Using the FCC’s Fairness Doctrine to Effect Environmental Reform

Henry L. Barr
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By Henry L. Barr

On March 14, 1970 the Friends of the Earth (hereinafter the FOE), an organization concerned with the protection of the environment, filed a complaint with the Federal Communications Commission against WNBC-TV, New York City. The FOE contended that automobile and gasoline advertisements aired by WNBC, particularly those for large-displacement engines and lead-additive gasolines, presented one side of a controversial issue of public importance—the effect of these products on the quality of the environment. The advertisements suggested to the consumer that these products are requirements for a full, rich life. For example, the advertisements encouraged the purchase of automobiles with large displacement engines by using such alluring expressions as “be a big rider,” “4 barrel V-8” engines and “up to 429 cubic inches,” and suggested that automobiles are consonant with an unpolluted environment by showing an automobile on a clean beach. The FOE claimed that WNBC’s refusal to give cost-free air time to counter the implications of these commercials was a violation of the FCC’s fairness doctrine. The FOE contended that “in the short run the public should prefer unleaded gasoline and small-engine cars which utilize less lead-additive gasoline until the auto and gas companies convert to non-polluting products.” Complainants relied primarily on Banzhaf v. FCC, which held that cigarette advertising presents one side of a controversial issue and that, therefore, under the terms of the fairness doctrine, stations presenting cigarette advertisements are required to give air time free of charge for presentation of the opposite point of view.

The FOE claimed that the documentary programming presented by WNBC relating to air pollution did not fulfill the fair-
ness obligation the station had incurred by its broadcast of many automobile and gasoline commercials. They insisted that presentation of the antipollution point of view by conventional programming could not fulfill the fairness obligation since commercial announcements are so numerous and exert considerable influence on the consumer.

The Commission ruled in favor of WNBC, finding the fairness doctrine inapplicable to automobile and gasoline advertisements. It based its decision on a comparison of the facts of FOE with those of Banzhaff, and concluded that cigarettes are a unique product with respect to commercial advertising. The Commission asserted three distinctions between cigarette advertisements and automobile and gasoline advertisements. As outlined in its opinion, these three points of distinctions are closely related, the first two actually state the same objection.

First, the Commission stated that cigarette smoking does not involve a "balance of competing interest." Cigarette smoking was viewed as a unique problem since it is a habit which is both acquired voluntarily and detrimental to health. Since people smoke by choice and cigarettes have no redeeming virtue, an anti-smoking advertising campaign aimed at educating the consumer was deemed a proper way to deal with the health problem. However, the Commission felt that environmental problems are more complex and cannot be remedied in this simple way.

This line of reasoning utilized by the Commission in FOE anticipated the second alleged distinction: whereas no one proposed to stop promoting or using the "fruits of the technological revolution," which are the sources of pollution (e.g., to stop all use of the internal combustion engine) they did propose complete abstinence from cigarette smoking which has no social utility.

The third distinction claimed by the Commission is that "proper action" (i.e., governmental regulation) should be taken with respect to products which contribute to pollution rather than with the promotional advertising of the product. To distinguish Banzhaff on this point, the Commission pointed out that the prohibition of smoking was no more feasible than the attempt to prohibit the drinking of alcoholic beverages, and that anti-smoking "spot" commercials are a more practical and effective solution to the cigarette-health problem. Since sources of pollution effectively could be regulated by government, resort to the advertising medium was deemed unnecessary and unwise.
In conclusion, the Commission’s opinion implies that even if the facts of FOE were analogous to the problem of cigarette smoking, the holding of Banzhaff should not be extended generally to the field of product advertising. It argued that such an extension of the fairness doctrine would undermine the present commercial broadcasting system since stations would be forced to air a significant number of cost free announcements countering ordinary product commercials. A decision in favor of FOE would open the floodgates to a great many products which have some adverse ecological effect. Detergents, electric power, airplanes and disposable containers were offered as examples of such products.

The Commission feels that Red Lion Broadcasting Co., Inc. v. FCC rather than Banzhaff should be followed as the best means for fulfilling the spirit of the National Environmental Policy Act of 1969. Red Lion obligates broadcasters to inform the public of both sides of a controversial issue. Although it is recognized that the licensee maintains a great deal of discretion in determining which issues of public importance he chooses to cover, the Commission felt “it would be no more reasonable for broadcasting to ignore these burning issues of the seventies—which may determine the quality of life for decades or centuries to come—then it would be to ignore the issue of Vietnam or the issue of racial unrest in communities racked by this problem.”

