

Liga ads

97060399

**JACKSON COUNTY ALCOHOL INFORMATION CENTER
COUNCIL ON ALCOHOLISM**

538 Scotts Creek Road Suite 105
Sylva, NC 28779

Telephone (704) 586-6948

June 17, 1997

Commissioner Susan Ness
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

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JUN 20 1997

Federal Communications Commission
Office of Secretary

JUN 20 12 46 PM '97

**OFFICE OF
COMMISSIONER
SUSAN NESS**

RECEIVED

Dear Commissioner Ness:

As a prevention educator in public schools, I continue to be amazed at the "knowledge" our children have based on the commercials of beer and wine seen on television. Many in the primary grades know the slogans and names of the products advertized. Many of the ads are appealing to children.

I strongly urge you to support a Notice of Inquiry to examine the Commission's role in addressing the alcohol advertising issue.

There is a need for FCC to require broadcasters to offer time for counter-ads.

Thank you for your kind consideration to this concern.

Sincerely,



Myrtle H. Schrader

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HMB ENFORCEMENT
COMPLAINTS
INVESTIGATIONS

97100398
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JUN 20 1997

Federal Communications Commission
Office of Secretary

June 11, 1997

Commissioner Susan Ness
Federal Communications Commission
1919 M Street NW, Suite 222
Washington, D.C. 20554

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RECEIVED
OFFICE OF
COMMISSIONER
SUSAN NESS
JUN 19 4 02 PM '97

Dear Commissioner Ness:

I strongly urge you to exercise FCC authority to implement the petition filed by 24 national organizations on May 14, 1997. This petition requested the FCC to require broadcasters to provide a significant amount of airtime for privately funded alcohol counter advertisements.

The rise in teen alcohol and other drug use statistics is cause for concern. The numbers remained steady or decreased until 1992 at which time funding for prevention and intervention efforts decreased and advertising budgets increased.

It is crucial to our nation's future to provide youth, families and neighborhoods with clear "non-use by minors" messages. In fact, underage use will decrease only when adults take on adult responsibilities and act like the leaders of our families, neighborhoods, organizations and business as well as our government.

Sincerely,

Marilyn Bader

Marilyn Bader
6719 Bonnie Ave.
St. Louis, MO 63123

RECEIVED
JUN 23 1 55 PM '97
MMB ENFORCEMENT
COMPLAINTS &
INVESTIGATIONS

Commissioner Susan Ness -

I feel that a Public Hearing be held regarding the television rating system. There are so many television shows that are unsuitable to watch. It surely has a lot of influence on the public viewing them.

97-100-100

TU Rating

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Stephenson County
Association for Home and Community
Education Public Relations Director

Lois Flack
5012 W Valley Rd
Shannon, Ill 61078

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SUSAN NESS

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FMB ENFORCEMENT
COMPLAINTS
INVESTIGATION

Richard P. Masterson
332 Bauer Place
Mineola, New York 11501

97051388

June 12, 1997

Commissioner James Quello
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

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JUN 20 '97

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Dear Commissioner Chong:

Alcohol related problems continue to plague our nation's youth. I strongly urge you to support a Notice Of Inquiry to examine the Commission's role in addressing the alcohol advertising issue.

The Federal Communications Commission's responsibility is to give broadcasters a license to use the public airwaves and the broadcaster's responsibility is to serve the public interest. I am very concerned that the public interest is not being served by alcoholic beverages advertisements that are appealing to children.

A thorough examination by the FCC would gather evidence on the reach these ads have, explore the effects they have on children and examine solutions to the problem. The FCC could then report to the president, Congress, parents, teachers health professionals and others on the status of alcohol advertising.

The National Council on Alcoholism and Drug Dependence has petitioned the FCC to require broadcasters to offer time for counter-ads. I hope you will support this petition, and the FCC's authority to implement it, as you consider this important issue.

Thank you for your time and consideration.

Sincerely,


Richard P. Masterson

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JUN 23 1 54 PM '97
FBI ENFORCEMENT
COMPLAINT
INVESTIGATION

Richard P. Masterson
332 Bauer Place
Mineola, New York 11501

June 12, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

RECEIVED
JUN 20 '97

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Thank you for your time and consideration.

Sincerely,



Richard P. Masterson



97060368

RECEIVED
JUN 20 '97

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY
June 18 1997

The Honorable Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Commissioner Chong:

On behalf of the Association of National Advertisers (ANA), I am writing to express our strong opposition to the Federal Communications Commission (FCC) launching a proposed Notice of Inquiry (NOI) on broadcast advertising of distilled spirits products.

