this opportunity to publicize their position. Even though KOTV refused time to balance PSO's campaign, for example, FUR was offered news coverage. KVOO reacted defensively to the Fairness challenge and froze FUR out completely. If the coalition had simply approached *all* the stations involved

and requested news coverage and public affairs discussions, without even mentioning the Fairness Doctrine, FUR might have had more success.

When the issues are fuzzy, in other words, it may pay to try old-fashioned public relations rather than take a strictly legal approach.

Citizens Opposed to Nuclear Dumping [1980]

ONE OF THE MOST SUCCESSFUL applications of the Fairness Doctrine we've ever heard of occurred in El Paso, Texas, in the spring and summer of 1980.

El Paso Electric sponsored a series of pro-nuclear spots on four El Paso TV stations and a number of radio stations. The spots promoted construction of a nuclear power plant, claiming the plant was clean, safe, economical, and important for solving the nation's long-term energy problem. The campaign was launched in December 1979 and continued into March 1980.

Citizens Opposed to Nuclear Dumping (COND)—a coalition of local Chicano, religious, senior and environmental groups including the Emergency Coalition Against the Rate Hike—sought response time, focusing its efforts on the TV stations.

Before contacting station management, COND asked MAP and PMC for help. MAP consulted over the phone and forwarded a pile of materials on the Fairness Doctrine. PMC advised COND on negotiating strategies and the production of counter-ads. Though none of COND's negotiating team were lawyers, they studied MAP's materials with care and researched other areas of broadcast law until they possessed a solid working knowledge of the Fairness Doctrine and its permutations.

Guided by MAP's materials, COND first drafted a letter to the stations. The response was immediate—three of the stations quickly invited COND members to meet and negotiate. The fourth station, claiming it was in the middle of a management shake-up and unable to deal with the situation, was brought into the process three months later.

COND also used a tactic less available today than it was in 1980, and may be lost for all if the National Association of Broadcasters has

"While it's unlikely the FCC would pull a license solely because of a Fairness violation, most stations will do everything they can to avoid any kind of license challenge."

its way with Congress. 1980 was license renewal year for every Texas station. COND made it clear that a Petition to Deny License Renewal would be filed if the Fairness question went unresolved. While it's unlikely the FCC would pull a license solely because of a Fairness violation, most stations will do everything they can to avoid any kind of license challenge. The cost of fighting a Petition to Deny is, after all, much higher than the price of complying.

Proceeding methodically, COND was able to negotiate agreements with the three TV stations. They knew more about the Fairness Doctrine than station management; they conducted themselves in a firm and professional manner, courteously, responsibily, without acrimony. And because they knew exactly what they were after, they got it.

COND asked the stations to grant time for a spot campaign comparable in frequency and scheduling with El Paso Electric's campaign. They were firm on this point. When two of the stations opened with an offer of talk show slots for COND representatives, the coalition accepted but still insisted that only spot time would adequately satisfy the Fairness Doctrine.

The stations eventually agreed to provide spot time at a ratio of 2 to 1: one COND spot for every two El Paso spots already broadcast. Each station agreed to help produce the spots in-house. COND wrote the scripts, using their own ideas and examples from a PMC campaign in California. The stations provided the equipment and technicians, each producing one ad and sharing it with the other two.

The reasons for COND's outstanding success? They took the time to learn the Fairness Doctrine backwards and forwards. They stayed in contact with MAP and PMC. Their case was tight; El Paso Electric had clearly presented just one side of a controversial issue of public importance and the stations couldn't demonstrate balanced coverage. The implied threat of a license renewal challenge increased the stations' desire for a negotiated settlement. And COND maintained a friendly, non-confrontational manner throughout the process.

A noteworthy by-product is that such success becomes addictive to coalition members. Participating in a collective enterprise for the first time, COND's remarkably diverse membership proved to themselves that a coalition can be more powerful than its parts. This laid the groundwork for future action on other fronts.

Arkansas ACORN [1976]

THE 1976 BALLOT asked Arkansans to vote on Amendment 57 to the state constitution. If passed, the amendment would have given tax-exempt status to all "intangible personal property."

Amendment supporters, financed by the banks, launched a statewide TV and radio campaign three weeks before election day.

The Association of Community Organizers for Reform Now (ACORN), a grassroots coalition of low- and moderate-income people, opposed Amendment 57. Their lawyers sent a letter to the stations involved informing them of their Fairness obligations and requesting free time. ACORN met with station managers and eventually negotiated spot time at an average ratio of 4 to 1. At first, some stations refused to cooperate. But when ACORN, always cordial, threatened to file formal complaints with the FCC and to inundate the stations with complaints from ACORN members, every station except one came around.

The exception, KCLA in Pine Bluff, refused to provide free time. It demanded proof that ACORN couldn't afford to pay for time. When ACORN supplied an affidavit, the station still held out.

As expected, Amendment 57 coasted to victory. Months later ACORN filed an FCC complaint against KCLA. More months passed. The FCC requested more information. ACORN dropped the case, reasoning they had a poor prospect of gaining a positive, meaningful ruling.

Given their reluctance to follow through on their complaint, ACORN should probably not have filed the complaint in the first place. Failure to pursue the issue might suggest to KCLA—and the other stations—that they need only shrug off Fairness requests down the road.

Group Against Smoker's Pollution of Miami [1979 – 80]

ON 8 MAY 1979 Dade County voters were asked, "Shall smoking be regulated in enclosed public places, places of employment, and educational and health facilities?"

The fate of the county's Clean Indoor Air Ordinance hinged on the

answer. Group Against Smoker's Pollution (GASP) knew the tobacco industry would wage all-out battle. So when the industry's front, Dade County for Free Choice, launched a million-dollar spot campaign on at least fourteen radio and two TV stations, GASP's Fairness Doctrine strategy was ready.

MAP helped GASP draft a letter to the stations asking for free response time. With a hard-pressed $8000 budget, GASP could easily show it couldn't afford to buy. All but one of the stations agreed to air GASP's counter-ads at a ratio of 4 to 1. The other offered to broadcast a thirty-minute interview with GASP leaders but refused any spot time. MAP filed a Fairness complaint with the FCC. Within twenty-four hours, the station had agreed to produce and air new public affairs programming during prime time and MAP withdrew the complaint.

"MAP filed a Fairness complaint with the FCC. Within 24 hours, the stations had agreed to produce and air new public affairs programming during prime time and MAP withdrew the complaint."

In spite of MAP's aid and the support of celebrities Art Linkletter, Charlton Heston, Carol Burnett and Cornell Wilde—all of whom appeared in GASP spots—the clean air initiative lost by fewer than a thousand votes.

In 1980 the initiative again qualified for the ballot. This time, GASP mailed "pre-emptive" letters to every local broadcast station, remarking on the upcoming vote and asking to be notified as soon as the tobacco industry bought airtime. But the industry had learned a lesson from 1979 and tried to sidestep a Fairness situation. Instead of buying TV and radio spots, its front invested heavily in newspaper ads, direct mail, and telephone canvassing. Not until ten days before the election did the industry start buying up time on ten radio stations. Another ten Miami stations, seeking to avoid GASP's predictable demands, simply refused to sell time to the industry front.

None of the stations contacted GASP about the industry buy, presuming that no time remained for GASP to mount a challenge. But as soon as the spots hit the air GASP was on the phone to each of the stations involved and quickly negotiated free time at a ratio of 4 to 1. Only one station balked at the terms.

WHRC, a Spanish-language station, refused any free time at all. Its managers argued that the appearance of a GASP spokesperson on an afternoon talk show satisfied all Fairness obligations, even though a flack for the tobacco industry had appeared the week before. As a sop, the station offered to produce two fifteen-minute news segments to air on the two nights before the vote. GASP turned this down and again asked for free spot time. WHRC didn't respond.

A year later, GASP filed a formal FCC complaint against the station. (Events had prevented the group from filing sooner.) When an FCC staff attorney told them that the most they could win, due to the late filing, was an admonishment, GASP chose to drop the complaint

and forego the time and expense involved.

Once more, the clean air initiative lost by a small margin. The tobacco industry had outspent GASP 100 to 1, but won by just 16,000 votes out of 480,000.

All things considered, GASP appears to have put the Fairness Doctrine to good use. Their skilled negotiators won a reasonable ratio of free time, and refused block time in lieu of a counter-ad campaign. GASP was prompt in its response to the circumstances, except in the case of WHRC. It would probably have been best to have accepted the station's offer of the news segments, given the short time left to election day; a complaint might still have been filed immediately after the vote.

An important feature of this case is the successful use of the "preemptive" letter. With foresight and advance preparation, you should be able to get ready for almost anything the opposition throws at you.

Robert DeVries Fairness Doctrine Cases [1978 – 80]

WHILE A STUDENT at San Francisco's Hastings Law School, Robert DeVries, with help from MAP and PMC, devised Fairness Doctrine strategies for two S.F. rent control initiative campaigns and two statewide campaigns on rent control and smoking in public areas.

Although three of the four campaigns ended in defeat, DeVries and his co-workers successfully negotiated hundreds of thousands of dollars in free airtime. Taken as as whole, these are model Fairness Doctrine campaigns worthy of review.

Affordable Housing Initiatives U & R (1978/79). In 1978 and 1979, San Franciscans for Affordable Housing gathered enough signatures to put a rent control initiative on the city ballot. In both years, landlords and real estate interests bankrolled the opposition and beat the measures by narrow margins. Rent control opponents outspent advocates by more than 50 to 1. They spent more than $60,000 on TV and radio alone, in each election.

DeVries, having learned about the Fairness Doctrine in law classes, volunteered to coordinate the Fairness campaign for affordable housing.

In support of Prop. U in 1978, he mounted a modest but relatively effective effort to win response time. With more experience, he launched

a more sophisticated and successful campaign on behalf of Prop. R the next year.

Six weeks before election day, he sent a letter to the General Managers of every San Francisco TV and radio station alerting them to the fact that Prop. R was on the ballot. Saying he expected the opposition to buy time for their campaign, DeVries declared that rent control advocates couldn't afford to buy. He declared his intention to ask for free time if the opposition bought, citing the Cullman Doctrine and the Fairness Doctrine in support. He asked each station to let him know if and when rent control opponents purchased schedules from their sales staff.

Some stations responded promptly. DeVries called the stragglers about a month before the election to check on time purchases. He usually talked first to the sales staffer responsible for political advertising. If the station had, in fact, sold time, DeVries hand-delivered a letter to the General Manager requesting one free spot for every two sold to rent control opponents. If he didn't hear from the station within two days, he called to follow-up.

Many stations agreed to the 2 to 1 ratio immediately. The three TV stations agreed to a 4 to 1 ratio. As it worked out, Affordable Housing wasn't able to deliver its response spots until a week before the vote. The stations were forced to run the ratio agreed to in that last week, giving rent control advocates effective parity with the opposition.

Several stations were reluctant to offer free time, but when DeVries contacted their attorneys directly, all but one caved in. DeVries filed a formal complaint against the lone hold-out; the complaint was withdrawn when the station relented.

Proposition 10 (1980). Reacting to a spate of local rent control measures, real estate interests placed Prop. 10 on the state ballot in June 1980. Their initiative would have overturned any existing rent control ordinances in California and made it much more difficult for cities to re-enact them.

To confuse voters, Prop. 10 supporters described their campaign as the "reasonable control and fair rent" initiative. In turn, housing activists statewide organized Californians Against Initiative Fraud (CAIF), assigning DeVries the Northern California Fairness work and handing Southern California to attorney Robert Myers.

A legal team assembled by DeVries and Myers began work in early March. First, they developed a list of every station in California which accepted political advertising. The list was further refined, prioritizing stations by their ratings. By early April, DeVries and Myers had begun calling station sales departments on a regular basis to discover if Prop.

