

The Fairness Doctrine Is Dead . . . Again

September 2011

In a press release issued on August 22, 2011, Federal Communications Commission (FCC) Chairman Julius Genachowski announced that the Commission was striking the much-maligned Fairness Doctrine from its books. First introduced in 1949, the Fairness Doctrine required broadcasters to provide “reasonable opportunity” for the discussion of “conflicting views on issues of public importance.”

The Fairness Doctrine had long been on the chopping block. In 1987, the FCC concluded that the doctrine was an unconstitutional restriction on the freedom of speech of broadcasters (this despite the Supreme Court having found the doctrine constitutional in *Red Lion*) and declined to further enforce it. True to its word, no Fairness Doctrine-related enforcement actions have been brought since. Nevertheless, the doctrine remained intact in the FCC's rules, causing concern among some broadcasters that the doctrine would be resurrected. Congress only added to that concern with its occasional attempts to revive the doctrine. After the FCC's announcement in 1987 that it would no longer enforce the rule, for example, Congress attempted to codify it. President Reagan vetoed the legislation. Another attempt to restore the doctrine was made in 1991, but stopped when President George H.W. Bush threatened another veto. Since then, bills occasionally have been introduced in the House aimed at reinstating the doctrine. Recently too, prominent Democrats have advocated for its resurrection, hoping to use the rule as a counterbalance to increasingly confrontational and partisan cable news programming. Republicans, however, have called for its demise. Now, with Chairman Genachowski's announcement, the Fairness Doctrine seems vanquished once and for all.

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Kathryne C. Dickerson
Partner
202.719.7279
kdickerson@wiley.law