Background

The proposed NOI would represent a radical and historic shift in the government's regulatory policies for broadcast advertising, in at least two respects. First, Congress has established the Federal Trade Commission, not the FCC, as the agency with primary jurisdiction to regulate national advertising in all media. It is difficult to imagine a more massive, sweeping regulatory inquiry than that set out in the proposed NOI for alcohol beverage advertising.

While the FCC has authority to ensure that the nation's broadcast system is operated in the public interest, we do not believe that Congress ever envisioned that this authority would or should be used as a springboard for FCC oversight of advertising content on the broadcast media. The FTC's role as primary regulator of national advertising, including broadcast advertising, would become meaningless under the broad scope of the proposed NOI.

The Federal Trade Commission, not the FCC, has the experience and the expertise to regulate advertising for all products and services in all media. The FCC has recognized this fact for decades, through a Liaison Agreement with the FTC which explicitly states that the FTC should have "primary" responsibility over broadcast advertising. Moving the FCC into the role of regulating major categories of advertising would be duplicative and would divert limited staff and resources away from the other important responsibilities of the Commission.

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- James J. Garrity, *Vice Chairman*
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- John H. Costello, *Sears, Roebuck and Co.*
- Richard A. Costello, *General Electric Co.*
- Ron Cox, *Wm. Wrigley Jr. Co.*
- Peter J. Foulds, *KFC Corp.*
- James J. Garrity, *Compaq Computer Corp.*
- David B. Green, *McDonald's Corp.*
- Carl E. Gustin, Jr., *Eastman Kodak Co.*
- Richard S. Helstein, *Kraft Foods, Inc.*
- Michael H. Holmes, *Hershey Chocolate U.S.A.*
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- Mary Ellen Payne, *Bell Atlantic Corp.*
- John J. Sarsen, Jr., *ANA*
- Arthur Shapiro, *The House of Seagram*
- Janet L. Soderstrom, *Visa International*
- Michael Soriano, Jr., *Warner-Lambert Co.*
- James D. Speros, *AT&T*
- Allan H. Steff, *Nestle USA, Inc.*
- Joseph V. Tripodi, *MasterCard Int.*
- John X. Wilson, *Reebok Int. Ltd.*
- Nancy J. Wise, *Xerox Corp.*

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JUN 18 1997
FEDERAL COMMUNICATIONS
COMMISSION
ENFORCEMENT
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155 East 44th Street
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Second, the "Possible Responsive Measures" outlined in the proposed NOI also represent a radical shift in government policy for broadcast advertising. The proposed NOI describes four possible responses that the FCC could take to alcohol beverage advertising: (1) a ban on broadcast advertising; (2) channeling such advertising to certain hours of the day; (3) counter-advertisements; and (4) some type of encoded blocking system similar to the V-chip. These proposals each raise serious First Amendment, technical and public policy concerns. We believe that many of these proposals are beyond the legal authority of the FCC and that all of them would be inappropriate and misguided.

It has been suggested that the jurisdictional and policy issues involved can all be analyzed as part of the NOI. The problem is that the NOI itself would immediately alter the role and focus of the FCC, to the detriment of the public interest.

For all of these reasons, we urge you not to embark on an ill-advised effort to place the FCC in the role of advertising censor.

In recent weeks, the Commission has been asked by several individuals and groups to regulate alcohol beverage advertising:

- A proposal by Mothers Against Drunk Driving that alcohol advertising be "channeled" to the hours of 10:00 p.m. to 6:00 a.m.
- A Petition for Rulemaking by Alaska and twelve other states to ban broadcast advertising of distilled spirits
- Proposals by President Clinton, 26 members of Congress and a coalition led by the Center for Science in the Public Interest calling for the FCC to study the effects of distilled spirits advertising on minors.
- A Petition for Rulemaking filed by the National Council on Alcoholism and Drug Dependence, Mothers Against Drunk Driving and other organizations asking the FCC to require broadcasters that air alcohol beverage commercials to provide a significant amount of "similarly placed counter-advertisements."
- A proposal that the V-chip be modified to permit the screening out of alcohol beverage advertisements.

While we share the concern of these groups about alcohol abuse in our society, the proposed responses are counterproductive. The problem is not speech about alcohol -- the problem is that some people break the laws about drunk driving or underage drinking. "Solutions" that place their primary focus on advertising, rather than education and law enforcement, are misplaced and likely to be ineffective.

Also, we believe that the FCC is not the appropriate forum for examining the advertising aspects of this issue. If there are particular ads or campaigns that are allegedly targeted

to underaged audiences, the FTC has shown that it will actively pursue such allegations and bring cases where necessary. Launching the NOI would be a vote of "no confidence" in the ability of the FTC to effectively regulate the marketplace. There is no legitimate basis for disregarding and undermining the appropriate role of the FTC.