However, Red Lion dealt with a much broader issue than did Banzhaff, the constitutionality of the application of the fairness doctrine to cases arising in the broadcast media. The court in Red Lion held that it does not violate the First Amendment “to treat licensees, given the privilege of using the limited number of radio frequencies, as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern.” This decision provided the constitutional basis for Banzhaff.

The Commission in its opinion has refrained from discussing two threshold questions which are traditionally posed in cases concerning the fairness doctrine: is the contested issue (here the effect of automobiles and gasoline, especially automobiles with large displacement engines and leaded gasoline, on the environment) one of substantial public importance; and, do the challenged broadcasts (here the advertisements for such products) raise the issue? The Commission recognizes that the environ-
mental pollution problem as a whole is a controversial issue of public importance, but equivocates on the questions whether the contributions of automobiles and gasoline specifically constitute a controversial issue, and whether such an issue can be raised by product advertisements. Rather than making these two basic inquiries, the Commission chose to dwell on the differences between the fact situation of FOE and the facts of Banzhaff. This note submits that the distinctions between these two cases alleged by the Commission are invalid and are not helpful in determining the merits of complainant’s claim. Moreover, the Commission chose to avoid analyzing FOE in the traditional manner which the case and rulings decided under the fairness doctrine (including Banzhaff) suggest: (1) that there was a controversial issue of public importance alleged in FOE and (2) that the issue was raised by the advertisements.

A. The Fairness Doctrine

Before examining some of these cases and rulings, the basic tenets of the fairness doctrine should be reviewed. Originally, the doctrine was only a part of the license renewal process which broadcast stations undergo periodically. Under the terms of the Communications Act of 1934 the Federal Communication Commission can grant a station license to any applicant upon evidence that the “public interest, convenience, or necessity would be served thereby.” This standard left wide discretion and called for imaginative interpretation on the part of licensees. Through trial and error, clearer guidelines have been formed. The most important of these is that the public interest, not the broadcaster’s financial interest, is paramount. Licensees assume the obligation to present all sides of important public questions fairly, objectively and without bias. The requirement to present opposing points of view is not confined to questions which have already proven controversial but also applies to issues which unexpectedly arouse controversy. If a licensee does not fulfill the fairness obligation, his license may not be renewed. The licensee may determine what percentage of the broadcast day should appropriately be devoted to news and discussion of public issues.

Today, the fairness doctrine is not limited in application to the license renewal process. Parties which feel that one side of a controversial issue has been aired can specifically request free time to respond to the presentation. If the request is refused appeal may
be made immediately to the Complaints and Compliance Division of the Federal Communications Commission. In considering complaints in this area, the Commission is not to substitute its judgment for that of the licensee as to any specific programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith over a substantial period of time.

Therefore, in order to fulfill its obligations each licensee must determine what is a controversial issue of public interest, whether one has been aired, and how properly to satisfy the requirements of the fairness doctrine to present the opposite side of the issue. In determining whether an issue is of a sufficiently controversial nature to cause the licensee to provide air time to counter the views expressed, the licensee must consider what kinds of issues are traditionally considered controversial and in what ways these issues have been raised (i.e., by editorials, advertisements, documentaries, or otherwise).

In an effort to determine whether the issue alleged by the FOE to be controversial (the effect of gasoline and automobiles, especially lead-additive gasoline and large displacement engines, on the environment) is the type of issue which has been and should be considered of such substantial public importance as to invoke the fairness doctrine, it is necessary to examine several cases which have been decided under that doctrine. If under these decisions, the issue is found to be controversial, it must then be determined whether it is raised by gasoline and automobile advertisements.

