SUPREME COURT OF UNITED STATES

Red Lion Broadcasting Co.

Vs.

Federal Communications Commission

Nos. 2 and 717.

Argued April 2 and 3, 1969.

Decided June 9, 1969.

[Syllabus from 368 intentionally omitted]

Roger Robb, Washington, D.C., for petitioners Red Lion Broadcasting Co., Inc. and others.

Solicitor Gen., Erwin N. Griswold, for respondents F.C.C. and others and petitioners the United States and others.

Archibald Cox, Washington, D.C., for respondents Radio Television News Directors Assn. and others.

Mr. Justice WHITE delivered the opinion of the Court.

The Federal Communications Commission has for many years imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine, which originated very early in the history of broadcasting and has maintained its present outlines for some time. It is an obligation whose content has been defined in a long series of FCC rulings in particular cases, and which is distinct from the statutory requirement of § 315 of the Communications Act1 that equal time be allotted all qualified candidates for public office. Two aspects of the fairness doctrine, relating to personal attacks in the context of controversial public issues and to political editorializing, were codified more precisely in the form of FCC regulations in 1967. The two cases before us now, which were decided separately below, challenge the constitutional and statutory bases of the doctrine and component rules. Red Lion involves the

application of the fairness doctrine to a particular broadcast, and RTNDA arises as an action to review the FCC's 1967 promulgation of the personal attack and political editorializing regulations, which were laid down after the Red Lion litigation had begun.

I.

A.

The Red Lion Broadcasting Company is licensed to operate a Pennsylvania radio station, WGCB. On November 27, 1964, WGCB carried a 15-minute broadcast by the Reverend Billy James Hargis as part of a 'Christian Crusade' series. A book by Fred J. Cook entitled 'Goldwater—Extremist on the Right' was discussed by Hargis, who said that Cook had been fired by a newspaper for making false charges against city officials; that Cook had then worked for a Communist-affiliated publication; that he had defended Alger Hiss and attacked J. Edgar Hoover and the Central Intelligence Agency; and that he had now written a 'book to smear and destroy Barry Goldwater.'2 When Cook heard of the broadcast he concluded that he had been personally attacked and demanded free reply time, which the station refused. After an exchange of letters among Cook, Red Lion, and the FCC, the FCC declared that the Hargis broadcast constituted a personal attack on Cook; that Red Lion had failed to meet its obligation under the fairness doctrine as expressed in Times-Mirror Broadcasting Co., 24 P & F Radio Reg. 404 (1962), to send a tape, transcript, or summary of the broadcast to Cook and offer him reply time; and that the station must provide reply time whether or not Cook would pay for it. On review in the Court of Appeals for the District of Columbia Circuit,3 the FCC's position was upheld as constitutional and otherwise proper. 127 U.S.App.D.C. 129, 381 F.2d 908 (1967).

B.

Not long after the Red Lion litigation was begun, the FCC issued a Notice of Proposed Rule Making, 31 Fed.Reg. 5710, with an eye to making the personal attack aspect of the fairness doctrine more precise and more readily enforceable, and to specifying its rules relating to political editorials. After considering written comments supporting and opposing the rules, the FCC adopted them substantially as proposed, 32 Fed.Reg. 10303. Twice amended, 32 Fed.Reg. 11531, 33 Fed.Reg. 5362, the rules were held unconstitutional in the RTNDA litigation by the Court of Appeals for the Seventh Circuit, on review of the rulemaking proceeding, as abridging the freedoms of speech and press. [1969] USCA7 13; 400 F.2d 1002 (1968).

As they now stand amended, the regulations read as follows:

'Personal attacks; political editorials.

'(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than 1 week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack, and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

'(b) The provisions of paragraph (a) of this section shall not be applicable (1) to attacks on foreign groups or foreign public figures; (2) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (3) to bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs, but the provisionso f paragraph (a) of this section shall be applicable to editorials of the licensee).

'NOTE: The fairness doctrine is applicable to situations coming within ((3)), above, and, in a specific factual situation, may be applicable in the ((2)), above. See, section 315(a) of the Act, 47 U.S.C. § 315(a); Public Notice: Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance. 29 F.R. 10415. The categories listed in ((3)) are the same as those specified in section 315(a) of the Act.