The FCC Has No Statutory Authority to Regulate Alcohol Beverage Advertising

The Communications Act contains no specific provision that authorizes the FCC to ban or otherwise restrict advertising of particular products, except for tobacco products. However, some have suggested that the "public interest" standard embodied in the Act's general licensing provisions authorizes the Commission to act in this area.

In the absence of express statutory authority, federal agencies are not free to impose limits on advertising. As the U.S. District Court for the Middle District of North Carolina recently held in *Coyne Beahm, Inc. v. FDA*, 958 F.Supp. 1060, 1083-1086 (M.D.N.C. 1997), government assertions as to the "unique" nature of a product and the asserted mandate to protect children do not confer statutory authority to regulate advertising where none exists. The same principle controls the FCC, and the courts have limited the Commission's ability to unilaterally extend its authority over programming matters in the absence of an express statutory grant. E.g., *FCC v. Midwest Video Corporation*, 440 U.S. 689 (1979).

This is true despite the FCC's general "public interest" mandate. Although the D.C. Circuit suggested in *Banzhaf v. FCC*, 405 F.2d 1082 (1968), that the public interest required the regulation of certain product advertisements (cigarettes), the court subsequently retreated from that view. See *National Citizens Committee for Broadcasting v. FCC*, 567 F.2d 1095, 1108 (D.C. Cir. 1977) ("We think that this view is unwarranted, and realize that both the Commission and this court used stronger language than was necessary in stating that the decision in *WCBS-TV* was 'required by the public interest.'"), cert. denied, 436 U.S. 926 (1978). Indeed, the D.C. Circuit held more recently that the FCC could not impose limits on political advertising based on its generalized public interest mandate and a desire to shield children from advertisements that "may be harmful." *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996).

Until recently, the FCC understood the application of such statutory limits, even for products the government had designated as harmful. Thus, in a 1969 Notice of Proposed Rulemaking on tobacco advertising, the Commission stressed that the "question of an across-the-board [cigarette advertising] ban is of course one solely for the Congress." *Amendment of Part 73 of the Federal Communications Commission Rules With Regard to the Advertisement of Cigarettes*, 16 F.C.C. 2d 284, 289 (1969). The same statutory limitation on FCC action applies to regulatory measures that fall short of a ban. Thus, when the FCC abandoned its policy of requiring counter-advertising for certain product commercials more than two decades ago, it noted:

"If in the future we are confronted with a case similar to that presented by the cigarette controversy, it may be more appropriate to refer the matter to Congress for resolution. For Congress is in a far better position than this Commission to develop expert information on whether particular broadcast

advertising is dangerous to health or otherwise detrimental to the public interest. Furthermore, it is questionable whether this Commission has a mandate so broad as to permit it "to scan the airwaves for offensive material with no more discriminating a lens that the 'public interest' or even the 'public health.'"

The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act, 48 F.C.C.2d 1, 25 n.22 (1974) ("Fairness Doctrine Report"), aff'd., *National Citizens Committee for Broadcasting v. FCC*, 567 F.2d 1095 (D.C. Cir. 1977).

The FTC Has Primary Responsibility for Regulating Advertising Content

With limited exceptions, Congress has established the FTC as the agency with primary jurisdiction to regulate national advertising in all media. The Liaison Agreement between the FCC and the FTC sets out the respective responsibilities of the two agencies in this arena. It states that:

"The FTC, pursuant to its legislative authority, will exercise primary jurisdiction over all matters regulating unfair or deceptive advertising in all media, including the broadcast media;

The FCC pursuant to its Congressional mandate, will continue to take into account pertinent considerations in this area in determining whether broadcast applications for license or renewal of license shall be granted or denied and in the discharge of other statutory responsibilities." (emphasis added)

Note that the Liaison Agreement states that the FTC's authority applies to "all matters," not just those that the FCC has failed to decide to regulate. This division of labor was confirmed in the FCC's cigarette advertising proceedings. When it abandoned its efforts to use the fairness doctrine and the general public interest mandate to police product advertising, the Commission, after an exhaustive inquiry, concluded that a better remedy lies in regulatory mechanisms that have been "congressionally mandated," such as FTC complaints where advertising is found to be deceptive. *Fairness Doctrine Report*, 48 F.C.C.2d at 27-28.

Traditionally, the FCC has not attempted to oversee particular advertising campaigns or categories of advertising. We believe it would be highly counterproductive if this traditional deference to the FTC is altered. Obviously, an effort to regulate advertising on the broadcast media would redirect the FCC from its enormous responsibilities to implement the new telecommunications reform legislation and the myriad other specific tasks delegated to the Commission by the Congress. Clearly, if the FCC wishes to embark on regulating advertising content, it would need to hire a substantial new cadre of staff, expert in this area. Scarce resources and staff should not be diverted to such a duplicative and unnecessary effort.