10 campaigners were buying time. They made it clear that they represented a "No on 10" group, but carefully avoided any suggestion that they were planning to buy time themselves. Most of the sales departments supplied the needed information.

If a station had sold time to Prop. 10, CAIF sent a letter to its General Manager requesting free time under the Fairness Doctrine (see Appendix A). CAIF asked for a 2 to 1 response ratio. Most stations responded promptly, many agreeing to provide the 2 to 1 ratio while others dickered before settling. CAIF accepted nothing worse than a 4 to 1 ratio, and successfully bargained for better news and public affairs coverage as well.

A few stations didn't respond to CAIF's initial letter. They were sent a second letter, and received a follow-up phone call within days. Most of these stations then agreed to provide balancing spot time at a reasonable ratio. When a couple balked, CAIF contacted their Washington lawyers directly and won a resolution.

A number of stations demanded proof of CAIF's inability to pay for time. While CAIF wasn't legally obligated to provide proof (the Cullman Doctrine requires stations to provide balanced coverage whether or not a paying sponsor can be found) the group dutifully prepared an affidavit (see Appendix A).

Eventually CAIF was forced to file formal complaints against three stations. One caved in after FCC staff ruled its 5 to 1 offer "without more" was unreasonable. The FCC staff let two stations—KGO-TV and KXTV—off the hook. Both claimed to have fulfilled their obligations through news coverage, talk shows, editorials and other programming and the FCC agreed they had provided sufficient balance.

All told, CAIF placed more than 5,000 sixty-second radio counter-ads and at least 500 thirty-second TV spots opposing Prop. 10. And all for free. CAIF staffers also generated plenty of news and public affairs coverage. On election day, the anti-rent-control initiative went down to defeat.

"All told, Californians Against Initiative Fraud placed more than 5,000 sixty-second radio counter-ads and at least 500 thirty-second TV spots opposing Prop. 10. And all for free."

You will have noticed that CAIF didn't send stations a "pre-emptive" letter, while they had plenty of time to do so. They had their reasons.

A "pre-emptive" letter might convince some stations to refuse to sell airtime to the opposition, forfeiting a favorable Fairness opportunity. And if the opposition is locked out of airtime, more money will be spent in media (newspapers, billboards, direct mail) to which the Doctrine does not apply.

CAIF knew it had nowhere near enough money to purchase an effective broadcast campaign on its own. DeVries and Myers reasoned that the only way they could get CAIF spots on the air was in response to opposition buys. CAIF assumed its Fairness organizing would pay

off with enough response time to balance the opposition—a net gain over a situation in which the opposition makes a strong public impression in print, for example, and CAIF could not.

DeVries also believes this strategy helped CAIF win very favorable response ratios in the critical two weeks before election day. If a station sold the opposition 100 spots over six weeks, for example, last-minute negotiations with CAIF for a 4 to 1 ratio—twenty-five spots which must be aired in the the two weeks of the campaign remaining—meant an effective 1:1 ratio right before the election.

"One has to walk a fine line," says DeVries, "between requesting time too early and requesting time too late to negotiate a deal to get on the air at all."

By the end of the campaign, CAIF had in fact gathered enough support to buy time on a few stations. But it chose not to buy any time at all, fearing its Fairness arrangements with other stations would be jeopardized.

A final, subtle strategic point: Throughout its Fairness organizing CAIF kept a tight lid on the details of its progress. When the press asked how things were going, CAIF simply said its success was "substantial" but left it at that in order not to disrupt on-going negotiations.

Californians for Smoking and No Smoking Sections (1980). In the fall of the same year, DeVries again found himself directing a Fairness campaign. Californians had placed an initiative on the November ballot calling for mandatory no smoking sections in public places like restaurants and theaters. The tobacco industry was expected to spend millions to defeat the measure. But employing the same strategy he used to win time in the spring, DeVries won at least $200,000 in free airtime for counter-ads.

Only one formal complaint had to be filed with the FCC during the process, and it led to the station's compliance within weeks.

The only significant deviation from the spring strategy occurred in the final weeks of the fall campaign when initiative supporters decided to spend some money to actually buy more time for their spot campaign.

Supporters considered spreading their money around to all the stations which had already supplied time for free, but finally chose to invest in a few key stations in "swing" communities. In each case, they made a purchase only after making sure their Fairness arrangements would not be much affected. If a station refused to make a promise—in effect guaranteeing supporters *more* time for their money—the buy was not made.

DeVries credits several factors with his overall success: early preparation, effective teamwork, and persistent follow-through with the

stations and the FCC. He also cites the ground broken in previous California campaigns which educated the state's broadcasters to their Fairness obligations.

DeVries notes that other referendum campaign organizations working at the same time failed to match his track record. He attributes their failures to poor campaign management, in general, and an unnecessarily offensive, belligerent and demanding approach to broadcasters, in particular.

Maine Nuclear Referendum [1980]

THE 1980 MAINE NUCLEAR REFERENDUM provides an excellent example of a successful Fairness Doctrine strategy.

The Maine Nuclear Referendum Committee (MNRC) had gathered enough signatures to put the following initiative question on the ballot: "Shall nuclear fission be prohibited as a means of generating electricity?" If passed, the initiative would have closed Maine Yankee nuclear plant, which generated 30 percent of the state's electric power.

MNRC supporters raised $160,000 from small contributors to finance the campaign against Maine Yankee. The opposition, led by the Committee to Save Maine Yankee (CSMY), spent more than $840,000.

Even so, MNRC's campaign won 41 percent of the vote. And the election drew more voters to the polls than any election since the 1960 Presidential race. Much of the credit for this intense voter interest must be given to the $100,000 in free airtime MNRC won through the Fairness Doctrine.

How did they do it?

Six months before election day, MNRC's Media Committee organized a statewide volunteer network to conduct Fairness negotiations. The requirements were precise. Each volunteer had to live in the media market in which he or she would negotiate. Each attended a special Fairness Doctrine training session. Each had to possess good negotiating skills, be neat and conservatively dressed, appear friendly and businesslike, and have a phone and a car. By the final month, MNRC had a dozen trained volunteers. Not one was a lawyer.

When the pro-nuclear campaign hit the air a couple of months before the election, MNRC was caught somewhat by surprise. They hadn't anticipated the early launch and scuttled their plans to approach

stations and negotiate time before the campaign broke. Still, they were hardly unprepared. The morning after the pro-nuclear spots first aired, MNRC Fairness negotiators armed with counter-ads and a position paper on the Fairness Doctrine contacted broadcasters in Maine's six largest media markets.

Some stations were reluctant to negotiate, but all eventually provided free time. Their hesitation was due to a letter from the Committee to Save Maine Yankee asserting that "there has been a substantial imbalance in news coverage and programming on an industry-wide basis against nuclear power since Three Mile Island and since the Maine Nuclear Referendum Committee has commenced circulation of its petitions."

CSMY was claiming that their broadcast campaign was actually helping the stations achieve balance, rather than the reverse, and urging stations to reject MNRC's counter-campaign.

Some stations, influenced by CSMY, delayed action or flatly refused to comply. But MNRC continued to pursue its goals patiently and persistently. Their negotiators stood firm on their request for a 3 to 1 ratio of spots, and refused public affairs time in its place.

In several cases, MNRC suggested it would contact the stations' Washington lawyers directly and threatened to involve Media Access Project. MAP finally did call the D.C. lawyers for a couple of stations, and that was all it took to reach a satisfactory arrangement. MNRC won a 5 to 1 ratio in the worst instances; many other stations granted 1 to 1 schedules.

In sum, MNRC did everything right. They started early, planned carefully, established a negotiating network statewide, kept negotiations cordial and businesslike, and sought expert advice when they needed it.

Montana Bottle Deposit Initiative [1980]

AN INITIATIVE on Montana's 1980 ballot called for a mandatory 5¢ deposit on cans and bottles unless 85 percent were being recycled by 1983. In effect, the initiative gave the beverage industry two years to make recycling work.

The initiative was supported by a wide range of groups, from en-

vironmentalists to the Farmer's Union, the Montana Small Business Association, the state's Democratic Party, the League of Women Voters and the United Food and Commercial Workers Union. A poll taken in May 1980 found 70 percent of the voters favored the initiative.

Predictably, container manufacturers and the bottling industry did not. They spent $500,000 to beat the initiative—twice the previous record in a Montana initiative campaign—80 percent of it on radio and TV advertising.

Two corporations own seven of Montana's twelve TV stations. In August, the initiative's proponents wrote directly to officers in the two corporations, to General Managers of the other TV outlets, and to the Public Affairs Directors of the state's fifteen largest radio stations. They asked for free time under the Fairness Doctrine and offered counter-ads to help the stations achieve balance.

"But proponents made a serious error. They failed to secure formal, written agreements on the number, frequency and placement of the counter-ads."

The broadcasters readily agreed the industry blitz had created an imbalance in coverage. Several stations, however, demanded proof that the initiative's backers could not afford to buy time. With a total campaign budget of less than $12,000, this was easy to show. The stations agreed to air free counter-ads.

But proponents made a serious error. They failed to secure formal, written agreements on the number, frequency and placement of the counter-ads. They had verbal assurances only. Proponents had reasoned that, since it was late October, they had better take what was offered or they might lose all.

Proponents now figure they got about $8,000 in free airtime. This indicates a probable ratio of 20 to 1. And they lost time when some TV stations—upset that the group bought newspaper ads—pulled counter-spots off the air.

As the campaign progressed, support eroded. From 70 percent in May, voting strength declined to 30 percent on election day. The industry's massive advertising clearly overwhelmed the electorate.

Proponents should have begun their Fairness organizing much earlier. A "pre-emptive" letter might have convinced broadcasters not to sell so much time to initiative opponents. Breathing room might have been gained for more effective negotiations.

Most important, initiative advocates should have secured written agreements to guard against last-minute reneging.

We also think the group should have filed an expedited FCC complaint against the stations which pulled the spots in retaliation for the print buy. Unless the stations could demonstrate balanced coverage *without* the spots, the FCC would most likely have found they violated the Fairness Doctrine and required them to ensure balance even in the last days of the campaign.

Oregon Campaign for Public Power [1980]

In 1980 Oregon residents placed an initiative on the state ballot in twelve counties proposing creation of a publicly owned and controlled electricity distribution system—the People's Utility District (PUD).

The PUD initiative, according to the community and labor coalition supporting it, would have lowered rates, allowed more democratic control over energy decisions, and increased responsiveness to community priorities.

To form a People's Utility District, Oregon law dictates a two-step electoral process. In November, the public would vote on the first section of the referendum:

> Shall a People's Utility District be created for a feasibility study on the cost of public takeover and ownership of the distribution networks for electricity now operated by private utilities?

If the public approved the study, then a future vote could be held to appropriate funds for the takeover.

The private utilities threatened by the PUD—Portland General Electric and Pacific Power & Light—hired Los Angeles PR firm Winner-Wagner to beat the referendum. Winner-Wagner had worked with Con Ed in 1979 to block a similar initiative in Westchester, N.Y. The firm ultimately launched a $1.8 million anti-referendum campaign, the most costly of its kind in Oregon history.

Oregon Public Power, proponents of the takeover, learned of the forthcoming media blitz and, unable to match budgets with two private utilities, developed a Fairness Doctrine strategy.

In Portland, Public Power's legal team headed by attorneys from the National Lawyers Guild Energy Committee coordinated strategy. They came up with a six-month plan, to begin in June. Based on advice from MAP, the Portland strategy became a model for PUD campaigns in the eleven other counties.

