AN ANALYTICAL REVIEW OF THE POLICIES OF THE FEDERAL COMMUNICATIONS COMMISSION REGARDING BROADCAST ADVERTISING

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ABSTRACT

AN ANALYTICAL REVIEW OF THE POLICIES OF THE FEDERAL COMMUNICATIONS COMMISSION REGARDING BROADCAST ADVERTISING

by Carl R. Ramey

The purpose of this study is to review and report the policies of the Federal Communications Commission regarding the regulation of broadcast advertising. The heightened interest of the FCC in this matter in recent years has caused many to become cognizant of some of the inherent problems of this subject, and has also raised questions as to the nature and effectiveness of the various official controls purporting to protect the public from undesirable advertising excesses in broadcasting.

This material reveals some of the ways in which the FCC has dealt with problems pertaining to broadcast advertising.

The information in this thesis covers the thirty-six years between 1927 and 1963 and was obtained from Commission documents such as specific statements of policy, reports of administrative action and intent, and selected case decisions.

The first chapter begins with the passage of the Radio Act of 1927 and contains a discussion of the early

formulation of Commission policy relating to broadcast advertising. Particular emphasis is placed on the role of the Federal Radio Commission, the predecessor of the FCC. The second chapter deals with the advertising standards set forth in the Commission's "Public Service Responsibility of Broadcast Licensees" report issued in 1946. The third chapter reports some of the current policies and problems of the Commission applicable to broadcast advertising.

Among the conclusions drawn in the fourth chapter was that the Commission has consistently held that while advertising revenue exists as the sole support for broadcasting it must retain a "secondary" place and "incidental" character as the servant and not the master of community broadcast service. In following a policy which subordinates advertising to the public interest, the Commission has placed full responsibility on the broadcast licensee to select and control the advertising material which is broadcast over his facilities.

The Commission regulates advertising by virtue of a broad grant of licensing power contained in the Communications Act of 1934, the criterion being the "public interest, convenience, or necessity." Because of the vagueness of this term, the Commission has been able to exercise broad discretion in formulating more specific standards.

One consideration in a license proceeding is the overall program service of a broadcaster. In passing on

programming under the test of "public interest, convenience, or necessity" the Commission has had occasion to weigh the qualitative merits of advertisements, for example, advertising which is inimical to the public interest on moral or ethical grounds. Also, under a cooperative arrangement with the Federal Trade Commission, the FCC has attempted to facilitate an interchange of information regarding false, misleading or deceptive broadcast advertising. The Commission's review of a station's performance also includes an inquiry into a disproportionate amount of time devoted to advertising which tends towards over-commercialization.

Through the powers inherent in its licensing function, the Federal Communications Commission is a potentially formidable force in the field of advertising regulation. In practice, however, the Commission has largely taken the position that the elimination of advertising abuses should be left to self-regulation by the advertiser and broadcaster.

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By

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INTRODUCTION

The Problem.--Today, nearly thirty years after the creation of the Federal Communications Commission, there remains some question as to its regulatory authority regarding broadcast advertising. This is a study of the past and current policies of the Commission that deal with this matter.[1]

Limitations.--This thesis is limited to those policies and regulations which are directed to the broadcasting industry by the Federal Communications Commission. This will necessarily exclude consideration of other agencies of government such as the Federal Trade Commission and Food and Drug Administration, Congress, and the Courts, as they do not specifically influence Commission policy.

Significance.--This study brings together information that is scattered through thirty-six years of the Commission's records. This thesis contains many of the relevant Commission statements that could be cited from 1927 through January, 1964.

Sources.--The principal sources of information for this study were the Federal Communications Commission Reports,

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[1]Unless otherwise noted, "Commission" will refer to both the Federal Radio Commission and its successor, the Federal Communications Commission.

containing decisions, reports and orders of the Commission; the Annual Reports of the Federal Radio Commission and the Federal Communications Commission; Pike and Fischer's Radio Regulation; and the appropriate available individual reports, orders, memoranda, and other public statements of the Commission.

Several books, articles from law journals, and selected periodicals concerning the question of Commission policy in the matter of broadcast advertising have also been referred to.

Organization.--The purpose of this introduction is to state the problem of the thesis and to give a brief review of the development of advertising's relationship to broadcasting prior to the passage of the Radio Act of 1927.

The first chapter will focus on the administrative standards for advertising developed by the Federal Radio Commission and evolved and implemented by the Federal Communications Commission. There will be an account of Commission decisions and policies regarding broadcast advertising through 1945. The issuance in 1946 of the Commission's "Public Service Responsibility of Broadcast Licensees" report will provide the basis for the second chapter, which, in addition, will contain pertinent material to 1960. The current state of Commission policy and problems relating to advertising will be incorporated in a third chapter.

The final chapter will summarize this material and suggest possible areas for further research.

Broadcast Advertising Prior to 1927.—In the early days of radio, particularly after the medium had emerged from its infancy and was no longer considered a "gadget," there was a great deal of discussion in this country as to how the industry would be financed.

The idea of advertising sponsorship as the source of radio's economic support shocked many people. Among the possible alternative expedients suggested in the early years of broadcasting was that "philanthropists would come forward and endow programs because of their educational value."[2] Various other suggestions were made, including support by the manufacturers of radio sets and transmitting equipment; public subscription plans;[3] a government tax on receiving sets;[4] and radio clubs whereby donations would be received to support radio.[5] All of these plans proved unfeasible and consequently failed to materialize as a realistic basis of support for the new industry. It was

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[2]Robert J. Landry, This Fascinating Radio Business (Indianapolis: Bobbs-Merrill Company, 1946), p. 44.

[3]U.S. Federal Communications Commission, Interim Report of the Office of Network Study—"Responsibility for Broadcast Matter," June 15, 1960, Washington, D.C., p. 59. (Hereinafter cited as Interim Report).

[4]Sydney W. Head, Broadcasting in America (Boston: Houghton Mifflin Company, 1956), p. 123.

[5]Landry, op. cit., p. 45.

apparent that they "were out of key with the destiny of the medium."[6]

The problem, however, was soon solved by the industry's discovery that radio was an effective medium for advertising various goods and services.

> Out of the experimentation in ways of rendering broadcasting economically self-supporting, advertising emerged as the principal source of revenue. So rapid was the evolution that before non-commercial alternatives had reached the state of public formulation and discussion, the nation was committed to a policy of broadcasting support by commercial advertisers.[7]

The genesis of the sponsored program occurred on August 28, 1922, when the first sale of radio station time for commercial purposes was made by the American Telephone and Telegraph Company's station WEAF in New York City. The first account was for the Queensborough Corporation, selling Long Island real estate lots.[8]

The early acceptance of advertising on the radio, however, was not universal and unconditional for listeners, who were accustomed to broadcasts without advertising, and were annoyed by the commercial messages.[9]

With the advent of commercialism on radio, the distinction between "direct" and "indirect" advertising was

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[6]Head, op. cit., p. 123.

[7]Interim Report, op. cit., p. A-18.

[8]Gleason L. Archer, History of Radio (New York: The American Historical Society, Inc., 1938), p. 276.

[9]Interim Report, op. cit., p. 59.

made.[10] The latter consisted of mere mention of sponsorship. "Direct advertising" referred to the articles advertised, including sales talk and price quotations. In 1922, Herbert Hoover, then Secretary of Commerce, called the first of four annual conferences in Washington of those interested in broadcasting. He realized the potential of radio and sought means to insure its future. At the third National Radio Conference held in 1924, Hoover advised the broadcasting industry that:

> . . . the quickest way to kill broadcasting would be to use it for direct advertising. The reader of a newspaper has an option whether he will read an advertisement or not, but if a speech by the President is to be used as the meat in a sandwich of two patent medicine advertisements there will be no radio left. To what extent it may be employed for what we now call indirect advertising I do not know, and only experience with the reaction of listeners will finally decide in any event.[11]

Hoover reiterated these views at the fourth and final Conference the next year. He suggested that the industry establish a policy of "unobtrusive advertising," saying that "advertising in the intrusive sense will dull the interest of the listener and will thus defeat the industry."[12] In response to this proposal, broadcasters passed

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[10] C. J. Friedrich and J. Sayre, The Development of the Control of Advertising on the Air, Harvard University Radio Broadcasting Research Project-Studies in the Control of Radio (Cambridge: Harvard University Press, 1940), p. 4.

[11] Landry, op. cit., p. 49.

[12] Comments of the National Association of Broadcasters in the Federal Communications Commission's Docket No. 15083, in the matter of the proposed amendment of the Commission's rules with respect to advertising. September 30, 1963, pp. 6-7.

a resolution which stated that the problems of radio advertising should be solved by the industry rather than by government compulsion. The use of direct advertising over radio was deprecated and the Conference resolved that there appeared to be no necessity for any specific regulation in regard to the form of announcement in connection with a paid or any other program.[13]

In spite of the concern of the members of the Radio Conferences, other broadcasters, advertisers, members of Congress and the public, the tendency toward direct advertising increased as the "novelty" of the new medium subsided and sponsors sought more tangible results from their expenditures for broadcast advertising.

Therefore, "by the time of the passage of the Radio Act of 1927, it had become apparent that revenues derived from the sale of time for advertising purposes would provide the economic means to create and maintain continuity of broadcasting in the United States."[14] It was clear that the problems relating to broadcast advertising would be of imminent concern to the fledgling Federal Radio Commission.

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[13] Ibid., p. 8.

[14] Interim Report, op. cit., p. 59.

CHAPTER I

THE FORMULATION OF COMMISSION POLICY REGARDING BROADCAST ADVERTISING

The Radio Act of 1927

Two legislative acts, the Radio Act of 1927 and the Communications Act of 1934, have dictated Commission authority in all matters. They furnish the legal and logical base on which any Commission policy is formulated. The Federal Constitution gives Congress the power to regulate commerce among the states. It has been determined by the Courts that broadcasting is interstate commerce within the meaning of the Federal Constitution and is, therefore, subject to Congressional regulation and control. It follows that "if Congress has the power to regulate broadcasting as interstate commerce, Congress also has the power to regulate radio advertising, not because advertising of itself is interstate commerce, but because it is radio broadcasting."[1] The Congressional arm that was initially assigned the role of representing the government in this matter was the Federal Radio Commission.

The Act of 1927 and Advertising.--Relatively little

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[1]A. Bruce Bielaski, Jr., "Radio Advertising--Control of Quality and Quantity," Air Law Review, 5 (July, 1934), 369.

was mentioned concerning advertising during the debates pursuant to the passage of the Act. There was, however, criticism of the amended conference version of the proposed bill by Senator K. Pittman of Nevada. The Senator observed:

> No authority is given the commission or the Secretary of Commerce to limit the extent to which broadcasting stations may be utilized for purely advertising purposes. The owners of the 15,000,000 purchased radio receiving sets in the United States are interested in the character of the matter that is broadcast.[2]

He further commented:

> There is one thing which you will find out, that if it becomes necessary to make money out of broadcasting, the broadcasting concerns, when they have sold all of the receiving sets they can, will shoot out through this country every night magnificent statements with regard to sausage and pigs' feet. Why not? If they can be paid to broadcast advertising matter through the country, why should they not do it? It is fair to the broadcasters, but is it fair to the 15,000,000 people who have bought receiver sets? There should be some power . . . to place some reasonable limitation on the use of broadcasting stations so that they might be enjoyed by and be beneficial to the people of the country. But the conferees' bill does not propose to do any such thing.[3]

Pittman unsuccessfully requested that the Senate return the Conference report to the House of Representatives for further consideration in this regard.

The principal concern of the Congressmen in this area was the possibility of disguised advertising;

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[2]68 Congressional Record, 69th Congress, 2nd Session, February 18, 1927, 4109.

[3]68 Congressional Record, 69th Congress, 2nd Session, February 18, 1927, 4112.

advertising not identified as such on the air. Representative Emanuel Celler of New York appealed for prohibitory legislation. He wanted all paid programming to be identified as such, just as newspapers are required to identify advertising "to avoid the foisting of disguised advertising matter 'as reading notices' or news."[4] This plea for legislation was effective and resulted in the only section of the Radio Act that made reference to advertising.

> Section 19. All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, firm, company, or corporation, shall, at the time same is so broadcast, to be announced as paid for or furnished, as the case may be, by such person, firm, company, or corporation.[5]

Advertising Policies of the Federal Radio Commission

The FCC concepts and policies involving the relation of broadcast advertising to the "public interest, convenience, or necessity" derive, in great measure, directly from the concepts and policies worked out by the Federal Radio Commission in the early years of the administration of the Radio Act of 1927.

One of the first problems which confronted the

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[4] 67 Congressional Record, 69th Congress, 1st Session, January 18, 1926, 2509.

[5] 68 Congressional Record, 69th Congress, 2nd Session, January 29, 1927, 2501.

Commission was the extent and character of advertising by the nation's broadcasting facilities.

> A problem with which the Commission is faced from time to time is the extent and character of advertising which will be permitted by broadcast stations. There is a tendency to make a distinction between "direct" and "indirect" advertising, but, obviously, there is no sharp line of demarcation between them. By "direct" advertising is usually meant the mention of specific commodities, the quoting of prices, and soliciting of orders to be sent directly to the advertiser or the radio station. By "indirect" advertising is usually meant advertising calculated simply to create or maintain good will toward the advertiser. In some localities, such as Iowa, direct advertising has assumed very substantial proportions. Soon after the Commission was established many objections to advertising were received by the Commission from listeners, and in the first allocation certain of these stations were given only limited facilities. Hearings were held at the request of these stations, and the mass of documentary evidence submitted seemed to show overwhelmingly that a majority of the public in certain areas favored direct advertising by radio of certain products for farm consumption, having the idea that there were economic advantages in this method. One such station submitted evidence showing that it had received over one-half million commendatory letters in one year.
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> On the other hand, there has been some measure of complaint by competing merchants who do not have broadcasting facilities to the effect that they were placed under an unfair disadvantage by such use of a Government franchise.
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> The problem is far from being solved. It is manifest that broadcasters must resort to some form of advertising to obtain the revenue for the operation of their stations. On the other hand, it is equally manifest that the advertising must not be of a nature such as to destroy or harm the benefit to which the public is entitled from the proper use of broadcasting channels. The Commission has, of course, no power to censor programs and must proceed cautiously in its regulations on this subject.[6]

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[6] 2 Annual Report of F.R.C. (1928), pp. 19-20.

Elsewhere in the same report it was further noted that:

> The Commission is not fully convinced that it has heard both sides of the matter, but it is willing to concede that in some localities the quoting of direct merchandise prices may serve as a sort of local market, and in that community a service may thus be rendered. That such is not the case generally however, the Commission knows from thousands and thousands of letters which it has had from all over the country complaining of such practices.[7]

The Commission, as part of an overall statement relative to the "public interest, convenience, or necessity," declared that:

> While it is true that broadcasting stations in this country are for the most part supported or partially supported by advertisers, broadcasting stations are not given these great privileges by the United States Government for the primary benefit of advertisers. Such benefit as is derived by advertisers must be incidental and entirely secondary to the interest of the public.[8]

The Commission, at this juncture, was more specific where a station broadcast a considerable amount of "direct advertising," including the quoting of merchandise prices. In this instance, said the Commission, "the advertising is usually offensive to the listening public" and "advertising should be only incidental to some real service rendered to the public, and not the main object of a program."[9]

A result of the foregoing statements was that the broadcasting of direct advertising, in some instances, was

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[7] Ibid., pp. 168-169.

[8] Loc. cit.

[9] Loc. cit.

made the grounds for reducing the power of stations. The Commission, in one of its earliest decisions reducing the power of station WCRW, located in Chicago, Illinois, stated:

> It is clear that a large part of the program is distinctly commercial in character, consisting of advertisers' announcements and of direct advertising, including the quoting of prices. An attempt was made to show a very limited amount of educational and community civic service, but the amount of time thus employed is negligible and the evidence of its value to the community is not convincing. Manifestly the station is one which exists chiefly for the purpose of deriving an income from the sale of advertising of a character which must be objectionable to the listening public and without making much, if any endeavor to render real service to that public.[10]

It has been suggested that the Commission's decision in this and similar cases was motivated by more technical reasons than its claimed legal duty to protect the public interest. Elmer Smead, in "Freedom of Speech by Radio and Television," submits that "the fact was that criticism of this kind of advertising provided a convenient ground upon which it [the Commission] could select stations for reductions of power where such action was necessary in order to stop the interference between stations which the failure of regulation in the middle 1920's had produced."[11]

These various pronouncements by the Commission in no way reduced the volume of complaints against radio

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[10] Ibid., p. 156.

[11] Elmer E. Smead, Freedom of Speech by Radio and Television (Washington: Public Affairs Press, 1959), p. 29.

advertising. Listeners complained to the Commission, the stations, and to Congress. Indeed, the problem was discussed at the Congressional hearings to extend the life of the Federal Radio Commission, but no action was taken since the prevailing attitude was that the industry would regulate its own abuses.[12] Although the advertiser was welcomed as a necessary means of support, his activities continued to be viewed with some misgivings.

The Commission's "new" application form for broadcast privileges issued in its first year reflected a prudent interest in advertising practices. Information was required therein regarding the time devoted to advertising and the type of advertising presented. These forms were more detailed and required much more information than had previously been requested.[13] The obvious result was that advertising practices became a major factor in the license renewal process.

In 1929 the Radio Commission issued its opinion in the Great Lakes Company Case.[14] This case contained a rather comprehensive statement of general Commission policy regarding its interpretation of the statutory standard—

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[12]U.S., Congress, House, Hearings before the Committee on Merchant Marine and Fisheries on H.R. 8525, 70th Congress, 1st Session, 1928, pp. 135, 144, 158, 203.

[13]Interim Report, op. cit., pp. 10-11. See 2 Annual Report of F.R.C. (1928), pp. 166-170.

[14]Ibid., p. 20. See, also: 3 Annual Report of F.R.C. (1929), pp. 32-35.

the public interest, convenience, or necessity. It is additionally significant since it includes several succinct statements regarding the development of Commission policy in the matter of broadcast advertising. On the subject of advertising, the Commission concluded that it "must be accepted for the present as the sole means of support for broadcasting, and regulation must be relied upon to prevent the abuse and over-use of the privileges."[15] Broadcast stations are licensed to serve the public rather than the private interests of individuals or groups of individuals. This, said the Commission, is the basic meaning of the "public interest, convenience, or necessity" standard. The only possible exception to this maxim is in the area of advertising because advertising "furnishes the economic support for the service and thus makes it possible."[16] In this respect, however, "the amount and character of advertising must be rigidly confined within the limits consistent with the public service expected of the station."[17]

> The Commission must . . . recognize that without advertising, broadcasting would not exist, and must confine itself to limiting this advertising in amount and in character so as to preserve the largest possible amount of service for the public. The advertising must, of course, be presented as such and not under the guise of other forms on the same principle that the newspaper must not present advertising

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[15] Ibid., p. 21.

[16] Loc. cit.

[17] Loc. cit.

> as news. It will be recognized and accepted for what it is on such a basis, whereas propaganda is difficult to recognize. If a rule against advertising were enforced the public would be deprived of millions of dollars worth of programs which are being given out entirely by concerns simply for the result and good will which is believed to accrue to the broadcaster or the advertiser by the announcement of his name and business in connection with programs. Advertising must be accepted for the present as the sole means of support for broadcasting, and regulation must be relied upon to prevent the abuse and over-use of the privilege. (Emphasis supplied).[18]

In its annual report for 1929, the Radio Commission reiterated these views when it informed Congress that "offensive sales talk is too common" but that because of the broadcasters' need the Commission "must confine itself" to limiting advertising "in amount and character so as to preserve the largest amount of service to the public."[19]

Despite the policy established in the preceding case and in similar pronouncements, the pressure for direct and increased advertising continued. The Chairman of the Radio Commission, Major General C. McK. Saltzman, was prompted to say that the continuance of the competitive broadcasting system might be jeopardized unless broadcasters "commence to take steps to make these sales talks more palatable."[20] In the prevailing atmosphere broadcasting was becoming a refuge for "hawkers of questionable commodities and services

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[18] Loc. cit.

[19] 3 Annual Report of F.R.C. (1929), pp. 3, 5.