In New Broadcasting Co. (WLIB), a radio station was found to have violated the fairness doctrine by advocating in its editorial programs support of a National Fair Employment Practices Commission and by not taking affirmative steps to encourage the presentation of points of view that differed from those of the station. The Commission reasoned that is was a matter of common knowledge that the establishment of a National Fair Employment Practices Commission was a subject that had been "actively controverted by members of the public and by members of the Congress of the United States and that in the course of that controversy numerous differing views had been espoused". The Commission ruled that the broadcast by the station of a relatively large number of editorial programs relating to this matter over a period of three days indicated an awareness of its
importance and raised the assumption that at least one of the purposes of the broadcasts was to influence public opinion. The record disclosed that the licensee had not permitted opponents of the bill’s enactment to use its facilities to present their views. This decision is particularly important since it indicates that the presence of active congressional debate on an issue can qualify that issue as controversial for fairness doctrine purposes.

When the contested issue involves health considerations, as opposed, for example, to a purely political issue, the Commission seems to be more willing to characterize it as a controversial issue of substantial public importance. Also, as we shall see later, when the issue concerns public health, the FCC is more willing to consider a number of different types of messages (e.g., editorials, regular programs, advertisements) as capable of being within the scope of the fairness doctrine. For example, the Commission gave special priority to the health of the consumer in *KFKB Broadcasting Ass’n. Inc. v. Federal Radio Commission.* Defendant owned a radio station, a hospital, and an association of pharmacies. The hospital and the association were advertised over the station. Defendant personally broadcast three half-hour programs each day (called the “medical question box”) devoted to diagnosing and prescribing treatment of problems described in letters sent to defendant. The defendant usually diagnosed the described ailment and recommended the procurement of prescriptions from one of the members of his pharmaceutical association. The Commission held that the practice of a physician prescribing treatment for a patient whom he has never seen in a way which would benefit advertisers who dealt in products which affect the health of the consumer “is inimical to the public health and safety, and for that reason is not in the public interest.” This ruling is important since it evinces a particular concern for public health. The Commission was willing to find in the health question a controversial issue of substantial public importance, although there seemed to be no raging public controversy, congressional or otherwise. Substantial danger to the public health sufficed to invoke the fairness doctrine.

In 1962, in a report by the Commission on a program entitled “Living Should be Fun” the Commission again dealt with an issue which affected public health. The program involved the discussion of such health issues as fluoridation of drinking water, the value of krebiozen in the treatment of cancer, and the value of
supplementary vitamins in the treatment of various diseases. The fact that each issue involved the health of the consumer apparently removed the need that they be as obviously controversial as such issues as the National Fair Employments Practice Commission.

Controversial issues, and especially those concerning public health, can be raised in advertising as well as in regular programming such as documentaries or editorials. The complaint in *In Re Sam Morris* claimed that a radio station had pursued a policy of selling choice time for broadcasts "counseling the drinking of alcoholic liquors . . . and refused to sell equally choice radio time, or any time whatever," for the broadcasting of messages which counseled the abstinence from drinking such alcoholic beverages. The Commission ruled that the advertising of alcoholic beverages over the radio could raise controversial issues—both moral and public health issues—of substantial public importance. "The fact that the occasion for the controversy happens to be the advertising of a product cannot serve to diminish the duty of the broadcaster to treat it as such an issue." The standard the Commission used to determine the presence of a controversial issue was that the question whether the sale and consumption of alcoholic beverages should be prohibited was widely debated by government agencies, private organizations and other individuals. This was reflected in the consistent effort to secure legislation in Congress wholly forbidding the advertising of alcoholic beverages over the radio. *Sam Morris* is most important to the analysis of FOE complaint since it concludes that a controversial issue (here one which partially concerned public health) may be raised in advertisements as well as in regular programming.

*Banzhaff v. FCC* also involved a health issue raised by advertisements. The court did not rely on *Sam Morris* since it felt the case had not been followed in the past twenty years; in the court's words *Sam Morris* was "not in any event a clear precedent for a ruling which instructs stations to broadcast opposition to their paid commercials regardless of whether opponents buy—or even request—such broadcast time." However, *Banzhaff* is a logical extension of the cases and rulings discussed above, including *Sam Morris*. These cases offer guidelines within which the decision was framed. The decisions and rulings established that the FCC could require a station to give free time to an opposing spokesman; that controversial issues could be identified as such
by the presence of significant congressional debate on the issue; that the threshold of the magnitude of debate necessary for an issue to be controversial seems to be lower when the issue concerns public health; that controversial issues could be raised by advertisements; that, for license renewal purposes, a station is responsible for presenting, on its own initiative, both sides of issues found to be controversial. Banzhaff, then, cannot be examined in the abstract; the case represents the maturation and coalescence of theories which had been worked out in earlier thinking. It is suggested here that the relevant facts of FOE are strongly analogous to the facts of Banzhaff, and that even absent the Banzhaff ruling, advertisements for automobiles and gasoline, especially automobiles with large displacement engines and leaded gasoline, raise the kind of controversial issue to which the fairness doctrine has been applied and should be applied.