The Fairness force was divided into four teams, each composed of lawyers, law students and members of the community. The team was responsible for monitoring certain radio and TV stations and for negotiating with station management. In early August a three-page letter outlining broadcasters' Fairness obligations was mailed to all stations. The legal teams then requested a meeting with management before the utilities bought airtime.

A few stations immediately agreed to cooperate with PUD supporters, but most failed to respond to the letter. Follow-up calls led to meetings attended by several lawyers and as many as fifteen other

people in which Public Power asked for 3 to 1 ratios and help in counter-ad production.

After the meeting, one of the lawyers would write a letter of understanding to confirm the negotiated agreements: that the station would notify Public Power when the private utilities sought to buy time and that public affairs slots would be provided before the election.

To make sure the agreements stayed in force, the team maintained contact with the stations and continued to monitor programming. The teams met with each other periodically and compared notes.

All of the Portland TV stations offered free time, and three out of four offered studio time, announcers, taping equipment and technical assistance for production of counter-ads. (Public Power used its own camera crew to film the thirty- and sixty-second spots aired statewide.)

The radio stations were more resistant, but eventually agreed to provide an average 3 to 1 ratio. Portland didn't produce radio spots until October; they were shared with Public Power groups in other counties.

The initiative lost in all twelve counties. But not for want of trying. Coalition leaders believe that involving lawyers from the very start of the process led to better response from the stations. The attorneys from the National Lawyers Guild report that the cases cited in MAP's materials were a great help during negotiations.

In retrospect, Public Power observes that a miniscule budget and non-professional production staff limited the quality of the spots they produced in-house and led to considerable production delays.

Regardless, you can easily see the value in the six-month plan and the legal teams' systematic approach. For a first-ever Fairness effort in Oregon, they achieved quite creditable gains.

Committee for an Elected Maine Energy Commission [1981]

MAINE VOTERS were asked in November 1981 if the state's appointed Public Utilities Commission should be replaced by a district-elected Maine Energy Commission. The new body would continue to regulate utilities but would also promote conservation and renewable energy sources.

Organized opposition to the measure was financed by the utilities themselves and large corporations. The Committee for Responsible

Government (CRG) bought more than a quarter-million dollars worth of time on thirty-eight radio stations and all seven of Maine's TV outlets.

Proponents of the initiative, calling themselves ELECT, were outspent 15 to 1. Yet they were able to win significant amounts of free time on all TV stations and about half the radio stations through the Fairness Doctrine.

ELECT sent each station a letter requesting free time to balance the CRG campaign. The TV stations responded promptly and offered a spot time ratio of 4 to 1. Only half the radio stations, however, responded positively. Short-staffed, ELECT chose not to pursue the recalcitrants.

In spite of the Fairness strategy's relative success, the ballot initiative lost by a three-to-two margin. ELECT remarks a number of factors worked against them.

The measure was a complex one, defying easy explanation. CRG's campaign shrewdly hammered one simple theme over and over: "This is a bad bill." The electorate didn't perceive it as a gut issue; CRG's broadcast message, reinforced by newspaper and billboard advertising, made it impossible to convince voters barely interested in the first place.

But ELECT also notes the ease with which their Fairness negotiations proceeded. They credit the successful use of the Fairness Doctrine by the Maine Nuclear Referendum Committee the year before with paving the way.

Don't Bankrupt Washington [1981]

THE NOVEMBER 1981 BALLOT asked Washington state voters to decide if public agencies should seek voter approval before issuing bonds for major energy projects. While the measure would affect other types of projects, Don't Bankrupt Washington (DBW), proponents of Initiative 394, primarily hoped to give voters the chance to pass on new power plants.

With a war chest of $220,000, DBW was still outspent by the opposition, which invested $1.35 million to beat the proposal. $220,000 was, however, enough to enable DBW to form an innovative Fairness strategy.

In August, DBW commissioned a professional pollster to survey voters' attitudes toward public power in general and Initiative 394 in

particular. The results showed strong support for public power, as well as a conviction that private contractors and other special interests were taking the public for a ride under the prevailing system. DBW produced three radio and two TV spots based on this research in late September.

The opposition had launched its broadcast campaign in late August, but DBW waited until October to approach the stations. And it did more than ask for free time under the Fairness Doctrine—it spread $54,000 among nine TV stations and $42,000 among forty radio stations in the last two weeks of the campaign. (Buys were handled through a New York ad agency.)

They had spent almost $100,000 on broadcast spots; the opposition had spent far more. Every station involved remained obliged to provide some free Fairness time. After making the time buys, DBW's Washington state organizers returned to the stations and asked for more time free. The first approach was through the mail, followed-up by phone. Without exception, the stations guaranteed DBW an overall 3 to 1 ratio. Some stations offered more time even before organizers requested it. The initiative won with 58 percent of the vote.

A spokesperson for Don't Bankrupt Washington reflects on the outcome: "Use of the Fairness Doctrine depends on timing. We had effective, targeted ads for the last two weeks—contrasted with an ineffective campaign for two months by the other side.

"Our group also had the advantage of knowing the content of their messages, and thus we were able to turn those messages back on them through responsive counter-advertising. Our opponents didn't have enough time to develop effective new ads to rebut our rebuttal."

Without a doubt, the fact that DBW could spread a little money among all the stations helped ensure a successful Fairness campaign. Broadcasters appreciated DBW's willingness to pay for time as well as ask for time gratis. This accounts for quite generous settlements.

DBW's resources also allowed them to wait until the crucial final weeks to contact broadcasters. They were able to concentrate their exposure into the two weeks before election day, maximizing their impact. And, having bought time, they encountered none of the problems of groups negotiating for free time at the last minute.

Californians Against Waste [1982]

IN NOVEMBER 1982, Californians Against Waste (CAW), an environmental coalition, presented voters with the chance to put a 5¢ deposit on beverage containers. Bottle and can manufacturers, joined by the state's grocers, poured more than $5 milliion into the campaign to beat the measure.

As in other states, the anti-bottle-bill forces were able to turn public opinion around in a few short months. In June, Californians supported the deposit measure by a two-to-one margin. In November, the measure lost with 44 percent of the vote.

That CAW was able to hold onto even that much support testifies to a well-organized Fairness campaign. They knew from the outset their only chance was to win free time. They hired a full-time Fairness Doctrine Coordinator and asked MAP and PMC for help. In September, CAW added a communications attorney—and a typist to handle the paperflow.

Ads opposing the beverage deposit—sponsored by an industry front group calling itself Californians for Sensible Laws (CSL)—hit the air early, in August. Within ten days, CAW sent a letter to all 500 California stations asking for a 2 to 1 ratio in free spot time. CAW urged broadcasters to refuse to sell time to CSL and thereby avoid a Fairness situation at all (see Appendix A).

By election day CAW had negotiated an average 3 to 1 ratio on 157 stations, virtually every station that had sold time to CSL. CAW estimates the free time was worth $600,000. Negotiating mainly by phone, CAW accepted any offer of 4 to 1 or better immediately, holding out for a better deal from stations that offered less. Some of these stations dickered, willing to increase frequency by running a thirty-second spot more often than a sixty-second spot. Very few stations refused to negotiate.

One of these was KTZO-TV in San Francisco. It didn't respond to CAW's letter, and phone calls went unreturned. CAW finally contacted the station's Public Affairs Director and simply negotiated a 2 to 1 ratio without top management's involvement. While most Public Affairs Directors lack such authority, it might be worth a try before filing a formal FCC complaint.

Thorough planning and staff support made a big difference for CAW. But another factor was also working in their favor. In the wake of PMC v. KATY and DeVries' cases, California stations are awake to the implications of the Fairness Doctrine like those in no other state. They're well aware of their obligations and prepared to negotiate in full faith.

The moral? The more the Fairness Doctrine is used, the easier it gets.

Massachusetts Nuclear Referendum Campaign [1982]*

IMAGINE YOU'RE IN the last week of a hard-fought and bitterly contested referendum campaign. Suddenly you learn that your heavily-financed corporate opponents have launched a surprise TV and radio advertising blitz.

You have no ads prepared, no money to buy airtime. Less than five days remain before the vote and the opposition's ads are running on dozens of stations every hour of the day and night.

That was the situation facing the Massachusetts Nuclear Referendum Campaign (MNRC) in November 1982. Yet what seemed to be an impossible situation became, in twenty-four hours, a 100% Fairness Doctrine victory.

By Saturday night every radio and TV station that sold time to the industry's Committee for Responsible Policy in Low-Level Nuclear Waste also provided time for MNRC spots, at an average 3 to 1 ratio. And MNRC went on to win the vote by a wide margin.

Here's how MNRC made a miracle.

They anticipated the industry's campaign and began to prepare a Fairness response strategy ten months before the election. In February MNRC held a training session for key staff and volunteers from across the state. The volunteers learned how the Fairness Doctrine works and how to monitor local stations. Throughout the campaign MNRC maintained a vigilant "media watch." In the final month, volunteers called many stations nearly every day to determine if the ad blitz was beginning. MNRC mailed a "pre-emptive" letter in early October, informing stations of their Fairness obligations (see Appendix A).

Then MNRC sat back and awaited the inevitable.

Just a week before election day, volunteer reports came in indicating the start of a radio blitz. A few stations called MNRC directly, said they had sold time, and asked for spots to satisfy the Fairness Doctrine.

MNRC quickly swung into action. A major financial backer issued an emergency grant for radio production. Scripts were approved over the phone, and a professional production firm recorded the spots. Another MNRC office revved up to coordinate negotiations and distribute tapes. Tom Kinder of the Fund for Secure Energy and Andrew Schwartzman of MAP, both of whom had helped MNRC prepare its Fairness campaign, were put on alert. Kinder helped at headquarters; Schwartzman applied muscle in Washington.

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*Our thanks to Tom Kinder and David Creighton for this report.

Inside forty-eight hours, every radio station in the state had been contacted to find out which were running the industry ads. Negotiations were opened. But a few refused to negotiate, claiming their news and public affairs coverage gave adequate balance.

With Schwartzman's aid, a preliminary complaint was filed against the largest station by telegram on Thursday night (see Appendix A).

MNRC also called the Chief of the FCC's Fairness/Political Broadcast Branch at home. On Friday morning, MNRC and the station's attorneys negotiated a settlement and the complaint was withdrawn.

With this precedent, and more pressure from Schwartzman, every station that had carried the industry's ads was airing MNRC ads for free by Friday night.

Before the group could catch its breath, the TV campaign broke in Boston and Worcester. The spots began on Friday afternoon and blitzed for the next four days. Meeting late Friday night, MNRC wrote a TV response script, taped it Saturday morning, and readied it for air that afternoon.

But negotiations with the TV stations were extremely difficult. As the opposition probably expected, station management was unavailable over the weekend. MNRC was forced to wade through entire news departments and technical staffs before station managers could be reached. Even then, the managers claimed they could do nothing until Monday morning.

Unwilling to accept the delay, MNRC lodged several formal complaints with the FCC on Saturday afternoon. The FCC staff, working around the clock seven days a week right before elections, contacted station managers at home and encouraged them to make immediate arrangements with MNRC. By Saturday evening, MNRC's TV spots were running on three out of four stations. The last station came to terms in a face-to-face meeting Sunday morning.

MNRC's success went unnoticed by the nuclear industry until late Sunday. On Monday, they issued a bitter release to the press, charging that MNRC had misrepresented its financial situation and should not be eligible for free time under the Cullman Doctrine. The allegations received only limited attention and MNRC was able to rebut them.

In the end, eighteen radio and four TV stations ran MNRC ads for a total of $20,000 of free airtime. Despite the short notice, careful preparation led to complete success and made a major contribution to the 68 percent to 32 percent victory.