[20] Interim Report, op. cit., p. 63.

which could no longer persuade most newspapers and magazines to accept their copy."[21]

Several other factors also led to increased radio advertising, often of an objectionable nature. When advertising agencies began to exercise a larger role in the control of programming in the 1930's, all-out direct advertising became the generally accepted practice.[22] With the advent of the depression two other events occurred which increased the flood of complaints to the Commission. For economy reasons during these years, the commercial "spot" announcement was fabricated and "developed into a fine art."[23] Under these circumstances smaller companies became interested in radio advertising, and the networks and independent stations reduced their rates to accommodate this new segment of business. The new spot announcements were more palatable to small businesses because they were less expensive than the prior practice of purchasing a full program.

Variety magazine, following this trend toward increased advertising, commented on "the advertising of unlisted and illegal stocks, fake hair restorers, phony language courses, quack doctors, real estate advertising of uncleared lands, and fortune-telling rackets whereby the advertiser built up a 'sucker list' of fan letter writers

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[21]Landry, op. cit., p. 48.

[22]Head, op. cit., p. 123.

[23]Smead, op. cit., p. 36.

which he later sold to commercial companies for their use in advertising campaigns." Probably the most annoying of these types of dubious advertising were those of "patent medicines which had gotten a new lease on life with radio since their distribution had been hit hard when reputable newspapers throughout the country decided not to carry questionable copy."[24]

The Commission became increasingly apprehensive about the direction taken by broadcast advertising. In the often cited KFKB Broadcasting Association Case, involving Dr. John R. Brinkley who had repeatedly made extravagant claims for his medicine and cures over his station in Milford, Kansas, one of the reasons which finally prompted the Commission in 1930 to refuse a renewal of license was the broadcasting of "doubtful" and "inimical" advertising.[25] On this occasion broadcast advertising which was against the public interest was sufficient to cause a denial of license renewal.

Within a year, on May 31, 1931, the Commission extended its opinion in the Brinkley case when it advised the industry of the widespread complaints against the following types of programs: fortune telling, lotteries, games of chance, gift enterprises, medical advice, improper

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[24]Friedrich and Sayre, op. cit., p. 9.

[25]5 Annual Report of F.R.C. (1931), p. 67.

language and misleading and deceptive advertising. The Commission felt that it was doubtful whether such programs were in the public interest and that complaints from a substantial number of listeners would result in the institution of revocation proceedings or the designation for hearing of the application for renewal of license.[26]

During these years the industry, specifically the National Association of Broadcasters, had responded to the criticism being directed against broadcast advertising by the issuance of a Code of Ethics.[27] On December 21, 1931, the Radio Commission released a formal statement in which it urged broadcasters to adhere to the "Code of Ethics" instituted by the NAB. If the broadcasters declined or failed at this opportunity for self-regulation, the Radio Commission felt that "the matter should be treated with proper legislation."[28] In its notice, the Commission commented:

> The principal objection to programs under our system arises out of the kind of advertising that is allowed to be made a part of them.
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> . . . There is not a single station that can escape responsibility. A heavy responsibility rests upon all chain companies. . . . If their (the American people) share of this form of entertainment can be received only at the expense of advertising statements or claims which are false, deceptive,

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[26] 5 Annual Report of F.R.C. (1931), p. 9; 6 Annual Report of F.R.C. (1932), p. 12.

[27] "Broadcasters Have Policed Selves for 34 Years," Broadcasting, May 27, 1963, p. 28.

[28] Interim Report, op. cit., p. 64.

> or exaggerated, at the expense of programs which contain matter which would be commonly regarded as offensive to persons or recognized types of political, social, and religious beliefs, then they are justified in demanding a change in the system.

The Commission concluded:

> The good will of the listener is the station's only asset, and therefore this could rest with the licensees of the stations. This problem should not be taken out of their hands until they have had full opportunity to make the necessary corrections. If they decline the opportunity or seizing it fail, the matter should be treated with proper legislation.[29]

The improvement in the standards of broadcast advertising that did follow were primarily attributable to the networks. The National Broadcasting Company and the Columbia Broadcasting System both initiated measures that would prevent objectionable and questionable advertising. This, however, could not completely eliminate the problem; as Friedrich and Sayre point out:

> The leadership of the networks, however, meant little to the small station dependent upon local advertising for its income. The merchant down Main Street wanted to have all the details of his product on the air, and could not be convinced that when he "bought" fifteen minutes it was not wisest from his point of view to spend all of them in advertising his goods. Such stations were in a shaky position financially and most of them would accept almost any advertising, so that talk of "restrictions" or improper proprietary medical accounts was a little premature.[30]

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[29] Loc. cit.

[30] Friedrich and Sayre, op. cit., p. 13.

Throughout this period, Congress was fully aware of the problems of radio advertising; indeed, the matter was discussed at various hearings pertaining to radio regulation.[31] In 1932, Senator Couzens of Michigan introduced Senate Resolution No. 129 requesting the Commission to survey and report to the Senate on the following questions, among others, pertaining to the growing dissatisfaction with the use of radio facilities for purposes of commercial advertising:

1. What information there is available on the feasibility of Government ownership and operation of broadcasting facilities.
2. To what extent the facilities of a representative group of broadcasting stations are used for commercial advertising purposes.
4. What plans might be accepted to reduce, to limit, to control, and perhaps, to eliminate the use of radio facilities for commercial advertising purposes.
6. Whether it would be practicable and satisfactory to permit only the announcement of sponsorship of programs by persons or corporations.[32]

The Commission submitted a detailed report to these queries. In its statement it noted that the "system of competitive operation of broadcast stations by private enterprise has grown up under the policy laid down by Congress in the radio act of 1927" in which "all the people of the United States get some form of radio-broadcast service."

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[31] Interim Report, op. cit., p. 64.

[32] Senate Document No. 137, 72nd Congress, 1st Session, Commercial Radio Advertising, A Letter from the Chairman of the Federal Radio Commission in Response to Senate Resolution No. 129. (Washington: U.S. Government Printing Office, 1932), p. v.

If the policy were changed, "then a thorough investigation of all the various possible methods of serving the people of the United States should be made and a policy determined which would be satisfactory."[33]

The Commission classified programs as commercial or sponsored, and sustaining. Briefly, a commercial program is one presented solely for profit; a sustaining program is presented without compensation and is intended to satisfy the station's public interest responsibilities and build audience interest which enhances the value of a station's commercial time.

> What is contained in sustaining programs depends almost entirely upon the extent to which radio facilities are used for purposes of commercial advertising . . . both commercial and sustaining programs contain much that is of an information and educational character.[34]

In answer to Question 2, the Commission submitted a survey of the offering of 582 stations at the time over a seven-day period which showed that 63.86% of the hours were devoted to sustaining programs and only 36.14% to commercial programs.[35]

The Commission's answers to Questions 4 and 6 of the Resolution deal specifically with the problems involved in eliminating or restricting broadcast advertising. The

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[33] Ibid., p. 3.

[34] Ibid., p. 14.

[35] Ibid., p. 31.

opinions will be quoted, at considerable length, to illustrate the evolutionary character Commission policy had taken in the field of advertising. In this respect, the Commission concluded that to eliminate broadcast advertising would "destroy the present system of broadcasting." The Commission's response to Question 4 was as follows:[36]

> Any plan to reduce, limit, and control the use of radio facilities for commercial advertising purposes to a specific amount of time or to a certain per cent of the total time utilized by the station must have its inception in new and additional legislation which either fixes and prescribes such limitations or specifically authorizes the Commission to do so under a general standard prescribed by that legislation. While the Commission may under existing law refuse to renew a license to broadcast or revoke such license because the character of program material does not comply with the statutory standard of public interest, convenience, and necessity, there is at present no other limitation upon the use of radio facilities for commercial advertising.
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> Such regulation, whether specifically undertaken by Congress or delegated by it to the Commission, could extend both to the quality and the quantity of commercial advertising. While the quality of advertising might and probably would be difficult of adequate regulation, the quantity of such advertising could be limited to certain hours in the day or night and to a certain number of such hours; also, provision could be made limiting the advertising matter to a certain per cent of the time devoted to total programs or commercial programs.
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> Any such system of regulation should, however, recognize and apply the differences in the needs and requirements of stations of the several classes; i.e., clear, regional, and local. Also, a basis for classification may exist in the fact that certain programs are originated locally for local consumption, whereas others are originated by chain companies for the edification and entertainment of the country as an entirety or at least for very large sections thereof.

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[36] Ibid., p. 33.

In an amplification of this point the Commission further commented:

> . . . A flat restriction placed upon the amount of time used for sales talks without regard to the location, power, and activities of stations would, in all probability, work inequitable results. Moreover, and in any case or class, limitations upon the use of time for commercial advertising, if too severe, would result in a loss of revenue to stations which, in all probability, would be reflected in a reduction in the quantity and quality of programs available to the public.

In concluding its response to the present question, the Commission said:

> The radio act of 1927 was obviously designed to permit the licensees of broadcasting stations the maximum of latitude in the matter of program material. Such licensees are in a singularly favorable position to learn what the audience wants to hear and to make the necessary changes in program material and in methods of presentation that will cause their programs to be favorably received by a substantial majority of the listeners. The adoption of regulation of the sort herein described should be undertaken only when it clearly appears that a majority or at least a considerable number of the licensees have failed to operate their stations in a manner acceptable to a majority of the listening public. If, in the opinion of Congress, that time has now arrived, we conceive it to be advisable to enact such legislation as will permit the Commission to impose such regulations as the circumstances from time to time seem to warrant rather than legislation imposing specific restrictions and unflexible limitations.[37]

In response to Question 6, the Radio Commission modified its previous policy against "direct advertising" when it replied that it would neither be practicable nor satisfactory to permit only the announcement of sponsorship

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[37] Ibid., pp. 33-34.

of programs by persons or corporations. The Commission informed the Senate:

> The American system of broadcasting is predicated upon the use of radio facilities as a medium for local and national advertising. Upon this use depends the quantity and quality of commercial and sustaining programs. The competition between advertisers insures the employment of the best talent available and a variety in kind of commercial programs. The commercial programs furnish the principal source of revenue to stations. The quality and character of sustaining programs are dependent upon the revenue received from the sale of time for commercial advertising purposes. The daily newspaper furnishes a parallel: A newspaper can be sold to the subscriber at a cost greatly under the cost of production because it is used as a medium for advertising, and what it contains of a news, educational, literary, and entertaining value depends almost entirely upon the revenue received from the sale of space for advertising purposes. Similarly, a radio broadcast station can present sustaining programs that are of great educational value and rich in entertainment only in a degree measured by the revenue derived from the sale of time for purposes of commercial advertising.
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> Information made available to the Commission shows that sponsorship of programs by name would amount, in the ordinary case, only to good-will advertising. A few products and their uses may be so well and generally known as to permit this. On the other hand, and as to the majority of products, such advertising would involve an expense which national advertisers are not now willing and in a position to bear.
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> Many products have several uses which must be described to be understood and appreciated. New products frequently need to be explained. Nearly every manufacturer seeks to develop concerning his product special characteristics which set it off from competing products and make it more desirable. Identity of product, description of uses, and characteristics must be woven into and become a part of the program to make it of value to the sponsor. What applies to the national advertiser applies in even greater degree to the local advertiser. In such cases identity by name only would be of little value to the advertiser.

It should be borne in mind that if a restriction permitting sponsorship by name only should cause a number of advertisers to discontinue the use of radio facilities as a medium for commercial advertising, such nonuse would immediately and inevitably be reflected in a decrease both in the quantity and quality of programs available to the public. A serious loss in revenue to the stations could, under our system of broadcasting, have no other result.

As a matter of fact, the situation should have its own cure within itself. There should be a keener appreciation by both the broadcaster and the advertiser that radio facilities not only offer perhaps the greatest opportunity for reaching the greatest number of people, but that their use imposes upon them a very great responsibility for the manner in which programs are presented. By the use of these facilities the advertiser is permitted by the licensee of a radio station to visit in the homes of the listening audience. The value of his contract is dependent upon the amount of sales talk and the kind of entertainment he offers as well as the manner in which he chooses to express himself. Those whom he offends can promptly eject him and deny him further admission. The broadcaster and advertiser who fail to recognize such fundamental principles and to make the adjustments in the content and method of presentation of programs desired by a great number of the listening public must suffer the natural consequences resulting from the operation of the law of economics. The employment of national surveys of program and station popularity, better showmanship and tact by advertisers, and a strict supervision of all programs by the licensees of stations should develop a technique that would be more satisfactory to the listening public and beneficial to the industry.

Here, as in our answer to the fourth question, if it is the opinion of Congress that the situation justifies further and additional legislation, the proper solution would seem to lie in legislation authorizing the commission to enact certain regulations designed to govern the situation rather than specific legislation on the subject by Congress.[38]

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[38] Ibid., pp. 36-37.

The Commission had concluded that it did not presently have the proper authority to control or limit the use of radio facilities for commercial advertising. It distinctly informed the Senate that the current system of broadcasting would be destroyed if advertising were eliminated, or drastically altered if Congress were to delegate to the Commission authority to place limits on advertising. Although the Commission would need additional legislative authority to control broadcast advertising, the latter should be included in the strict supervision of all programs by station licensees. The Radio Commission also modified its aforementioned policy against "direct advertising," recognizing that in many instances sponsorship by name only was not sufficient. The control of advertising, noted the Commission, could and should be instituted by a combination of "strict supervision" by the broadcaster, cooperation of the advertiser and the authority of the Commission to review station performance.

The problems relative to advertising faced by the Radio Commission continued to exist in substantial proportions. In this respect, the Federal repeal of prohibition was not without its repercussions on the broadcasting industry. On February 2, 1933, the Radio Commission was motivated to issue a news release in the matter of liquor advertising.[39] The Commission, in its statement, called the

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[39]Harry P. Warner, Radio and Television Law, Vol. 1 (Albany, N.Y.: Matthew Bender and Company, 1948), p. 411.

attention of broadcasters to the "public interest" section of the Radio Act of 1927, and asked for intelligent cooperation insofar as liquor advertising on the air was concerned. Although it noted that prohibition had been repealed by constitutional amendment and thus did not exist as far as the Federal government was concerned, the Commission commented:

> . . . it is well known that millions of listeners throughout the United States do not use intoxicating liquors and many children of both users and non-users are part of the listening public. The Commission asks that broadcasters and advertisers bear this in mind.

If they persist in doing otherwise:

> The Commission will designate for hearing the renewal applications of all stations unmindful of the foregoing and they will be required to make a showing their continued operation will serve the public interest, convenience, or necessity.[40]

This initial Commission policy relating to the banning of liquor advertising has, in essence, been retained throughout the history of the regulatory body.

The overwhelming importance of the Federal Radio Commission in the matter of broadcast advertising was that this agency was initially responsible for formulating concepts and policies associated with advertising. Much of the policy groundwork laid by the Radio Commission remains operative today in the functioning of the Federal Communications Commission. Other than the issuance of general

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[40] Loc. cit.

statements against excessive and other forms of advertising, however, the Radio Commission took no affirmative action against the great majority of stations.

The Radio Commission, as Friedrich and Sayre emphasize, began to feel the pressure of congressional and administrative attitudes.[41] The Administration wanted to unify the control of the various media of communication under one agency and ordered a survey of "the broadcast problem." One of the questions looked into was "limiting by statute the amount of advertising patter which can be included in a single program and other steps to curtail sales talk"; another was the means for raising the quality of advertising.[42]

These queries were investigated but the results of the study were never made public. It is pertinent, however, that no new provisions were written into the Communications Act of 1934 regarding advertising.

The Communications Act of 1934

All broadcasters are subject to the provisions of the Communications Act of 1934. The authority of the Federal Communications Commission, and the policies of the Commission as derived from an interpretation of that authority, are based on the statutory standards and obligations

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[41] Friedrich and Sayre, op. cit., p. 23.

[42] Loc. cit.

set forth in this Act. At the time of the passage of the Act, an article appeared in a legal journal which speculated on the control of radio advertising under the new legislation.

> Therein it is provided that no obscene or indecent language (sec. 326), nor any lottery scheme or gift enterprise (sec. 316) shall be broadcast under penalty of fine or imprisonment. Furthermore, it is stated that the purpose of radio broadcasting is to serve the public interest (sec. 303), and a license may be refused, or renewal denied, if these requirements are not fulfilled (sec. 311 and sec. 312). Thus it is safe to say that no advertising material which may be fraudulent, deceitful, or slanderous will be broadcast because of the fear that the license will not be renewed on the ground that the station does not serve the public interest.[43]

The above assumption was not so safe, at least in the early years of regulation. It should be noted, however, that although the Communications Act of 1934 has had several amendments through the years, it has not been significantly altered with regard to broadcast advertising.

The Act of 1934 and Advertising.--In the course of the debates, several comments were made concerning advertising practices in broadcasting. Perhaps the severest criticism against broadcast commercialism came from Senators Wagner of New York and Fess of Ohio. Senator Wagner declared, "I am only one of those public officials, who is tired of a few radio stations having a complete monopoly of the air and using it purely for commercial purposes."[44]

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[43] Bielaski, op. cit., p. 371.

[44] 78 Congressional Record, 73rd Congress, 2nd Session, May 15, 1934, 8331.

Senator Fess spoke against radio's advertising excesses: "Everyone must be impressed with the pollution of the air for commercial purposes until it is actually nauseating."[45]

As previously mentioned, the Communications Act of 1934 contained no new provisions relating to advertising, with the exception of Section 316 prohibiting the advertising of lotteries. The new Section 317 of the Communications Act was practically identical in language to Section 19 of the Radio Act of 1927, the requirement that broadcast stations disclose when they are broadcasting paid and advertising matter. In 1948 the original Section 316 prohibiting lotteries was repealed and recodified as Section 1304 of the United States Criminal Code (18 U.S.C. 1304). The few minor amendments to the Act as they relate specifically to broadcast advertising will be treated elsewhere in this thesis.

Early Advertising Policies of the Federal Communications Commission

The new regulatory authority "adopted in their essentials the policies and attitudes toward advertising support for broadcasting which has been evolved by the Radio Commission."[46] There were, however, early indications that the new Commission might be more strict about program

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[45] Ibid., p. 8830.

[46] Interim Report, op. cit., p. A-21.

standards, including advertising, than its predecessor had been. Chairman Anning S. Prall, who had replaced Eugene Sykes, opened his career with a broadcast over the National Broadcasting Company in the spring of 1935, saying:

> We will not brook any trifling with our regulations. The radio people who disregard them, and I include the broadcasting of harmful and manifestly fraudulent material, are going to be made conscious that they must render an accounting. We will punish the malefactors even if it means their extinction from the wave lengths.[47]

In its first annual report, the Commission called attention to the increased number of complaints that had been received the preceding year, particularly those regarding objectionable programs. The Commission pursued an active inquiry into these complaints and reported:

> . . . Formal action was taken with regard to 226 separate objectionable programs broadcast over 152 stations. Some action was taken with regard to a much larger additional number of complaints involving several more stations, but these were adjusted informally. The broadcasting of false, fraudulent, and misleading advertising in various guises has been the chief source of complaint. In many instances the Federal Trade Commission, the Post Office Department, and the Food and Drug Administration had taken action to curtail the objectionable activities of medical advertisers in printed form, the result being that these advertisers resorted to broadcasting in order to disseminate their misleading and often fraudulent sales propaganda.[48]

"Formal action," as stated in the foregoing, either implied the designation of a renewal application for hearing,

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[47] Friedrich and Sayre, op. cit., pp. 23-24.

[48] 1 Annual Report of F.C.C. (1935), pp. 16-17.

or the issuance of an order of revocation accompanied by an opportunity for hearing. In practice, many notifications of hearings were cancelled before they took place, when the station licensee showed that it had terminated the broadcasting of the objectionable material. "Informal action" consisted of correspondence between the Commission and the station with regard to the material that was the basis for complaint. The station might then prove that the allegations were unfounded, or otherwise prove good conduct to the Commission.[49] The Federal Communications Commission, like its predecessor, the Radio Commission, was reluctant to invoke the harsh procedure of license revocation. For the most part, the Commission used the informal processes of consultation and conference. Their reports declare that these milder methods achieved the desired results.[50]

The broadcasting industry was uncertain as to Commission policy in the matter of advertising. During 1934 the industry, fearing repressive advertising legislation, promulgated program standards to govern advertising content. Despite these efforts at self-regulation, the aggressive attitude of the Communications Commission had station owners "thoroughly scared." Their principal complaint was that

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[49] Friedrich and Sayre, op. cit., pp. 24-25.