'(c) Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1) notification of the date and the time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities: Provided, however, That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.' 47 CFR §§ 73.123, 73.300, 73.598, 73.679 (all identical).

C.

Believing that the specific application of the fairness doctrine in Red Lion, and the promulgation of the regulations in RTNDA, are both authorized by Congress and enhance rather than abridge the freedoms of speech and press protected by the First Amendment, we hold them valid and constitutional, reversing the judgment below in RTNDA and affirming the judgment below in Red Lion.

II.

The history of the emergence of the fairness doctrine and of the related legislation shows that the Commission's action in the Red Lion case did not exceed its authority, and that in adopting the new regulations the Commission was implementing congressional policy rather than embarking on a frolic of its own.

A.

Before 1927, the allocation of frequencies was left entirely to the private sector, and the result was chaos.4 It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. Without government control, the medium would be of little use because of the cacaphony of competing voices, none of which could be clearly and predictably heard.5 Consequently, the Federal Radio Commission was established to allocate frequencies among competing applicants in a manner responsive to the public 'convenience,

interest, or necessity.'

Very shortly thereafter the Commission expressed its view that the 'public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies * * * to all discussions of issues of importance to the public.' Great Lakes Broadcasting Co., 3 F.R.C.Ann.Rep. 32, 33 (1929), rev'd on other grounds, 59 App.D.C. 197, 37 F.2d 993, cert. dismissed, 281 U.S. 706, 50 S.Ct. 467, 74 L.Ed., 1129 (1930). This doctrine was applied through denial of license renewals or construction permits, both by the FRC, Trinity Methodist Church, South v. FRC, 61 App.D.C. 311, 62 F.2d 850 (1932), cert. denied, 288 U.S. 599, 53 S.Ct. 317, 77 L.Ed. 975 (1933), and its successor FCC, Young People's Association for the Propagation of the Gospel, 6 F.C.C. 178 (1938). After an extended period during which the licensee was obliged not only to cover and to cover fairly the views of others, but also to refrain from expressing his own personal views, Mayflower Broadcasting Corp., 8 F.C.C. 333 (1940), the latter limitation on the licensee was abandoned and the doctrine developed into its present form.

There is a twofold duty laid down by the FCC's decisions and described by the 1949 Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1949). The broadcaster must give adequate coverage to public issues, United Broadcasting Co., 10 F.C.C. 515 (1945), and coverage must be fair in that it accurately reflects the opposing views. New Broadcasting Co., 6 P & F Radio Reg. 258 (1950). This must be done at the broadcaster's own expense if sponsorship is unavailable. Cullman Broadcasting Co., 25 P & F Radio Reg. 895 (1963). Moreover, the duty must be met by programming obtained at the licensee's own initiative if available from no other source. John J. Dempsey, 6 P & F Radio Reg. 615 (1950); see Metropolitan Broadcasting Corp., 19 P & F Radio Reg. 602 (1960); The Evening News Assn., 6 P & F Radio Reg. 283 (1950). The Federal Radio Commission had imposed these two basic duties on broadcasters since the outset, Great Lakes Broadcasting Co., 3 F.R.C.Ann.Rep. 32 (1929), rev'd on other grounds, 59 App.D.C. 197, 37 F.2d 993, cert. dismissed, 281 U.S. 706, 50 S.Ct. 467, 74 L.Ed. 1129 (1930); Chicago Federation of Labor v. FRC, 3 F.R.C.Ann.Rep. 36 (1929), aff'd 59 App.D.C. 333, 41 F.2d 422 (1930); KFKB Broadcasting Assn. v. FRC, 60 App.D.C. 79, 47 F.2d 670 (1931), and in particular respects the personal attack rules and regulations at issue here have spelled them out in greater detail.