Notes

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9. 6 FCC 178 (1938)
10. 8 FCC 333 (1941)
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12. 11 FCC 372 (1946)
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7. *Madalyn Murray,* 40 FCC 647 (1965)
8. *Women Strike for Peace*, 25 FCC 2d 890 (1970)

9. *David L. Rice,* 45 RR 2d 1389 (1979)
10. *The Ridgewood Group,* 43 RR 2d (1978), aff'd, 45 RR 2d 649 (1979)
11. *KKHI,* 47 RR 2d 839 (1980)

Chapter III

1. *KKHI,* 47 RR 2d 839 (1980)
2. *Citizens to Tax Big Oil,* 47 RR 2d 1046 (Broadcast Bureau, 1980)
3. 44 RR 2d 947 (1978)
4. *Committee for Fair Broadcasting,* 25 FCC 2d 283 (1970)
5. *John H. Bickel,* 45 RR 2d 797 (1979)
6. See the case history, *Public Media Center v. KATY,* for a discussion of this landmark case involving the calculation of balance in terms of total time, frequency and audience time.
7. *National Coalition on the Crisis in Education,* 26 FCC 2d 586 (1970)
8. 47 RR 2d 1182 (1980)
9. See EDF case history.

Chapter IV

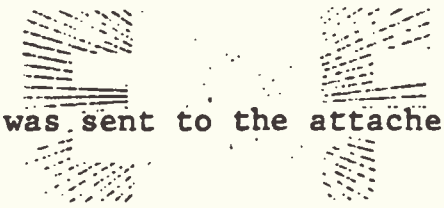
1. *Bankrolling Ballots Update 1980: The Role of Business in Financing Ballot Question Campaigns.* Steven D. Lydenberg, Council on Economic Priorities, 84 Fifth Avenue, NY, NY 10011, 1981; *Taking the Initiative: Corporate Control of the Referendum Process through Media Spending and What to Do About It.* Mastro, Costlow and Sanchez, Media Access Project, 1980.
2. *First National Bank of Boston v. Bellotti,* 434 U.S. 765 (1978)

Chapter V

1. *Public Media Center v. KATY et al.,* 59 FCC 2d 494, 517–518, [37 RR 2d 263] (1976), aff'd in part, remanded in part, 587 F 2d, 1325 [44 RR 2d 721] (DC Ct of Appeals 1978); on remand, 72 FCC 2d [45 RR 2d 175] (1979).
2. *Environmental Defense Fund,* 90 FCC 2d 658 (1982)

APPENDIX A

MODELS FOR CORRESPONDENCE



[This letter was sent to the attached list of broadcasters.]

December 4, 1978

Dear Broadcaster

The Environmental Defense Fund ("EDF")[1], Friends of the Earth ("FOE")[2], Citizens for a Better Environment ("CBE")[3], the Sierra Club[4], Public Media Center ("PMC")[5], Solar Lobby[6], San Francisco Ecology Center[7], Zero Population Growth("ZPG")[8], California Citizen Action Group[9], California Solar Action Network ("CSAN")[10], and Californians for Nuclear Safeguards ("CNS")[11] are seriously concerned about the Pacific Gas and Electric Company's television advertising campaign[12] which is promoting the construction of nuclear-and coal-fired electric power plants. These editorial advertisements, which have been broadcast by your station during the past several weeks in prime time, address a controversial issue of enormous public importance.[13] However, your programming on this issue to date has been seriously imbalanced and one-sided. Therefore, pursuant to the fairness doctrine which has been adopted by the Federal Communications Commission ("FCC") to ensure that "the public have an opportunity to receive contrasting views on controversial issues of public importance,"[14] we request you to correct this imbalance by presenting a contrasting point of view, thereby contributing to an informed citizenry. We will be glad to work with you to achieve this end.

PG&E's ADVERTISING CAMPAIGN

PG&E's television spots are part of a comprehensive advertising campaign[15] which PG&E states

> . . . has run in newspapers throughout our service area, in our major television markets, and is scheduled in Northern California editions of selected magazines.[16]

EXHIBIT A

Environmental Defense Fund, 2606 Dwight Way, Berkeley, CA 94704 (415) 548-8906
OFFICES IN: NEW YORK, NY (NATIONAL HEADQUARTERS); WASHINGTON, DC; BERKELEY, CA; DENVER, CO

December 4, 1978
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The central focus of PG&E's television spots, taken together, is that the only course of action "[t]o keep things running in the 1980's . . ." is to ". . . begin new power plants today."[17] Therefore, the spots are "aimed at drumming up public support for more power plants."[18]

CONTROVERSIAL ISSUE OF PUBLIC IMPORTANCE

The construction of new nuclear- and coal-fired steam electric plants is a matter of enormous economic and environmental importance to the citizens of California, and is currently the focus of a heated national debate.[19] While PG&E and other electric utilities continue to promote the construction of massive new centralized power plants, the California Public Utilities Commission ("CPUC") has recently stated that:

> It is well settled in our minds that continued growth of new generating capacity is too financially and environmentally expensive for California.[20]

The CPUC, which has the legal duty to evaluate the reasonableness of public utility construction and investment plans, including PG&E's,[21] has ". . . stressed the importance of energy conservation and the need to develop alternative energy sources . . . ."[22]

A critical issue in the debate on this nations's future energy path is whether electric utilities should develop and rely primarily upon "hard technologies" which "are huge centralized and non-renewable resources such as nuclear and coal-fired plants" or "soft technologies" which "are essentially the opposite--appropriately scaled, renewable and diverse energy sources such as solar, wind and hydro."[23] In California, this debate has reached the point that the CPUC has opened its own investigation ". . . to explore the relative merits and cost-effectiveness of the entire range of options available to PG&E and its customers for providing energy services whether through energy conservation or through traditional or alternative supply technologies."[24]

Specific, feasible alternatives to the construction of new nuclear and coal-fired plants include, inter alia: 1)on-site solar space

and water heating (direct use of heat from the sun by customers); 2) increased end-use efficiency (more efficient use of electricity, often called "conservation"); 3) co-generation; 4)geothermal; and 5) wind.[25] The PG&E television advertisements do not reveal that these alternatives could replace conventional power plants. Indeed, the strong theme of the ads is that there are no alternatives.

In regulatory proceedings before the CPUC on this vital issue, PG&E has expressed reservations about the feasibility of some of these alternatives to the hard technology power plants it seeks to build.[26] However, PG&E declined the opportunity to present evidence in support of its position.[27] Ultimately, the CPUC concluded that PG&E "has notably not been vigorous" in pursuing these alternatives,[28] and applauded the efforts of environmentalists and others to persuade PG&E of the benefits of alternatives to construction of massive new nuclear- and coal-fired plants.[29]

The controversy and its public importance are clear. The issue can be stated succinctly: In order to satisfy growing energy needs, must new central station power plants (particularly nuclear or coal-fired) be constructed, or may these needs be satisfied through the development and utilization of alternative energy sources? The PG&E ads which you have aired urge only one side of that issue. Moreover they seek to create the impression that there is no controversy; and, in fact, by urging immediate and irrevocable commitment to central station power plants, they seek to forestall investigation into alternatives and to prevent timely discussion of the issue.

The implicit goal of the PG&E campaign--to convince the public that alternatives to centralized electric generating stations are not now feasible--has apparently been effective. The Governor's Assistant for Issues and Planning has concluded that PG&E's advertising campaign has already adversely impacted the solar industry and has requested PG&E to "immediately terminate" the campaign.[30]

THE FAIRNESS DOCTRINE

The FCC's fairness doctrine applies to editorial advertisements such as PG&E's television spots.[31] The PG&E campaign parallels

December 4, 1978
Page Four

" . . . the major arguments advanced by partisans on one side or the other of a public debate."[32] The fairness doctrine imposes two duties on a broadcaster: 1) the broadcaster must present coverage of issues of public importance, and 2) such programming must fairly reflect differing viewpoints on controversial issues.[33] Indeed the FCC regards

> . . . strict adherence to the fairness doctrine--including the affirmative obligation to provide coverage of issues of public importance--as the single most important requirement of operation in the public interest--the sine qua non for grant of a renewal of a license.[34]

Based on our information, derived from monitoring, information supplied by broadcasters, and PG&E's publicity releases, we understand that your station has broadcast at least PG&E spots, including "dollhouse," "sun car" and "sun spot," in prime time during the months of October and November. Your broadcasts of PG&E's editorial advertisements which promote the construction of new nuclear- and coal-fired electric generating stations present only one side of this critically important issue. According to our members who routinely view the evening news, public affairs and other non-entertainment programs in your broadcast area, and/or our knowledge of your past programming we believe you have totally failed to air views contrasting to those of PG&E. Therefore, we request that you immediately make arrangements for the broadcast of such contrasting views.

Our memberships are representative of northern California power consumers.[35] Our coalition contains organizations with expertise on a wide range of alternative energy technologies,[36] and with vast experience in public education.[37] We are unable to purchase airtime for such a presentation. However, the FCC has made it clear that even when one side buys time, and no responsible spokesperson for the other side can afford to buy time, then free time must be given to the other side.[38] We would be pleased to assist you in satisfying your fairness doctrine obligation and we offer our services in preparing pre-recorded spots.

We request that you respond to this letter within ten days. We would be glad to discuss any matter we have raised in greater detail.

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Page Five

If you feel that you have met your obligation under the fairness doctrine in some manner we have been unable to determine, please inform us of the specific times and substance of contrasting and/or balanced programming which you have aired. Otherwise, please let us know exactly how you plan to meet your obligation, including whether you desire our assistance.

In conclusion, we feel that by working together at the local level we can ensure the protection of that:

> . . . paramount right of the public in a free society to be informed or to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by various groups which make up the community.[39]

Yours sincerely,

David B. Roe
Regional Counsel

for

Environmental Defense Fund
Friends of the Earth
Citizens for a Better Environment
Sierra Club
Public Media Center
Solar Lobby
San Francisco Ecology Center
Zero Population Growth
California Citizen Action Group
California Solar Action Network
Californians for Nuclear Safeguards

DBR:jm
cc: Media Access Project
The Honorable Charles Ferris, Chairman, FCC
The Honorable Robert E. Lee, Commissioner, FCC
The Honorable Tyrone Brown, Commissioner, FCC
The Honorable James H. Quello, Commissioner, FCC
The Honorable Joseph R. Fogarty, Commissioner, FCC
The Honorable Margita E. White, Commissioner, FCC
The Honorable Abbott M. Washburn, Commissioner, FCC

FOOTNOTES

1) EDF is a non-profit public membership organization composed of scientists, lawyers, economists, educators and other concerned citizens dedicated to the protection and enhancement of the human and natural environment through research and education and through legislative, administrative and judicial action. EDF has approximately 43,000 members nationwide, of whom approximately 7,000 reside in California.

2) FOE is a non-profit public membership organization committed to the preservation, restoration and rational use of the ecosphere. FOE has approximately 20,000 members in the United States and over 6,000 in California.

3) CBE is a national public interest environmental organization involved in a wide range of energy issues. CBE has approximately 25,000 members in the United States, of whom approximately 2,000 reside in the Bay Area.

4) The Sierra Club is a non-profit membership organization. Its nationwide membership includes approximately 50,000 northern Californians. The Sierra Club is involved in a broad range of concerns including energy.

5) PMC is a non-profit public interest media resource agency. PMC provides issue-oriented non-profit organizations with media and public relations materials for communicating with the public.

6) The Solar Lobby are the people who organized Sun Day. They are a non-profit membership organization with approximately 20,000 members throughout the United States. The Lobby continues to lobby the legislature on solar-related issues.

7) The Ecology Center is a non-profit public interest educational and research community organization. The Center has approximately 400 local members who follow and comment on local agency actions.

8) ZPG is a membership organization whose goal is to promote stabilization of the population by establishing population policy, informing the public on the impacts of population on a broad range of issues including energy, and other educational efforts. ZPG has over 1500 California members including approximately 600 in the Bay Area.