[50] See: 2 Annual Report of F.C.C. (1936), p. 19.

they were uncertain what particular forms of advertising were not in the public interest. In this atmosphere of fear and recrimination it was reported that the Commission had detailed its field assistants, usually involved solely in technical matters, to investigate stations for certain taboo practices, including excessive and lengthy commercial announcements, fraudulent advertising, advertising from professional people, fortune telling and lotteries.[51]

It was in this atmosphere that the Columbia Broadcasting System issued its program standards with considerable fanfare and publicity in May of 1935. The standards were comprehensive and included careful plans to control excessive and objectionable advertising. The effect of this pronouncement, combined with previous industry measures, was that advertising was substantially improved, at least to the point where Chairman Prall, at the 1935 NAB Convention, complimented the industry on its progress at self-regulation. He expressed Commission gratification in these terms:

> As you are probably aware we have injected a bit of the New Deal into Radio in the past few months, and from where we sit in Washington it is apparent . . . that you are interested in our . . . determination to free the air of objectionable programs and strengthen friendly radio reception in the American Home. While our actions may have appeared drastic, I believe all of you will agree that even at this stage much good has been accomplished. . . . Today after five months (since I took office) there

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[51]Friedrich and Sayre, op. cit., pp. 25-26.

> has been a wholesome cleaning up. Stations have taken the view that the result can be accomplished by self regulation. That is well! We on the Commission are gratified, for our records show that there are still 100 station citations pending involving programs. These are not confined to medical continuities. They include lotteries, astrology programs, and other seeming violations in the public interest. . . . Particularly gratifying to us has been the leadership of the nation wide networks. . . . We hope they will continue to lead the way in this sensible self regulation movement. Otherwise there is a strong possibility that Congress itself will step in and take a hand and perhaps write in the law restrictions with which the stations will be forced to comply.[52]

Chairman Prall's statement is especially interesting in that it reflects the attitude of the Commission at the time. The Commission, during these years, did not issue a great number of specific policy statements; rather its advertising policies are more accurately gauged by an examination of certain areas in which it acted.

Commercial Support for Stations.--With its earliest decisions, the Commission had indicated its reliance on the fact that the American system of broadcasting depends on the sale of advertising time for the maintenance and continued operation of stations. This is, of course, inextricably related to the Commission policy that a prospective or continuing station licensee have the proper financial qualifications to operate a broadcast station. One of the first considerations before the Commission regarding the granting

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[52] Ibid., pp. 28-29; quoted from Variety of July 10, 1935, p. 42.

of broadcast facilities was whether a particular community could adequately sustain a station in terms of available commercial support. In the Albert Moffat case, permission was granted to transfer a station from one community to another because the latter city would be able to provide more advertising business.[53] In many other instances the Commission either granted or denied permission to operate a station on the basis of necessary commercial support.[54] The Commission apparently favored this policy because it enabled a licensee to meet his financial obligations and yet maintain his station in the public interest. In the application for a construction permit to operate a station in Duncan, Oklahoma, by Siever, Bayless, and Steele, the Commission held that the applicant's finances and probable commercial support of the station were not adequate to insure the maintenance of the station in the public interest.[55]

Although the Commission has required that the community to which a station is to be licensed be able to provide sufficient commercial support, it has not considered

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[53] Re Albert Moffat, 1 F.C.C. 160 (1934).

[54] See: Re Taylor, 3 F.C.C. 281 (1936); Re Sweetwater Broadcasting Company, 4 F.C.C. 293 (1937); Re Miller and Mahoney, 4 F.C.C. 79 (1937); Re Robert Lowell Duren, 1 F.C.C. 159 (1934); Re Charles Henry Gaines, 1 F.C.C. 177, 178 (1934).

[55] Re Siever, Bayless, and Steele, 2 F.C.C. 103 (1935); See, also: Miller and Mahoney 4 F.C.C. 79 (1937); Re Sweetwater Broadcasting Company, 4 F.C.C. 293 (1937).

potential commercial support as the sole requirement. In other words, the feasibility and need for an additional advertising medium is not a singularly controlling factor in the granting of a license. Indeed, in the matter of the Metropolis Company of Jacksonville, Florida, an applicant contended that there was a lack of advertising time on existing stations due to time requirements of chain broadcasts, and that local business needed additional facilities. In its decision, the Commission said:

> The need for additional advertising outlets for the merchants of a particular community is not a controlling, or even strong factor, in the granting of a construction permit. Although Radio broadcasting is financed by and depends upon advertising, such advertising is not regarded as an end in itself.[56]

In a 1937 case involving the Continental Radio Company, the Commission heard testimony indicating that no provision was made by existing stations in Columbus, Ohio, for the broadcasting of spot announcements of less than one minute. The applicant proposed to provide such shorter announcements. The Commission held that this did not compel a finding of "need" where there was no showing of any public demand for this type of advertising service.[57] In a similar case, the Commission noted that "the mere desire of commercial organizations for a low-rate transmitting

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[56] Re The Metropolis Company, 6 F.C.C. 425 (1938).

[57] Re Continental Radio Company, 5 F.C.C. 518 (1937).

service for radio advertising does not by itself justify the granting of additional facilities."[58] On the other hand, in Utah Radio Educational Society, et al., a comparative hearing, one applicant was preferred because, in part, he proposed many local programs that would "provide a reasonably priced advertising medium for small business concerns not now using radio because of their inability to pay the rates prevailing on the two stations now serving the Salt Lake City area."[59]

There is considerable inconsistency in the Commission decisions on this topic; however, the important point remains. Its policy, as reflected by case decisions, clearly indicates that the Commission is and has been cognizant of broadcasting's dependence on the sale of broadcast time for its maintenance and continued operation.[60] In WCAR Broadcasting Company the Commission pointed out that " . . . under the existing American system of licensing broadcast stations, permitting the sale of time commercially, the Commission realizes that profit must be obtained because stations are

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[58] Re Radio Station WKEV, 7 F.C.C. 19 (1939); See, also: Re Smith, Keller and Cole, 5 F.C.C. 291 (1938); Re Pacific Acceptance Corporation, 5 F.C.C. 296 (1938); Re Pawtucket Broadcasting Corporation, 6 F.C.C. 582 (1938).

[59] Re Utah Radio Education Society, et al., 3 F.C.C. 247 (1936).

[60] See: Re Martin, 3 F.C.C. 461, 462 (1936); Re Power City Broadcasting Corporation et al., 4 F.C.C. 227, 230 (1937); Re Fall River Herald Pub. Publishing Company, 5 F.C.C. 377, 382 (1938); Re Roberts McNab Company, 6 F.C.C. 548, 552 (1938).

not licensed to philanthropic . . . institutions."[61]

Qualitative Aspects of Broadcast Advertising.--The Commission has on numerous occasions considered the qualitative merits of certain forms of broadcast advertising. In the early years many stations were cited for false and misleading advertising and objectionable and harmful forms of medical advertising. The advertising of such questionable products as Ray-die Salve, Birconjel, Congoin, and Dr. Michael's All Herb Remedy have been condemned.[62] Similarly, advertisements pertaining to Electronics and Health and Science Institutes and other dubious medical groups have been considered not in the public interest by the Commission.[63] The McClashan, et al. case is particularly significant because of the Commission's comment on the responsibility of station licensees in this matter. The Commission concluded that broadcast licensees are under a duty to examine the propriety of advertising to be broadcast over their stations and to do otherwise is "manifestly contrary to the law."[64] In Bremer Broadcasting Company, the Commission

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[61]Re WCAR Broadcasting Company, 5 F.C.C. 540 (1937).

[62]Re Knickerbocker Broadcasting Co., Inc. (WHCA), 2 F.C.C. 76, 77 (1935); Re [illegible], Inc., 2 F.C.C. 293, 295-296 (1936); Re Oak Leaves Broadcasting Station, Inc., 2 F.C.C. 298, 300 (1936); Re [illegible] Life Insurance Co., 2 F.C.C. 455, 458-459 (1936).

[63]Re Bremer Broadcasting Co., 2 F.C.C. 79, 81 (1935); Re McClashan, et al., 2 F.C.C. 145, 148 (1935); Re Hammond-Calumet Broadcasting Corporation, 2 F.C.C. 321, 323 (1936); Re [illegible], Station of the Stars, Inc., 7 F.C.C. 449 (1939).

[64]Re McClashan, et al., 2 F.C.C. 145 (1935).

held a station to "a high degree of responsibility" for not safeguarding the public interest and not recognizing the falseness of the advertising it had broadcast.[65]

In many other instances the Commission has indicated its disapproval of the qualitative or content aspect of commercial messages. Advertising has been considered objectionable because of the nature of the product and the presentation. In other words, the product itself creates the offense, so that no commercial for it could be satisfactory. For example, the Commission has considered commercials for birth-control devices to be contrary to the public interest.[66] It has frowned upon advertisements by members of the clergy[67] and the medical profession.[68] Similarly, disapproval has been expressed regarding advertising offering advice on marriage or family matters,[69] and the advertising of lotteries.[70]

As Commission policy evolved, it was evident that such practices would not be considered lightly in evaluating

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[65] Re Bremer Broadcasting Company, 2 F.C.C. 79 (1935).

[66] Knickerbocker Broadcasting Co., Inc., 2 F.C.C. 76 (1935).

[67] Re United States Broadcasting Corp., 2 F.C.C. 208, 218-19 (1935).

[68] Re Farmers and Bankers Life Insurance Company, 2 F.C.C. 455 (1936).

[69] Re Scroggin and Company Bank, 1 F.C.C. 194 (1936).

[70] Re KXL Radio Station, Inc., 2 F.C.C. 687 (1936); KXL Broadcasters, 4 F.C.C. 160 (1937).

the past record of a station. Furthermore, the Commission policy in these cases has given impetus to the prohibitions against advertising content promulgated by the industry.

Quantitative Aspects of Broadcast Advertising.—The Communications Commission's decisions, as reflected by cases in the early years of its existence, do not indicate a great preoccupation with the quantitative aspects of broadcast advertising. The Commission did, however, in United States Broadcasting Corporation, et al., say that it was in full accord with an earlier policy stated by the Radio Commission that advertising revenue must retain a "secondary" place and "incidental" character as the servant and not the master of community broadcast service.[71] Elsewhere, in a case involving the transfer of a license assignment, the Commission noted that the terms of the contract "might result in a tendency toward a more rigid commercialization of the facilities—thus detrimental to the listening public."[72] The Commission would have much more to say regarding the quantitative element of broadcast advertising in the ensuing years; this will be dealt with rather extensively in later sections.

Section 317 of the Communications Act.—This section

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[71] Re United States Broadcasting Corp., 2 F.C.C. 208 (1935).

[72] Re The Travelers Broadcasting Service Corporation, 6 F.C.C. 456 (1938).

of the Act, the requirement that advertising and sponsored programs be announced, was rarely interpreted or enforced in the early years.[73] The Radio Commission on one occasion criticized sponsored programs in which the sale of securities was advertised without announcing or divulging the name of the sponsor.[74] The Communications Commission, in The Brooklyn Cases, condemned the cloaking of commercial programs as religious talks.[75] The general administrative policy was to insure that advertising be presented as such and not disguised.

On May 16, 1939, the Commission released a statement in which it called attention to section 317 of the Act and requested all licensees to conform to its requirements. The Commission ruled that the practice of identifying a commercial program by giving the sponsor's name was sufficient compliance with the Act.[76]

Summation of Policy in the Early Years.--Since 1935 the Communications Commission has resorted less to formal hearings and more to informal action when dealing with stations which have broadcast questionable advertising.[77] For

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[73] Warner, op. cit., p. 351.

[74] Ibid.

[75] Ibid., p. 351; See: Re The Brooklyn Cases, 2 F.C.C. 208, 218 (1935).

[76] Ibid., p. 351.

[77] Ibid., p. 310.

example, in the year ending June 30, 1936, the Commission designated twenty stations for formal hearings for advertising certain medical products and treatments. The Commission renewed the licenses, except for two which were also found to lack adequate financial resources for broadcasting.[78] In June of 1936 the Commission called for hearing twenty stations which had been advertising "Karmola," a reducing compound for which the Federal Trade Commission had previously issued a cease and desist order. Before the hearing date, however, all the stations notified the Commission that they had discontinued the advertising. The Commission subsequently revoked its order for hearing except for three stations which had committed additional offenses.[79] For the most part, this method of informally handling such cases continued to be Commission policy and practice.

A policy committee within the Commission in 1939 suggested that it institute a code of its own that would clearly specify the minimum requirements for broadcasting in the public interest. Among the suggested principles were:

> Programs containing "uninteresting and lengthy advertising continuity," lottery information, and false, fraudulent, or misleading advertising should not be allowed.
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> In accepting copy for medical services or products, advertising should be "strictly truthful and

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[78] Friedrich and Sayre, op. cit., p. 31.

[79] Ibid., p. 32.

> decorous" and checked with the Food and Drug Administration, the Post Office Department, The Federal Trade Commission, local medical authorities, and FCC principles.[80]

The idea of such a code was rejected by a majority of the Commission members because they felt that it came close to violating the law restricting the Commission from censorship of programs. It was repudiated on the further grounds that such standards would be better initiated by the industry.[81]

The Commission regulates broadcast advertising by virtue of a broad grant of licensing power contained in the Communications Act of 1934, the criterion being "the public interest, convenience, or necessity." Because of the vagueness of this term, the Commission has been able to exercise broad discretion in formulating more specific standards. In passing on programming under the test of the "public interest, convenience, or necessity," the Commission has had occasion to consider the qualitative merits of broadcast advertising. The Commission has established as policy that one consideration in a license proceeding is the overall program service of a broadcaster. In addition, the Commission also deliberates the quantitative aspect of advertising, for example, cases in which advertising becomes too important or persistent in the overall program service

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[80] Ibid., pp. 32-33.

[81] Ibid., p. 33.

of a station.

In several early cases the Commission made it clear that a broadcast licensee assumes a statutory obligation as trustee for broadcast matter. He must exercise a high degree of care and prudence and put forth a continuing effort in determining the suitability of advertising material broadcast over his facilities.[82] In KMPC, the Station of the Stars, Inc., it was further noted that a station is presumed to have constructive knowledge of legal decisions affecting the advertising material it accepts, and it is contrary to the public interest when an advertisement condemned in a prior Commission proceeding is approved for broadcast.[83] KMPC had broadcast certain medical treatments previously held not in the public interest.

The penalty for broadcasting advertising contrary to the public interest can be the refusal of the Commission to renew a license when it comes up for periodic inspection and renewal. The early years of the Federal Communications Commission indicate that informal pressures have exerted control over much of broadcast advertising. In practice the Commission has been particularly reluctant to enforce compliance with its standards by the use of the revocation

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[82] See: Re McGlashan et al., 2 F.C.C. 145 (1935); Re Premier Broadcasting Corp., 2 F.C.C. 79 (1935).

[83] Re KMPC, the Station of the Stars, Inc., 6 F.C.C. 729 and 7 F.C.C. 449 (1939).

procedure. It would appear, however, that the simple threat of initiating hearings has, in most cases, been sufficient to curtail the great majority of advertising abuses.

In the Brinkley case, discussed under the Radio Commission, the broadcasting of advertising which was against the public interest was sufficient in itself to cause a denial of license. Another exception to general practice is illustrated in a 1936 case before the Communications Commission in which KMA, Shenandoah, Iowa, and KGBZ, York, Nebraska, applied for full-time on the frequency they had been sharing. Due to a record of false advertising, in addition to financial incompetence, the Commission deleted KGBZ and granted KMA the frequency full-time. The Commission found long and repeated claims for "Texas Crystals" and "Van-Nae Herb Tea" as medical cure-alls to be false.[84] The more realistic Commission pattern is exemplified in such cases as WSBC, Inc., in which a license was renewed despite continued broadcasting of advertising which had provided the basis for a conviction under the Pure Food and Drug Act and for a fraud order proceeding.[85]

The fact is that the Commission generally considers such additional factors as the licensee's compliance with Commission orders, promises of future good practices, and

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[84] Re May Seed and Nursery Company, et al., 2 F.C.C. 559 (1936).

[85] Re WSBC, Inc., 2 F.C.C. 293 (1936).

the station's overall meritorious program service before revoking a license for advertising abuses. For instance, in Scroggin and Company Bank where station KFEQ, St. Joseph, Missouri, had broadcast so-called "lead" advertising found not to be in the public interest, the Commission said:

> When renewal of license is set for hearing to determine the nature and character of programs and advertising material broadcast, consideration will be given to applicant's entire service and other indications and assurances as to probable future operation of the station.[86]

Since 1940 the Commission has had little occasion to censure the kind of advertising broadcast. Among the principal reasons for this was the successful use of informal regulation during its earlier years to lessen unfounded medical and other forms of objectionable advertising. The Commission policy in this area, as previously noted, spurred the adoption of advertising standards contained in various industry codes of practice. In the early 1940's the Commission also adopted an informal policy of leaving the problem of false advertising to the Federal Trade Commission.[87]

The main concern of the Commission was excessive advertising or over-commercialization by broadcast licensees. During the 1940's the Commission granted license renewals with relative ease. Program regulation was somewhat neglected

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[86] Re Scroggin and Company Bank, 1 F.C.C. 194 (1935).

[87] Smead, op. cit., p. 31; See: 6 Annual Report of F.C.C. (1940), p. 55.

because of wartime activities. This period is marked, quite obviously, by a minimal amount of Commission records and case reports in programming areas. It was recorded that "in some instances station schedules were as high as 95% commercial and that the few sustaining programs were often relegated to the bad hours of early morning and late night when audiences were small."[83]

Criticism of broadcast advertising had subsided during these years, but at the termination of the war, critics became more articulate. It was reported that the amount of advertising in broadcasting was on the increase. Inevitably, the Federal Communications Commission turned its attention to the problem.

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[83] Ibid., p. 67.

CHAPTER II

ADMINISTRATIVE POLICY FOR ADVERTISING IN THE BLUE BOOK[1]

This chapter will focus primarily on Commission concern with advertising standards set forth in the Blue Book. A review of this report will be accompanied by a consideration of several cases relevant to the policies contained in the Blue Book. In addition, the chapter will include an examination of other Commission decisions and actions pertaining to advertising through the 1950's.

Critics of broadcast advertising became increasingly vocal following the Second World War. The Commission's reports during these years diagnose the public's awareness and discontent with the existing program service of many stations. The agency had received numerous complaints relating to program matters, including severe criticism of false and misleading advertising and over-commercialization. The reverberations from Congress also could hardly go unnoticed.[2]

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[1] "The Blue Book" is the popular title of a booklet issued as Public Service Responsibility of Broadcast Licensees, by the Federal Communications Commission on March 7, 1946.

[2] Walter B. Emery, Broadcasting and Government: Responsibilities and Regulations (East Lansing, Michigan: Michigan State University Press, 1961), p. 298.

The Federal Communications Commission was moved to act. It retained Dr. Charles Siepmann, who had been with The British Broadcasting Corporation, to conduct a study to arrive at criteria by which the Commission might evaluate broadcast program service.[3] In March of 1945, Chairman Paul A. Porter told the National Association of Broadcasters that the Commission was studying the subject. He noted that the motivation was a "growing body of responsible opinion" in Congress and influential sections of the public. The Chairman further commented that "many influential broadcasters have expressed to me deep concern over what they themselves describe as an alarming trend toward 'excessive overcommercialism.'"[4] Chairman Porter concluded: "The cloud on the horizon is bigger than a man's hand and I know that responsible broadcasters see it and are concerned about it."[5]

On April 10, 1945, the Commission announced a "policy of more detailed review of broadcast station performance when passing upon applications for license renewals."[6]

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[3] Ibid., p. 237.

[4] Elmer E. Smead, Freedom of Speech by Radio and Television (Washington: Public Affairs Press, 1959), p. 67.

[5] Ibid., p. 68.