When a personal attack has been made on a figure invov ed in a public issue both the doctrine of cases such as Red Lion and Times-Mirror Broadcasting Co., 24 P & F Radio Reg. 404 (1962), and also the 1967 regulations at issue in RTNDA require that the individual attacked himself be offered an opportunity to respond. Likewise, where one candidate is endorsed in a political editorial, the other candidates must themselves be offered reply time to use personally or through a spokesman. These obligations differ from the general fairness requirement that issues be presented, and presented with coverage of competing views, in that the broadcaster does not have the option of presenting the attacked party's side himself or choosing a third party to represent that side. But insofar as there is an obligation of the broadcaster to see that both sides are presented, and insofar as that is an affirmative obligation, the personal attack doctrine and regulations do not differ from the preceding fairness doctrine. The simple fact that the attacked men or unendorsed candidates may respond themselves or through agents is not a critical distinction, and indeed, it is not unreasonable for the FCC to conclude that the objective of adequate presentation of all sides may best be served by allowing those most closely affected to make the response, rather than leaving the response in the hands of the station which has attacked their candidacies, endorsed their opponents, or carried a personal attack upon them.

B.

The statutory authority of the FCC to promulgate these regulations derives from the mandate to the 'Commission from time to time, as public convenience, interest, or necessity requires' to promulgate 'such rules and regulations and prescribe such restrictions and conditions * * * as may be necessary to carry out the provisions of this chapter * * *.' 47 U.S.C. § 303 and § 303(r).7 The Commission is specifically directed to consider the demands of the public interest in the course of granting licenses. 47 U.S.C. §§ 307(a), 309(a); renewing them, 47 U.S.C. § 307; and modifying them. Ibid. Moreover, the FCC has included among the conditions of the Red Lion license itself the requirement that operation of the station be carried out in the public interest, 47 U.S.C. § 309(h). This mandate to the FCC to assure that broadcasters operate in the public interest is a broad one, a power 'not niggardly but expansive,' National Broadcasting Co. v. United States, [1943] USSC 100; 319 U.S. 190, 219[1943] USSC 100; , 63 S.Ct. 997, 1010[1943] USSC 100; , 87 L.Ed. 1344 (1943), whose validity we have long upheld. FCC v. Pottsville Broadcasting Co., [1940] USSC 15; 309 U.S. 134, 138[1940] USSC 15; , 60 S.Ct. 437, 439[1940] USSC 15; , 84 L.Ed. 656 (1940); FCC v. RCA Communications, Inc., [1953] USSC 75; 346 U.S. 86, 90[1953] USSC 75; , 73 S.Ct. 998, 1002[1953] USSC 75; , 97 L.Ed. 1470 (1953); FRC v. Nelson Bros. Bond & Mortgage Co., [1933] USSC 93; 289 U.S. 266, 285[1933] USSC 93; , 53 S.Ct. 627, 636[1933] USSC 93; , 77 L.Ed. 1166 (1933). It is broad enough to encompass these regulations.

The fairness doctrine finds specific recognition in statutory form, is in partm odeled on explicit statutory provisions relating to political candidates, and is approvingly reflected in legislative history.

In 1959 the Congress amended the statutory requirement of § 315 that equal time be accorded each political candidate to except certain appearances on news programs, but added that this constituted no exception 'from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public inportance.' Act of September 14, 1959, § 1, 73 Stat. 557, amending 47 U.S.C. § 315(a) (emphasis added). This language makes it very plain that Congress, in 1959, announced that the phrase 'public interest,' which had been in the Act since 1927, imposed a duty on broadcasters to discuss both sides of controversial public issues. In other words, the amendment vindicated the FCC's general view that the fairness doctrine inhered in the public interest standard. Subsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction.8 And here this principle is given special force by the equally venerable principle that the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong,9 especially when Congress has refused to alter the administrative construction.10 Here, the Congress has not just kept its silence by refusing to overturn the administrative construction,11 but has ratified it with positive legislation. Thirty years of consistent administrative construction left undisturbed by Congress until 1959, when that construction was expressly accepted, reinforce the natural conclusion that the public interest language of the Act authorized the Commission to require licensees to use their stations for discussion of public issues, and that the FCC is free to implement this requirement by reasonable rules and regulations which fall short of abridgment of the freedom of speech and press, and of the censorship proscribed by § 326 of the Act.