B. THE BANZHAFF DECISION

The cases and rulings remove the absolute necessity of depending on Banzhaff. However, since Banzhaff lends much support to the FOE’s complaint, and since the FCC’s disposition of the complaint turned on a comparison between the fact situations, Banzhaff should be examined in some detail.

In December, 1966, John F. Banzhaff III presented to the FCC a letter which related that he had asked WCBS-TV (New York), to provide free time for anti-smokers to respond to the pro-smoking views implicit in the cigarette commercials broadcast by the station. He claimed that the commercials raised one side of a controversial issue of public importance, and that under the FCC’s fairness doctrine WCBS was under an affirmative obligation to make its facilities available for the expression of contrasting viewpoints held by responsible parties. The station replied that several news and information programs had presented facts about the smoking controversy and that these were sufficient to satisfy the fairness doctrine. The Commission sustained the complaint, finding that the cited cigarette commercials “present the point of view that smoking is ‘socially acceptable and desirable, manly, and a necessary part of a rich full life,’ ” and that this was sufficient cause for the presentation of the other point of view. Furthermore, the Commission found that the programming presented by the station concerning the negative side of smoking was too infrequent adequately to present the other side.
In *Banzhaff*, the Commission felt that in view of the 1964 Report of the Surgeon General's Committee, the Cigarette Labeling and Advertising Act of 1965, and reports to Congress by the Federal Trade Commission and the Department of Health, Education and Welfare pursuant to that Act, it was not an abuse of discretion for the Commission to decide that cigarette commercials raise a controversial issue of public interest. Therefore a station which allows cigarette advertising to convey the impression that cigarette smoking is desirable and which encourages the public to use a product that has been found by Congress and government agencies to be hazardous to health in normal use is under a statutory obligation to make a fair presentation of opposing views.

C. Extent of Automobile Pollution

There is substantial evidence which illustrates the undesirability of large displacement engines and leaded gasoline because of their effects on the public health. Some of this material is included here to illustrate the amount of controversy these products have engendered. It should be emphasized that pollution generally has already been conceded by the Commission to be an issue of great public importance.

The President in a message on the environment to Congress pointed out that "most air pollution is produced by the burning of fuels. About half is produced by motor vehicles." He further stated that "emissions from motor vehicles must be reduced greatly if air pollution is to be brought under control." The emissions referred to by the President have been categorized into three types in a report issued by the Department of Health, Education and Welfare: carbon monoxide (CO) which produces headaches, loss of visual acuity, and decreased muscular coordination; hydro-carbons (HC) which are a large class of chemicals some of which, in particle form, have produced cancer in laboratory animals, and others which, discharged chiefly by the automobile, play a major role in the formation of photo-chemical smog; and nitrogen oxide (NO) which, besides its contribution to photo-chemical smog, is responsible for the whiskey brown haze that not only destroys the view in some cities, but endangers the take off and landing of airplanes. At high concentrations nitrogen oxide can also interfere with respiratory function and, it is suspected, contribute to respiratory disease. The extent to which the automobile is the cause of the dispersements of these pollu-
tants has been outlined in an opinion of the National Air Pollution Control Administration (NAPCA) in which it is pointed out that in Los Angeles there seems to be general agreement that the "smog-season" emissions of HC, CO, and NO are mainly from mobile sources. With respect to carbon monoxide health effects, the city of Chicago represents the worst known case in the United States, and there the bulk of ambient CO concentrations seems to stem from mobil sources.

The hearings prior to the passage of the Air Pollution Control Act of 1967 as well as the Clean Air Amendments of 1970 evidence the government's concern with large engine cars and leaded gasoline. Both statutes established emission standards for new vehicles. The manufacture, import, or sale of any new vehicle not conforming with the standards is prohibited. The penalty for violation of the provision of the 1970 statute is $1,000 per vehicle.

