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UB Viewpoint – Hooray for Sinclair

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Who would have thought that our very own Hunt Valley neighbor would finally expose the utter bankruptcy of federal communications regulation? Structural deregulation, abandonment of fairness principles and editorial irresponsibility combined this year to create a "perfect storm" that finally got someone's attention. Someone's, but not that of the Federal Communications Commission. The FCC's primary responsibility is to protect us all from errant nipples, not from the use of our airwaves for abuse of the political process. That obligation died an agonizing death over the last couple of decades. Fortunately, Sinclair's advertisers and public shareholders didn't realize how toothless (spineless?) the FCC really is. In the end, they forced the company to revise its plans to require its 62 broadcast stations to pre-empt prime-time programming for an anti-Kerry documentary.

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There was a time when over-the-air broadcasters were required to air both sides of controversial issues under the "Fairness Doctrine" created by the FCC in 1949. In 1985, however, the Reagan FCC killed off most of the doctrine — with the Supreme Court's blessing — at the behest of the broadcasters. Even so, a remaining vestige of the "Fairness Doctrine" known as the "Personal Attack Rule" would have given Kerry the right to reply to the documentary. In 2000, however, that rule was killed off by the D.C. Circuit when the Clinton FCC failed to justify it. A corollary of the Personal Attack Rule, called the "Zapple Rule," might have given Kerry supporters the right to reply, but that policy is probably also dead. Neither the D.C. Circuit opinion nor the FCC's repeal order mentions it. Only the so-called "Equal Time" provision of the Federal Communications Act remains on the books to ensure a modicum of fairness in broadcasting, but it does not apply in this or many similar situations. Even new federal election law constraints may be inapplicable here. As it happens, Sinclair's business interests trumped its ideological bent, and the only real casualty of the broadcast was Washington bureau chief Jon Lieberman, who publicly opposed the company's original plans and lost his job for protecting the fading integrity of broadcast news. The actual program, which appeared in 40 markets where Sinclair owns at least one broadcast station, was a reasonably balanced presentation, according to Washington Post media critic Howard Kurtz. It might have been otherwise. If the FCC's proposed relaxation of broadcast ownership limits ever takes effect, multi-station owners like Sinclair — which now reaches about a quarter of the national market — would be free to poison a national election in 45 percent of the market. Those rules have been stalled by a federal appeals court, and the Sinclair episode may stall them permanently. If not, only the "Fairness Doctrine" or something like it can ensure the proper stewardship of our collective property interest in the broadcast spectrum. The market worked this time only because the abuse was so egregious that investors panicked and forced Sinclair stock down 15 percent. Unless we learn the right lesson from this episode, over-the-air television will gradually drift toward irrelevance, like AM radio, and a precious resource will be lost ... a resource that belongs to all of us, not to the media monopolists.

Eric Easton, an associate professor of law at the [University of Baltimore School of Law](#), wrote this column for The Daily Record. The opinions expressed are his own.