FCC Regulation of Alcohol Beverage Advertising Raises Serious First Amendment Concerns

Any constitutional analysis of proposed FCC advertising restrictions must begin with the understanding that prior FCC rulings and judicial review of the First Amendment issues took place at a time before the Supreme Court extended substantial protection to commercial speech. As the D.C. Circuit has since noted, the court in *Banzhaf* assumed that the information at issue "barely qualifies as constitutionally protected 'speech'" *Banzhaf*, 405 F.2d at 1101, and that subsequent "expansion of first amendment protection in the area of commercial speech" made application of FCC public interest policies to commercial advertising "less, rather than more, desirable." *National Citizens Committee for Broadcasting*, 567 F.2d at 113.

In 1976, the Supreme Court abandoned what it described as a "simplistic" and "highly paternalistic" approach that enabled the government to "suppress the dissemination of concededly truthful information about entirely lawful activity" on the theory that the government knew best how to protect the health of the public. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U. S. 748, 759, 769, 772 (1976).

The U.S. Supreme Court has since made it clear that truthful, nondeceptive commercial speech in any medium cannot be banned or restricted unless the restriction "directly and materially advances" a "substantial governmental interest" and is "narrowly tailored" to "reasonably fit" that interest. See *Central Hudson Gas and Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980).

In *44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495 (1996), a unanimous Supreme Court reaffirmed that all truthful nondeceptive advertising about a legal product is entitled to the same level of First Amendment protection. The Court noted that bans which target truthful, nonmisleading advertising rarely protect consumers from harm. Rather, they often serve only to obscure an underlying governmental policy that could be implemented without banning speech.

The Court in *44 Liquormart* specifically rejected the argument that the government had more power to regulate advertising about so-called "vice" products, such as alcohol. Finally, the Court held that the government carries the heavy burden to prove that a speech ban or restriction would directly and materially advance the government's asserted interest. The Court emphatically stated that speculation or conjecture is never enough, particularly when the government takes aim at truthful advertising for paternalistic ends.

Some have suggested that the FCC's authority might derive from the recent decision of the U.S. Supreme Court not to review a Fourth Circuit ruling allowing the City of Baltimore to regulate the location of billboards advertising alcohol beverage products. *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 (4th Cir. 1996).

Such a conclusion is hasty at best and likely to be proven wrong. The Supreme Court's own rules make clear that the decision not to review a lower court case does not change legal precedent; nor does it signal approval of the lower court's decision. The Supreme

Court often waits for more than one federal appeals court to grapple with an issue before accepting review. In fact, the Court has sometimes left speech restrictions standing, only to rule later that such restrictions are unconstitutional. We are confident that the Supreme Court will ultimately invalidate the Baltimore ordinance. The Fourth Circuit's decision is inconsistent with the strong language in *44 Liquormart*, emphasizing that alcohol advertising has broad protection under the First Amendment. In any event, the Fourth Circuit decision does not provide the FCC with authority to ban any form of advertising.

A Counter-Advertising Requirement Does Not Serve the Public Interest

We believe that the petition of the National Council on Alcoholism and Drug Dependence (NCADD) and others to require counter-advertising for alcohol beverage commercials would create a regulatory quagmire for the FCC.

The Commission's experience with requiring counter-advertising for cigarette advertising is well known. The central premise of the requirement was that cigarettes are a "unique" product. The FCC noted that governmental and private reports, as well as Congressional action, indicated that "normal use of this product can be a hazard to the health of millions of persons." *WCBS-TV*, 9 FCC 2d at 943 (emphasis added). Despite the current assertion in the NCADD Petition that alcohol beverage products also are "unique," the FCC dismissed that view when it adopted the cigarette rule.

Indeed, at the time of the cigarette ruling, the Commission expressly rejected as a "parade of horrors" the claim that "if governmental and private reports on the possible hazard of a product are a sufficient basis [for requiring counter-advertising], the ruling would apply to a host of other products, such as automobiles, food with high cholesterol count, alcoholic beverages, fluoride in toothpaste, pesticide residue in food, aspirin, detergents, candy, gum, soft drinks, girdles, and even common table salt." *Id.* at 942-943 (emphasis added).

The Commission said that such claims about other products were not "impressive;" that none of these other products "poses a serious health hazard to millions of persons who otherwise enjoy good health," and that the ruling "applies only to cigarette advertising" and not any other product advertising. *Id.* at 943.