[6] U.S., Federal Communications Commission, Public Service Responsibility of Broadcast Licensees, March 7, 1946, Washington, D.C., p. 3. (Hereinafter cited as Blue Book).

In the same year, in a dramatic execution of that policy, 300 licenses were put on temporary renewals.[7] In the next year, on March 7, 1946, the Commission issued the "Public Service Responsibility of Broadcast Licensees" report, commonly referred to as the Blue Book, declaring that a more careful scrutiny of each applicant's performance would be made. The report was based, in part, on the "experience" accumulated during the intervening period.[8]

The Adoption of the Blue Book

The Commission reasserted and codified its previous position with regard to the importance of program service as a significant component of the public interest:

> The Communications Act, like the Radio Act of 1927, directs the Commission to grant licenses and renewals of licenses only if public interest, convenience and necessity will be served thereby. The first duty of the Federal Radio Commission, created by the Act of 1927, was to give concrete meaning to the phrase "public interest": by formulating standards to be applied in granting licenses for the use of practically all the then available radio frequencies. From the beginning it assumed that program service was a prime factor to be taken into consideration.[9]

After asserting that the legislative history of both acts of Congress clearly points to the intention of Congress to have the Commission consider overall program service in

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[7] Emmet, op. cit., p. 68; also see 10 F.C.C. and 11 F.C.C.; 11 Annual Report of F.C.C. (1945).

[8] Blue Book, op. cit., p. 3.

[9] Ibid., pp. 9-10.

passing on applications, the report notes that the Federal Communications Commission "from the beginning accepted the doctrine that its public interest determinations, like those of its predecessor, must be based in part at least on grounds of program service."[10]

In general, the Blue Book stated that a broadcast licensee has a fundamental responsibility for determining the program service of his station. On the other hand, the Commission is under a statutory duty to protect the public interest, an obligation "of which it cannot divest itself."[11] It was, moreover, the intention of the Commission to review the program service of both new applicants and existing station licensees against their prior representations as to program service and the basic objectives of the Blue Book. If a station failed significantly to execute its representations as to program service or if on a review of its overall program service fell substantially short of Blue Book objectives, its application for renewal of license would be designated for hearing.

Commission's Concern with Program Service.--Although concern with program service implies a comprehensive nature of programming, advertising is an integral part of that consideration. Administrative scrutiny of the station's

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[10] Ibid., p. 11.

[11] Ibid., p. 50.

program service is warranted when one compares the representation of program service with actual performance. This is exemplified by a series of cases in which applicants in hearings before the Commission advised the agency that they would render a diversified program service. Among the items cited by applicants as illustrative of programming in the public interest were programs catering to local civic groups, agricultural programs, and programs utilizing local talent emphasizing live performances. Other representations to the Commission have included a pledge to broadcast discussions of controversial issues, and a promise to devote in excess of 50 per cent of broadcast time to a sustaining program service.

These representations made in public hearings before the Commission have often subsequently been marked by a substantial variance when the applicants file for renewal of license. A detailed review of a station's program service has, in many instances, shown that the amount of time devoted to sustaining public service programs was negligible and the amount of local live programs to be relatively insignificant. It has been concurrently found that the most frequent type of program is recorded material, interspersed with commercial announcements, and the overall proportion of commercial to non-commercial programs is heavily in favor of the former. This disparity between representations made in hearings before the Commission and

actual performance determined from a detailed review of program service is illustrated in many cases.[12]

This sort of material was presented in the Blue Book principally to indicate the occasional need for detailed reviews of program service at license renewal time.

The Concept of Sustaining vs. Commercial Programming.—One of the primary objectives of the Blue Book in setting forth the program service factors determining station operation in the public interest was to increase the sustaining program service of stations with a corresponding decrease in so-called advertising "excesses." Sustaining programs have reference to programs inappropriate for sponsorship. Advertising excesses refer to an undue proportion of a station's broadcast service devoted to commercial programs, and the abuses associated with commercial advertising.

The Commission conceded, however, that commercial programs were the most staple fare of the listening public.

> More than half of all broadcast time is devoted to commercial programs; the most popular programs on the air are commercial. The evidence is overwhelming that the popularity of American broadcasting as we know it is based in no small part upon

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[12] See: Re Cannon System, Ltd. (F.R.C. Docket No. 1535, September 23, 1932), and Re Cannon System, Ltd. (KIEV), 8 F.C.C. 287 (1940); Re Community [illegible] Company (WTCL), 7 F.C.C. 194 (1939); Re [illegible] Company, et al., 4 F.C.C. 505 (1937), reversed on appeal, [illegible] Broadcasting Company v. F.C.C., 70 app. D.C. 80, 104 F. (2nd) 213 (1938). Cases referred to in Blue Book, op. cit., pp. 3-9.

its commercial programs.[13]

The Commission, moreover, was cognizant that the commercial programs pay for the sustaining service of most broadcast stations.

Nevertheless, from the beginning of broadcasting, "broadcasters and the Commission alike have recognized that sustaining programs also play an integral and irreplaceable part in the American system of broadcasting."[14] Under the standards outlined in the Blue Book, there was a requirement for a certain amount of sustaining programming. The purpose was to promote a continuing diversity of programming and various public service features. The functions of the sustaining program were fivefold: to maintain an overall program balance; to provide time for programs inappropriate for sponsorship; to provide time for programs serving particular minority tastes and interest; to provide time for nonprofit organizations; and to provide time for experiment and "unfettered artistic" self-expression.

In effect, "the sustaining program is the balance-wheel by means of which the imbalance of a station's or network's program structure, which might otherwise result from commercial decisions concerning program structure, can be redressed."[15] A sustaining program service effectuates

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[13] Blue Book, op. cit., p. 12.

[14] Loc. cit.

[15] Loc. cit.

a "well-balanced program structure," which is an essential part of broadcasting in the public interest.

The Blue Book suggests that certain types of programs are inappropriate for commercial sponsorship. It noted that religious programs, informative programs furnished by various governmental agencies, certain programs involving discussion of political principles and other controversial issues were not available on the National Broadcasting Company for advertising sponsorship. The Commission itself has never set forth the particular types of programs which, for one reason or another, must be free from commercial sponsorship. It simply recognizes the existence of such programs. This is a matter of self-regulation "consonant with public sentiment and a responsible concern for the public interest."[16]

The sustaining program service of a station should also provide for the tastes and interests of significant minorities. In addition, a well-balanced program structure should include programs devoted to the needs and purposes of nonprofit organizations such as religious, civic, agricultural and educational groups. The Commission states that nonprofit programs "have done much to enrich American broadcasting." If it were not for such programs, "radio

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[16] Ibid., p. 15; Also see Siepmann, C. A., Radio's Second Chance (Boston: Little, Brown and Company, 1946), p. 15.

might easily deteriorate into a means of amusing only one cultural stratum of the American public if commercially sponsored entertainment were not leavened by programs having a different cultural appeal."[17]

Another role of the sustaining program is the opportunity it provides for program experimentation, undeterred by the commercial interest in selling goods.

The Blue Book was critical of many network-affiliated stations that did not carry the sustaining programs of the networks. The Commission inquired of several licensees why their proportion of sustaining programs was so low.

Some of the stations replied that they could discern few if any differences between commercial and sustaining programs and that sustaining programs were not necessarily an essential ingredient for a station to operate in the public interest. The Commission responded that sustaining programs were necessary to present a well-balanced program structure. Another group of stations pointed out that many commercial programs are as much in the public interest as sustaining features. The Commission was "in full accord with this view," but reminded broadcasters that the status of a broadcaster is over and above that of a common carrier. "The maintenance of this independent status and significance, however, is inconsistent with the abnegation of independent

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[17] Ibid., p. 16.

responsibility, whether to a network or to advertisers." The Commission further stated that:

> The conceded merit of many or most programs broadcast during periods which a broadcaster has sold to others does not relieve him of the responsibility for broadcasting his own programs during periods which he has reserved from sponsorship for public service.[18]

A third group of broadcasters contended that they were unable to estimate the time to be given sustaining programs because they could not predict the demand for time from commercial advertisers. This, said the Commission, amounts to an abdication of control over the station by the licensee to the advertiser. Broadcast licensees were informed that:

> The requirement of a well-balanced program structure, firmly founded in the public interest provisions of the Communications Act, is a responsibility of the station licensee. To permit advertisers to dictate either the proportion of time which the station shall devote to sustaining programs or any other major policy decision is inconsistent with the basic principles of licensee responsibility on which American broadcasting has always rested.[19]

One standard of operation in the public interest, therefore, would be evidence of a reasonable proportion of time devoted to sustaining programs. Accordingly, the Commission stated that in reviewing the program service of a station, its application forms would afford applicants

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[18] Ibid., p. 36.

[19] Loc. cit.

an opportunity to state whether they would render a well-balanced program structure composed of sustaining features or a specialized service emphasizing programs of a particular type or types.

Advertising Excesses Defined and Denounced.--The Blue Book recognized that "advertising represents the only source of revenue for most American broadcasting stations, and is therefore an indispensable part of our system of broadcasting." The idea of what constitutes the "public interest" as it pertains to advertising had indeed changed from the early regulatory history of the Commission. The Blue Book seemed to place upon direct advertising an official stamp of approval as indicated by the following comment:

> Advertising in general . . . and radio advertising in particular, plays an essential role in the distribution of goods and services within our economy. During the postwar era if manufacturers are to dispose of the tremendous output of which our postwar industry will be capable, they must keep their products before the public . . . informative advertising which gives reliable factual data concerning available goods and services is itself of direct benefit to the listener in his role as consumer. Consumer knowledge of the new and improved products which contribute to a higher standard of living is one of the steps toward achieving that higher standard of living.[20]

Despite the legitimate interest and place advertising has in American broadcasting, the interest of listeners still has strong precedence over that of advertisers. The history of broadcasting, moreover, discloses a limitation

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[20] Ibid., p. 41.

on the amount and character of advertising as an element of public interest.

The Commission indicated that there had been a general relaxation of advertising standards in recent years and that stations and networks were ignoring the NAB Code.

Initially, the Commission noted that the proportion of commercial to sustaining programs was excessive and was the most pressing problem regarding broadcast advertising. The proportion of overall time devoted to advertising by broadcast stations had increased steadily since the early 1930's. In addition, the Commission suggested that individual commercial announcements were too long and that there appeared to be little limitation on the use of spot announcements. The Blue Book intimated that a one-minute or longer commercial was too lengthy. The Commission further implied that a standard be prescribed limiting the number of commercial spot announcements. For example, spot announcements in excess of 1,000 per week have been frowned upon.

The practice of "piling up commercials" was also disapproved. Listeners had come to expect a commercial plug to intervene their enjoyment of one program to another.

> The "hitch-hiker" and "cowcatcher" on network programs, now rarer but not yet exterminated, have at times meant that a listener desiring to hear two consecutive network programs must survive five intervening commercial plugs--the closing plug of the first program, a "hitch-hiker" plug for another product of the same sponsor, a local plug in the station break between programs, a "cowcatcher" for a minor product of the sponsor of the second network program, and finally the opening commercial

of the second program.[21]

The Commission also listed as current advertising problems the time between commercials and the practice of the middle commercial. Listener satisfaction may depend on the appropriate length of time between commercial announcements, and advertisers and broadcasters perhaps would benefit from certain periods of uninterrupted programming. Similar benefit might accrue from the elimination of the "middle commercial," announcements that come in the middle of a program such as newscasts.

The subject matter of advertising is likewise considered by the Commission in the Blue Book. The patriotic commercial, wherein the advertising message is linked to a patriotic appeal, is severely criticized. The Commission, therefore, maintained that an improper appeal to the listener's patriotism in order to sell a commercial product is a violation of the public interest. In addition, the physiological commercial, in which an appeal is made to the listener to "take an internal bath," was viewed with disfavor. The Commission was concerned about this type of commercial because radio advertising of drugs, toilet goods, and patent and proprietary medicines were assuming a disproportionate share of broadcast time. The Commission, furthermore, made reference to propaganda in commercials and the intermixing

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[21] Ibid., p. 44.

of programs and advertising. Regarding the former, the Commission stated that the place of the broadcast commercial in our society is to sell goods and services honestly and not to propagandize one side of a debated issue. An indiscriminate mixing of program content and advertising, such as having a news analyst also deliver commercials in much the same style as his news, is thought to be an abuse of the public interest.[22]

In the matter of the preceding practices the Commission pointed out that it did not intend to concern itself directly with advertising excesses other than a disproportionate ratio of advertising time to program time. There did exist, however, a need on the part of the industry to review current advertising practices with the prospect of establishing and enforcing concrete standards of self-regulation.[23] The Commission itself "has no desire to concern itself with the particular length, content, or irritating qualities of particular commercial plugs."[24]

Since the public interest requires that the amount of time devoted to advertising matter shall bear a reasonable relation to programming, the Commission included in its application forms a requirement that applicants and

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[22] Ibid., pp. 45-47.

[23] Ibid., p. 47.

[24] Ibid., p. 56.

licensees specify the amount of time they propose to devote to advertising in any one hour.[25] Specifically, the new forms elicited information regarding the number of spot announcements carried by a station, and an analysis of the division of time between commercial and noncommercial programs. This information was obtained by the use of the so-called "composite week," in which the Commission selects, without advance notice to the licensees, seven days of the renewal period for an analysis of program logs.

The Blue Book is vague on the extent or percentage of time to be devoted to sustaining or commercial programs, and the number and length of commercials and commercial spot announcements. The Commission did, however, implement this report with a series of regulations defining commercial, sustaining, network, recorded, wire and local live programs. Other definitions embodied in these regulations were spot announcements and noncommercial spot announcements.

This document was a more detailed review of broadcast station performance in general, and advertising specifically, than had ever before been issued by the Commission. The Blue Book, although not having the force of a formal Commission regulation, does stand as one of the most comprehensive interpretations of the public interest clause of the Communications Act. The report, however, did not

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[25] *Loc. cit.*

prescribe specific standards for advertising, stressing the idea that regulation in this matter should be assumed by the industry. Although advertising practices would fall under increased scrutiny at renewal time, the report's major purpose regarding advertising in broadcasting seemed to be to crystallize and reaffirm policy which had been formulated in the early regulatory history of the Commission.

Advertising Practices Challenged by the Commission

In the years immediately following the issuance of the Blue Book, the Commission had occasion to discuss the subject of excessive advertising in several decisions.

In 1947, in the Eugene J. Roth case, an application for renewal of license was designated for a public hearing "to determine the extent to which applicant in the operation of KONO had carried out representations made to the Commission with respect to program service, the past programming practices and future program policies of KONO."[26] The representations made to the Commission in prior applications for renewal of license were that 40% of the station's time would be devoted to commercial programs and 60% to sustaining programs. The evidence presented at the hearing showed that the average amount of time devoted to commercial programs extended from approximately 82 to 92%.[27] The

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[26] Re Eugene J. Roth, 12 F.C.C. 102 (1947).

[27] See also Re Howard W. Davis, 12 F.C.C. 91 (1947).

Commission also probed into the number of spot announcements carried by the station. The record revealed that "during the composite week of 1945, the station broadcast a total of 2,201 commercial spot announcements."[28] The Commission concluded in the case:

> It is evident, therefore, that the preparation of program schedules had to a large extent been controlled by the availability of commercial spot announcements and the opportunities for financial gain rather than by an effort on the part of the licensee to furnish an overall program plan which would serve the varied needs and desires of the people of San Antonio and its environs, and a review of the financial position of the station clearly shows that the applicant might well have achieved a satisfactory program balance while at the same time continuing the financial soundness of his broadcast venture.[29]

The station was granted its renewal of license when it promised improved performance, despite the Commission's contention that its advertising policy had precluded the maintenance of a well-balanced program service and that the quantity of commercials was excessive.

In another 1947 case, involving station WTCL, the issues were similar.[30] The Commission characterized the program service of WTCL as "over-commercialized," since over

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[28]Re Eugene J. Roth, 12 F.C.C. 105 (1947); Also see Re WBUX Broadcasting Co., Inc., et al. (N.Y. FM Cases), 12 F.C.C. 503 (1948); Re [illegible] Broadcasting Co., et al., 13 F.C.C. 520 (1949); R.I. Broadcasting Company, Pike and Fischer, 6 RR 196 (1950).

[29]Re Eugene J. Roth, 12 F.C.C. 108 (1947).

[30]Re Community Broadcasting Company, 12 F.C.C. 85 (1947).

80% of the programs broadcast were sponsored. In addition, seven spot announcements within a 15-minute period were considered excessive. The following comment from the Commission's decision is significant:

> On the record, we conclude that the basic reasons for the program situation that existed at WTOL were, first, failure of the owners of the licensee to participate in or closely supervise the day-to-day operation of the station; second, employment of a general manager in complete charge of day-to-day operations on an incentive pay contract under which the manager's income was directly related to the amount of gross sales; third, preoccupation of the management and owners with the commercial functions at the expense of the programming and service functions of the station; and, fourth, failure of the owners to insure that program and sales functions should be segregated, and that control of program structure should be divorced from employees whose primary functions were the sale of commercial time.[31]

The Commission granted the station its renewal of license principally on the basis of representations made to it that the program service would henceforth be improved. The licensee agreed that commercial programs would not exceed 67% to 75% of the total broadcast time and that the number and length of commercial spot announcements would conform to more exacting standards, for example, three minutes of commercial continuity in a 14 1/2 minute-sponsored program.[32]

In still another 1947 case, the Commission seriously questioned a station's advertising practices on the principles elicited in the Blue Book. Among several other programming

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[31] Ibid., p. 89.

[32] Ibid., p. 88.

lapses, station KMAC in San Antonio, Texas, was questioned regarding its prior representations with respect to commercial and sustaining broadcast time and the quantity of commercial spot announcements. From the evidence adduced at the hearing, it was shown that the station's actual practice varied considerably from representations made to the Commission regarding the amount of time devoted to commercial programs. The actual percentage of commercial time would have even been greater if the applicant had followed the current method of program classification, in which each 14 1/2-minute segment of a station's broadcast day is treated as a complete commercial segment if one or more commercial spot announcements appear therein. In computing its percentage of commercial and sustaining time, station KMAC had followed the older method of program classification in which all periods of the broadcast day were treated as sustaining unless they were actually paid for. In addition to a high proportion of commercial time in its overall schedule, the applicant was shown to have broadcast 1,607 commercial spot announcements during the composite week of 1945, and prior to that had broadcast more than 2,200 spot announcements in a one-week period. The practice of inserting in excess of four spot announcements in any given 15-minute segment of the broadcast day was also considered inadvisable.

The evidence in this case indicated that the applicant had not at all times observed the responsibility to

serve the public which is incumbent upon him as a broadcast licensee. Particularly damaging to his performance record was an unbalanced program structure in favor of commercial programs and the broadcasting of an excessive number of commercial spot announcements. A renewal of license was granted, however, when the Commission was satisfied that the applicant appeared to be cognizant of his public service responsibility by virtue of improved practices during the hearing and promises for increased diversity of programming.[33]

The Commission withheld action on several other applications for renewal of license during these years on similar grounds, and used similar standards in the awarding of initial licenses. In the Bay State Beacon, Inc., et al. case, the Commission preferred the applicant whose program plans provided for a maximum limitation on commercial programs of 60% of total broadcast time. His competitor's program proposals provided a limitation of 80% on ordinary commercial programs and 15% on programs available for "institutional" sponsorship, which would be broadcast with or without sponsorship.[34] In James A. Noe, et al., although the average number of commercial spot announcements were in excess of 1,000 per week, the Commission in a comparative

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[33] Re Howard W. Davis, trading as The Walnut Company, 12 F.C.C. 51 (1947); also Re Community Broadcasting Corporation (WVRL), 12 F.C.C. 301 (1947).

[34] Re Bay State Beacon, Inc., et al., 12 F.C.C. 567 (1948).

hearing preferred an applicant on his assurance that the number of commercial spots would be reduced to not more than five in any 15-minute period, including station break announcements. The successful applicant also maintained that the practice of using double spot announcements would be eliminated.[35]

In a 1949 comparative hearing the Commission was faced with a choice of awarding a full-time operation to one station and a daytime only license to another. Radio station WHAT, Philadelphia, was awarded a license to operate full-time, while WTEL was subsequently granted only a daytime license because it was less apt to serve the public interest. WTEL had relinquished a substantial portion of control over its operation by selling foreign language broadcast time at a discount to so-called "time-brokers," who in turn had sold the time and programs as they determined. As a result, the station had broadcast an excessive number of spot announcements.