It would seem, then, that pollution caused by automobiles which burn gasoline (especially large displacement engines and leaded gasoline) has stirred the kind of controversy, in Congress, government agencies and among individuals, which would classify the issue as a controversial issue of substantial public importance under Banzhaff and the other cases and rulings discussed above. The requisite level of controversy seems to be met. Moreover, the fact that automobile and gasoline pollution is primarily a public health issue would add impetus to the argument that the issue is controversial under the fairness doctrine. In the light of Sam Morris and Banzhaff, specifically, it would seem further that advertisements for such products are capable of raising this controversial issue. In short, it is submitted that the traditional requirements of the fairness doctrine have been met: a controversial issue of public importance is present and has been raised by a broadcasting station. However, since the FCC did not seem to find it helpful to analyze the problem in these traditional terms, the conclusions made by the Commission should be examined to see if a contrary result (i.e., absence of violation of the fairness doctrine) can validly be reached by the Commission's analysis. As stated at the outset, the Commission chose to compare Banzhaff strictly to the facts of FOE. This would seem to be a somewhat narrow approach, in the light of the cases and rulings analyzed above. Moreover, the analysis to which the Commission limited itself seems to be invalid. The first two distinctions made by the Commission actually restate the same assertion: unlike
cigarette smoking, environmental problems involve a "balance of competing interests," i.e., since smoking is voluntary and is without social utility, it should be discouraged in every way possible, but the "fruits of the technological revolution," while they cause pollution, offer benefits to society and cannot be banned outright.

The Commission argues that advocating a ban on cigarettes is the simple and proper means for curtailing smoking; however, since the causes of pollution also provide benefits, they cannot be dealt with so summarily. The Commission bases this finding on the fact that cigarettes are habit forming. However, it would seem that it is even more imperative that the public be educated about a health menace which it cannot choose to avoid. If the fact that smoking is voluntary argues for presentation of both sides of the issue, the fact that pollution which impairs health is unavoidable would seem to make the issue more pressing and more in need of public debate. As Commissioner Johnson pointed out in his dissenting opinion:

The anti-smoking announcements are designed to warn smokers and non-smokers of the dangers of addiction. Yet the contemporary American is wedded to automobile pollution by even stronger bonds of necessity and lack of choice. . . . Many might prefer to purchase pollution-free automobiles, but Detroit simply has not given them the choice.

D. Analysis of FOE Opinion

The first alleged distinction between Banzhaff and FOE leads directly into the second. There the Commission states that "[n]o one proposes to stop promoting or using the fruits of the technological revolution (e.g., to stop all use of autos or trucks)." However, it should be noted that Congress has already legislated to remove from the market (beginning in 1975) any car which does not meet certain emission standards. Although these standards are low, Congress in its hearings on the Clean Air Amendments of 1970 is beginning to zero in on the large size car:

We should reduce the size of our autos . . . ; it is absolutely ridiculous that we should use the fantastic volume of steel that we use at the present time to move ourselves from one place to another, it just doesn't make sense.

and

[C]oncentrating on passenger cars, it is shown that only 50 h.p. are
utilized under normal conditions. The rest of the installed power is wasted weight...; an oversized engine has a poor burning rate all the time and therefore contributes maximum amounts of air contamination.\textsuperscript{84}

In short, contrary to the Commission’s conclusion, there seems to be serious discussion about banning at least one of the products included in the FOE’s complaint, the large displacement engine.

Looked at closely, the public controversy over cigarettes resulted in the government’s advocating a ban not on all smoking \textit{per se}, but on smoking of conventional cigarettes, which seem to cause cancer; \textit{i.e.}, if a safe cigarette tobacco or efficient filter were developed, public objection to smoking would lapse. In the same way, the \textit{FOE} is not in any sense advocating a complete ban of all the fruits of technology, as the Commission suggests; the \textit{FOE} seeks to educate the public on certain unnecessary and avoidable sources of pollution, the large displacement engine and leaded gasoline. As expressed by Commissioner Johnson,

\begin{quote}
[The] Friends of the Earth do not propose the elimination of either automobiles or automobile advertising. They merely claim the right to present a contrary view... The issue therefore is the freedom to express differing views on air pollution, not abolition of automobiles or their promotion.\textsuperscript{85}
\end{quote}