Despite the FCC's confidence about its ability to draw the line with cigarettes, it was quickly overrun with demands for counter-advertising in a wide variety of situations. Demands for time arose from retail store advertising during a labor dispute, *Retail Store Employee's Union, Local 880 Retail Clerks International Ass'n., AFL-CIO v. FCC*, 436 F.2d 248 (D.C. Cir. 1971); automobile advertisements, *Friends of the Earth v. FCC*, 449 F.2d 1164 (D.C. Cir. 1971); gasoline advertising, *Neckritz v. FCC*, 502 F.2d 411 (D.C. Cir. 1974); institutional advertising praising commercial television, *Anthony R. Martin-Trigona*, 19 F.C. C.2d 620, 622 (1969); advertisements advocating oil exploration, *National Broadcasting*, 30 F.C.C.2d 643 (1971); institutional advertisements for a power company, *Media Access Project*, 44 F.C.C.2d 755 (1973); army recruiting advertisements, *Green v. FCC*, 447 F.2d 323 (1971); advertisements for snowmobiles, *Public Interest Research*

Group v. FCC, 522 F.2d 1060 (1st Cir. 1975), *cert. denied*, 424 U.S. 965 (1976); and even advertisements for dog food, *In re Complaint by Mrs. Fran Lee, Director, Children Before Dogs, Concerning Fairness Doctrine re Stations WNBC-TV-AM-FM*, 37 F.C.C.2d 647 (1972).

While the FCC rejected some demands for counter-advertising (army recruiting, gasoline additives, snowmobiles, etc.), it accepted others (oil exploration, utility rates, retail advertising). Even in cases where the FCC did not mandate responsive commercials, the Court of Appeals did. Thus, in *Friends of the Earth v. FCC*, the D.C. Circuit reversed the denial of a complaint regarding advertisements for high-powered cars. The court rejected the FCC's claim that cigarettes are a "unique" product and was "unable to see how the Commission can plausibly differentiate the case presently before us from *Banzhaf*." 449 F.2d at 1170.

The Commission's problem in fashioning a coherent "public interest" response to issues arising from product advertising resulted in an extensive examination of the issues. It led to a five-year proceeding in which 120 written comments were filed. The Commission also convened a week-long series of panel discussions and oral arguments. At the end of this extensive process, the Commission concluded that it had been a "great mistake" to impose counter-advertising requirements and it expressly declined to do so in the future. *Fairness Doctrine Report*, 48 F.C.C.2d at 26.

The FCC found that the policy had become "particularly troublesome" because it could not be limited to cigarette advertising as originally promised. *Id.* at 25. The D.C. Circuit agreed that the Commission had "great difficulties" in fashioning a coherent policy regarding counter-advertisements and found that "if anything, [the FCC] understated the problem." *National Citizens Committee for Broadcasting*, 567 F.2d at 1100.

The "problem" that led to the demise of the cigarette policy would again confront the Commission in any attempt to require counter-advertising for alcohol beverage commercials. Indeed, it is difficult to name a product that does not have either some health effect, could be abused or would be inappropriate for consumers of a certain age. As a prominent signatory of the NCADD Petition wrote in an earlier study:

There are relatively few advertised products whose normal use does not involve some significant issue; automobiles (large or small), gasoline (leaded or unleaded), any type of medication, beer, airplanes, any product that does not have a biodegradable container, any foreign product -- the list is virtually endless. . . There is thus no way to limit the *Cigarette Advertising* ruling to a few products or to some commercials. (emphasis added).

Henry Geller, THE FAIRNESS DOCTRINE IN BROADCASTING; PROBLEMS AND SUGGESTED COURSES OF ACTION 85 (Rand Corp. 1973), ("Geller Report"), quoted in *National Citizens Committee for Broadcasting*, 567 F.2d at 1110, n. 60.

The Geller Report suggested that the FCC: "establish the policy that the fairness doctrine is not applicable to the ordinary product commercial. This suggestion again stems from

emphasis on avoidance of undue governmental intrusion in day-to-day broadcast operations." Geller Report at 84. Discussing the suggestion that the FCC require some amount of programming time for counter-commercial information, the report stated: "There is no logical end to this process of 'programming by FCC fiat.'" *Id.* at 88.

Like the discredited cigarette advertising policy, any decision by the FCC to apply the same principles to alcohol beverage advertising would lead towards regulatory quicksand.

By compelling broadcasters to air certain commercials, a counter-advertising requirement would also raise serious First Amendment concerns. The U.S. Supreme Court rejected a similar example of government-coerced speech when it ruled that the California Public Utilities Commission could not require a utility company to include communications opposing the utility's views in its monthly billing statements. See *Pacific Gas & Electric Company v. PUC*, 457 U.S. 1 (1986).

The V-Chip is Not a Viable Solution to Concerns About Product Advertising

ANA strongly opposes the proposal to develop a "V-chip" like technology to enable the blocking of alcohol beverage commercials.