In its decision, the Commission noted that the mode of operation of WTEL served to make "programming incidental to and subordinate to advertising, instead of advertising merely constituting the means of supporting entertainment, information and education." The station's spot announcements, furthermore, were "so excessive in length and number as to

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[35]Re James A. Noe (WNOE), et al., 13 F.C.C. 443 (1949).

impair the balance between advertising on one hand and programming of entertainment and informational value, on the other hand."[36]

In still another case, involving station WPAB in Ponce, Puerto Rico, a license renewal was set for hearing because of certain program service shortcomings, including numerous cases of over-commercialization. Broadcast time had been sold to entertainers who in turn sold spot announcements to advertisers, with no limit placed on the number of announcements which could be made during a program. This resulted in 30-minute periods sometimes containing as many as 20 spot announcements. The Commission's decision pointed to the desirability of maintaining continuity in broadcast programs without interruptions for advertising. Excessive advertising on the station had tended to interrupt the continuity of music and other programs and the Commission recognized this as not being in the public interest. In view of improved practices, however, the license renewal was granted.[37]

While no station license renewal was refused for failure to adhere to the advertising standards of the Blue Book, numerous applications were delayed and scrutinized

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[36] Re Foulkrod Radio Engineering Co., et al., 14 F.C.C. 180 (1949); Also Re The Community Broadcasting Company (WTOL), 12 F.C.C. 88 (1947).

[37] Re Portorican American Broadcasting Co., Inc., 14 F.C.C. 239 (1949).

where there appeared to be a considerable departure from these standards. It is clear from the reported decisions that the Commission, as a matter of administrative policy, would consider over-commercialization and related problems as an important element in judging the overall program performance of an applicant or licensee.

No specific percentages, numbers, or segments of broadcast time were specified. Like the Federal Radio Commission, the Communications Commission adhered to the idea that its statutory power did not permit such detail in program regulation. Practice, however, gave a clue to what the Commission thought was a proper proportion. Broadcasting magazine reported that the Commission was "quiescent if commercials are 80% or under," but that "if the figure passes 80, fur flies."[38]

Another Decade of Advertising Regulation

In the more recent history of broadcast licensing proceedings and administrative action, the Commission has adhered to its policies on broadcast advertising. Throughout the 1950's the Commission maintained its policy of considering the past programming and advertising conduct of an applicant or licensee as an important element in fulfilling his obligations toward the public interest. The Commission policy on broadcast advertising was reaffirmed,

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[38] Broadcasting Magazine, March 31, 1947, p. 4.

and sometimes clarified, in several pertinent cases.

In 1954 the Commission issued its decision in the Cowles Broadcasting Company case, involving two mutually exclusive television applicants, each having had a record of past performance as licensees of radio stations. The Commission succinctly stated that the choice would not be made solely on the basis of the percentage of commercialism on the two stations. "In the absence of a policy statement or directive from the Commission, no hard and fast rule of a certain arithmetical percentage of commercials and sustaining time should be made the basis of a decision." In other words, if a licensee has an otherwise balanced program structure consisting of a sufficient number of public service programs, sponsored or unsponsored, he is performing the job required by the Commission. A strict interpretation of the commercial versus sustaining concept seemed to be undergoing modification. In the present case it could not be determined that one applicant was over-commercialized with 88.2% or that the other was under-commercialized with approximately 50%. The prior records of both applicants indicated cooperation with local civic organizations. Indeed it was shown that the applicant with a higher percentage of commercial time actually had had a better record of satisfying the public interest.[39]

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[39] Re Cowles Broadcasting Co., Pike and Fischer, 10 RR 1289 (1954); Also Re Columbia Amusement Co., 12 RR 509 (1956); Re Biscayne Television Corp., 11 RR 1113 (1956).

The Commission further clarified its position with regard to commercialism as an element of program performance in the Southland Television Company case a year later. Here it was noted that "a great degree of commercialization is not a comparative factor and an applicant will not be penalized unless it proposes commercialization to such a degree as to clearly preclude a determination that its overall plan of programming is a well-rounded, balanced proposal."[40] Furthermore, in Sacramento Broadcasters, Inc., the Commission said that "isolated deviations" from a station's otherwise acceptable commercial policy would not be held against it as an applicant.[41]

Throughout this period the Commission had occasion to express its policy regarding various specific advertising practices. In appraising the past programming record of a television applicant's radio station, the Commission, in Indianapolis Broadcasting, Inc., et al., discussed at length one disputant's complaints (1) that "used car advertising" on a station of one of the applicants was violative of the standards of the local Better Business Bureau, (2) that advertising of an insurance company agency associated with an insurer having some adverse publicity was regularly

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[40] Re Southland Television Company, Pike and Fischer, 10 RR 699 (1955).

[41] Re Sacramento Broadcasters, Inc., Pike and Fischer, 10 RR 615 (1955); Also Re WHAC, Inc., et al., 24 F.C.C. 147 (1958).

carried over the facilities of his opponent's radio station, (3) that there was considerable "over-commercialization" in programs of his opponent's radio station, and (4) that there were abuses in "per inquiry" advertising. The last mentioned practice refers to a situation wherein an advertiser offers to pay a station a certain amount for each reply received from listeners to his radio offer, rather than buying the time at usual station rates. The Commission, in light of the evidence supporting each complaint, concluded that "nothing in the record . . . would reflect upon the qualifications of the applicant."[42]

Other advertising practices considered by the Commission in its case decisions have included "bait and switch" advertising, "double-billing," "palmist" advertising, and beer advertising. "Bait and switch" advertising has reference to the practice of advertising an apparently attractive bargain at a low price to obtain a response. A response is usually met with an attempt to induce the purchase of a new or different product and generally discourages the purchase of the advertised product. The Commission has frowned upon this practice and warned that a licensee is responsible for this type of advertising broadcast over its facilities.[43]

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[42] Re Indianapolis Broadcasting, Inc., et al., 22 F.C.C. 421 (1957); Also Re [illegible] Company, 22 F.C.C. 1053 (1957).

[43] Re [illegible] Broadcasting Service, Pike and Fischer, 10 RR 1323 (1955).

In The Delsea Broadcasters case, the practices of "double-billing" and "palmist" advertising were discussed. The former is a questionable technique in which a station issues two separate bills for an account, one to a local advertiser and another to the national advertiser in a co-operative advertising arrangement. When a station practices "double-billing," the national advertiser actually assumes the entire amount of the account. The Commission in this instance found that the station involved in the billing practice was not entirely at blame and dismissed the issue.

At issue also was the matter of "palmist" advertising, commercial spot announcements indicating where and when people could have their palms read. The Commission's decision observed that palm reading was not contrary to the laws of the jurisdiction in which the station operated, consequently "neither is such advertising contrary to the Communications Act, nor to the rules and regulations of the Commission."[44]

In a similar interpretation, the Commission in WPTF Radio Company maintained that the broadcasting of beer advertising was not to be held against an applicant when the sale of beer is legal in a majority of the counties in the station's service area. The Commission made it clear that such advertising was "a matter peculiarly within the realm

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[44]Re The Delsea Broadcasters, 25 F.C.C. 449 (1958).

of the licensee's responsibility."[45]

A significant point that pervades most of the decisions on this topic is the Commission's reaffirmation of policy that a broadcast licensee has a primary responsibility for determining the propriety of advertising broadcast over his facilities. In no instance, furthermore, can this responsibility be relinquished. In Gulf Coast Broadcasting Company it was determined that "the delivery of lengthy commercials without thorough screening and their presentation by an individual who is simultaneously the announcer and the interested advertiser is of doubtful propriety.[46] In a similar case in which a station surrendered a considerable portion of its advertising responsibility to a "free-lance personality system" resulting in excessive advertising, the station was given a serious "demerit" regarding its program schedule. The Commission considered this a grave case of management neglect because proper responsibility for advertising and related matters was not assumed.[47]

The Commission in the preceding cases weighed the past programming conduct of an applicant, both as an overall record of performance in the public interest, including

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[45]Re WPTF Radio Company, Pike and Fischer, 12 RR 609 (1956).

[46]Re Gulf Coast Broadcasting Company, Pike and Fischer, 10 RR 779 (1954).

[47]Re KMAT, Inc., 22 F.C.C. 117 (1957).

the proportion devoted to advertising, and as a matter of specific advertising practices. It is fair to conclude that the Commission, as a policy matter, would frown on a clear abuse of advertising practice, particularly as it would affect the entire program service of an applicant; this would influence the selection of those most likely to operate in the public interest.

Administrative Action in Other Advertising Matters Prior to 1960.—During the period following the issuance of the Blue Book and before 1960, the Commission took action in several matters of importance to broadcast advertising. Of particular significance were an additional statement regarding liquor advertising, a formal liaison arrangement with the Federal Trade Commission, and Commission comment relating to pending advertising legislation in the Congress.

In 1946, Sam Morris, acting on behalf of the National Temperance and Prohibition Council of Washington, D.C., had petitioned the Commission asking for denial of license renewal of station KRLD in Dallas. The petitioner contended that, since KRLD had advertised alcoholic beverages but had refused to sell time for abstinence messages, its license should not be renewed. Although the Commission denied the petition on the ground that an industry-wide problem was raised and should not be solved in an individual instance, it did remark that the advertising of alcoholic

beverages over the air could "raise substantial issues of public importance."[48] As a harbinger of a more comprehensive statement, the Commission observed that because there are those strongly opposed to alcohol, the advertising of such raises serious issues.

Three years later in an announcement entitled "Broadcast of Programs Advertising Alcoholic Beverages" the Commission enunciated the following policy:

> There is no federal law which prohibits the advertising of alcoholic beverages by means of radio. The Commission's authority with respect to the advertising of liquor by radio comes into play when it passes upon an application for renewal of license. In states and localities where the sale or advertising of alcoholic beverages is prohibited by law, such advertising by radio would be contrary to the public interest. In the absence of laws prohibiting the sale of hard liquor, the question is tendered whether such advertising would only appeal to a limited group in the community. The broadcasting of liquor advertisements may raise serious social, economic and political issues in the community, imposing an obligation on the station to make time available to groups desiring to promote temperance and abstinence.[49]

In its Annual Report for 1955 the Commission explained that in its review of applications for renewal it considers all matters that bear on the overall operation of broadcast stations, including complaints and expressions of views received from the public. A great many of the complaints had

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[48] Re Sam Morris, 11 F.C.C. 197 (1946).

[49] Re Broadcast of Programs Advertising Alcoholic Beverages, Public Notice of FCC, Pike and Fischer, 5 RR 503 (1949).

reference to excessive commercialization and false and misleading advertising. These reports, acknowledged the Commission, "are usually resolved by correspondence with the stations involved" and, in some instances, by cooperation with the Federal Trade Commission in that agency's efforts to protect the public from deceptive broadcast advertising.[50] The Commission, in this respect, reported that initial discussions had been held with the Federal Trade Commission regarding possible mutual procedure in deceptive advertising cases.

On February 21, 1957, the Commission released a public notice in which it formalized a liaison between it and the Federal Trade Commission. The announcement reiterated Commission policy regarding misleading broadcast advertising, in addition to setting forth the new policy concomitant with the liaison. In part, the Commission stated:

> The Federal Communications Commission has consistently held that the selection and presentation of program material, including advertising, is the responsibility of the broadcast station licensee, subject to its statutory obligation to operate in the public interest. In fulfilling this obligation, a broadcast station is expected to exercise reasonable care and prudence with respect to advertising copy in order to assure that no material is broadcast which will deceive or mislead the public. . . .[51]

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[50] 22 Annual Report of F.C.C. (1956), pp. 112-113.

[51] Re Liaison Between FCC and FTC Relating to False and Misleading Radio and Television Advertising, February 21, 1957, 22 F.C.C. 1572 (1957).

In following a procedure of notifying stations of complaints involving alleged broadcasting of deceptive advertising, the Commission said it did not attempt to determine the merits of such complaints. However, it was made clear that:

> Where a finding has been made by an authoritative body such as the Federal Trade Commission that particular advertising matter is deceptive, the continued broadcasting by station licensees, of advertising material found to be deceptive by the FTC would raise serious questions as to whether such stations are operating in the public interest.[52]

In order to permit the Communications Commission to apprise broadcast stations of advertising found to be false and misleading, a cooperative arrangement was arrived at whereby the FTC advises the FCC of questionable advertising broadcast over radio and television stations. The specific procedural arrangement was outlined as follows:

> . . . where a representation or statement disseminated by radio or television forms the basis or partial basis for the issuance by the FTC of a complaint, an order to cease and desist (including initial decisions) or acceptance of a stipulation, the FCC will be provided with a copy of such documents together with the call letters and locations of the stations which broadcast the questioned representations. The FCC proposes to communicate the above information to the stations involved in order that such stations may be fully informed in the matters and be in a position to consider taking action consistent with their operation in the public interest.[53]

In exercising this responsibility, the licensee should be

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[52] Loc. cit.

[53] Loc. cit.

cognizant of his high status as "trustee" for the operation of publicly owned facilities and should act accordingly. Broadcast licensees, as the Commission concluded, should not:

> . . . rely solely on the action or inaction of the Federal Trade Commission, nor should they suspend their own continuing efforts in determining the suitability of advertising material to be broadcast over their facilities.[54]

A licensee, moreover, must exercise an affirmative responsibility irrespective of the source of the material broadcast. In addition, advertising similar to that which was previously found deceptive should raise questions on the part of broadcast stations as to the propriety of such material.

Under the foregoing arrangement, the Commission has continued to abstain from proceeding against licensees and, in general, leaves the question of whether advertising is false up to the Federal Trade Commission instead of making its own independent determination. In fact, the Communications Commission takes the position that the correction of offenses should be undertaken by the stations and that its reports are solely for the purpose of giving them the necessary information. The procedure, furthermore, formalizes an earlier Commission policy in which the problem of false advertising over the air is entrusted to the Federal Trade Commission.

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[54] Loc. cit.

The liaison arrangement between the two agencies tends to treat broadcast media like their competitors, the printed media. Since the latter are not subject to revocation proceedings, a magazine or newspaper who publishes false advertising cannot be ordered out of business by a government agency. Accordingly, when coercive action in this matter is delegated to the Federal Trade Commission, that agency proceeds against the sponsor who makes the false claims for his product and not against the broadcast station. This procedure, therefore, treats broadcasting like other media. The Wheeler-Lea Act expressly exempts the advertising media from the jurisdiction of the Trade Commission. However, the media are guilty of violating the statute if they refuse to disclose, in response to a request by the FTC, the name and address of an advertiser who has used their facilities; and guilty if they themselves make any false claims over their own facilities.[55]

In the year following the announcement of the FTC liaison, the Commission received 26 documents from the FTC involving questionable broadcast advertising, including stipulations, complaints, and cease and desist orders issued by that agency against various advertisers. More than 300 stations were listed by the FTC as carrying the

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[55]Henry R. Goldstein, "The Broadcaster's Responsibility for Advertising," Journal of Broadcasting, Vol. V, No. 1, Winter, 1960-61, pp. 85, 86.

questionable advertising which included medical remedies, cosmetics, electric razors and various other products. The Commission noted that it would "continue to refer to the FTC complaints received from the public which involve possible false or misleading advertising on the air."[56]

There have been two proposed amendments to the Communications Act regarding the regulation of broadcast advertising that have been discussed on the floor of Congress during the 15 years covered in this section. Both of these would have had the Commission regulate the proportion of program time to be devoted to advertising. Identical bills were introduced in Congress—H.R. 5741 in 1955, and H.R. 4571 in 1957 by Representative J. W. Heselton of Massachusetts—with the purpose of amending the Communications Act "to provide for regulation of the amount of radio and television program time which may be devoted to advertising."[57] Specifically, the bills sought to add to the Communications Act of 1934, Part I, Title III, the following provision:

> Program Time Devoted to Advertising.
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> Section 330. The Commission shall prescribe appropriate regulations, applicable to licensees, program sponsors, and others, to insure that, of the total time available for any radio or television program, the proportion of such time which is

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[56] 24 Annual Report of F.C.C. (1958), p. 124.

[57] 102 Congressional Record, 84th Congress, 2nd Session, January 19, 1956, 927. Also Federal Communications Bar Journal, Vol. xv, No. 4, 1957.

devoted to advertising shall not be excessive.[58]

In its formal comments on H.R. 5741, in 1955, the Commission stated:

> The Commission is not aware of the fact that there have been, and are, abuses with respect to the amount of time devoted to advertising over particular radio and television stations and on particular programs broadcast over some stations . . . ; the responsibility for determining the amount of radio and television time devoted to advertising is the responsibility of the individual station licensee. However, in connection with reviewing licenses the Commission examines the overall record of stations, including the amount of time devoted to advertising to determine whether the continued operation of the station would serve the public interest . . . it should be noted that in considering renewal applications the Commission presently makes careful inquiries into evidences of abuse through over-commercialization. . . . (Emphasis supplied.)[59]

The Congress was in sympathy with the views of the Commission and subsequently refrained from enacting the proposed revisions.

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[58] 102 Congressional Record, 84th Congress, 2nd Session, January 19, 1956, 927.

[59] See Comments of F.C.C. on H.R. 5741, Mimeo #21521, adopted July 20, 1955. Also, Interim Report, op. cit., p. 74.

CHAPTER III

RECENT COMMISSION ADVERTISING POLICIES

The material in this chapter will focus on some of the more important administrative proceedings of the Commission in the area of broadcast advertising from 1960 to the present. The material is by no means exhaustive or definitive. My principal objective is to bring the study up to date with an analysis of some significant policy directives of the Commission that are pertinent to broadcast advertising. Since much of the policy in certain matters is in an embryonic stage, it will often be necessary to merely state a problem area of advertising currently before the Commission.

Sponsorship Identification

With the development of broadcast service along private commercial lines, it has become a well established principle of government regulation of the various broadcast media that the public is entitled to legal protection against deception in commercial advertising and the spreading of propaganda and ideas on public questions through radio, television, and other media of mass communication. This principle has long been recognized, and beginning with the Radio Act of 1927 and continuing with the incorporation of Section 317 into the Communications Act of 1934 there has been a constant requirement that all matter broadcast by

any station for a valuable consideration is to be announced as paid for or furnished, and by whom. Basically, this requirement simply means that the public has the right to know who has caused a given program or portion thereof to be broadcast. By letting the public know with whom they are dealing, they can evaluate for themselves any "message" presented. Therefore, radio and television stations have the legal obligation to tell the public the source or sponsorship of the material they broadcast.

The sponsorship identification requirements of the Communications Act have been supplemented by the Commission which has established rules more specifically stating what must be identified and how it should be identified. / The requirements for television and radio, both AM and FM, are essentially the same. Generally all program material which is broadcast must be identified as to "sponsorship" if any consideration is directly or indirectly paid as an inducement for its being broadcast.[1]

"Sponsor" identification applies not only to programs offering commercial products or service, but also covers all other programs or parts thereof involving some consideration passing to a station from an outside source. For example, the mere providing of material such as scripts, records, films or kinescopes can be considerations requiring

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[1]FCC, Rules and Regulations, Sections 3.119, FM; and 3.289, FM; and 3.654, TV.

"sponsor" identification. For the purpose of emphasis, the Commission rules specifically mention political broadcasts and programs involving the discussion of public controversial issues. If records, transcriptions, talent, scripts, or other material or services of any kind are provided, either directly or indirectly, as an inducement for such a broadcast, then the source or "sponsor" must be revealed at the time of the broadcast.[2]

The presentation of such issues in a news program does not thereby relieve a station of making proper identification of any material provided for the program. The Commission made its position clear on this matter in a 1958 case. A national trade association had made available to television stations kinescope summaries of Congressional labor hearings. The stations that presented the kinescopes without identifying the association as the source were cited by the Commission for violating Section 317 of the Act and Section 3.654 (a) of the Rules. The fact that the films had been provided free of charge and there was no consideration other than the films themselves was immaterial. The providing of the kinescopes was inducement to show them and, therefore, required identification.[3] In more recent examples, several stations in Minneapolis were imposed forfeitures

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[2] Ibid., Sections 3.119 (d), 3.289 (d), and 3.654 (d).