9) The California Citizen Action Group is a membership consumer organization. The Group's focus is on political issues in the food, health and energy areas. Statewide membership is approximately 5,000.

10) CSAN is the soon to be incorporated non-profit educational organization made up of the California coordinators of last years's Sun Day. CSAN's goal is to promote solar renewable energies through education and information.

11) CNS is a non-profit political organization made up of both individuals and representatives of a wide range of environmental and energy organizations. CNS sponsored the nuclear safety initiative on California's 1976 primary ballot. CNS was established to promote public acceptance and development of alternative energy technologies.

12) A PG&E memorandum describing its November 1978 advertising campaign, including copies of television and printed media advertisements, is attached as Appendix A. There are, however, other PG&E television spots not reproduced here which have been recently broadcast and fall within the scope of our concerns.

13) See, e.g., CPUC Order Initiating Investigation No. 26 dated September 6, 1978; A. Lovins, Soft Energy Paths: Toward A Durable Peace (1977); Dr. W.R.Z Willey, EDF Staff Economist, Alternative Energy Systems for Pacific Gas and Electric Co.: An Economic Analysis (1978); San Francisco Chronicle, Nov. 24, 1978, at 31 col. 1 ("U.S. To Rely on Coal, Nuclear Power"); San Francisco Chronicle, Nov. 18, 1978, at 13 col. 1 ("A True Friend of the Earth"); Sacramento Bee, Nov. 28, 1978, at B1 col. 1 ("PG&E Ad Campaign Stirs Up Debate, and Possible PUC Action"). If you wish, we can provide citations to numerous other authorities which support this contention.

14) Fairness Report, 48 F.C.C.2d 1, 33 (1974)

15) See Appendix A.

16) Letter from Lawrence R. McDonnell, PG&E Vice President--Public Relations to Wilson Clark, Assistant to the Governor for Issues and Planning 2 (Nov. 9, 1978). The letter is reproduced in Appendix B which consists of correspondence between the Governor's Assistant and PG&E concerning the advertising campaign.

17) PG&E television spot "Dollhouse" which is reproduced in Appendix A.

18) Sacramento Bee, Nov. 28, 1978, at B1 col. 1 ("PG&E Ad Campaign Stirs Up Debate, and Possible PUC Action").

19) See note 13 supra.

20) CPUC Decision No. 89316, dated Sept. 6, 1978 mimeo at 6. Decision 89316 is the final decision in proceedings on PG&E's Application's 57284 and 57285 for general rate relief.

21) Public Utilities Code §§451, 454. See also CPUC Decision 89316, dated Sept. 6, 1978 (mimeo at 6).

22) CPUC Order Initiating Investigation No. 26, dated Sept. 6, 1978 at 1.

23) San Francisco Chronicle, Nov. 18, at 31 col. 1.

24) CPUC Order Initiating Investigation No. 26, dated Sept. 6, 1978, at 2.

25) See, e.g., Dr. W.R.Z. Willey, EDF Staff Economist, Alternative Energy Systems for Pacific Gas and Electric Co.: An Economic Analysis (1978).

26) See, e.g., Transcript of Proceedings at 3717-20, 3763-66, proceedings before CPUC on PG&E Applications 57284 & 57285.

27) See generally Opening Brief of EDF at 10-12 (May 12, 1978) submitted to CPUC in proceedings on PG&E Applications 57284 & 57285.

28) CPUC Decision 89316 dated Sept. 6, 1978 (mimeo at 18).

29) Id. at 20.

30) Letter from Wilson Clark, Assistant to the Governor for Issues and Planning to John F. Bonner, President, Pacific Gas and Electric (Nov. 14, 1978). The letter is reproduced in Appendix B.

31) Fairness Report, 48 F.C.C.2d 1, 22-24.

32) Id. at 13

33) Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 111 (1973); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 377 (1969).

34) Committee for the Fair Broadcasting of Controversial Issues 25 F.C.C.2d 283, 292 (1970).

35) See notes 1, 2, 3, 4, 7, 8, 9 supra.

36) See notes 1, 2, 3, 4, 6, 9, 10, 11 supra.

37) See notes 1, 5, 7, 8, 10, 11 supra.

38) Cullman Broadcasting, 40 F.C.C. 576 (1963).

39) Report on Editorializing, 13 F.C.C. 1246, 1249 (1949).

METROPOLITAN COMMUNITY CHURCH

F. JAY DEACON, MINISTER/POST OFFICE BOX 514/HARTFORD, CONNECTICUT 06101

ALTERNATIVE CHURCH FOR THE CONNECTICUT VALLEY
A member of the Capitol Region Conference of Churches

February 22, 1977

General Manager
Television Station W H C T
555 Asylum
Hartford, Connecticut 06105

Dear sir:

It has come to our attention that your station has recently broadcast two telecasts in which a significant minority of the population, whose civil rights are currently under debate in Connecticut, and who represent a large proportion of our membership and an important focus of our ministry, came under attack. On one of the programs, our church was specifically singled out for attack; on the other (and perhaps both), a strong negative position was taken on the civil rights issue:

1. On a recent program of the "PTL Club," on which Anita Bryant was a guest, persons of homosexual affectional orientation were viciously attacked, and their civil rights opposed. Further, an appallingly one-sided argument was made--in terms of sociological considerations, theological considerations, and more--that gay persons are a threat to society, immoral, and emotionally unwell.

2. On a recent program of the "700 Club," Rev David Wilkerson, a guest, launched an even more vicious attack on homosexual persons, which included an attack on The Metropolitan Community Churches. We are dismayed that you have not contacted us for a reply, as required by the "Fairness Doctrine" of the Federal Communications Commission. We feel this to be a violation of the personal attack principle.

We feel that in both cases your station has not faithfully served its public stewardship with regard to the airwaves and the requirements of your license. We therefore request:

1. Either a tape or a transcript of each program (PTL's broadcast was seen on WHCT on approximately February 13, 1977, and 700 Club's broadcast was seen on WHCT, we believe, sometime between Feb 15 and this date).

2. A fair opportunity to reply to the statements about homosexuality, homosexual people, the moral character of homosexual people, the religious faith of homosexual people, and psychological and sociological data about homosexual people, as well as the civil rights of homosexual people. We would like to speak as homosexual people.

OFFICE: (203) 232-5110
SWITCHBOARD INFO LINE: 522-5575

3. A fair opportunity to reply to Mr Wilkerson's characterization of our church and to represent our own position and purpose as a church community. I know Mr Wilkerson too well to think that his characterization of us could have been either accurate or fair.

We believe the issues involved are certainly controversial public issues. Certainly there is enough prejudice, and bigoted and uninformed propaganda, on this issue already. We feel you have taken an undue liberty in airing these attacks without inviting us to reply. Already our phones are too busily ringing with sick and viscious calls. Already too many homosexual persons bear the deep psychic wounds of bigotry, nonacceptance and self-hate of the kind your stupid programs inspire. But we particularly resent your attacks on the quality of life and deep spirituality of people within our community.

Because the civil rights of homosexual persons are about to be voted on in the Connecticut State Legislature, we feel we may legitimately expect a prompt reply. A copy of this letter has been forwarded to the Fairness/ Political Broadcasting Branch of the Federal Communications Commission in Washington, DC.

Very truly yours,

F. Jay Deacon

Rev F. Jay Deacon
Pastor
Metropolitan Community Church
Hartford

cc: Fairness/Political Broadcasting Branch, FCC, Washington
Central Administrative Offices, Universal Fellowship of Metropolitan Community Churches, Los Angeles

Affordable Housing
We're doing something about it.

Re: Request for Time Under Fairness Doctrine

As we indicated to you in our earlier letter, we are the sponsors of Proposition "R", the Affordable Housing/Rent Control initiative on the November ballot in San Francisco. Proposition "R", as a ballot measure, is presumed to be a controversial issue of public importance (Fairness Report 48 FCC2d 1, 32 (1974)). It is our understanding that the opposition to Proposition "R" has bought a substantial number of spot announcements on your station. However, as we indicated earlier, although we cannot afford to buy time to respond to these announcements, you are under an obligation to provide us with free time to present our side of the issue (Cullman Broadcasting, 40 FCC 576 (1963)).

The most recent FCC case dealing with the Fairness Doctrine is Public Media Center, 72 FCC2d 776, released July 31, 1979. The case dealt with a complaint charging that a number of California stations had violated the Fairness Doctrine by not providing sufficient free time to the proponents of the anti-nuclear initiative in California to respond to large buys by the opposition to the initiative. In Public Media Center the FCC decided that it would look to three factors when determining if a licensee had met its obligation under the fairness doctrine: 1) the amount of time given to each side of an issue; 2) the frequency with which each side of an issue was presented; and 3) the audience potential that the presentation of each side of the issue was afforded by the scheduling of the presentations. In

San Franciscans for Affordable Housing
12 Valencia Street • San Francisco 94103 • 864-6413

using these factors the FCC found that all four stations in question had violated the Fairness Doctrine, even though three of the stations had actually devoted more time to the pro-initiative than the anti-initiative point of view (in fact, one station devoted more than twice as much time to the pro-initiative side). The FCC based its findings of violations on the inadequate scheduling (audience potential) and frequency of the pro-initiative messages.

We believe that in the present situation where the opposition to Proposition "R" has bought a substantial amount of spot time, the only way to satisfy the three criteria set forth in Public Media Center is for us to receive spot time as well. A time and frequency ratio of 2:1 (2 No on "R" spots to 1 Yes on "R" spot of the same length), with scheduling comparable to what the No on "R" side has purchased, would constitute a reasonable opportunity for the presentation of opposing viewpoints. We are presently preparing 30 and 60 second spots for your use.

We view this matter as quite urgent, as the election is rapidly approaching. If the advertising bought by our opposition is allowed to go unanswered in a meaningful fashion, and we lose the election as a result, it can truly be said that the election was bought. We don't think you want to see that result any more than we do.

For your use in evaluating our request, San Franciscans for Affordable Housing is a coalition of over 50 neighborhood, church, senior, labor, gay and political organizations. We formed in January of this year, and intend to continue to work together as a coalition after the election, in other areas of housing reform.

We will be contacting you within the next day or two to discuss these matters on a more personal basis. It is our hope that by working together we can contribute to an informed electorate.

Sincerely

Robert De Vries

DVR/ew
Enc.
cc: Mr. Arthur Ginsburg

Federal Communications Commission

NO on 10

Californians Against
Initiative Fraud

558 Capp Street
San Francisco, CA 94110
415/821-0230

Re: Request for Time Under the Fairness Doctrine and to Reject Deceptive Advertisements

I am writing on behalf of Californians Against Initiative Fraud, which is the principal statewide campaign committee organized to defeat Proposition 10 on the June 3, 1980 ballot. This letter is written to request time under the Fairness Doctrine so that the committee may respond to the advertisements paid for by Californians for Proposition 10 that have been aired on your station. In addition, this letter requests that you stop airing the false and deceptive advertisements that have been produced by the proponents of this measure.

I. Fairness Doctrine.

As you know, Proposition 10 is a ballot measure that will determine the fate of all existing rent control laws in the State of California. If passed, Proposition 10 will eliminate all existing rent control laws and make it extremely difficult for local municipalities to adopt any future rent control laws. Proposition 10 is clearly a controversial issue of public importance in the State of California. (See Fairness Report, 48 F.C.C.2d 1, 33 (1974); KING-TV, 23 F.C.C. 2d 41 (1970) (ballot measure presumed to be a controversial issue of public importance).)

