

unique characteristic of scarcity.¹¹⁰⁹ Thus, the Federal Communications Commission has broad authority to determine the right of access to broadcasting,¹¹¹⁰ although, of course, the regulation must be exercised in a manner that is neutral with regard to the content of the materials broadcast.¹¹¹¹

In certain respects, however, governmental regulation does implicate First Amendment values, and, in *Red Lion Broadcasting Co. v. FCC*, the Court upheld an FCC regulation that required broadcasters to afford persons an opportunity to reply if they were attacked on the air on the basis of their “honesty, character, integrity or like personal qualities,” or if they were legally qualified candidates and a broadcast editorial endorsed their opponent or opposed them.¹¹¹² In *Red Lion*, Justice White explained that “differences in the characteristics of [various] media justify differences in First Amendment standards applied to them.”¹¹¹³ Thus, although everyone has a right to speak, write, or publish as he will, subject to very few limitations, there is no comparable right of everyone to broadcast. The frequencies are limited and some few must be given the privilege over others. The particular licensee, however, has no First Amendment right to hold that license and his exclusive privilege may be qualified. Qualification by censorship of content is impermissible, but the First Amendment does not prevent a governmental insistence that a licensee “conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.”¹¹¹⁴ Furthermore, said Justice White, “[b]ecause of the scarcity of radio frequencies, the government is permitted to put restraints on licensees in favor of others whose views

¹¹⁰⁹ *NBC v. United States*, 319 U.S. 190 (1943); see also *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 375–79, 387–89 (1969); *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 798–802 (1978).

¹¹¹⁰ *NBC v. United States*, 319 U.S. 190 (1943); *Federal Radio Comm’n v. Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266 (1933); *FCC v. Pottsville*, 309 U.S. 134 (1940); *FCC v. ABC*, 347 U.S. 284 (1954); *Farmers Union v. WDAY*, 360 U.S. 525 (1958).

¹¹¹¹ “But Congress did not authorize the Commission to choose among applicants upon the basis of their political, economic or social views or upon any other capricious basis. If it did, or if the Commission by these regulations proposed a choice among applicants upon some such basis, the issue before us would be wholly different.” *NBC v. United States*, 319 U.S. 190, 226 (1943).

¹¹¹² 395 U.S. 367, 373 (1969). “The Federal Communications Commission has for many years imposed on radio and television broadcasters the requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage. This is known as the fairness doctrine. . . .” *Id.* at 369. The two issues passed on in *Red Lion* were integral parts of the doctrine.

¹¹¹³ 395 U.S. at 386.

¹¹¹⁴ 395 U.S. at 389.