[3] 25 Annual Report of F.C.C. (1959), p. 48.

for failing to identify the sponsor of a taped statement by an individual urging passage of a proposed local ordinance.[4]

Time consumed by any given program material has no bearing on whether or not "sponsorship" must be disclosed. The irrelevance of time is well exemplified by the case of the "teaser" announcement. A "teaser" is a short and succinct announcement utilizing catchwords, slogans, symbols, etc., designed to arouse the curiosity of the public as to the identity of the advertiser or product, which is to be revealed in subsequent announcements. The Commission had been concerned about the use of such announcements. On December 13, 1961, in a forfeiture proceeding, it fined station KDAV, Santa Monica, California, for violating the sponsorship rules by broadcasting "teaser" announcements.[5]

In a public notice on May 29, 1962, the Commission warned that "teaser announcements which do not adequately reveal the identity of the sponsor are in direct violation of Section 317 of the Act and of the Commission's rules."[6] The Commission's policy and practice in this matter was reaffirmed a year later in the Bastrop Broadcasting Company,

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[4] Re Midwest Radio-television, Inc., Pike and Fischer, RR 2nd 491 (1963); Also Re United Television, Inc., Pike and Fischer, RR 2nd 509 (1963); Re Time-Life Broadcasting, Inc., Pike and Fischer, RR 2nd 504 (1963); Re Intermountain Broadcasting, Inc., Pike and Fischer, RR 2nd 499 (1963).

[5] 28 Annual Report of F.C.C. (1962), p. 47.

[6] See Pike and Fischer, 23 RR 601 (May 29, 1962); also 28 Annual Report of F.C.C. (1962), p. 54.

Inc., case in which it noted that a licensee "cannot escape responsibility for such violations."[7]

Programs advertising commercial products or services, regardless of length, only require one sponsor identification announcement. This may be at the beginning, end, or any other spot in the course of the program. However, political broadcasts and programs involving discussion of public controversial issues must be identified as to sponsorship, both at the beginning and end of the broadcast, if the program is longer than five minutes. If such a program is of five minutes' duration or less, only one sponsor identification is required, and it may be either at the beginning or conclusion.[8]

Sponsor identification announcements must "fully and fairly disclose the true identity" of the person or persons by whom, or in whose behalf, program material is "sponsored." If a station knows that a person is arranging for a broadcast as an agent for someone else, then the station must identify that person and not the agent. Furthermore, licensees have the affirmative duty to exercise "reasonable diligence" in determining who is furnishing material for broadcasts, in order to be able to make full disclosure

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[7]Re Bostron Broadcasting Company, Inc., Pike and Fischer, 24 RR 1089 (1963).

[8]FCC, Rules and Regulations, Sections 3.119 (d) (g), 3.289 (d) (g), and 3.654 (d) (g).

to the public. For programs advertising commercial products or services, announcements which state the sponsor's corporate or trade name or the name of his product are sufficient to satisfy the requirements of the law. In the case of programs such as a political broadcast, if sponsorship is by a corporation, committee, association, or other unincorporated group, such a sponsor must be disclosed in the identification announcement. For such broadcasts, the station must require that a list of the chief executive officers, or members of the executive committee, or the board of directors of the "sponsor," be available for public inspection at one of the stations in a community carrying the program.[9]

A Revision of the Sponsorship Identification Rules.— The late 1950's and early 1960's were turbulent years in the broadcasting industry, marked by revelations of "payola" and other deceptive practices that brought heavy criticism of broadcast programming. There was widespread interest and concern among the public, Congress and the broadcasting industry. On March 16, 1960, the Commission publicly stated its general policy position on practices in contravention to Section 317 of the Communications Act and the Commission's Rules implementing it. The public notice sought to delineate

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[9] Ibid., Sections 3.119 (b) (e) (f) (g), 3.289 (b) (c) (f) (g), and 3.654 (b) (e) (f) (g).

what kinds of broadcast activities and practices would be subject to positive consideration by the Commission in testing violations of Section 317 and its rules. Among the practices specifically elaborated were (1) the playing of "free records" without accompanying announcements of the fact; (2) "promotion of outside activities," for example, "record hops" with hidden consideration paid to stations or performers by record companies; (3) acceptance of "gratuities" from persons and organizations not identified with broadcast activities, in their behalf; and (4) "plugs" or "sneaky commercials" where consideration is paid to the station or its employees, for mentioning a product or service without an appropriate announcement of such payment.[10]

The impact of this public announcement on the broadcasting industry brought forth a number of requests from broadcasters and other interested parties seeking its clarification and the opportunity for further proceedings. The Commission subsequently issued a notice of public inquiry in April, 1960, stating that it would receive the views and comments of all interested parties.[11] The comments were numerous, particularly those objecting to the Commission's

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[10] Re Sponsorship Identification of Broadcast Material, FCC Public Notice No. 85460, March 16, 1960, Pike and Fischer, 19 RR 1569-1577 (1960).

[11] In the matter of Public Notice (FCC 60-239) dated March 16, 1960, entitled Sponsorship Identification of Broadcast Material, FCC Docket No. 13654, 25 Federal Register 2923 (1960).

interpretation of Section 317 requiring that all free records played by a station must be accompanied with announcements identifying the donors and indicating that the records were furnished without cost.[12]

On September 13, 1960, while this matter was still in a formative stage at the Commission, a bill (S.1898) became law and amended Section 317 of the Communications Act. Among other things, it redefined situations in which broadcast licensees must make sponsorship identification announcements. The following provision was added to Section 317:

> Provided, that "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.[13]

The effect of this provision was to exempt from the announcement requirements of Section 317 some situations involving the furnishing of services or property to licensees without charge or at a nominal charge for use on or in connection with broadcasts. It modifies the rigid

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[12] See Walter B. Emery, Broadcasting and Government: Responsibilities and Regulations (East Lansing, Michigan: Michigan State University Press, 1961), pp. 216-219.

[13] U.S., The Communications Act of 1934 With Amendments and Index Thereto, Published by the FCC and revised to October, 1962, Section 317 (a) (1). Section 317 was amended to read as above by Public Law 86-752, 86th Congress, 1st Session, approved September 13, 1960, 74 Stat. 889. It formerly read, in essence, as it appears in Chapter I, under Section 2 of this paper.

interpretation placed on Section 317 by the Commission in its Public Notice of March 16, 1960.

In order to extend the reach of Section 317 so that it could cover payments made to station employees and others for the inclusion of matter in programs intended for broadcast, a disclosure section (Section 508) was added to the Act. The section requires any person giving or receiving money, services or other valuable consideration for inclusion of any matter in a program to be broadcast by a licensee, to report such facts to his superiors. They in turn are required to pass on the information so that it may reach the licensee over whose facilities the program is broadcast. When such information reaches the licensee, subsection (b) of the new Section 317 requires the licensee to make an appropriate announcement regarding such payment. The licensee must use reasonable diligence to obtain the information necessary to make this announcement. Any person who violates any provision of this section is subject, for each such violation, to a fine of not more than $10,000 or imprisonment for not more than one year, or both.[14]

As a result of this new legislation, on September 20, 1960, the Commission withdrew its Notice of Inquiry, noting that rules relating to sponsorship of broadcast material

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[14] Ibid., Section 508, "Disclosure of Certain Payments," added to the Act by Public Law 86-752, approved Sept. 13, 1960, 74 Stat. 889.

would remain in effect until revised, except where superseded by Section 317 of the Act, as amended.[15] Subsection (c) of the revised Section 317 directed the Commission to prescribe appropriate rules and regulations to implement the Congressional intent expressed in the new wording of the Section. On April 27, 1961, the Commission proposed rules (Docket No. 14934) to implement the amendments to Section 317 enacted by Congress the previous year.[16] Subsequently, by Report and Order adopted May 1, 1963, the Commission promulgated revised sponsorship identification rules to implement amended Section 317.[17]

The new Commission Rules, for the most part identical in Sections 3.119, 3.289, and 3.654, were effective as of June 20, 1963. Added to subsection (a) of the Rules for standard, FM, and television broadcast stations was the same provision that had been affixed to Section 317 of the Communications Act. The new rules exempted from the announcement requirements of Section 317 some of the situations involving the furnishing of services or property to licensees without charge or at a nominal charge for use

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[15] FCC Public Notice 60-1141, No. 93746, 25 Federal Register 9177 (1960).

[16] 28 Annual Report of F.C.C. (1962), p. 54.

[17] Re Applicability of Sponsorship Identification Rules, FCC Public Notice 63-409, No. 54174, May 6, 1963. (For a comprehensive history of the sponsorship identification proceedings, see 28 Federal Register 4707-4717, May 10, 1963.)

on or in connection with broadcasts; in effect, it modified the Commission's strict interpretation enunciated in its Public Notice of March 16, 1960.

In adopting the new legislation, Congress had set forth a series of twenty-seven examples to illustrate the intended effect of the proviso clause in amended Section 317 (a). In its Public Notice of May 6, 1963, describing the applicability of the new sponsorship identification rules, the Commission listed thirty-six illustrative interpretations, including the twenty-seven examples mentioned above. Several of these interpretations may be summarized as follows:

> 1. The mere furnishing of records to a broadcast station or a disc jockey by a record distributor for broadcast purposes does not require an appropriate announcement pursuant to Section 317. If, however, more records than needed are supplied, or if payment to a station or disc jockey are in the form of cash or other property, or if any special plugging of the record supplier or performing talent is to be made in return for the record, an appropriate announcement is required. It should be noted, moreover, that the principles applying to records, also apply to other property or services furnished for use on or in connection with a broadcast.
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> 2. Where payment in any form other than the matter used on or in connection with a broadcast is made to the station or to anyone engaged in the selection of program matter, an announcement is necessary. For example, an announcement is required where a Cadillac car is given to an announcer for his own use in return for a mention on the air of a product of the donor.
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> 3. Where service or property is furnished free for use on or in connection with a program, but where there is neither payment in consideration for broadcast exposure of the service or property,

nor an agreement for identification of such service or property beyond its mere use on the program, no announcement is required. In a case where news releases are furnished to a station by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program, an announcement is not required.

4. The announcement requirement of Section 317 contemplates the explicit identification of the name of the manufacturer or seller of goods, or the generally known trade or brand name of the goods being advertised. Therefore, "teaser" announcements and mail order solicitations in which the sponsor is merely referred to as "Flower Seeds" or "Real Estate," are not in compliance with the Commission's sponsorship identification Rules.

5. If a station carries an announcement or program on behalf of a candidate for public office or on behalf of the proponents or opponents of a public controversial issue, identification must be broadcast which will fully and fairly disclose the true identity of the person or persons by whom or in whose behalf payment was made. An announcement at the conclusion that "the preceding was a paid political announcement," for instance, is not sufficient.

6. The failure of a station to make an appropriate announcement as to the party supplying program material in the presentation of program matter involving controversial issues of public importance is a violation of the Commission's sponsorship identification rules. The Commission requires that a licensee exercise due diligence in ascertaining the identity of the supplier of such program matter.[18]

New Policies Influencing Broadcast Advertising

Several developments regarding the Commission's policy and practice since 1960 require mentioning although, in some instances, they do not deal specifically with the

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[18] Loc. cit.

regulation of broadcast advertising. They are presented in this section because they indicate the expanded scope of activity of the Commission, and its supplemental methods of dealing with violations.

New Policy Statement.--On July 29, 1960, the Commission released a significant report and statement of policy in connection with its programming inquiry of late 1959 and early 1960. The report set forth the Commission's views with respect to its powers over programming and what it considers the obligations of broadcast licensees. It reiterated previous policy that licensees must assume responsibility for all material broadcast over their stations. As to the obligations of a station licensee for advertising matter broadcast over his facilities, the Commission said:

> With respect to advertising material the licensee has the additional responsibility to take all reasonable measures to eliminate any false, misleading, or deceptive matter and to avoid abuses with respect to the total amount of time devoted to advertising continuity as well as the frequency with which regular programs are interrupted for advertising messages.[19]

In its 1960 policy statement the Commission repudiated its Blue Book standard regarding sustaining and commercially sponsored programs. In light of current standards of practice, the Commission said that "there is no public interest basis for distinguishing between sustaining

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[19] Re Network Programming Inquiry, Report and Statement of Policy, FCC 60-970, July 29, 1960. (See 25 Federal Register 7291-7296, August 3, 1960.)

and commercially sponsored programs in evaluating station performance."[20] Indeed, under modern conditions, sponsorship may foster rather than diminish the availability of significant public affairs and cultural broadcast programming.

Additional Sanctions for Violations of Commission Rules and Regulations.--Under a 1960 Amendment to the Communications Act, broadcast stations which engage in violations that do not warrant revocation proceedings can be held liable for forfeitures to be paid to the United States Treasury.[21] Also, under this same amendment, the Commission is able to issue short-term licenses (less than three years) to stations whose violation records indicate a need for closer supervision.[22] Accordingly, the Commission has amended its rules, providing for license terms of less than three years, if, in its judgment, public interest would be served.[23]

These new sanctions increased the Commission's powers to act against delinquent stations and, more importantly, provided the agency with appropriate alternative action to the previously sole sanction of revocation. The Commission

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[20] Loc. cit.

[21] Communications Act of 1934, as Amended, op. cit.; Section 503.

[22] Ibid., Section 307 (d).

[23] FCC, Rules and Regulations, Section 3.34.

has not been reluctant to institute forfeiture proceedings and issue short-term licenses. During 1963, for instance, notices of apparent liability were issued to twenty stations, eight of which were cited for failure to identify sponsorship.[24] In addition, twelve stations in 1963 were given license renewals for shorter periods than the normal three-year term because of various violations.[25]

A New Division Is Added to the Commission.--On May 20, 1960, the Commission announced the creation, effective June 1, 1960, of a functional division within its Broadcast Bureau to deal with complaints concerning radio and television programming and to assist in the overall evaluation of station operations at renewal time.[26] The new Broadcast Complaints and Compliance Division enables the Commission to send trained staff members into the field to ascertain the essential facts relating to complaints. In addition, the Commission is able to check into selected stations on a regular and continuing basis, and to conduct hearings in the field.

The scope of the division is broad. In 1963, as a result of numerous complaints received by the Commission,

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[24] 29 Annual Report of F.C.C. (1963), pp. 49-50.

[25] Ibid., p. 50.

[26] Re Broadcast Complaints and Compliance Division Creation, FCC Public Notice B-83758, May 20, 1960, Pike and Fischer, 19 RR 1631 (1960).

field investigations were conducted in twenty-one states involving fifty-one stations and two networks. Inquiry subjects included lotteries, double-billing, rigged contests, "payola" and "plugola."[27]

Supplemental FTC Liaison.--The original liaison between the Federal Trade Commission and the Communications Commission has been supplemented on several occasions. On February 18, 1960, at the height of the "payola" revelations, the FCC announced supplementary liaison arrangements with the FTC relating to unannounced sponsorship of broadcast material. Both agencies agreed to interchange information in their files that would indicate a broadcast licensee had been involved in the unannounced sponsorship of broadcast material.[28]

On November 7, 1961, the Commission sent a notice to all broadcast licensees informing them of a new joint program, instituted by the FCC and the FTC, to aid broadcasters in guarding against airing fraudulent and deceptive advertising matter.[29] In its notice the Commission reminded licensees of their responsibilities in the broadcasting of such advertising, and announced a procedure whereby the

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[27] 29 Annual Report of F.C.C. (1963), p. 47.

[28] 26 Annual Report of F.C.C. (1960), p. 26.

[29] Re Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising, FCC Public Notice 61 - 1316, No. 11633, November 7, 1961.

FTC would send to all licensees a regular publication ("Advertising Alert") summarizing agency action on false and deceptive practices and containing a detailed discussion of problems in specific areas. These discussions and notices are intended to familiarize licensees with various deceptive practices so that they will be able to recognize them and take appropriate steps to protect the public against them.

The Commission pointed out that where an FTC Complaint was associated with any advertising matter submitted to a station, particular care should be taken in deciding whether to use such advertising for broadcast. A situation in which an FTC final Order had been issued is even more serious. If a licensee has broadcast advertising which is known to have been the subject of a final Order by the FTC, "serious question would be raised to the adequacy of the measures instituted and carried out by the licensee in the fulfillment of his responsibility, and as to his operation in the public interest."[30] In this regard, the Commission concluded that:

> Particular attention is directed to the fact that licensee responsibility is not limited merely to a review of the advertising copy submitted for broadcast, but that the licensee has the additional obligation to take reasonable steps to satisfy himself as to the reliability and reputation of every prospective advertiser and as to his ability to fulfill promises made to the public over the

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[30] Loc. cit.

> licensed facilities. The fact that a particular product or advertisement has not been the subject of Federal Trade Commission action in no way lessens the licensee's responsibility with regard to it.[31]

As still another part of its continuing liaison with the Trade Commission, the FCC, on June 13, 1963, released a public notice concerning possible improper use of broadcast ratings in advertising campaigns.[32] The Commission's notice recognized that audience research is an important selling tool in efforts to obtain advertiser support; however, a licensee must act responsibly and take precautions to insure that a survey used in an advertising campaign is valid. The Commission noted that it intends to refer complaints dealing with the questionable use of broadcast ratings to the FTC, and that any decision against a licensee will be held accountable in determining whether a station is operating in the public interest.[33]

A Commission Warning Against Double-Billing.--On March 9, 1962, the Commission formally cautioned broadcasters against engaging in the practice of "double-billing," for example, sending a local advertiser two bills for the same advertising, one of an amount locally agreed upon for the

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[31] Loc. cit.

[32] Re Broadcast Licensees Improper Use of Broadcast Ratings, FCC Public Notice 63-544, No. 50211, June 13, 1963. 28 Federal Register 6243, June 18, 1963.

[33] Loc. cit.

broadcast and the other in a larger amount to be sent by the local advertiser to a manufacturer or distributor to support the local advertiser's claim for reimbursement under a cooperative advertising agreement.[34] In March, 1964, because the Commission considered the practice to be persistent, it announced proposed rules that would outlaw false billing. The new rules would enable the Commission to impose fines up to $10,000 on broadcasters who participate in double-billing arrangements. The proposed rules would also specify that advertisers who obtain double-billing favors from broadcasters be reported to the Federal Trade Commission.[35]

Continuing Concern with Over-Commercialization.— The Commission's case decisions in the early 1960's reflect its persistent interest in the problems of over-commercialization.[36] Several broadcasters were issued short-term license renewals because, in part, they had engaged in excessive commercialization practices.[37] Also, the Commission has continued to express deep concern with its proposal

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[34] 28 Annual Report of F.C.C. (1962), p. 55.

[35] Broadcasting Magazine, March 30, 1964, p. 30; Also Advertising Age, March 30, 1964, p. 2.

[36] See: Re Michigan Broadcasting Co., Pike and Fischer, 20 RR 667 (1960); Re [illegible] Television, Inc., et al., 30 F.C.C. 411 (1961); Re Shenandoah Broadcasting Company, 30 F.C.C. 579 (1961).

[37] Re Miss Ark Broadcasting Company, Pike and Fischer, 22 RR 305 (1961); Re [illegible] Broadcasting Company, Pike and Fischer, 21 RR 515 (1962).

versus actual operation doctrine regarding applications and renewals in matters of broadcast advertising.[38]

Commission Proposals Regarding Broadcast Advertising

In recent years the Commission has instituted several inquiries that look forward to the establishment of more concrete methods for dealing with problem areas of commercial advertising. Because these proceedings are, at this writing, in an embryonic stage of development, they represent some of the current broadcast advertising issues confronting the Commission.

Loud Commercials.--Over the years the Commission has, from time to time, received numerous complaints about the loudness of commercial announcements and commercial continuity. In 1956, as a result of complaints from the general public and inquiries from members of Congress, the Commission conducted an inquiry.[39] The results of special monitoring observations, disclosed, in substance, that of the 659 stations checked, there was only one instance of over-modulation exclusively during the commercials.[40] Similar studies in subsequent years have also failed to reveal

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[38] See: Re Fischer Broadcasting Company, et al., 30 F.C.C. 177, 185 (1961); Re [illegible], 31 F.C.C. 85 (1961).

