

## **FCC Repeals the Fairness Doctrine - Who Cares?**

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Yesterday, FCC Chairman Genachowski issued a [press release](#) stating that the **FCC was abolishing the Fairness Doctrine** as part of its clearing of its book of 83 obsolete media rules. What should the reaction of broadcasters be now that the Fairness Doctrine has been officially abolished? Probably, a collective yawn. In 1987 - almost 25 years ago - the FCC felt that it could not enforce the doctrine as it was an unconstitutional restriction on the freedom of speech of broadcasters. Since then, we have had no instances where the FCC has tried to revive the doctrine. While, as [we have written before](#), the revival of the doctrine is a political issue that is from time to time bandied about as something horrible one political party or another plans to impose on America, there really has been no serious attempt to bring the doctrine back in this decade. So the repeal of the actual FCC rule that sets out the doctrine is really inconsequential, as it practically changes nothing.

What remains unknown about yesterday's announcement from the Chairman is just how far this repeal goes. While certain corollaries of the Doctrine - including the political editorializing and personal attack rules - have been specifically mentioned in press reports as being repealed, the one vestige of the doctrine that potentially has some vitality - the **Zapple Doctrine** compelling a station to provide time to the supporters of one candidate if the station provides time to the supporters of another candidate in a political race, has never specifically been abolished, and is not mentioned in the Chairman's statement. Zapple, also known as "quasi-equal opportunities", has been argued in in various recent controversies, including in connection with the Swift Boat attacks on John Kerry, when Kerry supporters claimed that they should get equal time to respond should certain television stations air the anti-Kerry Swift Boat "documentary." We have written about Zapple many times (see, for instance, [here](#), in connection with the **Citizens United** decision). What would be beneficial to broadcasters would be a determination as to whether Zapple has any remaining vitality, as some have felt that this doctrine is justified independent of the Fairness Doctrine. Perhaps that clarification will come when the full text of the FCC action is released.

While this action has been greeted by some as confirmation that we will not see the Fairness Doctrine revived by the Commission, that jubilation seems a little unwarranted. If there was a future FCC that decided that they wanted to impose some degree of Fairness obligations on broadcasters, they still would have ways of doing so. After all, broadcasters are subject to an overall **obligation to operate in the public interest**, a standard that has, over the years, changed as Commissions change their

interpretation of what it means. As we've [written before](#), some would like to put more teeth into the standard, which could include some Fairness-like requirements. **Section 315 of the Communications Act**, dealing with equal opportunities for political candidates, itself has language that implies that there is some sort of Fairness obligation of broadcasters, at least in connection with their news coverage:

Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Thus, just because the Fairness Doctrine has been repealed, one cannot conclude that the FCC will never meddle in the speech of broadcasters. These debates over what is permitted and what should be restricted on the air have gone on as long as there have been broadcasters, and they will not end with yesterday's announcement.

What will be most interesting about the text of this action will be seeing what the other 82 rules are that are being repealed. The Obama administration has recently [announced a push to decrease Federal regulation as a way to stimulate economic growth](#). There are plenty of broadcast rules that impose monetary obligations on broadcasters for little public interest benefit (e.g. [the public file rule](#)), that have been the subject of FCC consideration as to whether they are still justified. Action on changing some of these rules would bring real relief to broadcasters - far more than the symbolic repeal of a Doctrine not enforced in 25 years.

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