The objectives of § 315 themselves could readily be circumvented but for the complementary

fairness doctrine ratified by § 315. The section applies only to campaign appearances by candidates, and not by family, friends, campaign managers, or other supporters. Without the fairness doctrine, then, a licensee could ban all campaign appearances by candidates themselves from the air13 and proceed to deliver over his station entirely to the supporters of one slate of candidates, to the exclusion of all others. In this way the broadcaster could have a far greater impact on the favored candidacy than he could by simply allowing a spot appearance by the candidate himself. It is the fairness doctrine as an aspect of the obligation to operate in the public interest, rather than § 315, which prohibits the broadcaster from taking such a step.

The legislative history reinforces this view of the effect of the 1959 amendment. Even before the language relevant here was added, the Senate report on amending § 315 noted that 'broadcast frequencies are limited and, therefore, they have been necessarily considered a public trust. Every licensee who is fortunate in obtaining a license is mandated to operate in the public interest and has assumed the obligation of presenting important public questions fairly and without bias.' S.Rep.No.562, 86th Cong., 1st Sess., 8—9 (1959) U.S.Code Cong. & Adm.News, p. 2571, See also, specifically adverting to Federal Communications Commission doctrine, id., at p. 13.

Rather than leave this approval solely in the legislative history, Senator Proxmire suggested an amendment to make it part of the Act. 105 Cong.Rec. 14457. This amendment, which Senator Pastore, a manager of the bill and a ranking member of the Senate Committee, considered 'rather surplusage,' 105 Cong.Rec. 14462, constituted a positive statement of doctrine14 and was altered to the present merely approving language in the conference committee. In explaining the language to the Senate after the committee changes, Senator Pastore said: 'We insisted that that provision remain in the bill, to be a continuing reminder and admonition to the Federal Communications Commission and to the broadcastes alike, that we were not abandoning the philosophy that gave birth to section 315, in giving the people the right to have a full and complete disclosure of conflicting views on news of interest to the people of the country.' 105 Cong.Rec. 17830. Senator Scott, another Senate manager, added that: 'It is intended to encompass all legitimate areas of public importance which are controversial,' not just politics. 105 Cong.Rec. 17831.

It is true that the personal attack aspect of the fairness doctrine was not actually adjudicated until after 1959, so that Congress then did not have those rules specifically before it. However, the obligation to offer time to reply to a personal attack was presaged by the FCC's 1949 Report on Editorializing, which the FCC views as the principal summary of its ratio decidendi in cases in this area:

'In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as * * * whether there may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person making the request. The latter's personal involvement in the controversy may also be a factor which must be considered, for elementary considerations of fairness may dictate that time be allocated to a person or group which has been specifically attacked over the station, where otherwise no such obligation would exist.' 13 F.C.C., at 1251—1252.

When the Congress ratified the FCC's implication of a fairness doctrine in 1959 it did not, of course, approve every past decision or pronouncement by the Commission on this subject, or give it a completely free hand for the future. The statutory authority does not go so far. But we cannot say that when a station publishes personal attacks or endorses political candidates, it is a

misconstruction of the public interest standard to require the station to offer time for a response rather than to leave the response entirely within the control of the station which has attacked either the candidacies or the men who wish to reply in their own defense. When a broadcaster grants time to a political candidate, Congress itself requires that equal time be offered to his opponents. It would exceed our competence to hold that the Commission is unauthorized by the statute to employ a similar device where personal attacks or political editorials are broadcast by a radio or television station.

In light of the fact that the 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public; the fact that the FCC has rested upon that language from its very inception a doctrine that these issues must be discussed, and fairly; and the fact that Congress has acknowledged that the analogous provisions of § 315 are not preclusive in this area, and knowingly preserved the FCC's complementary efforts, we think the fairness doctrine and its component personal attack and political editorializing regulations are a legitimate exercise of congressionally delegated authority. The Communications Act is not notable for the precision of its substantive standards and in this respect the explicit provisions of § 315, and the doctrine and rules at issue here which are closely modeled upon that section, are far more explicit than the generalized 'public interest' standard in which the Cm mission ordinarily finds its sole guidance, and which we have held a broad but adequate standard before. FCC v. RCA Communications, Inc., [1953] USSC 75; 346 U.S. 86, 90[1953] USSC 75; , 73 S.Ct. 998, 1002[1953] USSC 75; , 97 L.Ed. 1470 (1953); National Broadcasting Co. v. United States, [1943] USSC 100; 319 U.S. 190, 216—217[1943] USSC 100; , 63 S.Ct. 997, 1009 1010[1943] USSC 100; , 87 L.Ed. 1344 (1943); FCC v. Pottsville Broadcasting Co., [1940] USSC 15; 309 U.S. 134, 138[1940] USSC 15; , 60 S.Ct. 437, 439[1940] USSC 15; , 84 L.Ed. 656 (1940); FRC v. Nelson Bros. Bond & Mortgage Co., [1933] USSC 93; 289 U.S. 266, 285[1933] USSC 93; , 53 S.Ct. 627, 636[1933] USSC 93; , 77 L.Ed. 1166 (1933). We cannot say that the FCC's declaratory ruling in Red Lion, or the regulations at issue in RTNDA, are beyond the scope of the congressionally conferred power to assure that stations are operated by those whose possession of a license serves 'the public interest.'