[39] 22 Annual Report of F.C.C. (1956), p. 112.

[40] Loc. cit.

any significant trend toward overmodulation to achieve extra loudness for commercial material broadcast.[41]

Complaints in this matter, however, have continued to increase.[42] In an effort to learn how widespread loud commercials are, why they exist, and how they may be effectively controlled, the Commission, on December 18, 1962, initiated an inquiry of the subject.[43] The Commission's present rules, it was pointed out, "do not deal directly with varying degrees of loudness as between commercial and noncommercial matter." They do, however, contain "an upper limit on modulation levels and . . . language designed to maintain the average level of modulation at appropriate levels."[44] Loudness is a subjective quality which varies with numerous factors, such as degree of modulation of the signal, modulation level of preceding and subsequent material, rate of speech, and tone of voice. Broadcasting techniques such as speech processing and volume compression also affect loudness.[45] Therefore, it is not a simple matter

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[41]Re Amendment of Part 3 of the Commission Rules and Regulations to Eliminate Objectionable Loudness of Commercial Announcements and Commercial Continuity Over Standard, FM, and Television Broadcast Stations, FCC Notice of Inquiry in Docket No. 14904, FCC 62-1335, 28545, December 18, 1962. 27 Federal Register 12681, December 21, 1962.

[42]Ibid., Also 29 Annual Report of F.C.C. (1963), p. 63.

[43]Loc. cit.

[44]Loc. cit.

[45]See: "Is TV 'Loudness' Real or Imagined," Printer's Ink, September 6, 1963, pp. 43-45.

to control.

The Commission noted, however, that "it is not only contrary to the public interest that commercial material be objectionably loud, but contrary to the self-interest of broadcasters and advertisers." The notice urged broadcasters to "review their practices (use of rapid-fire delivery, compression, and other practices) which may result in objectionable loudness of commercial material and to discontinue practices found to result in complaints of such loudness."[46]

Combination Advertising Rates.--On January 31, 1963, the Commission released a public notice regarding combination advertising rates. The notice cited instances where two or more broadcast licensees serving the same approximate areas had entered into agreements whereby, directly or indirectly, through a mutual representative, combination rates were offered to advertisers who purchased time for commercial announcements by participating stations. The Commission concluded that such combination advertising rate agreements are not in the public interest, and urged broadcasters to modify their commercial practices accordingly.[47]

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[46]FCC Notice of Inquiry in Docket No. 14904, op. cit.

[47]29 Annual Report of F.C.C. (1963), p. 63.

Excessive Advertising.--In an address to the National Association of Broadcasters in early 1963, then Commission Chairman Newton N. Minow observed that the subject of commercials has been a matter of debate in broadcasting since 1922. Continuing, he proclaimed "that forty-one years later, the American public is drowning and calling for help" in the face of excessive commercialism.[48] The Commission has a policy against "over-commercialization," he continued, but "if you ask us what that means, we would have to confess that in all its years, the FCC has never established ground rules defining it."[49] In the absence of such standards the Commission has relied upon vague policy pronouncements and isolated case decisions.

For the past several years, since the Commission began to keep statistics on public complaints about broadcasting, the subject of commercials, their number, length, frequency, timing, and loudness, has been high on the complaint list. Indeed, it has been second only to complaints relating to programming in general. In fiscal 1962, for example, the Commission received approximately 2,500 complaints about advertising, of which about 35%, the largest category, related to length, amount and frequency of commercials.[50] In 1963 the complaints relating to advertising

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[48] Television Magazine, May, 1963, p. 27.

[49] Loc. cit.

[50] 28 Annual Report of F.C.C. (1962), p. 44.

received by the Commission more than doubled the figure of the previous year.[51]

In an effort to establish adequate criteria in this matter, and because of its increasing concern with excessive commercialization by broadcast stations, the Commission, on May 15, 1963, initiated a proceeding to limit the amount of time which may be devoted to broadcast commercials. The radio and television codes of the National Association of Broadcasters were used as a basis for the proposed rules, with a recognition that separate standards may be needed for special categories of stations. The Commission's consideration was not, however, limited to the NAB code; it requested alternative suggestions which would provide a reasonable balance between commercial copy and program material.[52] The Commission's notice further observed that:

> . . . while it must be recognized that, as the only source of revenue for most broadcasting stations, advertising is an indispensable part of the American system of broadcasting, it must be further recognized that broadcasting stations cannot be operated primarily in the interest of advertisers in presenting their message to the viewing or listening public or primarily in the interests of the station licensees in the revenues to be derived therefrom; broadcasting stations must be operated in the public interest--the interest of the viewing or listening public in the nature of the program

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[51] 29 Annual Report of F.C.C. (1963), p. 47.

[52] Re Amendment of Part 3 of the Commission's Rules and Regulations with Respect to Advertising on Standard, FM, and Television Broadcast Stations, Notice of Proposed Rule Making, FCC 63 - 407, 35001, Docket No. 15083, May 15, 1963. 28 Federal Register 5158-5161, May 23, 1963.

> service received. Therefore, while without advertising broadcasting would not exist, with excessive advertising broadcasting is not in the public interest.[53]

The Commission said that its case-by-case treatment of the problem had not been satisfactory. It further noted that the National Association of Broadcasters' attempts to accomplish a measure of self-regulation, admittedly the desirable course of action, had been equally unsuccessful.

The Commission argued that the establishment of generally applicable standards by means of rule-making procedures would permit an overall treatment of the problem. It would be definite, provide guidance to licensees and apply equally to all competitors in a given market. Moreover, the adoption of specific rules would not necessarily foreclose the flexibility inherent in case-by-case treatment of excessive advertising.[54]

In stating its position, the Commission maintained that the Communications Act of 1934, as amended, authorizes it to adopt a rule prescribing the maximum amount of broadcast time a licensee may devote to commercial advertising. Provisions in Sections 307 (a), 307 (d), and 309 give the Commission the authority, and indeed the responsibility, to insure that the advertising practices of an applicant

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[53] Ibid., p. 5158.

[54] Ibid., p. 5159.

for a license or renewal of license are consistent with the public interest. If these practices, and specifically over-commercialization, are a proper consideration in individual cases, the Act (Sections 303 (r), 4 (i)) and the cases establish that over-commercialization may be subject to appropriate rules that particularize the public interest standard. The rule would thus announce the Commission's attitude on public protection against over-commercialization. In addition, under Section 303 (b) of the Act, the Commission has authority to "prescribe the nature of the service to be rendered by each class of licensed stations" and thus may consider the question of over-commercialization under its public interest responsibilities laid down in this section. The Commission also cites a long line of administrative and judicial precedent as well as legislative history which, it said, further sustains its position.[55]

The National Association of Broadcasters, among many others, questioned this interpretation of Commission authority. Many of the NAB objections to the proposed rules echoed those put forward by state broadcasters' associations, business groups, and members of Congress, and may be summarized as follows:

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[55] See Memorandum Prepared by the General Counsel for the FCC on [illegible] Proposed Rule Prescribing Maximum Broadcast Time to be Devoted to Commercial Advertising, attached to FCC's Report and Order in Docket No. 15083, 36 F.C.C. 50-61 (1964).

1. The legislative history of the Radio Act of 1927 and the Communications Act of 1934 establishes that the Commission lacks the statutory authority to impose regulations limiting the amount of broadcast advertising.

2. The many different types and classes of broadcast stations and the variable factors which affect their operations make it impossible to devise standards for commercial time which would provide equal protection under the law.

3. The proposal abridges freedom of speech and press as contained in the First Amendment.

4. The establishment of commercial time limitations by the Commission will emphasize unduly the importance of the role of time at the expense of other more important public interest standards and would impair the efficacy of NAB Code efforts towards self-regulation.

5. The public interest would not be served by the adoption of standards devoted to the measurement of time for commercial advertising.

6. The proposal would give the Commission arbitrary power over stations' business decisions, and would constitute a form of rate regulation because the FCC would be determining indirectly the minimum rate that could be charged to produce advertising revenue.[56]

The NAB traced historical developments to argue that Congress passed up the opportunity to grant such power in 1934, when the FCC was created to replace the old Radio Commission, and again in 1955 and 1957, when efforts were made to limit commercials. It noted "repeated evidences" over the years of Commission attempts to "overreach in seeking to influence

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[56]Comments of the National Association of Broadcasters in the Federal Communications Commission's Docket No. 15003, in the matter of proposed amendments to the Commission's rules with respect to advertising. September 30, 1963.

programming and advertising affairs."[57]

Subsequent to numerous comments filed in response to its original notice and oral argument held in December, 1963, the Commission, on January 15, 1964, terminated its proceeding on possible rules limiting commercial material broadcast by standard, FM, and television stations. While reasserting its legal authority to impose such limits, the Commission found adoption of specific rules inappropriate at this time, due to a "lack of sufficient information in adequate scope and depth."[58] It commented:

> Upon consideration of the record and other available information, we are convinced that the total time consumed by broadcast advertising and the extent to which such advertising is permitted to interrupt programming are two major facets of the problem of overcommercialization. We are of the view, however, that adoption of definite standards in the form of rules limiting commercial content, would not be appropriate at this time. We do not have sufficient information from which a sound set of standards of wide applicability could be evolved. The logs which stations are presently required to keep and the program forms they are presently required to file can, in certain circumstances, yield significant information concerning these factors. But they are not specifically designed to do so. Nor has this proceeding provided us with sufficient information of this kind. As a result, the information required for the formulation and evaluation of specific regulatory standards is not available in scope and depth. Additionally, we note that the problem of commercial interruption has not as such been subjected to any extensive

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[57] Loc. cit.

[58] Re Amendment of Parts 3 of the Commission's Rules and Regulations with Respect to [illegible] AM, FM, and Television Broadcast Stations, Docket No. 15083, FCC Report and Order, adopted January 15, 1964, 36 F.C.C. 45-50 (1964).

> study. The industry codes contain no standards dealing with it and it requires considerable investigation before any standards might be suggested.[59]

The Commission emphasized that there is a continuing basis for concern about over-commercialization, and that it will, in the future, "take whatever steps are necessary and appropriate to prevent its occurrence." The Commission cited the fact that the NAB codes on the subject are not fully complied with, that not all stations subscribe to them, and that the limits are regarded as too low by some broadcasters. The Commission also called for further studies of over-commercialization, with particular attention to the total broadcast time devoted to advertising and the extent of program interruptions by advertising. The NAB's research project in this area, it was noted, would be closely watched. The Commission's 1960 program policy statement emphasizing contacts with the public to ascertain a community's broadcasting needs and interests, should apply to commercial content and practices as well as programming.

The Commission further noted that information secured under proposed new program forms will better enable it to decide an appropriate future course. To obtain more information on the extent of over-commercialization, the Commission staff will study applications which present proposals and performance records revealing the greatest amount of

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[59] Ibid., pp. 48-49.

commercialism. This data will be brought to the Commission for its consideration and action. In further outlining its policy, the Commission concluded:

> We emphasize that we will give closer attention to the subject of commercial activity by broadcast stations and applicants, on a case-by-case basis. Thus, we will continue to require station applicants to state their policies with regard to the number and frequency of commercial spot announcements as well as their past performance in these areas. These will be considered in our overall evaluation of station performance. Attention will be given to situations where performance varies substantially from the standards previously set forth. We also wish to emphasize that our decision not to adopt the NAB Codes at this time does not indicate that we regard them as of no value or as sound limitations. . . . On the contrary, one of the important considerations underlying our conclusion is that there is in existence an industry-formulated code of good practice in this field, which, while far from completely successful as a device regulating the industry generally, does serve as one appropriate limitation, and which may be made more effective in the future.[60]

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[60] Ibid., pp. 49-50.

CHAPTER IV

CONCLUSIONS

The first chapter of this study has surveyed the early administrative policies for advertising developed by the Federal Radio Commission and subsequently evolved and implemented by the Federal Communications Commission. The second chapter reviewed the advertising standards set forth in the Blue Book. The third chapter reported some of the policies and problems of the Commission regarding advertising since 1960. This chapter will present conclusions drawn from this material.

Administrative Experience of the Federal Radio Commission

The Congress enacting the Radio Act of 1927 could not have had a clear picture of the industry for which they were legislating. Because it was a new and undeveloped phenomenon, there could be no provisions in the Act explicitly dealing with broadcast advertising. However, following the passage of the legislation, one of the first topics to attract the Federal Radio Commission's interest was potential advertising abuse. The Commission announced that one of its "broad underlying principles" was that "the amount and character of advertising must be rigidly confined within the limits consistant with the public service expected of

the station."[1] Throughout its brief history, the Radio Commission maintained that, while advertising revenue exists as the sole support for broadcasting, it must retain a "secondary" place and "incidental" character as the servant and not the master of community broadcast service.

On January 12, 1932, Senate Resolution 129, introduced by Senator Couzens, chairman of the Committee on Interstate Commerce, was passed. It required the Radio Commission to "make a survey" and render a comprehensive report on the use of radio by advertisers. The language of the Resolution, containing questions regarding the feasibility of government ownership of broadcasting facilities and possible plans to "reduce, limit, control or perhaps eliminate" advertising, openly threatened private commercial broadcasting. In its detailed reply the Radio Commission supported the predominantly commercial system, indicating that advertising could be controlled by a combination of "strict supervision" by the broadcaster, the cooperation of the advertiser and the authority of the Commission to review station performance.

Thus the initial policy groundwork for advertising had been formulated. Indeed, the policies with regard to advertising developed by the Federal Radio Commission have undergone no essential change during recent years.

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[1] Re Great Lakes Broadcasting Company, 3 Annual Report of F.R.C., p. 32.

Responsibility for Broadcast Advertising

One of the basic principles that has evolved from the Radio Commission to the Communications Commission has been the fact that advertising is included as part of the broadcast matter for which a station licensee assumes a statutory obligation as trustee. The responsibility to select and control the advertising matter carried on his station remains an affirmative duty of the licensee. The licensee, however, must "exercise a high degree of care and prudence and put forth continuing effort in determining the suitability of advertising material broadcast over his facilities, whether such material is originated by him or is transmitted through his station by a network."[2] In defining the responsibilities of the broadcaster, the Commission has refused to allow a station to plead ignorance of the nature of the advertisement presented for transmission. Rather, the station's duty is to inquire into the veracity of the representations made and into the reputation and standing of the advertiser. In addition, the broadcaster is presumed to have constructive knowledge of legal decisions affecting the advertising material which he accepts; and a disservice to the public interest is rendered where an advertisement successfully attacked in a prior proceeding (FTC, FDA, etc., as well as FCC) is approved for broadcast.

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[2] Interim Report, op. cit., p. A-22.

In a recent declaration the Commission has carried this responsibility one step further. It said that broadcasters have a positive obligation to seek out the broadcasting needs and interests of the viewing and listening public with respect to advertising content and practices.[3]

The Commission has noted with approval the various statements and codes regarding licensee responsibility for advertising which have been promulgated by the National Association of Broadcasters and other industry groups. Indeed, as a matter of continuing policy the Commission has encouraged efforts at self-regulation, with particular emphasis on adherence to the principles for the selection and supervision of broadcast advertising contained in the NAB's Codes of Good Practice.

Regulation of the Qualitative Aspects of Broadcast Advertising

In keeping with its responsibility to make certain that radio and television are used in the public interest, the Commission must concern itself with the qualitative nature of broadcast advertising, that is, fraud, obscenity, indecency, deception, and so on.

Although not specifically directed at bad advertising, the Communications Act provides for suspension of the broadcast license of any operator upon proof that radio

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[3] Re Commercial Advertising, FCC Report and Order in Docket No. 15063, adopted January 15, 1964, 36 F.C.C. 45, 49 (1964).

communication containing profane or obscene words or meaning has been transmitted.[4] This provision has been embodied in the criminal code and provides for punishment by fine and imprisonment.[5] This dual sanction, therefore, effectively deters most indecency in broadcast advertising.

The Commission has never attempted to prescribe the limits of propriety in this area; the licensee himself must assume proper responsibility. A broadcast licensee who "conscientiously seeks to apply his own common sense determinations of propriety in terms of generally accepted norms of decency and decorum in our family life as he understands them, should have no great difficulty in exercising his responsibilities" in this matter.[6]

In the early regulatory history of the Commission, particularly, there were numerous occasions in which it weighed the qualitative merits of advertisements. Certain types of advertisements were disapproved on "moral" or "ethical" grounds, for example, objectionable and harmful medical advertising and commercials for hard liquor. Others were considered objectionable because of the nature of the product, such as contraceptive devices. Still others were frowned upon by reason of presentation, for instance,

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[4] Section 303 (m) (D).

[5] 18 United States Criminal Code, Section 1464.

[6] Interim Report, op. cit., p. A-23.

advertisements by clergymen and physicians.

Although at no time did the Commission issue a definitive list of objectionable practices, its regulation nevertheless was effective. Broadcasters were made cognizant that offensive and harmful advertising would not be considered lightly in evaluating station performance at renewal time. Besides the infrequent use of the revocation sanction, less formal pressures have exerted a degree of control in this area. For example, the threat of initiating hearings on renewal applications has, in some instances, influenced the conduct of stations. In addition, a Commission request that objectionable advertising be deleted is often successful, since few stations desire to risk the loss of privileges at a later date. A successful use of this informal regulation is found in the effort to lessen unfounded medical advertisements. As a result of an intensified campaign in 1935, such broadcasts have been virtually eliminated from the airways.

In a determination of the qualitative aspect of broadcast advertising, the Commission has also been critical of false and misleading commercials. It has consistently held that a broadcast licensee has an affirmative responsibility with respect to advertising copy in order to "assure that no material is broadcast which will deceive or mislead the public."[7]

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[7]Re Liaison Between FCC and FTC Relating to False and Misleading Radio and Television Advertising, February 21, 1957, 22 F.C.C. 1572 (1957).

Although technically the Commission's authority in this matter lies in its licensing power, most fraudulent advertising practices are resolved before the broadcaster's license comes up for renewal. Where a complaint to the Commission is a genuine one, and not the malicious effort of a misguided citizen, the station is informed of the complaint. The licensee, upon receipt of a Commission letter, will usually require the particular advertiser to change his commercial and correct the offensive practices. But when a licensee has ignored the complaint, the Commission can retain the complaint in the licensee's file; when his license comes up for renewal, his past practices are considered in determining whether he is operating in the public interest.

As a matter of general policy, complaints concerning such advertisements are normally referred to other regulatory agencies specializing in such matters. In 1957 the Commission formalized its liaison with the Federal Trade Commission "to facilitate an interchange of information regarding false, misleading or deceptive advertising on the air."[8] Subsequent arrangements in recent years indicate that responsibility for truthful advertising in radio and television will probably be increasingly concentrated in the hands of better equipped agencies such as the FTC and the Food and Drug Administration. The editors of the

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[8] Loc. cit.

Columbia Law Review feel this is proper, stating:

> . . . the FCC's position seems sound since the severity of its sole sanction is inappropriate for the control of advertising. The Commission cannot hope to cope effectively with the varying degrees of culpability in the field of false advertising when its only weapon springs from its licensing power. Moreover, this penalty does not operate directly against the advertiser, but is dependent on further action taken by the broadcaster. By virtue of the FCC's refusal to enter the area some of the confusion and duplication that has characterized federal advertising regulation has been avoided.[9]

The Commission's basic weakness seems to lie in the field of excessive broadcast advertising. Obscene, false, misleading or deceptive advertising practices are more or less suppressed by the criminal codes and administrative sanctions of other regulatory agencies. The Commission is of the opinion that it need not be overly concerned with advertising practices other than excessive advertising. In the Blue Book, for instance, the Commission reiterated its general policy of noninterference with advertising abuses. After pointing out several areas where remedial action was necessary, it concluded that it is not the intention of the Commission to concern itself with advertising practices per se, other than to insure proper balance between advertising and program time. The duty of establishing and enforcing proper advertising standards must devolve on other

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[9] "The Regulation of Advertising," by the editors, Columbia Law Review, Vol. 56, No. 7 (November, 1956), p. 1049.

interested agencies and on the industry itself.