The proponents of Proposition 10, landlords and other moneyed interests, have launched a multi-million dollar media campaign to convince Californians that the measure will stop rent gouging and establish reasonable controls. Californians Against Initiative Fraud does not have the money to buy time to respond to the pro-

ponents' campaign. Therefore, as you have accepted advertisements from the proponents of Proposition 10, you are under a legal obligation to provide a "reasonable opportunity for opposing viewpoints" by providing us with free time to present our side of the issue. (Fairness Report, 48 F.C.C.2d 1, 15 (1974); Cullman Broadcasting, 40 F.C.C. 576 (1963).)

In determining whether a licensee has provided a reasonable opportunity for opposing viewpoints the FCC looks to three factors: 1) the amount of time given to each side of an issue; 2) the frequency with which the views of each side of an issue was presented; and 3) the audience potential that the presentation of each side of the issue was afforded by the scheduling of the presentations. (See Public Media Center, 72 F.C.C.2d 776 (1979); Committee for the Fair Broadcasting of Controversial Issues, 25 F.C.C.2d 283, 292 (1970).) Applying these standards it is obvious that your public affairs programming does not meet the requirements of the Fairness Doctrine due to the large amount of time that Californians for Proposition 10 has purchased and the high frequency of its presentation.

In Public Media Center, supra, the Federal Communications Commission addressed Fairness Doctrine complaints filed against several California radio stations by opponents of nuclear power who claimed that they were not given sufficient free time to respond to the paid advertisements of the proponents of nuclear power. In applying the aforementioned factors of time, frequency, and scheduling the Commission found that all four of the stations in question had violated the Fairness Doctrine, even though three of the stations had actually devoted more time to the ant-nuclear point of view than to the pro-nuclear point of view (in fact, one station actually devoted more than twice as much time to the anti-nuclear point of view than to the pro-nuclear point of view). The Commission based its findings of violations on the inadequate frequency and scheduling (audience potential) of the anti-nuclear messages.

In light of the foregoing, Californians Against Initiative Fraud hereby requests time under the Fairness Doctrine to run spots that we have prepared. Given the large amount of time that the proponents are purchasing, and the deceptive nature of the spots you have broadcast (see part II of this letter) , we believe that in order to provide a reasonable opportunity for the presentation of the anti-initiative viewpoint you should provide us with a time and frequency ratio of at least 2:1 (one spot of equivalent length to every two

spots purchased by the proponents) with scheduling comparable to that purchased by the proponents.

Given the urgency of this request, please inform us as soon as possible of the time you intend to provide us. Upon your providing us with this information, we will send you the spots that we have prepared.

II. The Deceptive Advertisements of the Proponents of Proposition 10.

Time and time again the Federal Communications Commission has emphasized the responsibility of each station not to air material which it has reason to believe is misleading. That policy applies to everything from produce advertisements (Letter to the Consumers Association of the District of Columbia, October 26, 1971) to material on news and public affairs shows. (Selling of the Pentagon, 30 F.C.C.2d 150 (1971).) As discussed below, the advertisements paid for by the proponents of Proposition 10 are totally false in their characterization of the ballot measure. Responsible self-regulation dictates that your station not be a party to the fraud that the proponents of the measure are attempting to perpetrate on the people of California.

The common theme of the advertisements supporting Proposition 10 is that the measure will establish reasonable controls and fair rents. For example, the various advertisements being aired at the present time proclaim:

> "Support Proposition 10. Reasonable controls and fair rents."
>
> "What is needed in California is reasonable controls and fair rents. We need to stop the gougers and set up reasonable controls. We need Proposition 10."
>
> "Proposition 10 is reasonable controls and fair rents."
>
> "We can help put a stop to that kind of gouging by supporting Proposition 10. Reasonable controls and fair rents."

Each of these statements is false. Proposition 10 does not establish any controls and does not regulate any rent levels. It is a constitutional amendment that prohibits statewide rent control and establishes stringent guidelines to be followed if a local municipality desires to enact any rent control law. In those cities where no rent control exists, the passage of Proposition 10 will not in any way establish reasonable controls or ensure fair rents. In those cities where rent control does exist, the passage of Proposition 10 will invalidate the existing rent control law at the next election. The passage of Proposition 10 does not in any way control rent levels or ensure fair rents. If anything, the passage of proposition 10 will escalate rent levels by invalidating existing rent control laws.

In a recent letter to apartment owners, Howard Jarvis stated: "We qualified the initiative to end all current rent control laws in California, to ban statewide rent controls, and to severely restrict any future rent control proposals--it will be known as Proposition 10." Although landlords know the truth about proposition 10, their campaign is directed to communicating a false message to California voters.

If your station continues to air false advertisements in support of Proposition 10, your station will have assisted Californians for Proposition 10 in buying the election through a deceptive, mult-million dollar media campaign. We are confident that your station will not be a party to this fraud.

Should you desire to discuss further the matters raised in this letter, please do not hesitate to contact me.

Sincerely yours,

Robert De Vries
Legal Coordinator

DECLARATION OF PARKE K. SKELTON

I, PARKE K. SKELTON, do declare:

1. I am Campaign Coordinator for Californians Against Initiative Fraud.

2. Californians Against Initiative Fraud is the principal statewide campaign committee opposing Proposition 10 on the June 3, 1980, statewide election ballot. Californians Against Initiative Fraud has filed a statement of organization with the California Secretary of State as required by the Political Reform Act of 1974 and has been assigned Identification Number 800086.

3. Under the Political Reform Act of 1974, Californians Against Initiative Fraud is required to file periodic campaign statements showing receipts and expenditures. On February 15, 1980, the Committee filed its first statement, which is a matter of public record, showing receipts of $ 4,569.00 and expenditures of $ 2,802.00. (The proponents of Proposition 10 filed a campaign statement showing receipts of approximately 2.1 million dollars and expenditures of 1.8 million dollars.) The most recent campaign statement filed by Californians Against Initiative Fraud on April 19, 1980, which is also a matter of public record, showed total receipts for the campaign of $ 19,524.00 and total expenditures of $ 15,377.00. Hopefully, the Committee will be able to raise more money in the month of May. (However, we recently cancelled a $ 125.00-a-plate fundraising dinner scheduled for May 8, 1980, because of an inability to secure sufficient attendance.)

4. At this time, the expenditures for Californians Against Initiative Fraud are in the following areas: office space,

salaries, postage, telephone, printing, and television and radio spot production. The Committee has not purchased any radio or television time and does not have a budget for the purchase of such time. However, the Committee is producing two radio spots and two television spots in anticipation of receiving free air time under the fairness doctrine, because of the Committee's inability to purchase time and because of the large number of buys that the proponents of Proposition 10 have made throughout California. (In the southern part of California alone, we have identified over 80 radio and television stations that have sold time to the proponents of Proposition 10.)

5. The campaign against Proposition 10 is primarily a grassroots campaign. There is no way that Californians Against Initiative Fraud will be able to raise anywhere near the amount of money raised by the proponents of Proposition 10 -- estimated to be 6 million dollars. At this time, it is not expected that the Committee will be able to raise sufficient money to purchase radio or television time.

6. The facts set forth in this declaration are within my personal knowledge.

Executed on April 29, 1980, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

PARKE K. SKELTON

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

western union Mailgram®

UNITED STATES POSTAL SERVICE U.S.MAIL

4-066800S128002 05/07/80 ICS IPMRNCZ CSP SFOB
1 4158210230 MGM TDRN SAN FRANCISCO CA 05-07 0519P EST

ROBERT DE VRIES
588 CAPP ST
SAN FRANCISCO CA 94110

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

4158210230 MGM TDRN SAN FRANCISCO CA 261 05-07 0519P EST
ZIP
ARTHUR GINSBURG
FEDERAL COMMUNICATION COMMISSION
1919 M ST NORTHWEST
WASHINGTON DC 20554
FAIRNESS DOCTRINE COMPLAINT AGAINST:
KKHI SAINT FRANCIS HOTEL, UNION SQUARE SAN FRANCISCO CALIFORNIA 94119
BY: ROBERT DE VRIES
CALIFORNIANS AGAINST INITIAVE FRAUD
558 CAPP STREET SAN FRANCISCO CALIFORNIA 94110
TELEPHONE 415-821-0230

WE REQUEST IMMEDIATE ACTION ON THIS COMPLAINT, AS IT INVOLVES A BALLOT MEASURE TO BE VOTED ON JUNE 3, 1980.
WE ARE THE ONLY ORGANIZATON THAT HAS FILED WITH THE CALIFORNIA SECRETARY OF STATE IN OPPOSITION TO STATE PROPOSITION 10. THROUGH REGULAR LISTENING WE HAVE DETERMINED THAT KKHI HAS BEEN AIRING A LARGE NUMBER OF SPOT ANNOUNCEMENTS IN FAVOR OF CALIFORNIA VALID PROPOSITION 10, FROM MID-MARCH THROUGH THE PRESENT. WE ARE AWARE OF NO PROGRAMMING THAT HAS AIRED ON KKHI IN OPPOSITION TO PROPOSITION 10. ON APRIL 22, 1980 A REQUEST OF KKHI TO PRESENT OPPOSING VIEWPOINTS THAT WE HAVE PREPARED WAS MAILED TO JAMES P HICKEY JR KKHI GENERAL MANAGER. COMMENCING MONDAY MORNING MAY 5, 1980 NUMEROUS ATTEMPTS WERE MADE TO REACH MR. HICKEY OR MR. WHITING THE OPERATIONS MANAGER OF THE STATION, THE CALLS WERE NOT RETURNED. ON MAY 5, 1980 WE WERE FINALLY ABLE TO REACH MR. WHITING, WHO BECAME ABUSIVE AND HUNG UP THE TELEPHONE BEFORE THE END OF THE CONVERSATION.
KKHI HAS VIOLATED THE FAIRNESS DOCTRINE IN THAT THEY HAVE NOT MET THEIR AFFIRMATIVE OBLIGATION TO SEEK OUT OPPOSING VIEWPOINTS, AND TO THIS DAY ARE REFUSING TO ENTER INTO GOOD FAITH NEGOTIATIONS TO REDRESS THE IMBALANCE THAT THEY HAVE ALLOWED TO DEVELOP. WE REQUEST COMMISSION ACTION TO REMEDY THIS IMBALANCE.
ROBERT DE VRIES

CC JAMES P HICKEY JR
17:19 EST

MGMCOMP MGM

Mr. John Hansen
General Manager
KPTV-12
P.O. Box 3401
Portland, Oregon
August 8, 1980

Re: People's Utility District Ballot Measure

Dear Mr. Hansen

We are writing you as representatives of the Multnomah County People's Utility District Coalition. The Coalition was organized in October, 1979 for the purpose of forming a People's Utility District (PUD) in Multnomah County and successfully gathered 14,000 signatures to place the isuse on the November, 1980 ballot. The Coalition consists of approximately 70 member organizations including the Ratepayers Union, Gray Panthers, Portland Federation of Teachers, Oregon Consumer League, Multnomah County Grange, and a number of labor unions.

The PUD ballot measure is a controversial issue of public importance and we anticipate that the private utility companies will seek to purchase substantial commercial time form local broadcasters to oppose the measure.

We strongly believe that an informed electorate should decide whether a PUD would better serve the needs of our community. This important decision should be made on a reasoned basis and not on the basis of prejudice and bias stirred by a mass advertising campaign or media blitz. As a "public trustee" of the frequency under your control, we believe you have a legal and moral obligation to avoid such misuse of your broadcasting facility.

Our primary concern is that the voters not be left uninformed on this controversial issue. The voters should be presented with the facts and arguments on both sides of the PUD issue and the information should be presented in an even handed manner. The voters will not be adequately informed if they are presented with substantially more information and argument on one side of the issue than the other.