The third distinction put forth by the Commission is that action taken directly against the products causing pollution would be more effective than attacking the “peripheral advertising aspect.”\textsuperscript{86} However, as pointed out by Commissioner Johnson in his dissenting opinion: “Here again the majority attempts to deny the special, rather incredible impact of automobile spot advertising and its impetus to consumer action as a marketing tool.”\textsuperscript{87} The licensee has responded to this argument with the defense that the station has fulfilled its obligation under the fairness doctrine by presenting a number of documentaries in the area. However, “the mere fact that information is available, or even that it is actually heard or read, does not mean that it is effectively understood. A man who hears a hundred ‘yeses’ for each ‘no’, when the actual odds lie heavily the other way, cannot be realistically deemed adequately informed.”\textsuperscript{88}

F. \textbf{The Fairness Doctrine as an Environmental Remedy}

This brings us to the statement made by the Commission after discussing the three alleged distinctions between cigarettes and
pollution problems: "However, even assuming that we are wrong in that belief [that cigarettes are a unique product], we would not extend that ruling generally to the field of product advertising."89 This reluctance to apply the Banzhaff holding to new fact situations stems from the Commission's fear that the commercial system of broadcasting would be undermined thereby. The system would be undermined in two ways: commercial advertisers would turn to other media when broadcast stations began presenting spot advertisements which warned against the deleterious effects of certain products; and, a decision in favor of the FOE would open the floodgates to parties who objected to ordinary products which have some negative effect on the environment. It is submitted in this note that the commercial system of broadcasting would be undermined in neither way.

The "good faith" obligation of the licensee to provide a significant amount of broadcast time to present opposing points of view did not, in Banzhaff, require the inclusion of any statement in the actual cigarette advertisement.90 In Banzhaff, the Commission expressed the belief that in spite of this fairness obligation cigarette advertisers and manufacturers would probably not turn to other advertising media.91 The attractiveness of the broadcast media, particularly television, as a means of effectively reaching the vast majority of the American public with advertising as well as other messages is without equal.92 It would seem that, in spite of the spot messages sought by the FOE, automobiles and gasoline advertising, like cigarette advertising, would continue full strength, since television seems to be the medium with the most impact on the consumer. It should be further emphasized that the licensee retains the discretion of what is an adequate ratio of announcements countering the product commercial.93 The majority also feared that the commercial broadcast system would be undermined by a decision in favor of the FOE since the "floodgates" to litigation would be opened.94 The Commission seems to feel in this situation that it would be placed in the position of arbiter, determining which programs or advertising falls under the requirements of the fairness doctrine. But, as discussed above, it is not the Commission which decides; "the people decide through their proxies, the President, the Congress, and numerous public commissions and bodies that . . . have defined what are today's controversial issues of public importance."95

In the light of the cases and rulings discussed in this note, it
would seem that the fear of opening the 'floodgates' to numerous complaints against products which deteriorate the environment is ill founded. If an interest group wished to obtain free air time to discuss the deleterious effects of a particular product, certain stringent prerequisites must be met. The issue must be one which has engendered a substantial degree of public debate; the most common indicium of the existence of such a controversial issue is substantial congressional concern with the problem. As suggested here, cigarettes smoking and automobile gasoline pollution are examples of such issues and both issues have been hotly debated in Congress and by the public generally. Most ordinary products, even though they degrade the environment to some degree, have not yet reached such broad dimensions of intense discussion, and hence would not be controversial issues which would invoke the fairness doctrine on a national scale. For example, the scale of the debate over the effects of detergents would have to expand for us to consider it a controversial issue which would be raised by detergent advertisements. Even though the required level of debate is reduced somewhat where an issue concerns public health, its threat to the public health must be major. Cigarettes and automobile gasoline pollution present major threats to the public health; air pollution from electric plants, for example, presents (at least on a national level) a minor threat to the public health. Therefore, at this point in time, a controversial issue of substantial public importance is probably not raised by advertisements by electric companies.