The FCC has no statutory authority for such a project. Section 551(b) of the Telecommunications Act of 1996 amended Section 303 of the Communications Act, empowering the FCC to prescribe "guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, and other indecent material about which parents should be informed before it is displayed to children." Nothing in the legislation gives the FCC authority to add commercials, much less advertisements for specific products, to this statutory list of categories. Additionally, the law limits the FCC's role to making recommendations and does not empower the Commission to prescribe V-chip requirements.

Moreover, there would be significant technical issues, since the hardware to be installed in television sets would have to be configured to serve this new regulatory mission. Also, there is no V-chip for radio broadcasts. Finally, all of the objections with respect to counter-advertising apply equally to the V-chip. There is no rational way to apply the policy only to alcohol beverage advertisements.

Perhaps most importantly, any proposal to "screen out" broadcast advertising ultimately undermines the broadcasting industry. As the Supreme Court recently held in *Turner Broadcasting System v. FCC*, 117 S.Ct. 1174 (1997) ("*Turner II*"), preserving free over-the-air local television is a government purpose of substantial importance. Moreover, phenomena that erode the advertising base of broadcast stations pose a significant threat to the viability of the broadcast medium. *Id.* at 1196-1197.

Significantly, the erosion of advertising revenue was one reason the FCC abandoned the counter-advertising policy for product advertising. *Fairness Doctrine Report*, 48 F.C.C.2d at 26-27. See *National Citizens Committee for Broadcasting*, 567 F.2d at 1110 ("the Commission suggested in the *Fairness Report* . . . that application of the fairness doctrine

to commercial advertisements could undermine the economic base of commercial broadcasting").

A V-chip for advertisements, whether applied to a particular product category or to advertising in general, would obviously have the same effect.

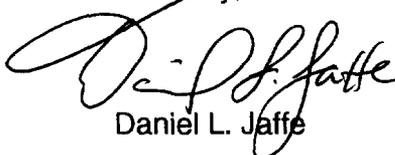
Conclusion

ANA and the advertising community share the FCC's concern about alcohol abuse in America. We have long demonstrated our awareness of the dangers of alcohol abuse and drunk driving by carrying out systematic public service campaigns directed at drunk driving, alcoholism, and youth drinking. The Advertising Council, the public service arm of the advertising community, has placed hundreds of millions of dollars of such advertising in the last decade. In addition, alcohol beverage companies and broadcasters have placed an enormous number of additional anti-alcohol abuse and drunk driving spots, on the broadcast media.

We have testified frequently in Congress in favor of strengthening the laws against the sale of alcohol beverage products to the underaged. We also have called for strengthening the enforcement and penalties against alcohol abuse.

We would be pleased to work with you and any other groups interested in coming to grips with the alcohol abuse and drunk driving problems in the United States. However, we strongly urge the FCC not to undermine the FTC and to radically alter its regulatory traditions in an attempt to become censors of commercial speech on the broadcast media.

Sincerely,



Daniel L. Jaffe

c: John J. Sarsen, Jr., ANA

NAM National Association of Manufacturers

Paul R. Huard

Senior Vice President

Policy and Communications

97-111395

RECEIVED
JUN 20 1997

Federal Communications Commission
Office of Secretary

June 18, 1997

The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Commissioner Chong:

The National Association of Manufacturers salutes your strong stand in defense of commercial free speech. Your position is particularly welcome since the rhetoric surrounding the proposed Notice of Inquiry on electronic-media distilled-spirits advertising is based on the argument that it would "protect children."

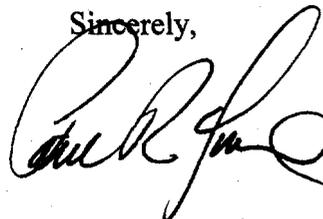
The NAM represents nearly 14,000 members encompassing all facets of manufacturing. Commercial free speech is a vital and important issue to all of our members.

A number of respected authorities believe the Federal Communications Commission lacks jurisdiction to regulate truthful, non-misleading advertising. Statutory authority questions aside, this effort violates the spirit if not the letter of the Memorandum of Understanding with the Federal Trade Commission that the FTC has primary jurisdiction over advertising issues.

Over and above the jurisdictional issues, attempts by the commission to restrict commercial free speech would be a questionable use of time and resources. The line of Supreme Court decisions on commercial free speech from *Central Hudson* through *44 Liquormart* has consistently made clear that government actions limiting commercial free speech must meet stringent requirements.

Once again, thank you for your stance and comments. The NAM hopes your fellow commissioners take them into serious consideration before voting on whether to issue a Notice of Inquiry.