III.

The broadcasters challenge the fairness doctrine and its specific manifestations in the personal attack and political editorial rules on conventional First Amendment grounds, alleging that the rules abridge their freedom of speech and press. Their contention is that the First Amendment protects their desire to use their allotted frequencies continuously to broadcast whatever they choose, and to exclude whomever they choose from ever using that frequency. No man may be prevented from saying or publishing what he thinks, or from refusing in his speech or other utterances to give equal weight to the views of his opponents. This right, they say, applies equally to broadcasters.

A.

Although broadcasting is clearly a medium affected by a First Amendment interest, United States v. Paramount Pictures, Inc., [1948] USSC 65; 334 U.S. 131, 166[1948] USSC 65; , 68 S.Ct. 915. 333[1948] USSC 65; , 92 L.Ed. 1260 (1948), differences in the characteristics of new media justify differences in the First Amendment standards applied to them.15 Joseph Burstyn, Inc. v. Wilson, [1952] USSC 66; 343 U.S. 495, 503[1952] USSC 66; , 72 S.Ct. 777, 781[1952] USSC 66; , 96 L.Ed. 1098 (1952). For example, the ability of new technology to produce sounds more raucous

than those of the human voice justifies restrictions on the sound level, and on the hours and places of use, of sound trucks so long as the restrictions are reasonable and applied without discrimination. Kovacs v. Cooper, [1949] USSC 22; 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949).

Just as the Government may limit the use of sound-amplifying equipment potentially so noisy that it drowns out civilized private speech, so may the Government limit the use of broadcast equipment. The right of free speech of a broadcaster, the user of a sound truck, or any other individual does not embrace a right to snuff out the free speech of others. Associated Press v. United States, [1945] USSC 133; 326 U.S. 1, 20[1945] USSC 133; , 65 S.Ct. 1416, 1424, 89 L.Ed. 2013 (1945).

When two people converse face to face, both should not speak at once if either is to be clearly understood. But the range of the human voice is so limited that there could be meaningful communications if half the people in the United States were talking and the other half listening. Just as clearly, half the people might publish and the other half read. But the reach of radio signals is incomparably greater than the range of the human voice and the problem of interference is a massive reality. The lack of know-how and equipment may keep many from the air, but only a tiny fraction of those with resources and intelligence can hope to communicate by radio at the same time if intelligible communication is to be had, even if the entire radio spectrum is utilized in the present state of commercially acceptable technology.

It was this fact, and the chaos which ensued from permitting anyone to use any frequency at whatever power level he wished, which made necessary the enactment of the Radio Act of 1927 and the Communications Act of 1934,16 as the Court has noted at length before. National Broadcasting Co. v. United States, [1943] USSC 100; 319 U.S. 190, 210—214[1943] USSC 100; , 63 S.Ct. 997, 1006—1009[1943] USSC 100; , 87 L.Ed. 1344 (1943). It was this reality which at the very least necessitated first the division of the radio spectrum into portions reserved respectively for public broadcasting and for other important radio uses such as amateur operation, aircraft, police, defense, and navigation; and then the subdivision of each portion, and assignment of specific frequencies to individual users or groups of users. Beyond this, however, because the frequencies reserved for public broadcasting were limited in number, it was essential for the Government to tell some applicants that they could not broadcast at all because there was room for only a few.

Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want broadcast licenses but there are only 10 frequencies to allocate, all of them may have the same 'right' to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. FRC v. Nelson Bros. Bond & Mortgage Co., [1933] USSC 93; 289 U.S. 266, 53 S.Ct. 627, 77 L.Ed. 1166 (1933). No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because 'the public interest' requires it 'is not a denial of free speech.' National Broadcasting Co. v. United States, [1943] USSC 100; 319 U.S. 190, 227[1943] USSC 100; , 63 S.Ct. 997, 1014[1943] USSC 100; , 87 L.Ed. 1344

(1943).

By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the lisensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.

This is not to say that the First Amendment is irrelevant to public broadcasi ng. On the contrary, it has a major role to play as the Congress itself recognized in § 326, which forbids FCC interference with 'the right of free speech by means of radio communication.' Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. See FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 475, 60 S.Ct. 693, 697, 84 L.Ed. 869 (1940); FCC v. Allentown Broadcasting Corp., [1955] USSC 63; 349 U.S. 358, 361—362[1955] USSC 63; , 75 S.Ct. 855, 857—858[1955] USSC 63; , 99 L.Ed. 1147 (1955); 2 Z. Chafee, Government and Mass Communications 546 (1947). It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. Associated Press v. United States, [1945] USSC 133; 326 U.S. 1, 20[1945] USSC 133; , 65 S.Ct. 1416, 1424, 89 L.Ed. 2013 (1945); New York Times Co. v. Sullivan, [1964] USSC 40; 376 U.S. 254, 270[1964] USSC 40; , 84 S.Ct. 710, 720[1964] USSC 40; , 11 L.Ed.2d 686 (1964); Abrams v. United States, [1919] USSC 206; 250 U.S. 616, 630[1919] USSC 206; , 40 S.Ct. 17, 22[1919] USSC 206; , 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). '(S)peech concerning public affairs is more than self-expression; it is the essence of self-government.' Garrison v. Louisiana, [1964] USSC 217; 379 U.S. 64, 74—75[1964] USSC 217; , 85 S.Ct. 209, 216[1964] USSC 217; , 13 L.Ed.2d 125 (1964). See Brennan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harv.L.Rev. 1 (1965). 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 constitutionally be abridged either by Congress or by the FCC.

B.

Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of 200,000,000, the Government could surely have decreed that each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week. The ruling and regulations at issue here do not go quite so far. They assert that under specified circumstances, a licensee must offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station. The expression of a political endorsement, or of a personal attack while dealing with a controversial public issue, simply triggers this time sharing. As we have said, the First Amendment confers no right on licensees to prevent others from broadcasting on 'their' frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the

right to use.

In terms of constitutional principle, and as enforced sharing of a scarce resource, the personal attack and political editorial rules are indistinguishable from the equal-time provision of § 315, a specific enactment of Congress requiring stations to set aside reply time under specified circumstances and to which the fairness doctrine and these constituent regulations are important complements. That provision, which has been part of the law since 1927, Radio Act of 1927, § 18, 44 Stat. 1170, has been held valid by this Court as an obligation of the licensee relieving him of any power in any way to prevent or censor the broadcast, and thus insulating him from liability for defamation. The constitutionality of the statute under the First Amendment was unquestioned.17 Farmers Educ. & Coop. Union v. WDAY, [1959] USSC 121; 360 U.S. 525, 79 S.Ct. 1302, 3 L.Ed.2d 1407 (1959).

Nor can we say that it is inconsistent with the First Amendment goal of producing an informed public capable of conducting its own affairs to require a broadcaster to permit answers to personal attacks occurring in the course of discussing controversial issues, or to require that the political opponents of those endorsed by the station be given a chance to communicate with the public.18 Otherwise, station owners and a few networks would have unfettered power to make time available only to the highest bidders, to communicate only their own views on public issues, people and candidates, and to permit on the air only those with whom they agreed. There is no sanctuary in the First Amendment for unlimited private censorship operating in a medium not open to all. 'Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.' Associated Press v. United States, [1945] USSC 133; 326 U.S. 1, 20[1945] USSC 133; , 65 S.Ct. 1416, 1425, 89 L.Ed. 2013 (1945).
C.