Mr. John Hansen
page 2

As you know, the Federal Communications Commission devotes much attention to questions of fairness when ballot measures raise controversial issues of public importance. In its 1974 Fairness Report, the Commission stated:

> "The existence of an issue on which the community is asked to vote must be presumed to be controversial issue of public importance, absent unusual circumstances ....It is precisely within the context of an election that the fairness doctrine can be best utilized to inform the public of the existance of and basis for contrasting viewpoints on an issue about which there must be a public resolution through the election process."
> Fairness Doctrine and Public Interest Standards,
> 39 Fed. Reg. 26384, note 31.

By application of the fairness doctrine, the FCC attempts to ensure that the electorate is not left uninformed on issues of public importance

Our legal opinion is that the fairness doctrine requires local broadcasters to present the PUD issue to the electorate in a balanced manner. We are further advised that to determine whether balance has been achieved the following factors are especially significant:

1. The total amount of broadcast time devoted to opposing viewpoints.
2. The frequencey with which programs or spot messages are aired on each side of the issue.
3. The placement of programs or spot messages in relation to audience size (e.g., program placement in TV "prime time" and radio "drive time).
4. The opportunities provided non-profit citizen groups for production and broadcast programming of professional quality where one side has purchased and aired high quality programming.

We do not believe that programming balance on the PUD issue can be achieved unless the foregoing factors indicate a rough equality of effective programming on both sides of the issue.

WRH

Mr. John Hansen
page 3

We understand that citizen groups have traditionally raised a fairness complaint after unfair programming has occured. However, we think it is to our mutual benefit that a positive effort be made in advance to avoid programming imbalance. Again, our concern is that the voters be adequately informed before the election. We wish to cooperate with you in any way we can to achieve a fair election.

The FCC has indicated that the approach we suggest is essential so that programming imbalance on controversial issues can be anticipated and avoided. In fairness situations a broadcaster has a "clear obligation. . . to plan his programming in advance so that he is prepared to afford reasonable opportunity for presentation of contrasting views on the issue, whether or not presented in paid time." 39 Fed. Red. 26384.

To determine whether the public will be provided with balanced programming on this issue we would like to discuss with you any programming commitments you have made with the private utilties and reach an understanding with you as to any future commitments. We would also like to discuss your plan for achieving a balanced presentation on the PUD issue. So that our discussions are as productive as possible, we suggest a written programming plan for review at our meeting. We would also appreciated the opportunity of reviewing copies of any advertising agreements you have reached with private utilities relating to this issue.

Again, we want to emphasize that our intent is to work with you in a positive way to achieve balanced programming on an issue of great importance to our community. We will contact you in a few days to arrange for a mutually convenient time for a meeting. If possible, we would like to meet with you on August 18, 19, 20 or 21.

We thank you in cooperation.

Multnomah County People's Utility
District Coalition Legal Team

Dick Baldwin

WRH

CALIFORNIANS AGAINST WASTE

Campaign Committee: Californians for Recycling and Litter Clean-up
4025 Sepulveda, Culver City, CA 90230
(213) 390-8653

August 6, 1982

Station Manager
KNBR AM
1700 Montgomery St., Ste. 400
San Francisco, CA 94111

Re: Request For Time Under Fairness Doctrine

Dear Station Manager:

I am writing on behalf of Californians For Recycling and Litter Clean-up, the chief proponents of Prop. 11, the Can and Bottle Recycling Initiative on November's ballot. Prop. 11 is a returnable container law similar to those in existence in Oregon and eight other states. If passed, it would require that beer and soft drink cans and bottles be returnable for a minimum five-cent deposit.

Our members have alerted us that your station is broadcasting advertisements produced by the opponents of Prop. 11, who identify themselves variously as Californians for Sensible Laws, Californians for Fair Government, and the California Campaign Committee.

As you know, the Federal Communications Commission's Fairness Doctrine requires that broadcasters present "contrasting views on controversial issues of public importance," (See Fairness Report 48 FCC 2d at 33, 1974), and states that a ballot initiative "must be presumed to be a controversial issue of public importance." (48 FCC 2d 1, 32, 1974.)

When one side of an issue buys advertising time and no responsible spokesperson for the other side can afford to buy time, the FCC has ruled that broadcasters must provide balancing time free of charge. (See Cullman, 40 FCC 576, 1963.)

Furthermore, in order to provide adequate balance, broadcasters are obliged to provide comparable air time to both sides of an issue, using the following as criteria:

1. The amount of time given to each side of an issue;
2. The frequency with which the views of each side are presented; and
3. The audience potential afforded by the scheduling of the respective presentations.

(See Public Media Center v. KATY, 72 FCC 2d 776, 1979; Committee for Fair Broadcasting of Controversial Issues, 25 FCC 2d 283, 292, 1970.)

4.15

The opponents of Proposition 11, a coalition of container manufacturers, beverage producers, and supermarket chains, have already raised more than $1.5 million to fight the initiative. In eight of the nine states where deposit laws have appeared on the ballot, similar coalitions have broken all prior campaign spending records in opposing the measures. The fact that CSL has already raised unprecendented amounts indicates they may exceed California spending records as well.

By comparison, CRLC's current balance is $4,824.82. We are in no position to purchase media advertising at this time.

Voters deserve a full and fair public debate on this measure. That interest cannot be served if the opponents of Prop. 11 are able to drown out the contentions of the proponents through saturation advertising on the public airwaves. We are determined to take every action legally available to see that this does not happen.

We intend, therefore, to press our full rights under the Fairness Doctrine.

We believe that in the present situation, where the opposition to Prop. 11 has purchased a substantial amount of spot time, the only way to satisfy the criteria set forth under the Public Media Center is for us to receive spot time as well. A time and frequency ratio of not less than 1:2 (one "Yes" spot for every two "No" spots), with scheduling comparable to what CSL has purchased, would constitute a reasonable opportunity for the presentation of opposing viewpoints.

We are presently preparing 50-second spots for your use, and will produce spots of other lengths if you desire.

We are certain you understand the position we are in. We believe imbalanced presentation of this issue threatens the public's constitutionally guaranteed right to a full and fair presentation of both sides of major ballot issues.

At the same time, we understand that at some point it becomes unprofitable for you to accept political advertising from one side of an issue if the other side presses for free response time.

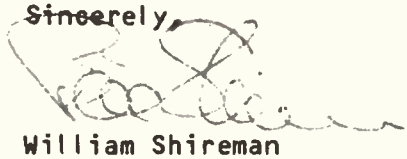
Therefore, as an alternative to the formula set forth above, we remind you of your right to refuse to sell advertising time to either side of a controversial public issue, and to cover the issue instead as a part of your normal news and public affairs programming (See 48 FCC 2d at 32, 1974; Red Lion, 1969).

We view this matter as quite urgent. If the advertising bought by our opposition is allowed to go unanswered for a long period of time, public opinion might be closed to new points of view before we have the opportunity to be heard.

Please inform us within ten days how you plan to carry out your fairness obligations. We are willing to work with you to come to a resolution which is mutually satisfactory.

In a democracy, the merit of an idea must be judged not by the money spent to promote it, but by the wisdom of its content. It is our hope that we can work together to contribute to the cause of a fully informed electorate in California.

Sincerely,



William Shireman
Legal Affairs Director

WS/jc

MASS. Nuclear Referendum
CAMPAIGN

October 13, 1982

Dear Station Manager:

We are concerned that your station may be approached by the nuclear industry's Committee for Responsible Policy on Low-Level Nuclear Waste, seeking to buy airtime for advertisements relating to Question 3 on this fall's ballot. We are writing in advance because if they do begin to advertise at this late stage in the campaign it will put a strain on both you and us to guarantee the fulfillment of the FCC's Fairness Doctrine. We hope this letter will help you plan for compliance in advance and make our relationship work as smoothly as possible. Since so little time will remain between when the industry begins advertising and election day, we hope to be on the air with response spots within a day or two of their inception.

We are forced to seek free air time from you through the FCC's Fairness Doctrine and Cullman doctrine because we are sorely underfinanced, as opposed to the industry effort which can afford a massive media blitz. While we would have preferred to have waged our campaign over the airwaves, we have only been able to take it door-to-door, person to person, with inexpensive literature and by word of mouth, and by occasional appearances in the press or on the news.

If the industry alone were able to advertise on the airwaves, it would create a great imbalance of coverage of the issue. Since most people get their information from radio and television, that would be extremely unfair to the people's side of the issue. Fortunately, the Fairness Doctrine exists because the FCC and courts feel it is "important in a democracy that the public have the opportunity to receive contrasting viewpoints on controversial issues of public importance -- that 'robust, wide-open debate' take place." The FCC has further stated that:

> "It is precisely within the context of an election that the fairness doctrine can be best utilized to

21 Quint Street #2 Allston, Massachusetts 02134 617/787-0611

> inform the public of the existence of and basis for contrasting viewpoints on an issue about which there must be a public resolution through the election process."

We understand from studying the Fairness Doctrine and discussing it with our lawyers in Washington and other experts that it is a station's duty to present both sides of a controversial issue of public importance; a ballot initiative like Question 3 is such by definition, and therefore we can expect compliance with the FCC's regulations. For that reason, we will not approach stations carrying industry spots in hysteria, but rather with the attitude that we are here to make the station's job easier. Specifically, we will help stations air prepared messages to represent our side of the issue, as well as any other programming they may desire.

We are seeking funds now to produce those messages. It is clear to us that we will be lucky to have enough money for production, and that purchasing air time will be out of the question. The FCC guarantees our right to be represented on the air in the Cullman doctrine, which provides that if a station "has been unable to obtain paid sponsorship for the appropriate presentation of the opposing viewpoint or viewpoints, he cannot reject a presentation otherwise suitable to the licensee -- and thus leave the public uninformed -- on the ground that he cannot obtain paid sponsorship for that presentation." We hope to be able to provide stations with suitable presentations as soon as needed.

The most comprehensive recent interpretation of the Fairness Doctrine was compiled by the U.S. Court of Appeals for the District of Columbia Circuit and by the FCC during the Public Media Center Case. The case arose after a nuclear referendum in California in 1976. We hope to avoid damaging rulings against stations in Massachusetts by following the guidelines set out by that decision and helping stations to comply with them.

In the Public Media Center Case, the FCC mentions three areas of compliance with the Fairness Doctrine: total time, frequency, and potential audience. In other words, if the nuclear industry is running thirty spots per week on a station, the FCC would look at the total amount of time given to our contrasting viewpoint, and would also look at whether or not that time came at a comparable frequency and during comparable times of day. In such a situation, the Court listed other considerations, such as a balance of one-sided programming, of identical repeated messages, and of professionally prepared spots. In a situation where the industry is running such a set of spots, we hope to obtain free time for similar spots, as is our right.

The question of whether or not we receive free time we hope is non-debatable. If a station has some question, we will gladly provide an expert legal opinion to help explain our position. If a station simply refuses to comply, we will regretfully begin the procedure of filing a complaint with the FCC.

The question of quality of airtime is made clear by the Public Media Center Case — that the contrasting viewpoint is entitled to a presentation similar to, in kind and time, that of the opposition.

The question of what makes a balance of presentation fair is not made clear at all. This is up to the interpretation of the FCC given the individual situation of each case. The more important the issue, the closer the balance must be, however. We feel that because the nuclear industry is prepared to spend large sums of money to convey its point of view, and more importantly because the outcome of Question 3 will affect the health and safety of every citizen in the Commonwealth, this issue is one of the most controversial and important ever to be raised here.

We hope stations will present our messages at a ratio of one to every three run by the industry. In similar referenda around the country on the nuclear issue, this has been the average balance, although some stations have actually played response spots at a ratio of one to one, and others a bit less than one to three. We hope you will plan your schedule accordingly, if you accept the nuclear industry's spots.