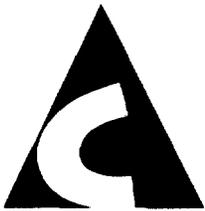
Sincerely,



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HMB ENFORCEMENT
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INVESTIGATION

Manufacturing Makes America Strong

1331 Pennsylvania Avenue, NW, Washington, DC 20004-1790 · (202) 637-3113 · Fax (202) 637-3182



ALCOHOLISM COUNCIL OF NEW YORK

Your Life Matters

352 Park Avenue South
New York, NY 10010
(P)212-252-7001
(F)212-252-7021

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The New York Affiliate
of the National
Council on
Alcoholism
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97000341

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FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

June 6, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Commissioner Chong,

I am writing in response to FCC Chairman Reed Hunt's proposal for a Notice of Inquiry to examine the Commission's role in addressing the issue of alcohol advertising.

As a member of the substance abuse field, I am constantly reminded that alcohol problems continue to plague our Nation's youth, a major constituent of the television and radio audience. Alcohol advertisements are appealing to children and youth and, since they are designed to sell the product, neglect to show some of the negative consequences of alcohol use including addiction, various health problems, domestic violence and death. These advertisements have a profound effect when it comes time for youth to make decisions concerning alcohol. I strongly believe that the Federal Communications Commission has a responsibility to thoroughly examine the impact of these ads and possible solutions to the problem and to make decisions which avoid putting our children at risk.

The National Council of Alcoholism and Drug Dependence has petitioned the FCC to require broadcasters to offer time for counter-ads. I urge you to support this petition, as well as Chairman Hunt's proposal, as you consider this important issue.

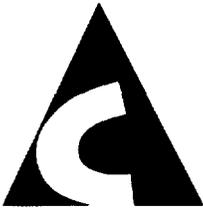
Thank you for your time and consideration.

Sincerely,

Joan Haas MA

Joan Haas, MA
Counselor

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Thank you for your time and consideration.

Sincerely,

Colette Sadallah

Colette Sadallah,
Manager, Drinking Driver Program

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COMPLAINTS
INVESTIGATION

Racine Council

on Alcohol and Other Drug Abuse, Inc.
818 - 6th Street • Racine, WI 53403 • (414) 632-6200

974-348

June 10, 1997

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Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

FEDERAL COMMUNICATIONS
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OFFICE OF SECRETARY

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JUN 20 '97

Dear Commissioner Chong:

I am writing to urge you to support a Notice of Inquiry to examine the Commission's role in addressing the alcohol advertising issue.

As you know, alcohol is the number one drug of choice of America's youth. I am concerned that the public interest is not being served by alcoholic beverage advertisements that are appealing to children. The Federal Communications Commission's responsibility is to give broadcasters a license to use the public airwaves and the broadcasters' responsibility is to serve the public interest.

A thorough examination by the FCC would gather evidence on the reach these ads have, explore the effects they have on children and examine solutions to the problem. The FCC could then report to the President, Congress, parents, teachers, health professionals and others on the status of alcohol advertising.

The National Council on Alcoholism and Drug Dependence has petitioned the FCC to require broadcasters to offer time for counter-ads. I hope you will support this petition, and the FCC's authority to implement it, as you consider this important issue.

Thank you for your time and consideration.

Sincerely,

Francie McGuire Winkler

Francie McGuire Winkler

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NICHOLAS A. PACE, M.D.
GENERAL MOTORS BUILDING
767 5TH AVENUE, 9TH FLOOR
NEW YORK, NEW YORK 10153

TELEPHONE (212) 418-6450

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June 11, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

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Dear Commissioner Rachelle,

As a physician who has been in practice for more than 25 years, I have seen the havoc that alcohol has caused on families, especially among the young of our country. I strongly urge you to support a Notice of Inquiry to examine the Commission's role in addressing the alcohol advertising issue.

The Federal Communications Commission's responsibility is to give broadcasters a license to use the public airwaves and the broadcasters' responsibility is to serve the public interest. I am very concerned that the public interest is not being served by alcoholic beverage advertisements that are appealing to children.

A thorough examination by the FCC would gather evidence on the reach these ads have, explore the effects they have on children and examine solutions to the problem. The FCC could then report to the President, Congress, parents, teachers, health professionals and others on the status of alcohol advertising.

The National Council on Alcoholism and Drug Dependence has petitioned the FCC to require broadcasters to offer time for counter-ads. I hope you will support this petition, and the FCC's authority to implement it, as you consider this important issue.

Thank you for your time and consideration.