It is strenuously argued, however, that if political editorials or personal attacks will trigger an obligation in broadcasters to afford the opportunity for expression to speakers who need not pay for time and whose views are unpalatable to the licensees, then broadcasters will be irresistibly forced to self-censorship and their coverage of controversial public issues will be eliminated or at least rendered wholly ineffective. Such a result would indeed be a serious matter, for should licensees actually eliminate their coverage of controversial issues, the purposes of the doctrine would be stifled.

At this point, however, as the Federal Communications Commission has indicated, that possibility is at best speculative. The communications industry, and in particular the networks, have taken pains to present controversial issues in the past, and even now they do not assert that they intend to abandon their efforts in this regard.19 It would be better if the FCC's encouragement were never necessary to induce the broadcasters to meet their responsibility. And if experience with the administration of those doctrines indicates that they have the net effect of reducing rather than enhancing the volume and quality of coverage, there will be time enough to reconsider the constitutional implications. The fairness doctrine in the past has had no such overall effect.

That this will occur now seems unlikely, however, since ifp resent licensees should suddenly prove timorous, the Commission is not powerless to insist that they give adequate and fair attention to public issues. It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and

attention to matters of great public concern. To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of the press. Congress need not stand idly by and permit those with licenses to ignore the problems which beset the people or to exclude from the airways anything but their own views of fundamental questions. The statute, long administrative practice, and cases are to this effect.

Licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them. 47 U.S.C. § 301. Unless renewed, they expire within three years. 47 U.S.C. § 307(d). The statute mandates the issuance of licenses if the 'public convenience, interest, or necessity will be served thereby.' 47 U.S.C. § 307(a). In applying this standard the Commission for 40 years has been choosing licensees based in part on their program proposals. In FRC v. Nelson Bros. Bond & Mortgage Co., [1933] USSC 93; 289 U.S. 266, 279[1933] USSC 93; , 53 S.Ct. 627, 634[1933] USSC 93; , 77 L.Ed. 1166 (1933), the Court noted that in 'view of the limited number of available broadcasting frequencies, the Congress has authorized allocation and licenses.' In determining how best to allocate frequencies, the Federal Radio Commission considered the needs of competing communities and the programs offered by competing stations to meet those needs; moreover, if needs or programs shifted, the Commission could alter its allocations to reflect those shifts. Id., at 285, 53 S.Ct. at 636. In the same vein, in FCC v. Pottsville Broadcasting Co., [1940] USSC 15; 309 U.S. 134, 137—138[1940] USSC 15; , 60 S.Ct. 437, 439[1940] USSC 15; , 84 L.Ed. 656 (1940), the Court noted that the statutory standard was a supple instrument to effect congressional desires 'to maintain * * * a grip on the dynamic aspects of radio transmission' and to allay fears that 'in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field.' Three years later the Court considered the validity of the Commission's chain broadcasting regulations, which among other things forbade stations from devoting too much time to network programs in order that there be suitable opportunity for local programs serving local needs. The Court upheld the regulations, unequivocally recognizing that the Commission was more than a traffic policeman concerned with the technical aspects of broadcasting and that it neither exceeded its powers under the statute nor transgressed the First Amendment in interesting itself in general program format and the kinds of programs broadcast by licensees. National Broadcasting Co. v. United States, [1943] USSC 100; 319 U.S. 190, 63 S.Ct. 997, 87 L.Ed. 1344 (1943).
D.

The litigants embellish their First Amendment arguments with the contention that the regulations are so vague that their duties are impossible to discern. Of this point it is enough to say that, judging the validity of the regulations on their face as they are presented here, we cannot conclude that the FCC has been left a free hand to vindicate its own idiosyncratic conception of the public interest or of the requirements of free speech. Past adjudications by the FCC give added precision to the regulations; there was nothing vague about the FCC's specific ruling in Red Lion that Fred Cook should be provided an opportunity to reply. The regulations at issue in RTNDA could be employed in precisely the same way as the fairness doctrine was in Red Lion. Moreover, the FCC itself has recognized that the applicability of its regulations to situations beyond the scope of past cases may be questionable, 32 Fed.Reg. 10303, 10304 and n. 6, and will not impose sanctions in such cases without warning. We need not approve every aspect of the fairness doctrine to decide these cases, and we will not now pass upon the constitutionality of these regulations by envisioning the most extreme applications conceivable, United States v. Sullivan, [1948] USSC 9; 332 U.S. 689,

694[1948] USSC 9; , 68 S.Ct. 331, 334[1948] USSC 9; , 92 L.Ed. 297 (1948), but will deal with those problems if and when they arise.

