



Written by [Daniel Sayani](#) on June 13, 2011

FCC to Officially Scrap Fairness Doctrine

The Federal Communications Commission (FCC) announced Wednesday that they are abandoning the so-called Fairness Doctrine, an FCC policy introduced in 1949 which requires the holders of broadcast licenses to both present controversial issues of public importance and to do so in a manner that was, in the Commission's view, honest, equitable and balanced. Congress backed the policy in 1954, and by the 1970s the FCC called the doctrine the "single most important requirement of operation in the public interest — the sine qua non for grant of a renewal of license."



At the time, only 2,881 radio stations existed, compared with roughly 14,000 today. The doctrine stayed in effect, and was enforced until FCC chairman Mark S. Fowler began rolling it back during Reagan's second term — despite complaints from some in the Administration that it was all that kept broadcast journalists from thoroughly lambasting Reagan's policies on air, and Democrats in Congress have been trying to resurrect the Fairness Doctrine ever since.

Under pressure from House Republicans, FCC Chairman Julius Genachowski (above, left) said in a [letter](#) earlier this week to Rep. Fred Upton (R-Mich.), Chairman of the House Committee on Energy and Commerce, that the agency's effort to identify and eliminate "antiquated and outmoded rules that unnecessarily burden business, stifle investment and innovation, or confuse consumers and licensees" will include a recommendation to delete the Fairness Doctrine:

As I stated at my confirmation hearing and on numerous subsequent occasions, I oppose the Fairness Doctrine, which has been a dead letter at the Commission for more than two decades. In my view, the Fairness Doctrine holds the potential to chill free speech and the free flow of ideas, and accordingly, was properly abandoned. The General Counsel has advised me that the FCC's abandonment of the Fairness Doctrine had the legal effect that the Commission intended, and that the Fairness Doctrine is unenforceable even without an affirmative rulemaking proceeding and vote of the Commission to revive it. I have publicly stated many times that I would not initiate any effort to reinstate the Fairness Doctrine.

Much of the regulation was repealed in the 1980s under FCC Chairman Fowler, but the doctrine is still technically on the books. Upton and Rep. Greg Walden (R-Oregon), chairman of the subcommittee on communications, applauded the news that it would be eliminated. "We are heartened by your continued opposition to the Fairness Doctrine because of its chilling effects on free speech and the free flow of ideas," Upton and Walden said in a joint statement. But they wrote back to Genachowski Wednesday asking him when the regulation will be eliminated and whether he has the support of his fellow commissioners.

Since taking over the House this year, Republicans have vowed to bury the regulation once and for all and introduced a bill that would have prevented the FCC from reinstating it. The bill, the Broadcaster



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Freedom Act, is under review in Upton's committee.

Republicans remain skeptical, however, about the future prospects of the unconstitutional Fairness Doctrine, and fear that Democrats are merely paying lip service to American conservatives, as continuous clarification and accountability are needed as to what the Obama Administration is truly planning vis-à-vis unconstitutional federal regulation of the airwaves. The Fairness Doctrine remains a favorite political weapon for liberal Democrats in their attempt to stifle the free flow of ideas in the media and the ability of the American people to form decisions based on programming dictated by the free market, ie, the forces of supply and demand causally related to what listeners themselves actually want to listen to. Some powerful Democrats in Congress, including Senate Communication Subcommittee Chairman John Kerry (D-Mass.), and most insidiously, Senator Debbie Stabenow (D-Mich.), have in the past suggested it should be revived as a counter to conservative talk radio, whose rise coincided with the doctrine's demise.

Congressmen Upton and Walden, in their June 8th letter to Genachowski, also pushed the chairman to submit an agency plan per the president's directive on regulatory reviews.

We have yet to see a plan from your agency on how it will implement the January 2011 order and begin eliminating other outmoded and economically harmful regulations. When will you begin eliminating other antiquated rules that stifle investment and harm innovation? What concrete steps will you take to reduce the burden on small businesses, who are today's primary engine for jobs growth? How many jobs will you create through your deregulatory efforts?

Yet, disappointingly, the two Republicans gave credence and legitimacy to the use of executive orders as a means of implementing policy, thus rejecting the constitutional and traditionally American insistence on congressional lawmaking powers and a limited executive. The letter praised Genachowski for abiding by Obama's Executive Order 13563 on Improving Regulation and Regulatory Review, even though it does not bind independent agencies such as the FCC.

FCC Commissioner Roger McDowell, a Republican, cautions that conservatives should not be celebrating just yet. "I think what happened today at the FCC is positive, but folks shouldn't be popping any champagne corks just yet," he said. McDowell warns that traces of the Fairness Doctrine "are still on the books" and it will take some time to truly eliminate them. He says his goal is to get that done by the end of the year. However, McDowell cautions that even if the Fairness Doctrine is permanently dismantled, "There are many different ways to try to accomplish the same goals," a realistic fear, considering the Obama Administration's propensity for heavy-handed regulatory policies.

One area in which a potential showdown may ensue between the FCC and Obama Administration officials is so-called news media localism. In another attempt to impose federal regulations upon the media, the FCC is pushing for federal enforcement of policies requiring that local news outlets devote a certain percentage of their airtime to demonstrably local news stories. Under an FCC proposal, local media outlets across the country would have to set up permanent advisory boards to keep tabs on what those local stations air. The FCC noted the importance of making sure communities have forums to debate issues relevant to residents, but skeptics worry that localism would simply be the Fairness Doctrine in different clothing.

The unconstitutional notion of federal regulation of the media must not only be rejected and fought by conservatives, but conservatives must also stand firm in educating others on the threat of government-regulated news media. The result of the fairness doctrine in many cases would be to stifle the growth of



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disseminating views and, in effect, make free speech less free. This is exactly what led the FCC to repeal the rule in 1987. FCC officials found that the doctrine “had the net effect of reducing, rather than enhancing, the discussion of controversial issues of public importance,” and therefore was in violation of constitutional principles. Even liberal New York Governor [Mario Cuomo](#) has argued that, “Precisely because radio and TV have become our principal sources of news and information, we should accord broadcasters the utmost freedom in order to insure a truly free press.”

Conservatives must also remain vigilant and monitor continual FCC activities, given the high probability of “localism” becoming the next FCC attempt to control the media. With the threat of FCC regulation and penalties for perceived lack of compliance, most broadcasters would be more reluctant to air their own opinions because it might require them to air alternative perspectives that their audience does not want to hear. FCC-imposed self-censorship must be combated, as stations seek to avoid requirements that they broadcast specific opposing views.



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