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DOLE LAUNCHES THREE-PRONGED ATTACK

WASHINGTON, D.C., Aug. 27 -- U.S. Senator Bob Dole (R-Kans) today launched a three-pronged effort to block a recent ruling of the Federal Communications Commission.

The decision in question was issued on August 18 and dealt with the so-called "Fairness Doctrine" for presentation of conflicting viewpoints on major issues over radio and television.

The three points of Dole's attack are:

- An appeal taking the FCC into the U.S. Court of Appeals in Washington, D.C.
- A motion with the Commission asking postponement of its decision until the court gives a ruling.
- A letter to NBC President Julian Goodman asking that opposing spokesmen be allowed to answer an NBC program featuring Senators George McGovern and William Fulbright scheduled for broadcast on NBC August 31.

Dole was one of 11 U.S. Senators who unsuccessfully sought an FCC ruling to obtain free time on NBC to respond to a May 12, 1970, NBC television show promoting the McGovern-Hatfield so-called "Amendment to End the War." The Dole petition, along with several other related cases concerning radio and TV coverage of controversial issues, was dealt with in one FCC opinion. In taking the Commission to the Court of Appeals, Dole also challenged portions of the FCC decision which require the major television networks to grant free prime time for opponents of the President's Southeast Asian Policy to answer five televised Presidential addresses on the subject.

At the same time the court case was begun, a separate petition was filed asking postponement of FCC enforcement of its decision until a court ruling is obtained.

"If the confusion the FCC has created is to be clarified and further misapplication of the law is to be avoided, we must have an authoritative decision by the courts," Dole said. "If the Commission's order is allowed to stand until the court can rule, the damage will have been done regardless of the court's final decision."

NBC announced on August 21 that it was making free broadcast time available to Senators McGovern and Fulbright in response to the recent FCC decision.

In his letter to NBC President Goodman, Dole pointed out that the so-called "End the War" amendment would be voted on the morning after the McGovern-Fulbright program, and opponents would have no other chance to reply. He asked that two additional Senators with opposing viewpoints be allowed to appear on the August 31 program.

* ATTACHMENTS

Before The

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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tional Broadcasting Company, Inc.

C 70-81, Memorandum
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5: The Commission

MOTION FOR STAY

Robert Dole, United States Senator, State of Kansas, hereinafter referred to as Movant, by his attorney, respectfully submits this Motion for Stay of the Commission decision in the above captioned proceeding. In support of the Motion, Movant shows:

Movant was one of the eleven United States Senators filing complaint with the Federal Communications Commission against the practices of the National Broadcasting Company, Inc. (hereinafter BC). Said complaint was filed on July 13, 1970. Thereafter, on July 16, 1970, Movant and other United States Senators submitted a brief in Support of their request for time and their complaint against BC. The latter filed a reply on July 30, 1970. The Federal Communications Commission released its Memorandum Opinion and Order on August 18, 1970, which denied the complaint of Movant and the other eleven Senators. See Section D, Paragraphs 46 through 51 of said Memorandum Opinion and Order, pages 21 and 22.

As a party aggrieved and adversely affected, Movant has filed a notice of appeal with the United States Court of Appeals for the District of Columbia Circuit. The appeal raises questions of law involved with all aspects of the Commission's decision, save for that portion that dealt with the complaint of the Republican National Committee. In view of the pendency of the appeal, Movant asks that the Commission stay the effectiveness of its decision, until the United States Court of Appeals for the District of Columbia Circuit has had an opportunity to pass upon all aspects of the appeal.

Specifically, the Commission should enter an order requiring that the parties preserve the status quo pending the outcome of the appeal before the United States Court of Appeals for the District of Columbia Circuit.

As will be shown below, a stay is vital in the instant case, in order to maintain the status quo and avoid disruption which would be of a substantial nature in the event the Commission declined to enter a stay of the effectiveness of its decision of August 18. If the appeal is successful before the Court, the National Broadcasting System would be required to grant thirty minutes of prime time to the Movant and the other Senators to respond to the program of May 12, 1970, presented by the "Committee to End the War" over the NBC network. The FCC decision recognizes that there was a controversial issue of public importance and that the Fairness Doctrine was applicable. No one has been permitted by NBC to answer that specific program on NBC. Instead, the Commission has merely relied upon vague generalities to the effect that the "Administration" has had opportunity to present a contrasting position.

Instead of the opportunity for Movant and other Senators to debate the issue, the effect of the FCC decision has been to permit, and encourage, NBC to grant further time to Senator McGovern, as well as Senator Fulbright, to overwhelm the public with their views, presented free over NBC.

A stay of the decision is necessary to avoid serious injury to the public and to nullify the overall effect of the Commission decision. The granting of a stay in this matter will not harm anyone. The lack of injury to the public dictates that the Commission stay the effectiveness of its decision.

In conclusion, the grant of a stay would protect the public interest as well as the interest of Movant and other United States Senators, pending a final decision by the United States Court of Appeals.

Note is taken of the fact that a petition for reconsideration of that portion of the decision dealing with the Republican National Committee complaint is pending before the Commission. A grant of the stay would simply permit the Commission to maintain orderly processes during the pendency of review, both by it and by the Court.