G. Conclusion

In conclusion, then, it is submitted that the Commission was wrong in finding that the fairness doctrine does not apply to automobile and gasoline advertisements. Considering the intensity of congressional and general public debate on the issue and the health danger caused by the products, air pollution by these products would seem to be the kind of controversial issue to which the fairness doctrine has traditionally applied. Furthermore, in the light of cases and rulings as Banzhaff and Sam Morris, the fairness doctrine issue can be raised by product advertisements. The Commission's effort to distinguish the facts of FOE from those of Banzhaff is unconvincing. The cases are basically similar. Finally, the Commission's fear that a decision in favor of the FOE would open the floodgates to parties objecting to con-
sumer products is ill founded. Few ordinary products have en­
gendered the degree of debate or health damage necessary to
classify as controversial issues. In short, it seems that it would
have been consistent with the spirit of the fairness doctrine to
find that automobile and gasoline advertisements, especially
advertisements for large engine automobiles and leaded gasoline,
raise a controversial issue of substantial public importance.

Footnotes

(hereinafter cited in footnotes as Friends of the Earth).
2 Id. at 2.
3 Id. at 2.
4 Id. at 3.
5 Id. at 2.
6 Banzhaff v. FCC, 405 F.2d 1082 (D.C. Cir. 1968).
7 Id. at 1104.
8 "WNBC noted that between November 1969 and February 1970
it had presented one documentary, two panel discussions and two news
features dealing with air pollution and including the effects of auto­
mobile related pollution." Friends of the Earth at 1.
9 Id.
10 Id. at 12.
11 Id. at 4.
12 Id. at 5.
13 Id. at 5–6.
14 Id. at 5.
15 Id.
16 Id.
17 Id. at 8.
18 Id. at 4.
21 Friends of the Earth, at 10.
22 395 U.S. at
23 See, e.g., New Broadcasting Co. (WLIB), G.R.R. 258 (April 12,
24 See, e.g., Banzhaff v. FCC., 405 F.2d 1082 (D.C. Cir. 1968).
25 Friends of the Earth, at 6.
26 Id. at 8.
27 For the history and role of the Fairness Doctrine as it applies to

30 Id. at §307(d).
31 See, e.g., FCC v. RCA Communications, 346 U.S. 86 (1953).
33 Id.
34 See 13 FCC 1246 (1949).
39 Id.
40 Id.
41 47 F.2d 670 (D.C. Cir. 1931).
42 Id. at 671.
44 11 FCC 197 (1946).
45 Id. at 197.
46 Id. at 199.
47 Id. at 199.
48 Id.
49 405 F.2d 1082 (D.C. Cir. 1968)
50 Id. at 1092.
51 Id.
52 Id. at 1086.
54 Matter of Television Station WCBS-TV, Applicability of the Fairness Doctrine to Cigarette Advertising, 9 FCC 2d 926 (1967).
55 Banzhaff v. FCC 405 F.2d 1082 (1968); In Re Sam Morris, 11 FCC 197 (1946).
56 405 F.2d at 1086.
57 Id.
58 Id.
59 Television Station WCBS-TV (Banzhaff Complaint) 8 FCC 2d 381 (1967).
60 Id. at 381.
62 8 FCC 2d at 382.
63 Id.
64 Friends of the Earth at 6.
66 Id. at 1611.
68 Id. at 1.
69 Id. at 1.
70 National Air Pollution Control Administration (NAPA) “Federal Motor Vehicle Commission goals for CO, HC, and NO Based on Desired Air Quality Levels.”
71 Id.
72 Id.
75 E.g., id. at §1857f-1.
76 E.g., id. at §1857f-2(a) (3).
77 Id. at §1875f-4.
78 Friends of the Earth, at 5.
79 Id.
80 Id. at 4–5 (dissenting opinion).
81 Id. at 5.
84 Id. at 105 (Remarks of Karl E. Wichert).
85 Friends of the Earth at 5–6 (Dissenting Opinion).
86 Id. at 5.
87 Id at 6. (Dissenting opinion).
88 Banzhaff v. FCC 405 F.2d 1082, 1099 (D.C. Cir. 1968).
89 Friends of the Earth at 8.
90 405 F.2d at 1088.
91 9 FCC 2d at 944.
92 Id.
93 Letter to Mrs. Madalyn Murray, 5 R.R. 2d 268, 40 FCC 647.
94 Friends of the Earth at 4.
95 Id. at 12 (dissenting opinion).