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FCC Fairness Doctrine Upheld by U.S. Court As Not Unconstitutional

Pennsylvania Broadcaster Loses Challenge to Equal-Time Rule Covering Controversial Issues

WASHINGTON (AP) — A three-judge panel of the U.S. Court of Appeals ruled that the fairness doctrine of the Federal Communications Commission doesn't violate the Constitution.

The doctrine was challenged by Red Lion Broadcasting Co., which operates radio station WGCB in Red Lion, Pa.

Under the doctrine, broadcasters are directed to give equal time to both sides when a station's facilities are used for discussion of controversial issues.

The court's ruling follows by less than two weeks the FCC's decision to extend the doctrine's application to a specific product: cigarettes. The commission said then that a television station that broadcasts cigaret commercials must devote a "significant" amount of time to material warning of potential health hazards from smoking.

Station WGCB objected specifically to a provision that free time must be given to a person or group that is criticized on a paid broadcast.

The case began when Fred L. Cook, an Interlaken, N.J., writer, complained to the FCC that he had been denied free time by the station to answer what he said was an attack on him over WGCB in 1961 by the Rev. Billy James Hargis on the latter's "Christian Crusade" program. The Rev. Hargis made his comment in connection with Mr. Cook's book, "Goldwater—Extremist on the Right."

WGCB offered Mr. Cook free time to reply to the Rev. Hargis if Mr. Cook would state that he was unable to pay. Mr. Cook contended that he had an unqualified right to free time, and the FCC upheld him.

The court's opinion was delivered by Judge Edward A. Tamm.

In it he said he had concluded that Congress didn't commit an unconstitutional delegation of its legislative function when it adopted the FCC's fairness doctrine.

He also said the doctrine isn't unconstitutionally vague, indefinite or uncertain and doesn't lack the precision required in legislation affecting basic freedoms guaranteed by the Bill of Rights.

Judge Tamm said neither Federal law nor the fairness doctrine violates the Ninth or Tenth Amendments to the Constitution.

Judge Tamm said: "Under the facts in this case, the requirement under the fairness doctrine that a broadcaster may not insist upon financial payment by a party responding to a personal attack does not violate the First and Fifth Amendments to the Constitution nor is doctrine violative of either the Ninth or Tenth Amendments."