Sincerely,



Nicholas A. Pace, M.D.
Asst. Professor of Medicine NYU Medical Ctr.
NAP:st

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9708-345

YoungLife

Commissioner Rachelle Chong
Commissioner James Quello
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

Brian Trost
Staff

JUN 11 1997

RECEIVED

June 11, 1997

Dear Commissioners:

Alcohol-related problems continue to plague our nation's youth. I work for an international Christian ministry organization that focuses on adolescents, and I see first-hand the effects of alcohol abuse on students and their families. I am one of the people who often tries to help them get back on track in life. Thus, I strongly urge you to support a Notice of Inquiry to examine the Commission's role in addressing the alcohol advertising issue.

The Federal Communications Commission's responsibility, as you well know, is to give broadcasters a license to use the public airwaves, and the broadcasters' responsibility is to serve the public interest. I am very concerned that the public interest is not being served by alcoholic beverage advertisements that are appealing to children.

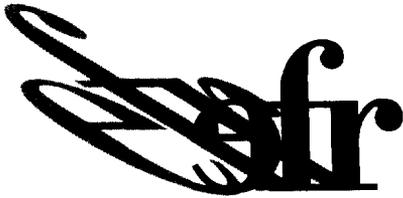
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The National Council on Alcoholism and Drug Dependence has petitioned the FCC to require broadcasters to offer time for counter-ads. I hope you will support this petition, and the FCC's authority to implement it, as you consider this important issue. Thank you for your time and consideration.

Sincerely,

Brian Trost

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Employee & Family Resources

97060349

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JUN 20 '97

FEDERAL COMMUNICATIONS
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OFFICE OF SECRETARY

June 13, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Commissioner Chong:

It is my understanding that you and your fellow commissioners will soon decide on whether or not to provide a Notice of Inquiry to examine the Commission's role in the alcohol advertising issue. I ask that you give strong consideration to support this Notice of Inquiry.

As a provider of alcohol prevention and intervention services throughout our community, we are well aware of the negative and costly impact of alcohol advertising on our entire community, particularly our children and youth. I personally have experienced the impression of these creative ads on my own children at times when we have been watching television together.

A Notice of Inquiry would allow all parties interested in this issue the opportunity to express their opinions and relevant research to the Commission, which, in turn, could develop a report to the President, Congress and others.

Thank you for your consideration of support of the Notice of Inquiry.

Sincerely,

Paul M. Hedquist
CEO

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INVESTIGATION

97060359



June 17, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street NW
Washington D.C. 20554

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FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

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JUN 20 '97

Dear Commissioner Chong:

Alcohol related problems continue to plague our nation's youth. I strongly urge you to support a Notice of Inquiry to examine the Commission's role in addressing the alcohol advertising issue.

The Federal Communications Commission's responsibility is to give broadcasters a license to use the public airwaves and the broadcaster's responsibility is to serve the public interest. I am very concerned that the public interest is not being served by alcoholic beverage advertisements that are appealing to children.

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The National Council on Alcoholism and Drug Dependence has petitioned the FCC to require broadcasters to offer time for counter-ads. I hope you will support this petition, and the FCC's authority to implement it, as you consider this important issue.

Thank you for your time and consideration!

Sincerely,

Debra Schmid, Prevention Supervisor
Berrien County Health Department's
Alcohol/Drug Abuse Program

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INVESTIGATION

Benton Harbor Office
769 Pipestone St., P.O. Box 706
Benton Harbor, MI 49023
926-7121
Fax: 926-8129

St. Joseph Office
4066 Red Arrow Hwy.
St. Joseph, MI 49085
426-5000

Niles Office
South County Bldg.
1205 N. Front Street
Niles, MI 49120
884-2800

Three Oaks Office
21 North Elm
Three Oaks, MI 49129
756-2008

BERRIEN COUNTY HEALTH DEPARTMENT
ALCOHOL/DRUG ABUSE PROGRAM

756 Pipestone
Benton Harbor, MI 49022
(616) 926-7135
FAX (616) 925-8830 (BH)
FAX (616) 428-4851 (SJ)

TO: Commissioner Rachelle Chang NUMBER OF PAGES TO FOLLOW: 1

FROM: Debra Schmid

DATE: 6-17-97

COMMENTS: Hello Commissioner Chang-
Thanks in advance for your
consideration of the following fax!!
Debra Schmid

FAX.WPS

97160324

**Ann Thompson
117 Hitching Post Lane
Amherst, NY 14228**

June 10, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M. Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

**FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY**

JUN 20 '97

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Thank-you for your time and consideration.

Sincerely,

Ann Thompson

Ann Thompson

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97600323

**Kimberlee Hoftiezer
94 Byron Avenue
Buffalo, NY 14223**

June 10, 1997

Commissioner Rachelle Chong
Federal Communications Commission
1919 M. Street, NW
Washington, DC 20554

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JUN 20 '97

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Sincerely,


Kimberlee Hoftiezer

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COMMISSION
INVESTIGATIVE
DIVISION