We need not and do not now ratify every past and future decision by the FCC with regard to programming. There is no question here of the Commission's refusal to permit the broadcaster to carry a particular program or to publish his own views; of a discriminatory refusal to require the licensee to broadcast certain views which have been denied access to the airwaves; of government censorship of a particular program contrary to § 326; or of the official government view dominating public broadcasting. Such questions would raise more serious First Amendment issues. But we do hold that the Congress and the Commission do not violate the First Amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials.
E.

It is argued that even if at one time the lack of available frequencies for all who wished to use them justified the Government's choice of those who would best serve the public interest by acting as proxy for those who would present differing views, or by giving the latter access directly to broadcast facilities, this condition no longer prevails so that continuing control is not justified. To this there are several answers.

Scarcity is not entirely a thing of the past. Advances in technology, such as microwave transmission, have led to more efficient utilization of the frequency spectrum, but uses for that spectrum have also grown apace.20 Portions of the spectrum must be reserved for vital uses unconnected with human communication, such as radio-navigational aids used by aircraft and vessels. Conflicts have even emerged between such vital functions as defense preparedness and experimentation in methods of averting midair collisions through radio warning devices.21 'Land mobile services' such as police, ambulance, fire department, public utility, and other communications systems have been occupying an increasingly crowded portion of the frequency spectrum22 and there are, apart from licensed amateur radio operators' equipment, 5,000,000 transmitters operated on the 'citizens' band' which is also increasingly congested.23 Among the various uses for radio frequency space, including marine, aviation, amateur, military, and common carrier users, there are easily enough claimants to permit use of the whole with an even smaller allocation to broadcast radio and television uses than now exists.

Comparative hearings between competing applicants for broadcast spectrum space are by no means a thing of the past. The radio spectrum has become so congested that at times it has been necessary to suspend new applications.24 The very high frequency television spectrum is, in the country's major markets, almost entirely occupied, although space reserved for ultra high frequency television transmission, which is a relatively recent development as a commercially viable alternative, has not yet been completely filled.

The rapidity with which technological advances succeed one another to create more efficient use of spectrum space on the one hand, and to create new uses for that space by ever growing numbers of people on the other, makes it unwise to speculate on the future allocation of that space. It is enough to say that the resource is one of considerable and growing importance whose scarcity impelled its regulation by an agency authorized by Congress. Nothing in this record, or in our own researches, convinces us that the resource is no longer one for which there are more immediate and potential

uses than can be accommodated, and for which wise planning is essential.26 This does not mean, of course, that every possible wavelength must be occupied at every hour by some vital use in order to sustain the congressional judgment. The substantial capital investment required for many uses, in addition to the potentiality for confusion and interference inherent in any scheme for continuous kaleidoscopic reallocation of all available space may make this unfeasible. The allocation need not be made at such a breakneck pace that the objectives of the allocation are themselves imperiled.

Even where there are gaps in spectrum utilization, the fact remains that existing broadcasters have often attained their present position because of their initial government selection in competition with others before new technological advances opened new opportunities for further uses. Long experience in broadcasting, confirmed habits of listeners and viewers, network affiliation, and other advantages in program procurement give existing broadcasters a substantial advantage over new entrants, even where new entry is technologically possible. These advantages are the fruit of a preferred position conferred by the Government. Some present possibility for new entry by competing stations is not enough, in itself, to render unconstitutional the Government's effort to assure that a broadcaster's programming ranges widely enough to serve the public interest.

In view of the scarcity of broadcast frequencies, the Government's role in allocating those frequencies, and the legitimate claims of those unable without governmental assistance to gain access to those frequencies for expression of their views, we hold the regulations and ruling at issue here are both authorized by statute and constitutional.28 The judgment of the Court of Appeals in Red Lion is affirmed and that in RTNDA reversed and the causes remanded for proceedings consistent with this opinion.

It is so ordered.

Not having heard oral argument in these cases, Mr. Justice DOUGLAS took no part in the Court's decision.