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Pol. Editor
Fairness
Doctrine
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May 31, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
Room: 8-B201
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

Although the FCC has previously ruled that it would cease enforcement of the Fairness Doctrine and repeal the political-editorial and personal-attack rules, it has neglected to take them off the books. We write to ask you to finish the job and strike from the FCC's regulations the rules codified at 47 C.F.R. §§ 73.1910, 76.209, 76.1612, and 76.1613.

The FCC concluded in 1987 that the Fairness Doctrine chilled free speech and had been used to intimidate broadcasters who criticized government policy. According to the FCC's analysis, the growth of the media market had rendered the doctrine unnecessary and—based on its intrusion on the First Amendment rights of broadcasters—unconstitutional. The FCC ruled, therefore, that it would cease enforcement. *Syracuse Peace Council v. Television Station WTVH, Syracuse, NY; Fairness Doctrine*, 52 Fed. Reg. 31,768 (Aug. 24, 1987). The D.C. Circuit later upheld the FCC's decision that enforcing the Fairness Doctrine was not in the public interest. *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989).

Ten years later, the D.C. Circuit required the FCC to review and justify its political-editorial and personal-attack rules in part because they "interfere with the editorial judgment of professional journalists and entangle the government in day-to-day operations of the media." *Radio-Television News Dirs. Ass'n v. FCC*, 184 F.3d 872 (D.C. Cir. 1999). The D.C. Circuit vacated those rules the following year. *Radio-Television News Dirs. Ass'n v. FCC*, 229 F.3d 269 (D.C. Cir. 2000). In response, the FCC repealed the political-editorial and personal-attack rules. *Repeal or Modification of the Personal Attack and Political Editorial Rules*, 65 Fed. Reg. 66,643 (Nov. 7, 2000).

Despite the FCC's determination not to enforce the Fairness Doctrine, Commissioner McDowell recently discovered that it still remains in the Code of Federal Regulations. Further

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research has revealed that the political-editorial and personal-attack rules also remain intact despite the FCC's decision to repeal them. The media marketplace is more diverse and competitive today than it was ten years ago when the D.C. Circuit struck down the Commission's political-editorial and personal-attack rules. The difference is even more stark when compared to the market twenty years ago when the Commission concluded that the Fairness Doctrine was unconstitutional.

You wrote to Chairman Walden on July 24, 2009, that you "do not support reinstatement of the Fairness Doctrine," that you "believe strongly in the First Amendment," and that you "do not think that the FCC should be involved in the censorship of content based on political speech or opinion." We agree that the Constitution places a special duty on Congress and the federal government to respect the freedom of broadcasters and cable operators to speak freely without fear of reprisal or government sanction.

President Obama's recent Executive Order has asked agencies to remove unwarranted regulations from their rolls. President's Memorandum for the Heads of Executive Departments and Agencies, "Regulatory Flexibility, Small Business, and Job Creation" (76 Fed. Reg. 3827 (January 21, 2011)). Although that order does not apply to the FCC, you stated at our May 13, 2011, Subcommittee on Communications and Technology hearing that you have instructed Commission staff to follow its direction. Statement of Chairman Julius Genachowski, Hearing on "FCC Process Reform" Before the Subcommittee on Communications and Technology (May 13, 2011). The Fairness Doctrine, political-editorial, and personal-attack rules would seem like an easy place to start since the FCC has already abandoned them based on principles you say you continue to support.

Accordingly, we ask you to remove the Fairness Doctrine and the political-editorial and personal-attack rules from the Code of Federal Regulations as soon as possible. Please confirm in writing no later than the close of business June 3, 2011, that you will do so and include an estimate of how long it will take. If you have any questions, don't hesitate to contact Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman

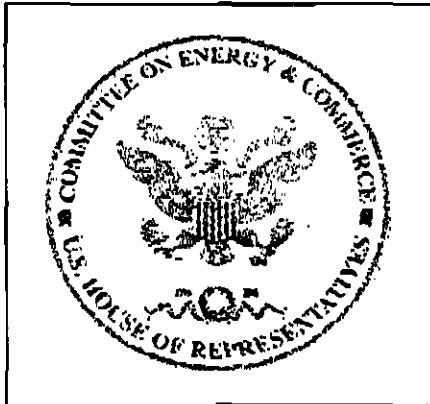


Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology

Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn



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From: Rep. Fred Upton, Chairman, Committee on Energy and Commerce

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Date: March 29, 2011

Phone:

Pages: 2 (Including cover)

Notes: Detail request letter