Regulation of the Quantitative Aspects of Broadcast Advertising

The quantitative nature of advertising, that is, the amount of broadcast time devoted to advertising, has been a more difficult Commission problem. The issue of the broadcaster in establishing a "reasonable balance between proper use as against 'abuse' of his privilege to use the public airways for commercial purposes has been more or less constant since the beginning" of the medium.[10]

The problem lends itself to a syllogistic analysis. The major premise is that the Commission possesses the authority to deny a license where it would not be in the public interest. The minor premise is that at some point the broadcast licensee's programming has become excessively commercial and therefore not in the public interest, because it does not cater to the diverse interests of the listening and viewing public. The obvious conclusion would be that the Commission may revoke the license of a broadcaster whose programming is excessively commercial. The solution, however, is not that simple. The Commission is aware that advertising revenue is the vital means of subsistence for most broadcast stations. If a station is to broadcast in the public interest, it must first of all be able to continue in business. Advertising permits such continuing

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[10]Interim Report, op. cit., p. A-23.

existence. On the other hand, the broadcaster is using the radio spectrum that belongs to the public and cannot be permitted to use public property for his own personal gain if it is not also in the public interest.

For the most part, the Commission has relied on a case-by-case analysis in seeking to limit abuses of over-commercialization. There is strong indication that in the absence of a definitive rule in this area, the Commission will pursue this procedure more rigidly. The Commission, in passing upon applications for new facilities or for renewal of license, has taken into account the advertising practices of an applicant, and specifically, the time which he proposes to devote, or has devoted to advertising, and the way in which he proposes to permit, or has permitted, advertising to affect his program service. In brief, the applicant's proposals or past record as to the amount of time devoted to commercials obviously can be relevant in the public interest judgment at the time of grant or renewal. In a recent action, after finding that programming of the licensee was frequently saturated with commercial announcements, the Commission said:

> The conclusion is compelling that Robinson tailored his operation more to the convenience of his advertisers than to the need of the public. Standing alone, this issue, on the facts of the case, might have resulted only in a short-term renewal of license. As it is, our conclusion [on this issue] bolsters the ultimate conclusion we reach that a grant of renewal would not be in the public interest.[11]

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[11] Re Palmetto Broadcasting Company, 23 Pike and Fischer, RR 483 (1962).

As a matter of policy the Commission has consistently held that over-commercialization is contrary to the public interest. Its application forms have sought information in this regard. The matter has been stressed in Commission policy pronouncements. Thus, in the Blue Book, it was noted that "some stations during some or many portions of the broadcast day have engaged in advertising excesses which are incompatible with their public responsibilities," and further stated:

> As the broadcasting industry itself has insisted, the public interest clearly requires that the amount of time devoted to advertising matter shall bear a reasonable relationship to the amount of time devoted to programs. Accordingly, in its application forms the Commission will request the applicant to state how much time he proposes to devote to advertising matter in any one hour.[12]

Also, in its 1960 definitive policy statement, the Commission stated that "with respect to advertising material the licensee has the additional responsibility . . . to avoid abuses with respect to the total amount of time devoted to advertising continuity."[13]

Although the Commission has recently terminated a rule-making proceeding in this matter, the ultimate effect of this and other declarations of policy intent may be to provide impetus for more stringent self-regulatory efforts.

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[12]Blue Book, op. cit., p. 56.

[13]Re Programming Policy Statement, 20 Pike and Fischer, RR 1912-1913 (1960).

Observations of the Writer

The regulation of advertising by the Commission is not a simple proposition, nor can it be completely segregated from other regulatory problems and policies. Advertising is inextricably related to many of the other broad problem areas of the Commission. For example, the problem of monopoly and chain broadcasting is closely connected with advertising in that the network is the instrumentality through which broadcast advertising is often used most effectively. The general problem of censorship is concerned often with controlling fraudulent advertising on radio and television. Also, the problem of encouraging the "larger and more effective use" of these media is associated with the advertising problem, since commercial interests, seeking to attract additional advertising funds, are among the first to seek authorization to use new technical methods. Overshadowing all other considerations is the paramount requisite that the public interest be served.

The Commission regulates broadcast advertising by virtue of a broad grant of licensing power, the criterion being the "public interest, convenience, or necessity." In the exercise of this power the Commission may not censor or impose positive requirements of broadcast content on stations.[14]

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[14]Communications Act of 1934, op. cit., Section 326.

Through the powers inherent in its licensing function, the Federal Communications Commission is a potentially formidable force in the field of advertising regulation. It is the only governmental agency which can decide, to a limited extent, whether broadcast advertising is in good taste, offensive to the public on moral or ethical grounds, or in other ways inimical to the public interest. Furthermore, it is the only agency that can exert the pressure necessary to make broadcasters responsible for advertising disseminated.

In practice, however, the Commission has largely taken the position that the elimination of advertising abuses should be left to self-regulation by the advertiser and broadcaster. Indeed, one of its few clearly articulated policies subordinates advertising to the public interest in community broadcast service, but places full responsibility on the licensee to select and control advertising material which is broadcast over his facilities.

In addition, the Commission's practice versus proposal doctrine, wherein the past advertising conduct of a licensee is measured against his proposals in renewal proceedings, has not always been rigidly enforced or clearly executed. In fact, the Commission's case law has exhibited a groping for administrative policy with regard to the regulation of broadcast advertising. Such uncertainty has caused confusion and indecision within the Commission and the broadcasting industry.

The Commission, of course, has been handicapped by the Communications Act, based as it is upon the logically contradictory notions of (1) no censorship; (2) public interest, convenience, and necessity. As it is not readily apparent how the broadcaster can be regulated in public interest, convenience, and necessity without considering what he broadcasts and since such considering may mean censorship, the Commission has vacillated between these two incompatible goals of the policy as defined by Congress.

As we have seen, Congress at times has felt that the Commission was not pursuing its goals in the matter of advertising regulation with sufficient vigor. However, loud complaints rather than legislative guidance have been the usual Congressional reaction. The solution would seem to be more readily achieved if Congress would prescribe in more specific terms the basic policies.

Our broadcasting structure was designed to operate through competitive commercial interest tempered by public responsibility. It can be hoped that through a more rigorous adherence to its present prerogatives and policies, the Commission can maintain, irrespective of Congressional action, an equitable balance between these essential factors.

Future Research

One must view the issues in light of the original question, namely: What in fact has been the policy of the FCC regarding broadcast advertising? One finds a complex

pattern has evolved in which other governmental agencies, Congress, broadcasters, advertising agencies, and the public all share a responsibility for radio and television advertising.

The story cannot be complete, therefore, without a study of the relationships and influence of these diverse groups on the total picture of broadcast advertising regulation.

BIBLIOGRAPHY

BIBLIOGRAPHY

Books

Archer, Gleason L. History of Radio. New York: The American Historical Society, Inc., 1938.

Emery, Walter B. Broadcasting and Government: Responsibilities and Regulations. East Lansing, Michigan: Michigan State University Press, 1961.

Friedrich, C. J., and Sayre, J. The Development of the Control of Advertising on the Air, Harvard University Radio Broadcasting Research Project - Studies in the Control of Radio. Cambridge: Harvard University Press, 1940.

Head, Sydney W. Broadcasting in America. Boston: Houghton Mifflin Company, 1956.

Landry, Robert J. This Fascinating Radio Business. Indianapolis: Bobbs-Merrill Company, 1946.

Pike and Fischer. Radio Regulation. Broadcast Edition, I-XXIV. Executive Editor: Henry G. Fischer.

Volume One contains statutes, Congressional committee reports, Court rules, treaties, and the Rules and Regulations of the FCC relevant to broadcasting.

Volume Two contains a current digest of the decisions of the FCC, relevant decisions of the Federal and State Courts, and selected decisions of the Federal Radio Commission.

Volume Nine, and succeeding volumes, contains the decisions of the FCC and the Courts since early 1953.

Siepmann, C. A. Radio's Second Chance. Boston: Little, Brown and Company, 1946.

Smead, Elmer E. Freedom of Speech by Radio and Television. Washington: Public Affairs Press, 1959.

Warner, Harry P. Radio and Television Law. Albany, New York: Matthew Bender and Company, Inc., 1948.

FCC Documents

Annual Report of the Federal Communications Commission to the Congress of the United States. Washington: Government Printing Office, I-XXIX, 1935-1963.

Annual Report of the Federal Radio Commission to the Congress of the United States. Washington: Government Printing Office, I-VII, 1927-1933.

Applicability of Sponsorship Identification Rules. FCC Public Notice (63-409) No. 34174, May 6, 1963. 28 Federal Register 4732-4735, May 10, 1963.

Broadcast Complaints and Compliance Division Creation. FCC Public Notice B-68753, May 20, 1960. Pike and Fischer, 19 RR 1631 (1960).

Broadcast Licensees Improper Use of Broadcast Ratings. FCC Public Notice (63-544) No. 35011, June 13, 1963. 28 Federal Register 6243, June 18, 1963.

Broadcast of Programs Advertising Alcoholic Beverages. FCC Public Notice. Pike and Fischer, 5 RR 593 (1949).

Comments of F.C.C. on H.R. 5741. FCC Mimeo No. 21521, Adopted July 20, 1955. Interim Report, p. 74.

The Communications Act of 1934 with Amendments and Index Thereto. Washington: Government Printing Office. Published by the FCC and revised to October, 1962, also contains the Administrative Procedure Act, the Judicial Review Act, and selected sections of the Criminal Code pertaining to broadcasting.

FCC Rules and Regulations. Washington: Government Printing Office, III, Part 3, "Radio Broadcast Services."

Federal Communications Commission Reports. Washington: Government Printing Office, I-XXXVI, 1934-1964. (The FCC suspended publication of these annual reports of decisions from 1950 to 1957, XV-XXI.)

Interim Report of the Office of Network Study: Responsibility for Broadcast Matter. FCC Docket No. 12782. Washington, D.C., June 15, 1960.

In the matter of Public Notice (FCC 60-239) dated March 16, 1960, entitled Sponsorship Identification of Broadcast Material, FCC Docket No. 13454. 25 Federal Register 2928 (1960).

Liaison Between FCC and FTC Relating to False and Misleading Radio and Television Advertising. February 21, 1957. 22 F.C.C. 1572 (1957).

Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising. FCC Public Notice (61-1316) No. 11833, November 7, 1961.

Memorandum Prepared by the General Council for the FCC on its Legal Authority to Adopt a Rule Prescribing Maximum Broadcast Time to be Devoted to Commercial Advertising. 36 F.C.C. 50-61 (1964).

Public Service Responsibility of Broadcast Licensees. FCC Report. Washington, D.C., March 7, 1946.

Re Amendment of Part 3 of the Commission Rules and Regulations to Eliminate Objectionable Loudness of Commercial Announcements and Commercial Continuity Over Standard, FM, and Television Broadcast Stations. FCC Notice of Inquiry in Docket No. 14904, FCC 62-1335, No. 28545, December 18, 1962. 27 Federal Register 12681-12682, December 21, 1962.

Re Amendment of Part 3 of the Commission Rules and Regulations with Respect to Advertising on Standard, FM, and Television Broadcast Stations. FCC Notice of Proposed Rule Making in Docket No. 15083, FCC 63-467, No. 35001, May 15, 1963. 28 Federal Register 5158-5161, May 23, 1963.

Report and Statement of Policy Re: Commission en banc Programming Inquiry. FCC 60-970, July 29, 1960. 25 Federal Register 7291-7296, August 3, 1960.

Rules with Respect to Advertising on Standard, FM, and Television Broadcast Stations. FCC Report and Order in Docket No. 15083, adopted January 15, 1964. 36 F.C.C. 45-50 (1964).

Sponsorship Identification of Broadcast Material. FCC Public Notice No. 85460, March 16, 1960. Pike and Fischer, 19 RR 1569-1577 (1960).

Other Public Documents

U.S. Congressional Record. Vols. LXVII, LXVIII, LXXIII, and CII.

U.S. Criminal Code. Title 18 U.S.C. (1958 Edition).

U.S. Federal Register.

U.S. House of Representatives. Hearings before the Committee on Merchant Marine and Fisheries on H.R. 8825. 70th Congress, 1st Session, 1928.

U.S. House of Representatives. Report of the Committee on Interstate and Foreign Commerce. Television Network Program Procurement. Report No. 281, 88th Congress, 1st Session, May 8, 1963.

U.S. Senate. Commercial Radio Advertising, A Letter from the Chairman of the Federal Radio Commission in response to Senate Resolution No. 129. Senate Document No. 137, 72nd Congress, 1st Session, 1932.

FCC Case Citations

Albert Moffat, 1 F.C.C. 160 (1934).

Bay State Beacon, Inc., et al., 12 F.C.C. 567 (1948).

Bilber and Barnard, 4 F.C.C. 79 (1937).

Biscayne Television Corp., Pike and Fischer, 11 RR 1113 (1956).

Boston Broadcasting Company, Inc., Pike and Fischer, 24 RR 1089 (1963).

Bremer Broadcasting Company, 2 F.C.C. 79 (1935).

The Brooklyn Cases, 2 F.C.C. 208 (1935).

Cannon System, Ltd., F.R.C. Docket No. 1595, September 23, 1932.

Cannon System, Ltd. (KIEV), 8 F.C.C. 207 (1940).

Charles Henry Cuntheran, 1 F.C.C. 177 (1934).

Columbia Amusement Company, Pike and Fischer, 12 RR 509 (1956).

Community Broadcasting Company, 12 F.C.C. 85 (1947).

Community Broadcasting Co. (WTOL), 7 F.C.C. 194 (1938).

Community Broadcasting Corporation (WWIL), 12 F.C.C. 301 (1947).

Continental Radio Company, 5 F.C.C. 518 (1937).

Cowles Broadcasting Co., Pike and Fischer, 10 RR 1289 (1954).

The Delsea Broadcasters, 25 F.C.C. 449 (1958).

Eugene J. Roth, 12 F.C.C. 102 (1947).

Fall River Herald New Publishing Company, 5 F.C.C. 377 (1936).

The Farmers and Bankers Life Insurance Co., 2 F.C.C. 455 (1936).

Fischer Broadcasting Co., et al., 30 F.C.C. 177 (1961).

Foulkrod Radio Engineering Co., et al., 14 F.C.C. 100 (1949).

Gordon County Broadcasting Company, Pike and Fischer, 24 RR 315 (1962).

Great Lakes Broadcasting Company, 3 Annual Report of F.R.C., p. 32 (1929).

Gulf Coast Broadcasting Company, Pike and Fischer, 10 RR 779 (1954).

Hammond-Calumet Broadcasting Corp., 2 F.C.C. 321 (1936).

Hannibal Broadcasting Company, et al., 4 F.C.C. 505 (1937).

Howard W. Davis, trading as The Dixie Company, 12 F.C.C. 91 (1947).

Hubbard Broadcasting, Inc., Pike and Fischer, RR 2nd 499 (1963).

Indianapolis Broadcasting, Inc., et al., 22 F.C.C. 421 (1957).

Inter-City Broadcasting Co., et al., 13 F.C.C. 530 (1949).

James A. Noe (WNOE), et al., 13 F.C.C. 448 (1949).

KFKB Broadcasting Association, 5 Annual Report of F.R.C., p. 32 (1931).

KMPC, Station of the Stars, Inc., 6 F.C.C. 709; 7 F.C.C. 419 (1939).

Knickerbocker Broadcasting Co., Inc. (WCSH), 2 F.C.C. 76 (1935).

KORD, Inc., 31 F.C.C. 85 (1961).

KXL Broadcasters, 4 F.C.C. 186 (1937).

Liberty Television, Inc., et al., 29 F.C.C. 538 (1960); 30 F.C.C. 411 (1961).

Martin, 3 F.C.C. 461 (1936).

May Seed and Nursery Company, et al., 2 F.C.C. 559 (1936).

McGlashan, et al., 2 F.C.C. 145 (1935).

The Metropolis Company, 6 F.C.C. 425 (19[illegible]).

Michigan Broadcasting Co., Pike and Fischer, 20 RR 667 (1960).

Midwest Radio-Television, Inc., Pike and Fischer, RR 2nd 4[illegible]1 (19[illegible]3).

Miss [illegible]k Broadcasting Company, Pike and Fischer, 24 RR 305 (19[illegible]1).

Oak Leaves Broadcasting Station, Inc., 2 F.C.C. 298 (1935).

Pacific Acceptance Corporation, 5 F.C.C. 296 (1938).

[illegible] Broadcasting Co., Pike and Fischer, 23 RR 433 (1962).

[illegible] Broadcasting Corporation, 6 F.C.C. 532 (1938).

Puertorican American Broadcasting Co., Inc., 14 F.C.C. 239 (19[illegible]).

Power City Broadcasting Corporation, et al., 4 F.C.C. 227 (1937).

Radio Station [illegible], 7 F.C.C. 19 (1939).

R.I. Broadcasting Company, Pike and Fischer, 6 RR 196 (1950).

Robert Lowell [illegible], 1 F.C.C. 139 (1934).

Roberts McNab Company, 6 F.C.C. 548 (1938).

Rochester Broadcasting Company, 22 F.C.C. 1053 (1957).

Sacramento Broadcasters, Inc., Pike and Fischer, 10 RR 615 (19[illegible]).

Sam Morris, 11 F.C.C. 197 (194[illegible]).

Scroggin and Company Bank, 1 F.C.C. 194 (1935).

Sheffield Broadcasting Company, 30 F.C.C. 579 (1961).

Siever, Bayless, and Steele, 2 F.C.C. 194 (1935).

Smith, Keller, and Cole, 5 F.C.C. 291 (1938).

Southland Television Company, Pike and Fischer, 10 RR 699 (1955).

[illegible] Broadcasting Company, 4 F.C.C. 293 (1937).

Taylor, 3 F.C.C. 231 (1936).

Time-Life Broadcasting, Inc., Pike and Fischer, RR 2nd 504 (1965).

The Travelers Broadcasting Service Corporation, 8 F.C.C. [illegible] (1938).

United States Broadcasting Corp., 2 F.C.C. 293 (1935).

United Television, Inc., Pike and Fischer, RR 2nd 509 (1963).

Utah Radio Education Society, et al., 3 F.C.C. 247 (1936).

WBNX Broadcasting Co., Inc., et al., 12 F.C.C. 805 (1948).

WCRW Case, 2 Annual Report of F.R.C., p. 156 (1928).

WGAR Broadcasting Company, 5 F.C.C. 540 (1937).

WHEC, Inc., et al., 24 F.C.C. 147 (1958).

WKAT, Inc., 22 F.C.C. 117 (1957).

WTTF Radio Company, Pike and Fischer, 12 RR 609 (1956).

WWRL Radio Station, Inc., 2 F.C.C. 687 (1936).

WXYZ Broadcasting Service, Pike and Fischer, 10 RR 1323 (1955).

[illegible], Inc., 2 F.C.C. 293 (1936).

Articles and Periodicals

Advertising Age. March 30, 1964, p. 2.

Bielaski, Bruce A. "Radio Advertising--Control of Quality and Quantity," [illegible], V (July, 1934), 368-373.

"Broadcasters Have Policed Selves for 34 Years," Broadcasting, May 27, 1963, 28-29.

Broadcasting. March 31, 1947, 4.

Broadcasting. March 30, 1964, 36.

Federal Communications Bar Journal, XV, No. 4, 1957.

Goldstein, Henry R. "The Broadcaster's Responsibility for Advertising," Journal of Broadcasting, V, No. 1 (Winter, 1960-1961), 79-86.

"Is Television 'Loudness' Real or Imagined?", Printer's Ink, September 6, 1963.

"The Regulation of Advertising," Columbia Law Review, LXI, No. 7 (November, 1956), 1043-1049.

Television. May, 1963, 27.

Unpublished Material

Comments of the National Association of Broadcasters in the FCC's Docket No. 15063, in the matter of the proposed amendment of the Commission's rules with respect to advertising. September 30, 1963.

Comments of the National Association of Broadcasters in the FCC's Docket No. 14964, regarding amendment of Part 3 of the Commission Rules and Regulations to Eliminate Objectionable Loudness of Commercial Announcements and Commercial Continuity over Standard, FM and Television Broadcast Stations. March 22, 1962.

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