If we should receive funding beyond our expectations, we will buy as much airtime as possible. In the meantime, we are counting on stations to provide us with free time in the spirit of fairness and public service.

For the convenience of the stations, we will establish one person as the representative of our group for each station. Our representative will try to establish a healthy working relationship with the station and will try to negotiate any problems a station may have complying with the Fairness Doctrine.

Once again, we would like to emphasize that if the industry buys air time from you, speed will be essential for the Fairness Doctrine to be fulfilled. The FCC will expedite considerations of complaints in ballot situations, although we hope that complaints won't be necessary since the situation with Question 3 is so clear. We hope you will call us as soon as your advertising staff has an indication that the industry will buy airtime on your station. In that way, we may both work quickly to insure that your audience receives a fair, balanced presentation of the issue.

For now, please contact me at our state office with any information or questions you may have. If and when you run industry spots, we will provide you with a local representative with whom you may work out the details of our response.

Thank you very much.

Sincerely,

David L. Creighton
Executive Director
(617)787-0611

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

Western Union Mailgram®

4-000776B302-053 10/29/82 ICS SOTSCTJ MLTN BSNB
SUSPECTED DUPLICATE: 4-061761B301002 ICS IPMMTZZ CSP
1 6175228150 MGM TDMT JAMAICA PLAIN MA 10-28 0957P EST

DAVID CREIGHTON
71 MORAINE ST
JAMAICA PLAIN MA 02130

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

6175228150 MGM TDMT JAMAICA PLAIN MA 431 10-28 0957P EST
ZIP
JASON L SHRINKSY
CARE OF EISEN & SHRINSKY
1120 CONNETICUT AVE NORTHWEST
WASHINGTON DC 20036
THE MASSACHUSETTS NUCLEAR REFERENDUM CAMPAIGN IS THE PROPONENT OF QUESTION #3 ON THE NOVEMBER 2ND BALLOT IN MASSACHUSETTS. THE QUESTION DEALS WITH A CONTROVERSIAL ISSUE OF PUBLIC IMPORTANCE, THE SITING REQUIREMENTS FOR NEW NUCLEAR POWER PLANTS AND RADIOACTIVE WASTE FACILITIES. WE ARE CONTACTING YOU BECAUSE WE ARE CONCERNED ABOUT THE BALANCE OF COVERAGE OF THIS ISSUE BY RADIO STATION IN WORCESTER MASS. BASED ON OUR KNOWLEDGE OF THE OVERALL PROGRAMMING OF STATION TO DATE, WE DO NOT BELIEVE THAT THERE HAS BEEN A SIGNIFICANT IMBALANCE IN OVERALL PROGRAMMING WHICH STANDING ALONE WOULD RAISE A CLEAR CUT QUESTION OF FAIRNESS DOCTRINE VIOLATION. IN PARTICULAR, OVERALL COVERAGE HAS BEEN CHARACTERIZED BY A LOW FREQUENCY OF PRESENTATIONS OF BOTH POINTS OF VIEW. HOWEVER, BASED ON THE FACT THAT THERE HAS BBEEN A VERY SUBSTANTIAL PURCHASE OF AIR TIME BY THE OPPONENTS OF QUESTION #3 ON OTHER RADIO STATIONS ON 10/27/82 AND 10/28/82, WE BELIEVE THAT AN IMMINENT PURCHASE OF ADVERTISING ON WILL CREATE A TREMENDOUS FREQUENCY IMBALANCE, OF A MAGNITUDE THAT WE ARE UNABLE TO STATE, IN THE FINAL FOUR DAYS BEFORE THE ELECTION. STATION MANAGER STATED IN A PHONE CONVERSATION WITH DAVID CREIGHTON ON THURSDAY, 10/28/82, AT 5PM, THAT HE WAS UNWILLING TO INFORM MR CREIGHTON IF ADVERTISING TIME WAS PURCHASED, SINCE IT WAS A CLIENT CONFIDENTIAL MATTER BETWEEN THE STATION AND THE PURCHASER. MR ALSO TOLD MR CREIGHTON THAT HE UNDERSTOOD THAT HE WAS NOT REQUIRED TO, NOR WOULD HE, ALTER HIS PROGRAMMING PLANS IF THERE WAS A PURCHASE OF ADVERTISING BY THE INDUSTRY. HE ASSERTED THAT THE NEWS AND PUBLIC AFFAIRS PROGRAMMING ON WAS SUFFICIENT TO PROVIDE A BALANCED PRESENTATION OF THE ISSUE, REGARDLESS OF THE FREQUENCY IMBALANCE THAT WOULD OCCUR WITH THE PURCHASE OF PROFESSIONALLY PRODUCED, REPEATED SPOT ADVERTISEMENTS. THEREFORE, WE ARE ASKING THE COMMISSION TO INSTRUCT TO COMPLY WITH ITS FAIRNESS DOCTRINE OBLIGATIONS, INCLUDING CONSULTATION WITH THE STATION LISTENERS AND THAT IT DO SO TODAY, FRIDAY, 10/29/82, SO THAT WE MAY UNDERSTAND WHAT THE STATION PLANS FOR PROGRAMMING ARE AND MAKE AFFIRMATIVE PLANS WITH THE STATION TO

Western Union Mailgram®

INSURE THAT THERE IS A BALANCED PRESENTATION OF THE ISSUE. IN VIEW OF THE SHORTNESS OF TIME BEFORE THE ELECTION, I AM SENDING A COPY OF THIS COMMUNICATION TO THE STATION'S ATTORNEY, MR JASON SHRINSKY, AND EXPECT TO HANDLE THIS MATTER BY TELEPHONE.

DAVID CREIGHTON
DIRECTOR
MASSACHUSETTS NUCLEAR REFERENDUM CAMPAIGN

03:11 EST

MGMCOMP

APPENDIX B

RESOURCES FOR ACTION

Periodicals

Access. Published monthly by the Telecommunications Research and Action Center (formerly the National Citizens Committee for Broadcasting). PO Box 12038, Washington, D.C. 20005, (202) 462-2520.

Broadcasting. Published weekly by Broadcasting Publications, 1735 DeSales Street, NW, Washington, D.C. 20036.

Electronic Media. Published weekly by Crain Communications Inc., 740 Rush Street, Chicago, IL 60611.

Television/Radio Age. Published biweekly by the Television Editorial Corp., 1270 Avenue of the Americas, New York, NY 10020.

Channels of Communication. Published bimonthly by the Media Commentary Council, Inc., 1515 Broadway, New York, NY 10036, (212) 398-1300.

Columbia Journalism Review. Published bimonthly by the Graduate School of Journalism, 700 Journalism Building, Columbia University, New York, NY 10027.

Washington Journalism Review. Published monthly by Washington Communications Corporation, 2233 Wisconsin Avenue, NW, Washington, D.C. 20007, (202) 333-6800.

The Press. Published bimonthly by Tone Arm Publications, Inc., 112 East 19 Street, New York, NY 10003, (212) 533-6500.

Publicity Guides

Strategies for Access to Public Service Advertising, published by Public Media Center, 25 Scotland Street, San Francisco, CA, 94133, (415) 434-1403. $4.00.

Media Action Handbook, published by the National Committee Against Discrimination in Housing, 1425 H Street, NW, Washington, D.C. 20005, (202) 783-8150. $4.00.

The Media Book: Making the Media Work for Your Grassroots Group, published by the Committee to Defend Reproductive Rights of the Coalition for the Medical Rights of Women, 1638B Haight Street, San Francisco, CA 94117. $8.00.

The Publicity Handbook, David R. Yale, published by Bantam Books, New York. $3.50.

A Citizen's Primer on the Fairness Doctrine, published by the Telecommunications Research and Action Center, PO Box 12038, Washington, D.C. 20005. (202) 462-2520.

Books

Barnouw, Erik. *Tube of Plenty . . . The Evolution of American Television*. Oxford University Press, Inc., New York, 1975.

Barnouw, Erik. *The Sponsor: Notes on a Modern Potentate*. Oxford University Press, New York, 1978.

Barron, Jerome A. *Freedom of the Press for Whom? The Right of Access to the Mass Media*. Indiana University, Bloomington, IN, 1973.

Brown, Les. *Television . . . The Business Behind the Box*. Harcourt Brace Jovanovich, Inc., New York, 1971.

Cole, Barry, and Mel Oettinger. *The Reluctant Regulators: The FCC and the Broadcast Audience*. Addison-Wesley Publishing Company, Reading, MA, 1978.

Epstein, Edward Jay. *News from Nowhere . . . Television and the News*. Random House, New York, 1975.

Friendly, Fred W. *The Good Guys, the Bad Guys and the First Amendment . . . Free Speech vs. Fairness in Broadcasting*. Random House, New York, 1975.

Haight, Timothy (ed.). *Telecommunications Policy and the Citizen*. Praeger Publishers, New York, 1979.

Schmidt, Benno C., Jr. *Freedom of the Press vs. Public Access,* sponsored by the Aspen Institute Program on Communications and Society and the National News Council. Praeger Publishers, New York, 1976.

Schwartz, Tony. *The Responsive Chord*. Anchor Press/Doubleday, Garden City, NY, 1973.

Shapiro, Andrew O. *Media Access: Your Rights to Express Your Views on Radio and Television*. Little, Brown and Company, Boston, 1976.

Reports

Bankrolling Ballots—Update 1980: The Role of Business in Financing Ballot Question Campaigns. Steven D. Lydenberg, published by the Council on Economic Priorities, New York, 1981.

Taking the Initiative: Corporate Control of the Referendum Process Through Media Spending and What to Do About It. Mastro, Costlow and Sanchez, published by Media Access Project, 1980.

Fairness Doctrine and Public Interest Standards: Handling of Public Issues, published by the Federal Communications Commission, 1974. Available from the FCC Mass Media Bureau, Enforcement Division, Fairness/Political Programming Branch, (202) 632-7581. Free.

Options Papers prepared by the Staff for Use by the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, House of Representatives. Committee Print 95–13, published by U.S. Government Printing Office, 1977.

Resource Organizations

Public Media Center
25 Scotland Street
San Francisco, CA 94133
(415) 434-1403

PMC is a non-profit advertising and media resource agency that has helped hundreds of issue-oriented social change groups gain access to the media. PMC has extensive experience using the Fairness Doctrine.

Media Access Project
1609 Connecticut Avenue, NW
Washington, D.C. 20009
(202) 462-4300

MAP is a public interest law firm specializing in communications, primarily access issues and the Fairness Doctrine.

Citizens Communications Center
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
(202) 624-8047

Citizens is another public interest media law firm that represents, educates and trains individuals and community groups which seek to participate in the telecommunications regulatory and decision-making process. Citizens concentrates on broadcast and common carrier (cable, telephones) issues.

Telecommunications Research and Action Center
(formerly National Citizens Committee for Broadcasting)
PO Box 12038
Washington, D.C. 20005
(202) 462-2520

TRAC, formerly NCCB, is a media reform organization that works to protect the consumer's interest in all aspects of telecommunications: radio, television, cable, telephone and new technologies.

Telecommunications Consumer Coalition
105 Madison Avenue, Suite 921
New York, NY 10016
(212) 683-3834

TCC is a project of the Office of Communication of the United Church of Christ. UCC has been at the forefront of the media access movement for more than a decade. The Coalition was formed in 1977 to serve as a network for a wide variety of public interest organizations concerned about broadcast deregulation and telecommunications policy.

Safe Energy Communication Council
1609 Connecticut Avenue, NW, Suite 4B
Washington, D.C. 20009
(202) 483-8491

SECC is a coalition of environmental and media access organizations, formed in 1980, to help the safe energy movement respond to pro-nuclear and anti-solar public relations and advertising campaigns mounted by industry and utility companies.

Produced by Public Media Center

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