Respectfully submitted,
Robert Dole.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROBERT DOLE

Appellant

v.

FEDERAL COMMUNICATIONS
COMMISSION

Appellee

N O T I C E O F A P P E A L

Robert Dole, United States Senator, State of Kansas, pursuant to the provisions of Section 402 (b) of the Communications Act of 1934, as amended, hereby appeals from the actions of the Federal Communications Commission, as contained in a Memorandum Opinion and Order released August 18, 1970, FCC 70-881 (___ FCC 2d___) entitled In Re Complaint of Eleven United States Senators Against National Broadcasting Company, Inc., and other closely related and mutually dependent cases contained in the same Memorandum Opinion and Order. In its order, the Federal Communications Commission denied the complaint of the appellant, and ten other Senators, against the National Broadcasting Company (NBC) involving the May 12, 1970 program on NBC which supported the "Amendment to End the War." This matter is treated in what the FCC Memorandum Opinion and Order refers to as "Section D", Paragraphs 46 through 51.

Because portions of the Commission decision, Section B, "The Complaints that a Spokesman be Given Equal Opportunities to Respond When the President has Addressed the Nation on Broadcast Facilities," and Section C, "The Complaints that the Networks or Licensees Have Not Achieved Fairness in View of the Number of Presidential Broadcasts on the Indo-China War and Their Efforts to Present the Contrasting Viewpoint," are apparently interrelated in the Commission's rationale, contained in the Order, appeal is taken from these portions of the Order, also.

If the decision of the Commission in respect to Sections B, C and D is allowed to stand as the law, the rights of the Appellant, and many other similarly situated individuals, will be aggrieved and adversely affected. Broadcast licensees would be encouraged to act unreasonably and to fail to fulfill their obligations to the public which they serve.

Respectfully submitted,
Robert Dole

Mr. Julian Goodman, President
National Broadcasting Company
1 Rockefeller Plaza
New York, New York

Dear Mr. Goodman:

I note that the National Broadcasting Company has announced a one-half hour program on August 31, 1970, featuring Senators Fulbright and McGovern as "spokesmen to present the contrasting viewpoint to that of the Administration" on the "issue" of the Indochina War. It has also been reported that NBC does not intend to appeal the August 18, 1970, decision of the Federal Communications Commission dealing with the Fairness Doctrine. I have also read your article in the Wall Street Journal of August 3, 1970, entitled, "TV: Formulas Won't Bring Fairness."

Taking the FCC decision, the NBC announcement and your article together, I am concerned and alarmed at your failure:

1. To invite Senators, opposed to the positions espoused by Senators Fulbright and McGovern, to appear on the same program with them; or, alternatively.
2. To refrain from presenting Senators Fulbright and McGovern until all legal and administrative remedies have been exhausted.

In the first place, it is difficult to understand how you define the "issue" of the Indochina War, or what you have determined the "viewpoint of the Administration" to be or what the contrasting viewpoint to it is. Nonetheless, in the light of the importance of the issues involved, your actions appear to be incomplete and ill-considered.

Although the second above enumerated course of action does not have the greatest appeal, it does appear to be a possible way of complying with the letter and spirit of the law, because the points of law raised by the August 18 FCC decision have not yet been finally determined by the Commission or the courts. It seems somewhat unusual that NBC would take this action under the August 18 ruling before all administrative and legal remedies have been exhausted.

I believe the first course outlined above would provide the greatest freedom of information and most complete discussion of the issues for the public. If you carry Senators Fulbright and McGovern on August 31, 1970, you will be obliged to present spokesmen opposing the views they will express. Under the circumstances surrounding this matter, the most reasonable and effective way to illuminate the controversial issues to be discussed by Senators McGovern and Fulbright would be to simultaneously present spokesmen from the U. S. Senate who hold opposing views.

You have stated that there is no formula and that there should be none . for balancing Presidential appearances on television. You are certainly correct both as to Presidential statements and the general question of all controversial issues. In this case it is also important to remember that the Presidential appearances in question took place long before August 31, and that the circumstances and issues have changed considerably in the interval. Particularly important is the fact that the McGovern-Hatfield Amendment has twice been altered significantly within the past few days, and one would expect the latest version of this proposal to be the principal subject of discussion on August 31. Thus, the appearance of Senators Fulbright and McGovern will be the first discussion of a controversial issue (viz. the new version of the McGovern-Hatfield Amendment), to which opponents will have a clear right of reply. On this point it should also be noted that the Senate will vote on the McGovern-Hatfield Amendment on the morning following the appearance of Senators McGovern and Fulbright. Therefore, August 31 will be the last day any discussion of the opposition viewpoint would be relevant.

I call upon you to insure that the major positions on each issue presented on the August 31 NBC program are expressed by including in addition to Senators McGovern and Fulbright two other Senators who hold opposing viewpoints on the issues to be discussed.

You should also be aware that I am today taking an appeal of the August 18 FCC decision to the U. S. Court of Appeals for the District of Columbia and am filing a motion for stay of said decision with the FCC.

Sincerely yours,

BOB DOLE
United States Senate